MYTH: AICO Will Harm Small Business

Big Tech Groups argue that the bill will harm small business. The bill only applies to companies with market capitalizations greater than $550,000,000,000. This applies to a radically small number of companies, and certainly not to small business.

The other common argument is that regulating the large businesses that small businesses depend on, will harm those small businesses because they will lose access to the helpful things the platforms offer.

The claim contains its own logical inconsistency, however. Small businesses are currently dependent on the large platforms that the bill regulates. The bill places rules that prevent those platforms from unfairly discriminating against, retaliating against, or denying access to smaller businesses that pose competitive threats. This bill only applies to a company if it is unfairly harming other businesses' ability to compete. One generally does not argue that public companies should be freed from securities fraud regulations because the cost of complying with fraud laws harms their stockholders. There is no reason to believe that prohibiting illicit behavior by large firms will harm small businesses.

MYTH: AICO Will Harm American Business's Competitiveness Globally

Lobbyists argue that the bill will harm the U.S. capacity to compete with other economies around the world. This argument often identifies Chinese companies like Alibaba, Tencent, and Baidu competitors that must be defeated and any regulations or fines of U.S. giants like Amazon, Apple, or Google makes our economy less competitive.

However, more giant firms do not make the U.S. economy stronger overall. They generally lead to lower wages and lower tax revenues. Competition is the traditional source of strength for the American economy, both domestically and in competition with other economies. Failing to preserve competition out of fear that it will harm the largest firms gets the problem backwards. Law Professor Tim Wu testified that America may be "entering a startup winter" due to excessive consolidation. He notes that the rise of market power online threatens to make the United States "a country where inventors and entrepreneurs dream of being bought, not of building something of their own." The largest booms in the American economy have come on the heels of dominant firms being regulated. The post-war boom was under FDR's vigorous competition enforcement. The innovation and success of the American tech economy—from telecoms in the 1980s after the Bell System breakup to the flourishing Silicon Valley software economy after the Microsoft antitrust decision—show that competition regulation is critical to continued American economic success.

MYTH: AICO Will Destroy Privacy and Security of Tech

Big Tech Groups have argued that the bill prevents companies from protecting their users' privacy and the security of their systems.

However, the bill explicitly protects privacy and security.

Section 2(b)(5) explains that preinstallation and default settings can be preserved even if they are self-preferential if they are "necessary for the security or functioning of the covered platform"

Section 2(d)(1)(B) explains that a company accused of violating the law can defend themselves from all liability by showing that the decisions or features were necessary to "protect safety, user privacy, the security of non-public data, or the security of the covered platform"

Section 2(d)(2)(B)(ii) likewise explains that the bill "shall not apply" if the a given decision or feature that may otherwise violate the bill "was necessary to… protect safety, user privacy, the security of non-public data, or the security of the covered platform."

There are many layers of protections for companies acting to preserve the security of their devices and the privacy of their users. The bill does not, however, protect against discriminatory behavior that uses privacy or security as a pretext for harming competition.

MYTH: AICO will kill Prime

Big tech groups have claimed that the bill will kill the features of Amazon Prime like 2-day shipping or Fulfillment by Amazon.

Posts like this identify 3 elements of the bill that supposedly eliminate Prime features. Looking at the provisions shows this to be untrue.

Section 2(a)1 makes it a violation to:

> "unfairly preference the covered platform operator's own products, services, or lines of business over those of another business user on the covered platform in a manner that would materially harm competition on the covered platform;"

This provision prohibits Amazon from "unfairly" preferencing itself in ways that "materially harm competition." Tech lobbyists suggest that this means Amazon could not display a Prime badge on products and could not offer FBA because it's a better value for consumers.

However, noting membership in Prime is not unfair preferencing, it's providing information. Merchants would be allowed to mention their shipping times and logistics information however they like. Amazon would only be prohibited from unfair preferencing, like making Prime results always appear in the top 5 search slots even if they are not relevant. Similarly, offering FBA is not unfair preferencing if it is offered as an option that consumers can choose on the merits. Amazon would only be prohibited from unfair preferencing like only presenting users with products if they use FBA.

