



January 18, 2021

The Honorable Dick Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Chuck Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

**Re: Committee hearing on S.2992 – American Innovation and Choice Online Act**

Dear Chairman Durbin and Ranking Member Grassley:

Consumer Reports supports S. 2992 and applauds the bipartisan group of Senators working together to address the problematic market power of the largest online platforms.

***The American Innovation and Choice Online Act is targeted at online activities where the marketplace is not working. And the proposed fair market rules will benefit consumers.***

Multiple investigations and studies have found that the largest online platforms have too much market power, and that this is resulting in harm to consumers, businesses, and our economy. These investigations include not only this Committee’s examination of this problem, but also the House Antitrust Subcommittee’s investigation, as well as numerous competition enforcers around the world.<sup>1</sup>

The American Innovation and Choice Online Act helps address this problem by setting fair market rules to prohibit discriminatory conduct by the covered platforms that materially harms competition. The bill sets out three general non-discrimination requirements that prohibit self-preferencing, exclusionary conduct, and discrimination among businesses. The bill also sets out specific non-discrimination requirements such as: prohibiting the covered platform from restricting or impeding a business user from accessing or interoperating with the covered platform or conditioning access to the platform on purchasing other services; rules on how data are used – including a business user’s non-public customer data; and allowing users to change default options and uninstall software they don’t need or want.

---

<sup>1</sup> For example, the UK’s [Digital Market Taskforce](#) delivered its advice in December 2020. The [European Commission](#) is consulting on a new Digital Markets Act as well as the Digital Services Act. [Germany](#) recently updated its competition law for digital ecosystems. Australia’s ACCC is conducting a [digital platform service inquiry 2020-2025](#) and conducted a [digital platform inquiry in 2019](#).

These fair market rules will mean consumers and businesses large and small can more easily choose, install, and use alternative apps and online services; switch between different services; mix and match services from different providers; and break out of the closed product ecosystems we find ourselves trapped in today.

The bill will also open technology innovation to a broader and more diverse set of companies and individuals. Today the ability of the largest platforms to preference their own products and services constrains and impedes innovation from competing suppliers.

For example, an Apple iPhone user may also be using an Apple Watch. A smartwatch competitor has two options. Offer its own smartphone and smartwatch bundle of services that a consumer would prefer to the iPhone and Apple Watch, or hope that Apple allows its competing smartwatch to have the same level of integration and interoperability with iOS as the Apple Watch does. This is not the case today.

The proposed market rules will allow everyone to innovate without artificial restrictions resulting in more innovation and choice for consumers.

***The Act includes effective safeguards against unintended adverse effects.***

First, conduct must ‘materially harm competition’ to be prohibited, and the bill further provides the protection of a number of affirmative defenses. Hence the largest platforms remain fully able to compete on the merits - i.e., without exploiting their dominant market position to block competition and choice by others.

For example, the bill does not, as some have claimed, prevent pre-installing apps on smartphones or providing one-day delivery services. The bill simply ensures that these services are delivered without exploiting dominant market positions. For pre-installation of apps, it gives consumers the ability to easily choose, install, and use alternative default apps. For one-day delivery services it gives marketplace sellers the ability to use alternative delivery fulfilment services (say DHL instead of Amazon’s FBA on the Amazon marketplace) and not be punished in search results and buy recommendations for doing so.

Second, the proposed market rules will not apply to each corporation’s entire digital ecosystem of services. In particular, the market rules will not directly cover activities where these giant corporations are new market entrants and are thus potentially innovating and increasing competition and benefiting consumers. For example, the proposed market rules would not hinder Apple’s moves to build its own search service, or Google’s cloud computing service, or Amazon’s Fire operating system.

Finally, we understand that the bill will require the FTC and DOJ Antitrust Division to jointly issue and update guidelines outlining policies and practices related to the enforcement of the bill. This guidance will set out how the bill will be enforced for each of the designated covered platforms, providing business and planning certainty for these corporations. For example, such guidance could clarify that if Apple were required to allow alternative app stores on the iPhone, as long as all app stores were treated equitably, Apple would be allowed to use a system of notarizing and signing software to ensure privacy and security for all apps on iOS.

**Consumer Reports supports S. 2992 – the American Innovation and Choice Online Act.**

We believe S. 2992 is a sound and practical proposal, with a solid foundation in antitrust and economic principles, that will enable our laws to better achieve their mission of preserving and promoting competition and the benefits it brings to us all. Please see our recent report ‘*The Case for Fair Market Rules for the Largest Online Platforms*,’ which analyzes the American Innovation and Choice Online Act in more detail.<sup>2</sup>

Throughout our 80+ year history, Consumer Reports has emphasized the fundamental importance of competition for ensuring a marketplace that works for consumers, and for all who seek to reach them. Competition empowers consumers with the leverage of choice, the ability to go elsewhere for a better deal, which means businesses must be responsive to consumers’ interests. Addressing dominant online platforms’ gatekeeper role and lowering entry barriers is crucial to achieving this.

We look forward to working with you to ensure that the online marketplace works for consumers, for businesses big and small that seek to serve their needs, and for all who seek to reach them on the internet.

Sumit Sharma  
Senior Researcher, Consumer Reports

George P. Slover  
Senior Policy Counsel, Consumer Reports

**cc: Members, Senate Judiciary Committee**

---

<sup>2</sup> <https://advocacy.consumerreports.org/research/report-the-case-for-fair-market-rules-for-the-largest-online-platforms/>