

May 8, 2024

Hon. Dick Durbin, Chair  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Hon. Lindsey Graham, Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Senators:

We write to urge you to pass the American Innovation and Choice Online Act<sup>1</sup> (AICOA), and the Open Apps Market Act<sup>2</sup> (OAMA) each of which will address some of the most damaging effects of Big Tech's anticompetitive behavior: its manipulation of online marketplaces to benefit themselves, which has damaged thousands of small American companies and imposed hundreds of thousands of dollars in unnecessary costs on American consumers.

As you are aware, both AICOA and OAMA passed out of the Judiciary Committee in the last Congress with strong bipartisan support. Despite that support, the bills did not receive a floor vote. We now urge you to prioritize these bills in the 118th Congress and to begin the committee markup process with haste.

"It's past time to put in place rules of the road," said Sen. Amy Klobuchar<sup>3</sup> when introducing AICOA last year, "to give small businesses and entrepreneurs a chance to compete and bring down costs for all consumers who rely on digital platforms."

The accumulated evidence, including voluminous documents from Big Tech itself, makes starkly clear that these companies preserve their monopolies by dictating market rules that are exploitative and hinder competition.<sup>4</sup> There is no shortage of examples of the ways in which they throw their weight around, impair the free market, and hurt American consumers and businesses.

For example, Google uses its search monopoly to lock out competitors, and its default contracts lock in users<sup>5</sup>. Amazon squeezes<sup>6</sup> its small Marketplace sellers and unjustifiably preferences its

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<sup>1</sup> American Innovation and Choice Online Act, June 2022, <https://www.congress.gov/bill/118th-congress/senate-bill/2033>

<sup>2</sup> Open App Markets Act, February 2022, <https://www.congress.gov/bill/117th-congress/senate-bill/2710/text>

<sup>3</sup> Klobuchar, Grassley, Colleagues Introduce Bipartisan Legislation to Boost Competition and Rein in Big Tech, June 15, 2023

<https://www.klobuchar.senate.gov/public/index.cfm/2023/6/klobuchar-grassley-colleagues-introduce-bipartisan-legislation-to-boost-competition-and-rein-in-big-tech>

<sup>4</sup> [https://democrats-judiciary.house.gov/uploadedfiles/competition\\_in\\_digital\\_markets.pdf](https://democrats-judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf)

<sup>5</sup> Cite to DOJ complaint

<sup>6</sup> Halelyua Hadero, Federal Trade Commission, states sue Amazon over alleged market abuses, Federal Times, September 2023,

own brands in product search results.<sup>7</sup> Apple shuts down services<sup>8</sup> that introduce more competition within its closed iPhone ecosystem even if these services benefit consumers. Facebook entered into an agreement with Google to use Google's ad-exchange system in exchange for preferential rates and ad placement.<sup>9</sup>

Regulators and enforcers are taking action, but Congress must ensure that the law gives them all the tools they need to rein in corporate abuse. Just in the past year, the Justice Department's historic Google antitrust trial<sup>10</sup> led to extensive damning testimony; the FTC filed a complaint<sup>11</sup> against Amazon for anticompetitive behavior; and the Digital Markets Act took effect<sup>12</sup> in the European Union to protect European consumers and businesses against Big Tech's abuses.

AICOA and OAMA would enable Congress to set fair market rules for BigTech in a way that respects our fundamental values and a competitive market economy which is the engine of our innovation and progress. AICOA and OAMA address policy priorities of both parties.

AICOA will end Big Tech companies' preferential treatment of their own products when this harms competition. It will promote innovation and enable smaller companies to grow. It will protect those companies' proprietary business data against abuses by companies like Amazon. And it will help tens of millions of American families. Sen. Chuck Grassley stated the benefits concisely<sup>13</sup>: "Ensuring that there are competitive and dynamic online markets is crucial to bringing more choices and lower prices to American consumers."

OAMA would end Google and Apple's gatekeeping and unfair taxation of the multi-billion dollar app market and also prevent both companies from self-preferencing their own apps and

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<https://www.federaltimes.com/federal-oversight/2023/09/26/federal-trade-commission-states-sue-amazon-over-alleged-market-abuses/>

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[https://www.hbs.edu/ris/Publication%20Files/Self-Preferencing%20at%20Amazon%20-%20Evidence%20from%20Search%20Rankings\\_c3330c64-0bad-48e7-98e7-afdd8356afd4.pdf](https://www.hbs.edu/ris/Publication%20Files/Self-Preferencing%20at%20Amazon%20-%20Evidence%20from%20Search%20Rankings_c3330c64-0bad-48e7-98e7-afdd8356afd4.pdf)

<sup>8</sup>Wes Davis and Jess Weatherbed, US lawmakers push DOJ to investigate Apple following Beeper shutdowns, The Verge, December, 2023,

<https://www.theverge.com/2023/12/18/24006037/apple-beeper-doj-investigation-imeessage-letter-android>