Section 2(b)2 makes it a violation to:

> "condition access to the covered platform or preferred status or placement on the covered platform on the purchase or use of other products or services offered by the covered platform operator that are not part of or intrinsic to the covered platform itself;"

This provision prohibits Amazon from denying businesses "access" or "preferred status or placement" unless they sign up for Prime, FBA, or some other additional ancillary program offered by Amazon. Tech lobbyists suggest this will eliminate free shipping for Prime.

It is hard to see how free shipping is disrupted by this provision. Amazon would be prohibited from forcing businesses to sign up for Prime if they want to be shown in the list of available options to buy a product (called the "Buy Box.") However, those product offerings can and should still reflect reality. If other merchants are offering longer shipping times or a more expensive product, Amazon can reflect that in the information it shows, or by excluding the offering from the Buy Box. It simply cannot use Prime or FBA

membership on its own as a reason to exclude other merchants from appearing in searches or in the Buy Box.

MYTH: AICO Will Destroy the App Store and Force Apple to Allow Malware

Big Tech Groups have claimed the bill will force Apple to allow any and all sources of mobile apps to load software onto iPhones. They claim this will ruin the security and quality of the Apple ecosystem. Nothing in the bill forces Apple to allow unsafe or low-quality application distribution on its phones. Instead, it requires a level playing field. The likely provisions the lobbyists are responding to are Section 2(a)1, 2(b)2), and 2(b)6:

Section 2(a)1 makes it a violation to:

> "unfairly preference the covered platform operator's own products, services, or lines of business over those of another business user on the covered platform in a manner that would materially harm competition on the covered platform;"

Section 2(b)2 makes it a violation to:

> "condition access to the covered platform or preferred status or placement on the covered platform on the purchase or use of other products or services offered by the covered platform operator that are not part of or intrinsic to the covered platform itself;"

Section 2(b)6 makes it a violation to:

> "in connection with any covered platform user interface, including search or ranking functionality offered by the covered platform, treat the covered platform operator's own products, services, or lines of business more favorably relative to those of another business user than they would be treated under standards mandating the neutral, fair, and non-discriminatory treatment of all business users;"

Section 2(a)1 outlaws unfair preferencing, while 2(b)6 outlaws preferencing that is not done according to "neutral, fair, and non-discriminatory standards." These provisions do not say that Apple must allow all comers on to its platform. They instead say that Apple must provide a fair set of standards for how applications can be distributed on its devices and then not deny people if they fit those standards. For example, Apple could allow apps to only be distributed onto phones if the developer meets security standards, at which point users could download from that developer however they like. Or, if Apple does not have the capability to verify in this way, it can allow only apps downloaded through approved app stores, each with their own required review and security processes that meet Apple standards. There are countless ways to arrange this.

The underlying issue that the tech lobbyists are concerned about is represented in Section 2(b)2 which bans dominant companies from forcing businesses to pay for additional services to stay on their platform. In this case, Apple requires developers to pay 30% of their revenue when distributed through the App Store. The App Store does this by taking 30% of all payment processing for digital goods and services. Under 2(b)2 provision, developers would not be forced to pay this fee to maintain access to iOS.

Developers would either have the choice of other ways to distribute apps or the choice of how to have their payment processed. Both of which could still be subject to strict security standards

MYTH: AICO Will Prohibit Preinstallation of Software

Big Tech Groups have claimed the bill will prohibit Google and Apple from preinstalling any apps on their devices. They list for example the idea that users won't have a functional iPhone with Safari or Notes or Weather when they first start their phone.

The applicable provision here are 2(a)1 and 2(b)5

Section 2(a)1 makes it a violation to:

> "unfairly preference the covered platform operator's own products, services, or lines of business over those of another business user on the covered platform in a manner that would materially harm competition on the covered platform;"

Section 2(b)6 makes it a violation to:

> "unless necessary for the security or functioning of the covered platform, materially restrict or impede covered platform users from un-installing software applications that have been preinstalled on the covered platform or changing default settings that direct or steer covered platform users to products or services offered by the covered platform operator"

Again, Section 2(a)1 does not prohibit all preferencing of all types. Rather it prohibits "unfair" preferencing to "harm competition" In Apple's case there is a pattern of practice that is common enough that it has a name: Sherlocking. In many cases, developers have argued that Apple took their successful product on iOS, made a direct copy, and then preinstalled the Apple version to prevent any competition. This type of conduct, if proven would be the type of pre-installation that is banned. These allegations would have to be proven to be unfair for Apple or Google to be forced to change behavior. If the Justice Department successfully alleged that the preinstallation of certain default apps or software harms competition, courts may ask Apple or Google to give consumers more choice during the installation process. But this requires proof first that the practice is unfair and harms competition. So long as Apple or Google are not using preinstallation as a tool to suppress competition, they should have little to worry about.

