CPI TALKS…

… *with Representative Ro Khanna*

California's 17th Congressional District

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In this edition of CPI Talks we have the pleasure of speaking with U.S. Representative Ro Khanna, of California's 17th Congressional District.

Thank you, Representative Khanna, for sharing your time for this interview with CPI.

1. **The "tech giants" have come under enhanced scrutiny at a regulatory and political level in recent years and months. What do you see as the main antitrust challenges posed by these companies? Do you think new legislation or regulation is required, or do you believe more rigorous enforcement of the existing antitrust toolkit would be appropriate?**

Technology companies, no matter what their power, cannot be left to regulate themselves. Even they would admit that at this point. Thus far, there has been a reluctance in Congress to step in and regulate an industry that, frankly, many members themselves don't have a complete understanding of even today. That needs to change.

The most urgent issue to address is the lack of transparency between technology giants, legislators and regulators, and the American public. Some level of transparency is absolutely essential to ensure bad actors aren't abusing the platforms we've come to rely on, and that companies are upfront about the challenges they're encountering in combating those attacks. We should not reflexively break-up our big tech companies. Instead, we should regulate anti-competitive behavior and ensure there are basic privacy protections for all Americans.

2. **In late 2019, fifty States' Attorneys General announced an antitrust investigation into Google, focusing on Google's advertising business, but potentially extending into other aspects of its activities. In 2013, the FTC closed an investigation into Google on similar issues. In parallel, the FTC is looking at similar issues relating to Facebook and Amazon. What are your views on the functioning of the U.S. enforcement system in this sector? Are the various agencies properly coordinating, or is there need for more joined-up thinking?**

I've said that, broadly, we should regulate anti-competitive behavior. As a founding member of the House Antitrust Caucus, I co-led a letter to the FTC requesting information on how mergers and acquisitions impact jobs and small businesses. I've called for more funding for the FTC and DOJ so they can do their jobs studying and enforcing the antitrust laws we already have on the books.

3. **Prominent politicians and commentators have vocally called for the “tech giants” to be “broken up” to remedy perceived antitrust concerns associated with their conduct. Such “structural” remedies have in latter years typically only been used by the DOJ for under the Clayton Act, though historically they have also been used under the Sherman Act. In your view, is there a broader role for structural remedies in antitrust cases, or would regulators be better advised to limit themselves to targeted “behavioral” remedies?**

Any future antitrust investigation should be executed with surgical precision, not a sledgehammer. Technology companies are not a monolith. While there’s inevitable overlap, they are each pursuing fundamentally different goals across the broad spectrum of technology innovation. We need thoughtful regulation that ensures these platforms stay neutral, and don’t privilege their own products.

4. **In your view, is there a “knowledge gap” between the tech industry and those (legislators, regulators, and other senior political figures) entrusted by the public with its regulation? If the authorities are over-reliant on industry for knowledge of the sector, does this create the risk of regulatory capture? What initiatives would be appropriate to close any such knowledge gap? Were the 2019 Congressional hearings into the tech sector a useful exercise? Do you think such dialogue ought to be institutionalized, and how would you seek to ensure that a diversity of voices is heard?**

Absolutely. The 2019 hearings were an embarrassing display of how little lawmakers understand about the technology industry. Many are technologically illiterate. We had some members asking Zuckerberg how Facebook made money, and others asking the CEO of Google questions about Apple’s iPhone, not knowing Google didn’t make the iPhone. It was an astonishing lapse of Congressional oversight capability.

Worse still, the 115th Congress took no action after massive breaches of people’s data. How could we fail to act even after the Cambridge Analytics scandal? The American public wants some assurances that our privacy and our data are going to be protected. This stuff really isn’t rocket science. We know what we need: basic protection for people having access to their data and knowing where their data is being used. That’s why I proposed an Internet Bill of Rights, a commonsense list of rights that should be afforded to all Americans in the digital age.

In the short term, Congress should require any technology company to notify users of a data breach of any scale, immediately. In the longer term, users should be able to own their data, and have the freedom to move it if they are unhappy with the way a particular company is using it.

To combat the gaps in knowledge among both legislators and potential regulators, we should require members to undergo some level of basic technology training. I’ve supported Rep. Takano’s call to bring back Congress’ Office of Technology Assessment. To combat the lack of diversity within the technology industry, companies need to reconsider their recruiting strategies to incorporate more historically black colleges and colleges in economically less-prosperous areas. Earlier this year, I held a recruiting event with some of Silicon Valley’s top technology companies, including Amazon, Facebook, and Apple, at San Jose State University with Black students. Wealth creation and job opportunity shouldn’t be exclusive to members of a certain race, gender, or income level.

5. **M&A activity by large tech companies has been singled out as a particular area of concern. Beyond acquiring smaller innovative tech companies, they also seek to spread their influence into the bricks-and-mortar world. Do such so-called “killer acquisitions” merit particular scrutiny, even though, under the prevailing standards, they would typically avoid detailed review? Is there need for a re-evaluation of the application of the merger rules? Moreover, to the extent that potentially problematic**

transactions have thus far evaded review, should there be scope for the agencies to review post-merger conduct *ex post facto*?

It is very difficult to go back and breakup mergers *ex post facto* given the integration that companies undertake. But we should do a better job of scrutinizing new ones before companies undertake them. We can also regulate anti-competitive behavior even if we are not able to unwind past mergers.

6. **The prevailing antitrust school of thought since the 1970s has focused on the so-called “consumer welfare” standard. This standard is typically taken to refer to effects on prices paid by end consumers. Is the time right, as some have suggested, for a reconsideration of this standard, so that the rules can be applied in a manner to take into account structural features of the economy, and other social goods, such as effects on small businesses, entrepreneurship, and income distribution? What type of standard would you envisage, and how could it be implemented while ensuring legal certainty and growth and innovation incentives?**

You’re exactly right. For too long, we’ve relied on the Bork doctrine of antitrust that only looks at prices and consumer welfare. Instead, we should go back to the Brandeisian perspective when considering mergers and acquisitions. Why all of a sudden did we not care about the impact that mergers will have on innovation, inequality, jobs, wages, and the health of local businesses? A decades-long obsession with the Bork doctrine has made us forget about these other aspects of our economy. I hope the FTC and DOJ take this more holistic approach when considering future mergers.