



Executive Summary

Evaluating 2 Tech Antitrust Bills To Restore Competition Online

By Adam Conner and Erin Simpson June 7, 2022

A new report from the Center for American Progress assesses two bipartisan proposals to tackle anti-competitive actions by digital gatekeepers.¹ Both proposals are likely to come to the Senate floor in summer 2022: Sens. Amy Klobuchar (D-MN) and Chuck Grassley's (R-IA) American Innovation and Choice Online Act (S. 2992) and Sens. Richard Blumenthal (D-CT) and Marsha Blackburn's (R-TN) Open App Markets Act (S. 2710).² These bills propose rules to prohibit critical digital platforms from arbitrary discrimination against competitors, to restrain promotion of platforms' own products over those of competitors (self-preferencing), and to ensure consumers have access to competitive, functional app ecosystems. CAP endorses the American Innovation and Choice Online Act and the Open App Markets Act and urges Congress to take meaningful action to enhance consumer choice and competition online by passing these bipartisan bills into law this summer.

The bills can lower costs and increase choice for the American people. They can immediately remove barriers that cause significant inconveniences between popular services on covered platforms, which millions of Americans use daily to shop, socialize, and surf. New rules will take away confusion in some cases and lower costs in others. Over time, these bills will reduce costs and increase choices for consumers.

- People will enjoy cost savings on mobile digital services.
- People will have more options to purchase digital goods from their phones.
- People will have more choices when it comes to convenience, privacy, and safety.
- Developers can be honest with people about functionality restrictions.
- Online mobile gaming could finally be unlocked for billions of gaming fans across the world.

The bills create new protections for U.S. small and medium-sized businesses.

They would ensure that, as controllers of the major U.S. digital platforms, covered platforms do not abuse their positions to prevent small and medium-sized businesses from competing.

- Companies would no longer be able to design algorithms to favor their own products.
- Companies would no longer be able to prevent smaller businesses from communicating with customers.
- Companies would no longer be able to impose “pay to play” restrictions for businesses on major platforms.

The likely effects of these bills on content moderation, security, and privacy

are positive. The bills would introduce competitive pressure that may result in an improvement of the status quo. The CAP report discusses in-depth how the bills may affect privacy and security, national security, company litigation risks, terms-of-service enforcement, and the potential for chilling effects on content moderation—answering a range of important questions and concerns that have been raised in the course of deliberation on the proposals.

- **Privacy and security:** The bills would create greater incentive for companies to improve privacy and security, while carefully protecting their ability to make those improvements.
- **National security:** In contrast to misleading claims to the contrary, the bills have multiple layers of provisions protecting American national security and do not create significant new risks. Rather, the bills can restore competitive pressure that supports American dynamism and global technology leadership.
- **Content moderation:** The bills preserve platforms’ abilities to moderate content as they see fit. The bills create a very high bar for disgruntled complainants seeking to abuse competitive provisions to advance content moderation grievances.
- **Definitions of covered platforms:** The bills’ definitions of covered platforms offer functional, well-informed ways to get at gatekeeping platforms of most concern, while effectively excluding smaller businesses.

Across these issues, the report highlights areas of dissonance between the bills’ likely effects and misleading industry critiques. Ultimately, it finds that the bills provide companies with further incentives to get it right on the issues people care about most.

If Congress fails to pass these bills into law, the United States will continue to cede regulatory leadership in this space to the European Union and as a result have little leverage to advocate for U.S. interests or values—leaving American consumers and companies on the sidelines to be regulated by Brussels.

The bills put forth reasonable proposals to alleviate some of the most economically harmful behaviors of extremely large digital platforms. They do not solve every single problem associated with online services—nor should that be the bar by which any piece of legislation for a swath of issues so broad be judged. Congress has strong options to improve consumer choice today and support a more dynamic online economy tomorrow.

Background on the bills

The American Innovation and Choice Online Act (S. 2992)

The American Innovation and Choice Online Act seeks to advance a principal issue of economic fairness online. It contends that gatekeeper digital platform companies should not be able to give themselves an advantage over other commercial competitors (including smaller businesses) trying to compete with them if it harms competition, nor should companies be able to arbitrarily discriminate among businesses that rely upon their platform. American Innovation prohibits a number of unfair, discriminatory behaviors for covered platforms—giving competitors a chance to innovate and a fair shot at providing new choices to the American people.

American Innovation would apply to the major business lines of the largest gatekeeping internet companies. The legislation would pertain to those online platforms that act as critical trading partners; that have more than 50 million monthly active U.S. users, more than 100,000 active U.S. business users, or 1 billion worldwide users; and that record net annual sales or a market capitalization of more than \$550 billion—among other qualifications. Products or business lines from Amazon, Apple, Google, Facebook, Microsoft, and TikTok would be covered. The legislation's criteria to determine a covered online platform, well-researched following numerous Senate hearings, address those platforms that control key chokepoints of digital markets and on which self-preferencing and discriminatory behavior create the most damage to competition. The bill covers only a handful of companies now, but its criteria are drafted in such a way that they would apply consistently to any future online platforms that gain similar market power.

The Open App Markets Act (S. 2710)

The Open App Markets Act aims to eliminate anti-competitive conduct by app store operators and open application markets to greater user choice and competition. Under the bill, app stores with more than 50 million U.S. users would have to allow third-party app developers to interoperate with mobile operating systems, including in ways that compete directly with first-party applications. Open App Markets would require dominant companies to allow for alternate payment options and app installs while also removing restrictions related to favorable pricing and developer communications with users. Covered companies that run qualifying large app stores consist of players in the international mobile phone duopoly—Apple's App Store and Google's Play store—as well as other large application markets such as Microsoft's Windows app store. These criteria would also cover app stores that become sufficiently large in the future.

Endnotes

1 Adam Conner and Erin Simpson, "Evaluating 2 Tech Antitrust Bills To Restore Competition Online" (Washington: Center for American Progress, 2022), available at <https://www.americanprogress.org/article/evaluating-2-tech-antitrust-bills-to-restore-competition-online/>.

2 American Innovation and Choice Online Act of 2022, S. 2992, 117th Cong., 2nd sess. (March 2, 2022), available at https://www.klobuchar.senate.gov/public/_cache/files/b/9/b90b9806-cecf-4796-89fb-561e5322531c/B1F51354E81BEFF3EB96956A7A5E1D6A.sil22713.pdf; Open App Markets Act of 2022, S. 2710, 117th Cong., 2nd sess. (February 17, 2022), available at <https://www.congress.gov/bill/117th-congress/senate-bill/2710/text?r=1>.