April 1, 2025

The Honorable Andrew Ferguson
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20580

RE: The Federal Trade Commission's Approach to Antitrust in Technology Markets

Dear Chairman Ferguson,

ACT | The App Association, the leading trade group representing small business app developers and device makers in the app economy, writes to express concerns regarding the Federal Trade Commission's (FTC's) continued pursuit of the previous administration's antitrust policies as they apply to digital markets. The FTC's actions to date contravene the Trump Administration's efforts to safeguard America's technology leadership, detailed in the President's February 21, 2025, memorandum on *Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties*. We urge you to take this important opportunity to forge a path that hews more closely to American antitrust principles and clearly rejects those rooted in a European framework that puts specific competitor concerns over the interests of competition and consumers.

The App Association represents small business innovators that compete in an ecosystem valued at approximately $1.8 trillion domestically and supports 6.1 million American jobs. App Association members make the software and connected devices that are revolutionizing healthcare, agriculture, public safety, financial services, and virtually all other industries.

The President's February 21, 2025, memorandum rightly recognizes that foreign governments, particularly the European Union, have unfairly targeted U.S. technology companies with regulations and fines that stifle American innovation and global competitiveness. Europe's Digital Markets Act (DMA) is a prime example of this, as it targets and disproportionately impacts U.S. firms, including curated online marketplaces (COMs) that our members rely on for seamless and trusted distribution channels. While DMA targets some of the largest American companies in digital markets, it would directly undermine small business prospects by degrading and fragmenting the integrated marketplaces that tend to benefit them more than their larger rivals. In imposing rigid restrictions on American companies' operations in the digital economy, the DMA undermines their ability to protect consumer privacy, defeat cybersecurity attacks, and protect vital intellectual property. Thus, DMA elevates the competitive prospects of European rivals while discriminatorily restricting the ability for U.S. COMs to take procompetitive measures to protect their brands, consumers, and customers (like App Association members).

The previous administration's FTC consistently sought to declare a broad range of procompetitive merger and single firm conduct illegal under theories of harm that protect specific competitors rather than competition and consumers. That FTC also sought to impose remedies that mirror many of the same principles enshrined in the EU's DMA, which President Trump has made clear is an improper attempt to dictate how American companies interact with consumers. For example, consistent with DMA's approach, the FTC's antitrust lawsuit targeting the Amazon marketplace plainly seeks to declare activity that benefits competition and

consumers illegal, siding instead with specific competitors.[1] Ironically, one of the competitors that would benefit most from the FTC's success in this case is Temu, a China-based marketplace competitor that the FTC awkwardly chose to carve out of its market definition, even as it recently relied on Temu to gather evidence for its claims.[2] Prioritizing the complaints of Temu over the interests of American small businesses and consumers is inconsistent with the February 21, 2025, memorandum.

The Amazon case is important for App Association members. If the FTC is successful, the ruling could outlaw a marketplace model small businesses like being able to leverage. For the same reason, we have concerns with the 2022 unfair methods of competition (UMC) policy statement, which could be used to challenge procompetitive COM management functions in the future. Although the FTC did not explicitly rely on its 2022 UMC statement, the Amazon case serves as a test balloon of the kinds of single firm conduct the FTC might challenge under the statement's interpretations.[3] Because it does not articulate a limiting principle, the statement is unlikely to hold up as a valid interpretation of UMC authority. And for that same reason, it is also useless as an indicator of which COM management functions App Association members can continue to rely on and which will draw a challenge from the FTC. The App Association recommends that you withdraw the 2022 UMC policy statement and replace it with something substantially similar to the 2015 UMC policy statement.[4]

Similarly, the Trump Administration FTC's continued support for the 2023 joint merger guidelines risks undermining U.S. economic leadership in global digital markets. Small businesses in the app economy rely heavily on building their enterprise value, whether their next step is a Series B round or an acquisition. Sending a message that mergers considered procompetitive under current law may nonetheless see a challenge from the FTC chills the market for companies like App Association members. Expanding the FTC's conception of liability for mergers tends to track more closely with the EU's less permissive "abuse of dominance" test has had a similar impact.

