

October 17, 2025

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

Re: *Comments of ACT | The App Association, Draft FTC Strategic Plan for FY 2026-2030 [FTC-2025-0660]*

Dear Chairman Ferguson:

ACT | The App Association appreciates the opportunity to respond to the Federal Trade Commission (FTC) Draft Strategic Plan for FY 2026-2030.¹

The App Association is a not-for-profit trade association representing the small business technology developer community. Our members are entrepreneurs, innovators, and independent developers located across the United States that compete across consumer and enterprise markets. We work with and for our members to promote a policy environment that rewards and inspires innovation while providing resources that help them raise capital, create jobs, and continue to build incredible technology.

The value of the ecosystem the App Association represents—which we call the app economy—is valued at approximately \$1.8 trillion and is responsible for 6.1 million American jobs.² App Association members are key drivers of a broader U.S. digital economy that, on its own, is the world’s eighth largest economy. Yet our members’ ability to grow and create American jobs faces significant challenges, exacerbated in some cases by either inaction or ill-advised policies during the previous Administration, that now represent great opportunities for the Trump-Vance Administration to improve the regulatory environment.

Since its founding, the App Association has been, and remains, committed to American small business growth and job creation. Today, the app economy is an incredible means of innovation, creativity, and empowerment that must be supported through domestic policies. We believe that the FTC’s dual mission of protecting consumers from unfair or

¹ <https://www.regulations.gov/docket/FTC-2025-0660>.

² ACT | The App Association, State of the App Economy (2022), <https://actonline.org/wpcontent/uploads/APP-Economy-Report-FINAL.pdf>.

deceptive acts or practices and unfair methods of competition can be accomplished without unduly burdening small business innovators.

The App Association generally agrees with the FTC's draft strategic plan pillars, which prioritize protecting the public from unfair or deceptive marketplace practices, promoting fair competition, and enhancing the agency's operational effectiveness. These pillars align closely with the App Association's core mission to support SME developers and connected device companies, and we share the FTC's commitment to ensuring that enforcement actions are balanced so as not to stifle innovation or unfairly burden smaller technology creators in the evolving digital economy. The App Association particularly appreciates the FTC's emphasis on protecting consumers and promoting competition without unduly disrupting legitimate business activity. App Association members thrive in ecosystems where competition is fair but not overly constrained by regulatory measures that could widen the moat around larger, established incumbents.

The App Association further supports the FTC's goal of improving agency effectiveness, which is critical for agile oversight in fast-moving technology sectors. By focusing resources strategically, the FTC can better guard against deceptive practices and anticompetitive conduct while fostering an environment that enables small technology developers to innovate, grow, and contribute to the broader economy. The App Association is committed to working collaboratively with the FTC to ensure that regulatory approaches preserve a vibrant, inclusive digital marketplace where businesses of all sizes can succeed.

Building on the above, the App Association urges the FTC to consider the following policy changes as it finalizes its Strategic Plan for FY 2026-2030:

Focusing Enforcement Actions on Systemic and Demonstrated Harmful Behaviors

We urge FTC to, consistent with its goal of protecting the public from demonstrated unfair or deceptive acts or practices in the marketplace, reevaluate its approach to enforcement based on the impact on small businesses that serve the public and boost America's competitiveness. The App Association urges FTC to maximize operational efficiencies by focusing its resources on clear cases of systemic harm that demonstrably engage in unfair or deceptive acts or practices and/or unfair methods of competition.

Policy Statement Regarding the Enforcement of Section 5 of the FTC Act

The FTC's 2022 Policy Statement regarding the enforcement of Section 5 of the FTC Act (addressing prohibited "unfair methods of competition in or affecting commerce") represents a significant shift from the FTC's previous approach, expanding the agency's interpretation and enforcement powers beyond traditional

antitrust laws like the Sherman and Clayton Acts. Notably, the policy rejects the previous "rule of reason" analysis, which required a case-by-case economic assessment of whether a restraint of trade was reasonable; and asserts that the FTC does not need to define a relevant market, prove market power, or show actual anticompetitive harm to act under Section 5. The policy statement calls out categories of conduct that would enable the FTC to outlaw online marketplace functions similar to the approach taken by the EU's Digital Markets Act, which is counter to small businesses' need to rely on such management activities to grow and create American jobs. This policy statement should be rescinded to revert to its predecessor which appropriately balance the FTC's interests in avoiding unfair methods of competition with the ability of American small businesses to innovate and compete.

