



January 18, 2022

The Honorable Dick Durbin  
Chair, Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Chuck Grassley  
Ranking Member, Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chair Durbin, Ranking Member Grassley, and Members of the Senate Committee on the Judiciary,

On behalf of National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, I write to share NTU's opposition to the American Innovation and Choice Online Act ([S. 2992](#)). As a coalition of 17 taxpayer, consumer, and free market groups [warned](#) late last year, this legislation, like the House version, includes the harmful "guilty until proven innocent" standard. Furthermore, S. 2992 would arbitrarily target a handful of companies for common business practices, risk consumer privacy, and negatively impact consumer technology.

This legislation would make it unlawful for online "covered platforms" over an arbitrary \$550 billion market capitalization to "self-preference" or "discriminate" on their platforms. However, this ban on self-preferencing would not extend to the thousands of brick-and-mortar grocery and retail stores that employ this same business practice. Essentially, this legislation would grant Lina Khan's Federal Trade Commission (FTC) and the Department of Justice (DOJ) substantial powers to dictate economic growth and trust the government enforcers to act in a restrained, pro-consumer, and non-partisan way. More likely, it would result in the FTC and DOJ picking winners and losers.

Nearly [80 percent](#) of Americans are concerned about how their data is being used. The interoperability language in this legislation would create additional security and privacy concerns. As NTU Foundation [argued](#), making it unlawful for companies to resist interoperability could force U.S. companies to provide foreign competitors with sensitive data on their users without consent. Congress should act constructively on a reasonable federal data privacy standard, not create more data security concerns in a misguided attempt to punish certain American companies.

In a stark departure from the [consumer welfare standard](#), this legislation would worsen consumer technology without creating more competition. Not only would this legislation hinder future innovations and services, it would also likely lead to covered platforms cutting back on their offerings that consumers currently enjoy, like Amazon Prime shipping or integrating Google Maps in search results. These integrations are in response to consumer demand, not monopoly power, evident by the fact that [numerous competitors](#) like Yelp and DuckDuckGo utilize similar integrations. Rather than try to make U.S. competition policy more like that of Europe, where there are few comparably successful technology companies, lawmakers should preserve the

consumer welfare standard and ensure governmental action is constrained to protecting consumers, not bolstering competitors.

NTU generally attempts to offer pragmatic improvements to legislation, even to those that we would still oppose, but we do not see a path to markedly improve this legislation. Even with substantial amendments, we are concerned that this bill would unduly hamper consumer technology and arbitrarily punish growth. We urge lawmakers to instead consider pro-growth measures that encourage free market competition and reinforces the U.S. role as a global leader in innovation.

Sincerely,

Will Yepez  
Policy and Government Affairs Associate

CC: Members of the Senate Committee on the Judiciary