

March 31, 2017

The Honorable Amy Klobuchar
United State Senate
Washington, D.C. 20510

Dear Senator Klobuchar:

We write to thank you for your recent speech on the growing concentration of economic power and the need for more vigorous antitrust enforcement, and to commend your call for legislative action. We also wish to share information that we hope can help inform the drafting of your legislative package and expand its scope.

Advocates for Independent Business (AIB) is a coalition of national trade associations representing tens of thousands of independent small businesses across a variety of industries. Our member groups count many small businesses across Minnesota as members, including **23 toy stores** from Albert Lea to Ely, **14 office supply dealers** with 30 locations, **18 bike retailers** and a number of bike distributors and manufacturers, **27 record stores**, **3 running retailers**, more than **a dozen florists**, and nearly **40 bookstores** from Grand Rapids to New Ulm. These businesses make significant contributions to payrolls, tax bases, and civic life in their communities and statewide.

In today's highly concentrated markets, the ability of dominant companies to exclude and impede small businesses from competing has become one of the most pressing issues facing our members. A growing body of evidence suggests that anticompetitive behavior may be behind a sharp drop in the rate of new business formation as well as a decline in the overall number of small businesses operating in the U.S. According to the Economic Innovation Group, the rate of new business formation during the current recovery is less than half of what it was during the recovery of the early 2000s. Many metro areas have experienced more business deaths than births. In the Twin Cities, business births have only slightly exceeded deaths.

This is a troubling change from past patterns, and it has alarming implications for job growth, innovation, community well-being, and the entrepreneurial aspirations of Americans. Locally owned businesses occupy a critical position in a healthy economy: New and growing businesses account for nearly all of net job growth; small businesses play a pivotal role in innovation; and as recent economic research has found, local and dispersed business ownership strengthens the middle class and lessens

economic inequality. Along with these economic impacts, social science research has shown that local business ownership strengthens the social and civic well-being of communities in ways ranging from increased voter turnout to greater participation in civic associations.

In surveys, our members report that anticompetitive behavior by dominant companies is having a significant negative impact on their businesses. Here are a few examples of what they are contending with:

- The Internet has enabled a new form of market power—platform power—that dominant firms can use to undermine competing businesses. In e-commerce, for example, Amazon has become a powerful gatekeeper. More than half of all online shoppers now start their search at Amazon.com, rather than a search engine, and last year, Amazon’s platform captured nearly \$1 of every \$2 that Americans spent online. The practical effect of this is that competing retailers and manufacturers have to become sellers on Amazon’s platform to reach the market. Much like the railroad barons of the 19th century—whose anticompetitive practices gave rise to our first antitrust laws—Amazon uses its control of market access to disadvantage its competitors. The impacted companies include both rival retailers and manufacturers that compete with Amazon’s rapidly growing line of private-label products. Recent research by The Capitol Forum has shown that Amazon’s algorithms favor its own private-label products for the recommendation carousel at the bottom of product pages, even when competing products are a better match for the customer’s search. ProPublica’s research has shown that Amazon often awards the buy-box to itself even when lower-cost products are available from other sellers. Studies by Harvard Business School, Upstream Commerce, and others have documented how Amazon abuses third-party sellers who rely on its platform, including arbitrarily closing their accounts.
- Many industries have high levels of vertical integration, allowing dominant companies to use their power in one part of the supply chain to impede competition in another. In the pharmacy sector, for example, the two leading pharmacy benefit management companies, Express Scripts and CVS Health, which control prescription benefits for over 180 million Americans (about 75 percent of the market), impose terms on independent pharmacies that impede or exclude them from competing. The effect is to steer consumers to the PBMs’ own mail-order and retail pharmacies.
- Markets for essential services that small businesses depend on are often highly concentrated, enabling dominant suppliers to charge excessive fees. Credit card processing is one example. Visa and MasterCard impose swipe fees on U.S. businesses that are roughly six times what they charge in Europe, where their monopoly is regulated and swipe fees are capped. Because of this

price gouging, swipe fees often rank as a small business's third highest expense after payroll and occupancy. This sizable cost burden erodes profitability and has hindered small businesses' ability to invest and grow.

Small and new businesses deliver important market innovations and consumer benefits, and their future depends on a level playing field. We believe that the antitrust pendulum has swung too far in the direction of a lax approach by both enforcers and the courts, and that enforcement has also failed to keep pace with the ways technology has altered the dynamics of market power.

Congress has a critical role to play in correcting this, both by spurring enforcement agencies to adopt a more aggressive approach and by clarifying the intent of antitrust laws so as to better guide the courts in their interpretation. Again, we thank you for your leadership on this issue and commend your initial proposals for reform. We hope these can serve as a starting point for what's needed to fully restore competition. We would welcome the opportunity to share more information with you and your staff.

Sincerely,



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On behalf of AIB's member organizations:

- *American Booksellers Association*
- *American Specialty Toy Retailing Association*
- *Brixy*
- *Coalition for Independent Music Stores*
- *Independent We Stand*
- *National Bicycle Dealers Association*
- *North American Retail Hardware Association*
- *Running Industry Association*
- *Society of American Florists*
- *TriMega Purchasing Association*