NEW PHOENIX CENTER ANALYSIS FINDS CALL FOR A NEW “DIGITAL PLATFORM AGENCY” WANTING

Proposal by Former FCC Chairman Tom Wheeler for a New “Digital Platform Agency” Would Create Agency with Broad and Unchecked Powers over the Entire Internet Ecosystem

WASHINGTON, D.C. — For the past twenty-five years, the U.S. Government has increasingly looked to antitrust—rather than regulation—to protect consumers in the Internet Ecosystem. There is a growing school of thought that an antitrust-only approach has failed and is ill-suited for the Internet Ecosystem. Reform advocates worry the giant Internet Platforms—primarily Apple, Facebook, Amazon and Google—have grown too large and too dominant under antitrust’s watch (or alleged lack thereof). The unbridled growth of big tech along with the high evidentiary requirements and slow pace of antitrust cases have some reformers looking for alternative forums for oversight—forums with a more anticipatory, immediate, and interventionalist perspective.

In a new analysis released today entitled A Poor Case for a “Digital Platform Agency”, Phoenix Center President Lawrence J. Spiwak examines one such proposal by former Federal Communications Commission ("FCC") Chairman Tom Wheeler and his co-authors Phil Verveer and Gene Kimmelman (hereinafter the “Wheeler Proposal”).

Dissatisfied with existing regulatory institutions like the FCC and Federal Trade Commission, along with the long-standing consumer welfare standard under antitrust law (which the authors summarily dismiss as a “conservative litmus test for judicial appointments”) the Wheeler Proposal calls for the creation of a new “Digital Platform Agency” or “DPA” — complete with its own novel governing statute. Central to the argument for the DPA is that with the combination of “Digital DNA” and “cooperative engagement” with the industry, this new DPA will somehow be different from existing regulatory agencies and thus fully capable of regulating dynamic markets with minimal intrusion. As demonstrated by Spiwak’s critique, the Wheeler Proposal’s desired new statutory framework would give the DPA broad and unchecked regulatory powers over the entire Internet Ecosystem—including both tech platforms and Internet Service Providers alike.

“Regulators tend toward capture and their efforts often do more harm than good. As such, we may rightly demand compelling arguments for a new regulator, especially one with broad scope and unbridled power over the most important and dynamic segment of the modern economy,” says


The Phoenix Center is a non-profit 501(c)(3) organization that studies broad public-policy issues related to governance, social and economic conditions, with a particular emphasis on the law and economics of the digital age.