


Competition Principles for a Thriving App Economy





Small businesses in the app economy are at their best when the markets they compete in are robust and competitive. Federal policy must allow small businesses to leverage curated online marketplaces (COMs) and seek investment from those best positioned to provide it. These two pillars are critical for small businesses in the app economy to compete with the largest tech companies on their innovative products and specialized solutions to problems. **However, many competition policies under consideration would tear down the services and capabilities that small businesses need to thrive.** Small businesses need consistent and fair guidelines on mergers and acquisitions (M&A), access to key supports from platforms, and protection from harmful policy ideas around the globe that target U.S. businesses.

Mergers and Acquisitions


Several recent policy changes by the Federal Trade Commission (FTC) and Department of Justice (DoJ) pose significant threats to small businesses in the app economy. Emblematic of the agencies' efforts to shut down the market for small companies, the FTC recently updated rules to require superfluous additional reporting for transactions over a certain size, regardless of whether they pose a potential risk to competition. Despite positive changes to the proposed rules, the updates arrived amid the FTC's broader implementation of policies that threw M&A into total uncertainty and were unhelpful overall. Specifically, those policies included the FTC and DoJ's new merger policy proposing to outlaw several categories of merger that are often beneficial for exiting companies and for consumers; the FTC's policy of never notifying merging parties when transaction investigations were complete, which only just ended upon adopting the merger review rule; and the FTC's policy of issuing warning letters even after the end of merger investigations, among others. The result of these policy decisions is complete uncertainty for parties considering a transaction. This has harmed small app companies and device makers in several ways, including by making it harder for them to obtain startup investment in the first place, due to clouded exit options; by harming their prospects for securing relatively small investments from venture funds due to worsened prospects for the larger potential exits in the same portfolio; and by directly undermining acquisition programs built around large potential transactions.

FTC and DoJ are required to consider the harms to small businesses of any new regulation, but FTC and DoJ clearly ignored these considerations in all of their recent M&A policy updates. Congress must ensure that these agencies safeguard, rather than destroy, App Association members' ability to attract investment and compete on the global stage.

COM Regulation

Throughout the last several years, regulators and policymakers have been taking a close look at competition on and among COMs. This scrutiny has put a spotlight on how the app development community works with the largest consumer-facing app stores like Apple's App Store and the Google Play store, as well as platforms such as the Amazon Marketplace, Nintendo (games), and Oracle (business). In general, small businesses in the app economy choose to distribute software and hardware through COMs to the extent they provide an advantage in three areas:

1. Offloading overhead costs to free up resources to focus on the core aspects of the business.
2. Immediate access to global markets and consumers.
3. Built-in consumer trust in the COM and in the businesses distributing through it.



In general, small businesses want COMs to continue to improve and expand these benefits, but unfortunately, much larger competitors are spamming policymaker inboxes with requests for them to undermine or completely eliminate these offerings from COMs. Those larger competitors want policies that would undermine trustworthiness by mandating unfettered access to systems so consumers have no idea who is at the other end of the transaction, undermine the pricing model and increase the cost to small businesses, and remove platform-provided legal, tax, and trade support for small businesses. **While discussions have referenced “small developers” in the abstract, policymakers must understand that App Association member interests do not align with some large companies on the app stores seeking to lower their own distribution costs.** These competitors have pushed Congress to consider a variety of bills that would undermine small businesses’ ability to leverage COMs, including the American Innovation and Choice Online Act (AICOA, S. 2033, 118th). Proposals like this would homogenize, disintegrate, and commoditize distribution options to fit the needs of the largest competitors, undermining the built-in services that disproportionately benefit small businesses in the app economy. We urge you to reject such proposals so that App Association members can continue to benefit from improving distribution options that put them on equal footing with much larger competitors.

DMA-style Regulations around the World

The European Union’s (EU’s) Digital Markets Act (DMA) has proven to be detrimental to innovation in the European market. Even the strongest proponents of the law are feeling buyer’s remorse. DMA [eliminates new product development in the EU](#), [degrades customer experience](#) and [small business prospects](#), and [prioritizes bureaucrats’ preferences](#) over those of consumers. In the United States, competitors have relatively wide latitude to make the products and services that consumers want more than those made by rivals. The net result of this is that small businesses are often able to satisfy consumers’ (and their own) discerning demand for the best inputs and distribution paths to reach their global markets. Unfortunately, many other countries are choosing to follow the EU into a DMA-style regulatory nightmare rather than prioritize their own markets and small businesses.

The App Association has submitted comments to or attended meetings with regulators around the world, including Japan, South Korea, Australia, Brazil, Vietnam, and the United Kingdom on the topic of platform regulation. In these key markets we urge policymakers to consider the impacts of policies like the DMA on their local small business ecosystems and the broader global economy. Their concerns often fail to consider the procompetitive advantages of platforms, including reduced overhead for small businesses, built-in trust networks for consumers, stronger privacy policies, and more widely available developer tools. As governments around the world attempt to regulate Big Tech, they often catch small businesses up in their regulations, which leads to less innovation, more consolidation, and an overall less healthy economy.