Differences between the EU standard and U.S. law stood out when the previous administration's FTC, unable to challenge the iRobot acquisition under U.S. law, sought EU involvement and resulted in abandonment of the deal.[5] Dampened acquisition prospects not only affect enterprise value, but they

---

[1] Graham Dufault, "Issue Brief: Why App Developers Care about FTC v. Amazon," ACT|THE APP ASSOCIATION BLOG (Oct. 5, 2023), *available at* https://actonline.org/2023/10/05/issue-brief-why-app-developers-care-about-ftc-v-amazon/; Morgan Reed, "More Than a Leg: The True Costs of Chair Khan's White Whale Hunt," ACT | The App Association Blog (Jan. 31, 2025), *available at* https://actonline.org/2025/01/31/more-than-a-leg-the-true-costs-of-chair-khans-white-whale-hunt/ ("But the real problem is the FTC's lawsuit, by favoring Temu and seeking to restrict the marketplace management practices Amazon uses, sends the clear message that Temu's model is legal—while Amazon's model is illegal.").

[2] Graham Dufault, "Temu Complicates the FTC's Antitrust Case Against Amazon," ACT | The App Association Blog (Oct. 8, 2024), *available at* https://actonline.org/2024/10/08/temu-complicates-the-ftcs-antitrust-case-against-amazon/ ("Fundamentally, enforcers and policymakers seeking to mandate competition-by-fiat onto individual [curated online marketplaces (COMs)], such as app stores and retail marketplaces, miss that sellers and app developers choose carefully between their distribution options precisely because of COM management practices—not in spite of them.".

[3] *See* Ted Bolema, "What Does the New Federal Trade Commission Policy Statement Mean for Antitrust?" THE CTR. FOR GROWTH AND OPPORTUNITY, (Sept. 5, 2023), available at https://www.thecgo.org/research/what-does-the-new-federal-trade-commission-policy-statement-mean-for-antitrust/.

[4] Fed. Trade Comm'n, Stmt. of Enforcement Principles Regarding "Unfair Methods of Competition" Under Sec. 5 of the FTC Act, (Aug. 13, 2015), *available at* https://www.ftc.gov/system/files/documents/public_statements/735201/150813section5enforcement.pdf.

[5] Morgan Reed, President, ACT | The App Association, statement, "For Entrepreneurs, Anti-Merger Enforcement Policies Hurt Small Business," (Jan. 29, 2024), *available at* https://actonline.org/2024/01/29/for-entrepreneurs-

can also significantly weaken a company's bargaining power as it negotiates terms from lenders and equity investors, regardless of where the firm is in its lifecycle. As former FTC Commissioner Noah Phillips said in 2019, "The adage that 'barriers to exit are barriers to entry' makes the general, but too often overlooked, point that the harder it is to exit, the higher the cost of entering in the first place."[6] While it may be an adage in academia, it is reality for App Association members and they oppose unnecessary uncertainty and costs weighing down their value and marketability as enterprises.

Consistent with the Trump Administration's commitment to supporting small business innovator growth and job creation, we urge the FTC to pivot away from the previous administration's antitrust policies that openly sought to implement foreign laws like the DMA and the European Union's "abuse of dominance" competition standard. The App Association's small business community calls on you to shift to policies that protect American interests in both its ongoing antitrust cases against American companies and through its other policymaking and advocacy levers.

We thank you for your leadership and commitment to defending American small businesses and innovation. The App Association commits to assist you in your efforts moving forward in any way possible.

Sincerely,

Morgan Reed
President

anti-merger-enforcement-policies-hurt-small-business/.

[6] The Hon. Noah Joshua Phillips, "Competing for Companies: How M&A Dries Competition and Consumer Welfare," opening keynote as prepared, The Global Antitrust Econ. Conf. (May 31, 2019) (citing *see, e.g.,* STEPHEN MARTIN, INDUSTRIAL ORGANIZATION IN CONTEXT, 128-29 (Oxford U. Press 2009) ("Risk-averse potential entrants will require a greater assurance of profitability before coming into a market, the greater the extent to which entry involves making sunk investments. In this sense, 'barrier s to exit are barriers to entry.'"), *available at* https://www.ftc.gov/system/files/documents/public_statements/1524321/phillips_-_competing_for_companies_5-31-19_0.pdf.