

Comments for the Record
Anti-American Antitrust Bills Have Already Been
Introduced in Congress

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NetChoice is a trade association of leading internet businesses that promotes the value, convenience, and choice that internet-based business models provide to American consumers. Our mission is to make the internet safe for free enterprise and free expression. We also work to promote the integrity and availability of the internet on a global stage and are engaged on issues in the states, in Washington, D.C., and in international internet governance organizations.

We welcome the committee's focus on the European Union's anti-American antitrust model. Defenders of American free markets and limited government should react with deep concern that the EU has not only launched a war on American businesses within its own borders but has provided countries around the world with a blueprint for similar assaults. Countries like Brazil, Australia, and South Korea are taking bad policies global, and Americans are footing the bill.

Most concerning is that there are American politicians who are working to import these failed European policies into the United States. In 2020, the House Judiciary Committee, under the direction of former Chairman Jerry Nadler (D-NY) and Lina Khan, released a report that outlined six legislative proposals inspired by the European antitrust model. These proposals lit a fire across leftist and socialist organizations but ultimately failed to gain momentum in Congress.

Two of these proposals have returned for the 119th Congress—though likely destined for the same fate.

The *App Store Freedom Act*, a slight re-write of Democrats' *Open App Markets Act*, would give the federal government the ability to violate private contracts, property rights, and undermine the security of the app store ecosystem. In the European context, DMA changes to the app store ecosystem have made security risks more likely. That lawmakers in the United States would entertain the idea of benefitting a tiny percentage of the largest app developers to the detriment of the safety and security of every American consumer is baffling. Luckily, the bill has taken off like a lead balloon.

The American Innovation and Choice Online Act (AICOA) was the primary European antitrust bill offered by Congressional Democrats in the previous Congress. There was a massive campaign by its lead sponsor, Senator Amy Klobuchar (D-MN) and socialist groups like the Open Markets Institute and the American Economic Liberties Project to reshape American online marketplaces in the image of their European counterparts. This would, of course, require them to be less competitive, less lucrative, and return less value to consumers. It would also upend important services that customers depend on, like two-day shipping. It is rumored the bill is being prepared for reintroduction in the Senate, even as this committee correctly expounds upon the dangers of European antitrust.

The committee is right to concern itself with the attacks that American businesses are facing across the globe. European style antitrust has gone global, and while the Trump administration has been a vocal opponent of these unfair practices, it will require a coordinated effort from government, industry, and civil society to ensure that American innovators are treated equally. At the same time, we should not lose sight of the fact that these same bad policies are already being proposed in the halls of Congress and that we should feel as comfortable rejecting these ideas at home as when they appear abroad.

As ever, NetChoice offers itself as a resource to the committee on this and any other issue related to the protection of free expression and free enterprise online.

Respectfully submitted,

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Questions for Committee Members

- What is the primary difference between the American and EU models of antitrust enforcement and what are the effects on consumers and small businesses?
- The Europeans have positioned themselves as a global model for antitrust. Is this a conscious effort and how have they exported it abroad?
- Have Americans helped them in that effort?
- Given the negative effects of EU antitrust on businesses and consumers, what makes this model attractive to other governments around the world?
- Which pending or proposed U.S. legislation most closely mirrors the DMA's approach? How would bills like AICOA (American Innovation and Choice Online Act) or the App Store Freedom Act replicate the problems we're seeing abroad and undermine American competitiveness?
- What tools does Congress have to push back against discriminatory foreign regulations targeting U.S. companies?