Addressing Harmful Anticompetitive Standard Essential Patent Abuses

The FTC plays an essential role in addressing anticompetitive abuses by licensors of standard essential patents (SEPs) against American innovators the seek to compete in standards-driven technology markets. Because of the inherent dominant position holding a valid and essential SEP creates, SEP holders commit to licensing on fair, reasonable, and nondiscriminatory (FRAND) terms during the standards-setting process. Unfortunately, some SEP holders discard those promises and abuse their dominant market position by refusing to license on FRAND terms, sometimes even outright refusing to license FRAND-committed SEPs. In leveraging the monopoly power attained through standardization, such practices distort competition, stifle SME innovation, and harm consumers.

The App Association recognizes the FTC's important enforcement role in preventing such abuses to ensure a balanced and competitive technology ecosystem. The FTC has, can, and should use its authority under Section 5 of the FTC Act to pursue anticompetitive conduct beyond traditional antitrust violations, addressing practices such as SEP holdup that harm competition. By acting against SEP holders who do not honor their FRAND commitments, the FTC helps protect SME technology developers who otherwise face prohibitive barriers to entry. The FTC's enforcement against anticompetitive SEP licensor abuses is crucial for fostering a more equitable licensing environment that supports innovation, competition, and consumer choice in the digital economy.

Consistent with the Strategic Plan's goals of supporting competition and protecting consumers, the FTC addressing anticompetitive SEP licensor abuses will strengthen the foundations of interoperability and standardization that enable innovation across technology platforms. The FTC should take a central role in ensuring that no single SEP holder can unduly restrict the use of standardized technologies needed by a diverse range of market participants, which will preserve competition and encourage investment in technological advancement.

Hart Scott Rodino (HSR) Pre-merger Notification Rule

Unprecedented updates to the HSR pre-merger notification rules have substantially increased burdens and costs on small businesses that are seeking to enter pro-competitive transactions. The increased complexity and cost of compliance is dissuading App Association members and their investors from pursuing pro-competitive merger and acquisition (M&A) activity, especially in high-risk, high-reward industries. This is dampening incentives for research and development, as M&A often serves as a key exit or growth strategy for startups and innovators. Consistent with its strategic goal of ensuring competitive markets, we urge FTC to reconsider its decision to endorse the previous Administration's HSR policy, and to withdraw its HSR rule changes made in 2024.

Merger Guidelines

As updated by the previous Administration, the FTC/DOJ merger guidance requires excessive reporting for any transaction over \$119 million and treats many tech market mergers as inherently anticompetitive. The App Association has detailed how the previous Administration's changes to U.S. merger policy harm U.S. small business innovators and undermine American competitiveness.³ We disagree with the decision to affirm this policy change, which continues to create uncertainty for U.S. small businesses seeking to be acquired, and makes it harder for them to attract startup investment. The 2024 changes made to the DOJ and FTC's merger guidelines should be withdrawn in order to promote competition, consistent with the Strategic Plan's second pillar.

Health Breach Notification Rule

The FTC finalized significant amendments to the Health Breach Notification Rule (HBNR) on May 30, 2024, with the updated rule taking effect on July 29, 2024. Overlapping with other regulations, the rule now explicitly applies to a broader range of entities, including vendors of personal health records (PHRs), PHR-related entities, and third-party service providers, especially those not covered by HIPAA. This includes many mobile health apps, wearable technologies, and other direct-to-consumer health technologies. The additional burdens on small businesses due to this rule change has imposed new and expensive regulatory burdens on small business developers with little public benefit, and undermine the FTC's strategic goal of promoting competition. The 2024 updates to the FTC's HBNR should be withdrawn.

³ <https://actonline.org/wp-content/uploads/ACT-The-App-Association-Ltr-to-Chairman-Ferguson-re-FTC-DOJ-Merger-Guidelines-26-Feb-2025.pdf>.

Thank you for your consideration of these matters and your continued efforts to protect consumers and to remove regulatory barriers and bolster the success of American small businesses.

Sincerely,

A handwritten signature in black ink that reads "Morgan Reed". The signature is written in a cursive style with a large initial 'M' and 'R'.

Morgan Reed
President

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