It is worth noting that the bill also forces platforms to allow users to uninstall preinstalled software and change defaults. This addresses the opposite side of the same point and shows that, ultimately the goal of these provisions is not to prohibit functionality but to enable user choice. This choice is already available in other products from Apple and Google. For example, MacBooks can install Windows which is owned by Microsoft.

MYTH: AICO Will Eliminate Amazon Basics

Big Tech Groups have claimed the bill will force Amazon to shut down Amazon Basics.

Amazon producing its own products is not banned by any portion of the bill. There is no provision that prevents platforms from selling products on their own platform. However, Amazon currently encourages users to buy its Basics products by giving them the premier placement at the top of Amazon listings above all other brands. Moreover, Amazon uses the commercial data from sellers on its own site to launch competing products.

Sections 2(a)2 or 2(b)3 address these practices directly:

Section 2(a)2 makes it a violation to:

> "unfairly limit the ability of another business user's products, services, or lines of business to compete on the covered platform relative to the covered platform operator's own products, services, or lines of business in a manner that would materially harm competition on the covered platform"

Section 2(b)3 makes it a violation to:

> "use non-public data that are obtained from or generated on the covered platform by the activities of a business user or by the interaction of a covered platform user with the products or services of a business user to offer, or support the offering of, the covered platform operator's own products or services that compete or would compete with products or services offered by business users on the covered platform"

Section 2(a)2 would prevent Amazon from excluding all others from the top of its search results to give that placement to Basics in the categories that Basics operates. That behavior "unfairly limits" the ability of other businesses to compete vis-à-vis Amazon's products on its platform. Likewise, Section 2(b)3 would prohibit Amazon from "using the non-public data" it has on the success of other competitors to launch its competitive Basics products. These practices unfairly tilt the playing field to serve Amazon Basics and starve competition. If Amazon Basics cannot exist without these unfair and discriminatory practices, it may be said that this bill bans it. However, if Amazon Basics is capable of existing with the same rules as other sellers on the Amazon platform, it is not banned in any respect.

MYTH: AICO Will Prevent Google Maps Appearing in Your Search

Big Tech Groups have claimed the bill will kill Google Maps and degrade Google search results. The common claim is that it will prevent Google from showing Google Maps in its Google Search results.

The likely provisions they are responding to are Section 2(a)1 or 2(b)6.

Section 2(a)1 makes it a violation to:

> "unfairly preference the covered platform operator's own products, services, or lines of business over those of another business user on the covered platform in a manner that would materially harm competition on the covered platform;"

Section 2(b)6 makes it a violation to:

> "in connection with any covered platform user interface, including search or ranking functionality offered by the covered platform, treat the covered platform operator's own products, services, or lines of business more favorably relative to those of another business user than they would be treated under standards mandating the neutral, fair, and non-discriminatory treatment of all business users;"

Section 2(a)1 prevents Google from "unfairly" preferencing itself in ways that "materially harm competition." Section 2(b)6 prevents Google from treating its own products more favorably than they deserve to be treated under "neutral, fair, and non-discriminatory" standards. Neither of these provisions mean Google cannot incorporate map results in its search results. It could still incorporate Google Maps so long as it makes the decision about which mapping results to display in a fair and non-discriminatory way. There are a host of ways to do this, from displaying multiple mapping options in a search result, to allowing users to choose a default map for their search on a browser, to selecting the map result to display based on publicly available, uniform standards of mapping quality. The only thing the bill prevents is Google giving Google maps permanent preference on all searches exclusively because Google owns both search and maps. If Google Maps are fairly determined to be the best map to put in a search based on quality or user preference or some other fair metric, the bill permits it. If Google is suppressing better maps in its search results because it doesn't want to allow competition, the bill outlaws that.

This same logic applies to nearly all search based preferencing, from app store to retail website. If the search results are generated from neutral criteria and the owner of the search engine isn't putting their thumb on the scale for themselves, the bill allows it.