

February 2, 2022

U.S. Senate  
50 Constitution Ave NE  
Washington, DC, 20510

Dear Senator,

On behalf of the undersigned organizations – representing millions of taxpayers, consumers, and free market advocates across the nation – we urge you to oppose the “Open App Markets Act” (OMA) ahead of its markup in the Senate Judiciary Committee this week. This bill will jeopardize the ability of smart phone providers to secure their devices and their customers’ privacy. It will also cause unnecessary disruptions to the market.

Major smart device manufacturers go to great lengths to safeguard the security of their products for consumers. They strive to ensure malicious actors do not get access to their operating systems and marketplaces to wreak havoc on private information or to otherwise take advantage of everyday Americans. Unfortunately, OMA will severely hinder their ability to do this.

OMA would have U.S. law treat it as anticompetitive behavior if a device manufacturer bars an app developer from their platform. Given that smartphones store increasingly sensitive information these days, basic safeguards surrounding who gets access to them would be a commonsense measure. However, under OMA, doing so would lead these manufacturers before a Federal Trade Commission (FTC) tribunal and open them up to millions in potential lawsuits.

There is no indication that such a regulatory regime would benefit consumers. An overwhelming majority of smartphone users opt for devices with such protections. Sensibly, most people want to be able to trust the content they download and sites with which they interact without having to do hours of due diligence. Under the current framework, smart device providers perform those background checks so users don’t have to. This should be viewed as a valuable service, not a crime.

Further, one of OMA’s primary sponsors has, in the past, acknowledged that such safeguards are vital to combatting child sex trafficking. At a hearing on this very subject, Sen. Marsha Blackburn (R-Tenn.) pointed out that Apple’s threat to remove Facebook from its App Store led to Facebook taking a more hardline stance on potential illegal activity on its site. Again, this is a valuable service being rendered by smart device providers.

To combat these supposed anticompetitive practices, the bill would give the FTC sweeping authority to punish companies they deem to be in violation. The vague definitions included in the legislation would create a reality in which the FTC has virtually unchecked authority to go after the American tech sector. Given FTC Chair Lina Khan’s stated desire to make the

agency more political, this would be a disaster for the economy and the integrity of the agency itself.

At a time where our economy has been battered by a global pandemic, rising inflation, and supply chain shortages, there is no reason to go after one of our most vibrant sectors. The widespread access smartphones granted to the world mitigated many of the most severe challenges of the pandemic. Passing legislation like the Open App Markets Act would sow distrust in these devices by ensuring that potentially fraudulent actors can gain access to the personal data of millions. This is unacceptable.

It is for these reasons – among others – that we, the undersigned organizations, ask you to oppose this legislation.

Sincerely,

Taxpayers Protection Alliance

American Consumer Institute

Americans for a Strong Economy

Americans for Prosperity

Americans for Tax Reform

Center for Freedom and Prosperity

Competitive Enterprise Institute

Council for Citizens Against Government Waste

Digital Liberty

National Taxpayers Union

Open Competition Center

R Street Institute