



June 22, 2021

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Jim Jordan
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

RE: H.R. 3816, the American Choice and Innovation Online Act

Dear Chairman Nadler and Ranking Member Jordan:

We believe the proposed bipartisan H.R. 3816, the American Innovation and Choice Online Act, introduced by Representatives David Cicilline (D-RI) and Ken Buck (R-CO), the chairman and ranking member, respectively, of the Subcommittee on Antitrust, Commercial, and Administrative Law, would be an important step toward a fair marketplace for apps that will benefit consumers through greater competition, choice, and innovation.

Under the American Innovation and Choice Online Act, consumers would have more options on their smartphones and tablets to choose various services and features that best meet their needs and lifestyles. It would not take away or prevent the current services already provided by tech companies, but it would encourage lower prices for existing services through greater competition.

Importantly, H.R. 3816 would only apply to the largest and most dominant technology companies and would create greater access to services and products for American consumers. Additionally, smaller companies would have the opportunity to reach new users, helping more small businesses create jobs across the country.

Congress must act because dominant mobile platforms like Apple have gained and maintained monopoly power over app distribution, creating captive audiences for the app stores tied to their mobile devices. They have used this power to impose abusive terms and conditions through their app stores. This unchecked power has resulted in harm to businesses and consumers through increased prices, decreased choice and information, stifled innovation, and unfair competition.

First, large mobile device platforms mandate exclusive use of their proprietary app stores and bar consumers from using competing app stores on their devices. For example, an iPhone user may only use Apple's App Store—they cannot use the Google Play Store or other competing offerings on the iPhone. Because switching costs for mobile devices are high and competing app stores are

prohibited, consumers buy a device and become locked into a particular app store ecosystem for good. Application developers, whose economic viability depends on reaching those consumers, have no choice but to distribute via the App Store. This combination of locked in users and developers who cannot refuse to develop for the mobile device platforms creates significant monopoly control.

Second, the dominant mobile platforms tie app distribution to their own payment processing services within an app, known as in-app purchases, or IAP. Apple mandates that third-party apps use its payment processing system exclusively in the App Store. Google announced that it will implement the same policy for its Google Play Store beginning in September 2021. Importantly, the platforms only demand this from developers which sell so-called “digital goods” like content subscriptions or upgrades in mobile games. These practices mean app developers and their customers must use the platforms’ payment processing services, creating tremendous friction because it interjects the platforms between an app and its customers. Apps with digital goods cannot manage their own refund processes, offer discounted subscriptions, or customize payment terms.

Beyond this, Apple uses its control over its operating system to advantage its own competing products by pre-installing applications by default or by arbitrarily disrupting distribution performance, pricing, and functionality of disfavored third-party apps. This abuse of app store dominance has real, harmful effects on app developers who are wholly reliant on the platforms’ app stores to reach consumers, and the customers whose choice and access is limited by these practices.

Americans support free enterprise, but we also know that competition must be fair. When a single company is large enough to set the rules and standards for an entire industry, and abuses that power to advance its own interests at the expense of consumers, Congress has an obligation to act.

We urge the members of this committee to take the needed action to restore competition and protect the vibrancy of these markets in the years to come by advancing H.R. 3816 to the full House of Representatives.



Executive Director
Coalition for App Fairness