<sup>9</sup> <https://nymag.com/intelligencer/2021/10/inside-jedi-blue-facebooks-secret-deal-with-google.html>

<sup>10</sup>US wraps up antitrust case against Google in historic trial, Reuters, November 2023,

<https://www.reuters.com/legal/us-wraps-up-antitrust-case-against-google-historic-trial-2023-11-16/>

<sup>11</sup>Amazon.com, Inc. (Amazon eCommerce), Federal Trade Commission, November, 2, 2023,

<https://www.ftc.gov/legal-library/browse/cases-proceedings/1910129-1910130-amazoncom-inc-amazon-ecommerce>

<sup>12</sup>Skadden, Arps, Slate, Meagher & Flom LLP, EU Digital Markets Act Enters Into Force on November 1, Creating New Regulatory Regime for Large Tech Platforms, Skadden, October 2022,

<https://www.skadden.com/insights/publications/2022/10/eu-digital-markets-act-enters-into-force>

<sup>13</sup>Chuck Grassley, Opinion: Bipartisan Innovation and Choice Online Act would boost small businesses on 'Big Tech', Des Moines Register, December 2021,

<https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2021/12/14/american-innovation-choice-online-act-boost-small-businesses-big-tech/6497340001/>

services on smartphones.<sup>14</sup> “This legislation will tear down coercive anticompetitive walls in the app economy, giving consumers more choices and smaller startup tech companies a fighting chance,” said Senator Richard Blumenthal (D-CT) in introducing the legislation. Senator Marsha Blackburn (R-TN) explained thusly: “Apple and Google want to prevent developers and consumers from using third-party app stores that would threaten their bottom line. Their anticompetitive conduct is a direct affront to a free and fair marketplace.”<sup>15</sup>

The emergence and increasingly widespread use of artificial intelligence technology by the tech industry will likely only exacerbate the prevailing issues. As Dr. Sarah Myers West, Managing Director of the AI Now Institute, explained in her December 2023 testimony<sup>16</sup> before your committee, “concentration among the firms producing and deploying AI and algorithmic systems risks creating single points of failure through which flaws introduced in one system could have ripple effects throughout the economy.” Dr. West recommended AICOA as one legislative solution, as it highlights “the importance of tackling large tech firms’ gatekeeper role and influence in the broader economy.”

Extensive data shows that expanding free-market and consumer protections as a bulwark against Big Tech enjoys widespread and bipartisan public approval. In a 2022 poll released by the Tech Oversight Project, 73% of respondents said they supported AICOA and 74% said they supported OAMA.<sup>17</sup> More than two-thirds said they would be more likely to support members of Congress who worked toward accountability for Big Tech generally. In another poll<sup>18</sup> surveying voters under 25, majorities of respondents across the party spectrum and from all demographic groups supported AICOA and OAMA.

There are bills on the table that a bipartisan majority of Judiciary Committee members agreed two years ago will effectively address some of the most damaging kinds of market abuses practiced by Big Tech companies.

We urge you to delay no further, and move AICOA and OAMA to markup now.

Sincerely,

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<sup>14</sup>Leah Nylen, Apple Says US Bill Would Make App Store Less Secure, But Its Critics Aren’t So Sure, Bloomberg, June 2022, <https://www.bloomberg.com/news/articles/2022-06-23/apple-aapl-defends-app-store-security-from-new-us-antitrust-bill-critics#xj4y7vzkg>

<sup>15</sup> Blumenthal, Blackburn & Klobuchar Introduce Bipartisan Antitrust Legislation to Promote App Store Competition, August 2021, <https://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-blackburn-and-klobuchar-introduce-bipartisan-antitrust-legislation-to-promote-app-store-competition>

<sup>16</sup> [https://www.judiciary.senate.gov/imo/media/doc/2023-12-13\\_pm\\_-\\_testimony\\_-\\_west.pdf](https://www.judiciary.senate.gov/imo/media/doc/2023-12-13_pm_-_testimony_-_west.pdf)

<sup>17</sup>Edison Research and Tech Oversight Project, California Likely Voters Study Toplines, July 2022, <https://techoversight.org/wp-content/uploads/2022/08/California-Likely-Voters-Study-Topline-Results.pdf>

<sup>18</sup> Data For Progress, May 2022, [https://techoversight.org/wp-content/uploads/2022/05/dfp\\_top\\_youth\\_tabs.pdf](https://techoversight.org/wp-content/uploads/2022/05/dfp_top_youth_tabs.pdf)

Accountable Tech  
Athena Coalition  
Center for American Progress  
Committee to Support the Antitrust Laws  
Consumer Federation of America  
Consumer Reports  
Demand Progress  
Economic Security Project Action  
Future of Music Coalition  
Fight for the Future  
Institute for Local Self-Reliance  
Coalition for App Fairness  
Open Markets Institute  
P Street  
Public Citizen  
Public Knowledge  
Responsible Online Commerce Coalition  
Social Security Works  
The Tech Oversight Project