

October 28, 2021

Dear Republican Senators:

On behalf of the undersigned organizations that represent taxpayers, consumers, and free market advocates across the nation, we write in strong opposition to the American Innovation and Choice Online Act ([S. 2992](#)). The big government regulations included in this bill would empower enforcers to weaponize antitrust laws and punish American companies for providing products and services that consumers widely enjoy. Competition thrives when barriers are removed, not when top-down government policies distort free market activity.

While proponents of this bill claim it offers improvements from the House version, these changes [do little to mitigate](#) the damage that it would cause by making a variety of commonplace business practices into antitrust violations. Under this version, the standard of evidence that “covered platforms” must provide if accused of a violation is slightly lowered, but the burden of proof would still fall upon the companies to affirm that they are not “materially” harming competition. This “guilty until proven innocent” standard is antithetical to the American legal system and would have a chilling effect on innovation, as these companies decide whether it’s worth the potential legal risk to grow their business.

Importantly, although some of its supporters might believe that this bill would not negatively affect the services and products consumers enjoy, in practice it would absolutely make consumer technology [worse](#). Common consumer-friendly features would be threatened by the bill’s targeting of practices such as “self-preferencing” and “discrimination” among the products offered on an online platform. This could bar practices such as Google Maps being featured in Google search results, Amazon labeling which products feature free Prime shipping, and pre-loading apps on mobile devices. Absent changes to this bill, lawmakers are essentially relying on regulators to “do the right thing.” However, depending on Chair Lina Khan’s Federal Trade Commission (FTC) to act with restraint ignores the [partisan](#) and [aggressive](#) actions they have taken over the past year. Giving the FTC and other federal regulators wide discretion to meddle in markets is sure to backfire on consumers.

Overall, this bill places a larger emphasis on protecting competitors instead of consumers. If “self-preferencing” is such an anticompetitive practice, it would make sense for lawmakers to ban it holistically. Instead, this bill targets a handful of companies within one industry for a practice [common](#) in retail, grocery, and streaming services. For example, Walmart saw 80 percent [growth](#) in e-commerce over the last year and sells their own private labels. The tailoring of this bill to apply to just a handful of technology companies suggests this is not truly about protecting competition and consumers. This undermining of the [consumer welfare standard](#) further empowers antitrust enforcers to pursue non-economic goals. Furthermore, a company with market power that engages in self-preferencing that is truly exclusionary or predatory would already run afoul of existing antitrust laws.

This bill also creates massive new privacy and security concerns and may open these tech platforms up to massive data grabs by foreign competitors who are not bound by the same constraints. Covered platforms are required to make their data interoperable with their competitors and are disallowed from any privileged use of data collected via use of their services. In addition, the bill’s ban on “discrimination” in the enforcement of their terms of service could slow down the moderation of offensive or malicious products on these platforms.

As Republicans continue to search for ways to boost competition and protect consumers, we urge you to stick to your principles and not endorse a progressive antitrust agenda masquerading as reform. This misguided antitrust push won’t create more competition, but it will make consumer technology worse. Consumers should not be collateral damage in the push to punish technology companies.

Sincerely,



National Taxpayers  
Union



American Consumer  
Institute

AMERICAN COMMITMENT

American  
Commitment



Americans for  
Prosperity

AMERICANS  
FOR TAX REFORM

Americans for Tax  
Reform



Center for Freedom and Prosperity



Competitive Enterprise Institute



Council for Citizens Against Government Waste



Digital Liberty



Market Institute



Net Choice



Open Competition Center



Taxpayers Protection Alliance



Pelican Institute



R Street Institute



Small Business & Entrepreneurship Council (SBE Council)



The Committee for Justice