

REGULATORY HUMILITY: SHOULD LEGISLATORS RETHINK PLANS TO OVERHAUL ONLINE MARKETPLACES?



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¹ Bruce Gustafson, CEO of the Developers Alliance. I'd like to thank the generous friends and colleagues who contributed to this work.

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By Bruce Gustafson

Over the past several decades, tech companies have innovated to provide great products to consumers for free. While most people are happy about this, politicians seem not to be. Driven by the perception that tech needs fixing, in the U.S., Europe, and recently Asia, politicians have begun proposing disruptive antitrust legislation targeting tech companies. Many of these proposals seek, in some form, to limit “self-preferencing” by tech companies on digital platforms. Others seek to constrain tech companies with online platforms from merging with or acquiring other online products and services. These proposals threaten the business models that have made these great products free to consumers, and risk harming developers by increasing fragmentation and raising the cost of capital.

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Legislators across the world have been struck by the urge to dictate how online marketplaces are run. In December 2020, the European Commission proposed the Digital Markets Act ("DMA"), which proposes to regulate everything from how online services can conduct rankings to what services they must make interoperable. In 2021, both houses of the U.S. Congress followed suit with a barrage of legislative proposals, some based on the DMA and others adding new restrictions and requirements.

Regulators in Asia show signs of following suit. In August 2021, South Korea's National Assembly amended its Telecommunications Business Act to prevent app store operators from requiring use of their in-app purchasing systems. In the same month, China issued new competition guidelines, banning behaviors that regulators claimed could harm internet users and limit market competition, including blocking competitors' products and discriminatory pricing.

Many of these proposals seek, in some form, to limit "self-preferencing" by tech companies on digital platforms. Others seek to constrain tech companies with online platforms from merging with or acquiring other online products and services. All are reactions to criticism that tech companies have used their size and popularity to limit competition.

These proposals are also often broad and unclear in scope (e.g. is it self-preferencing if Google shows its own restaurant reviews, but only links to Yelp's?). And they are likely to be disruptive. Since China began targeting competition by its most successful tech companies, those companies have collectively lost roughly one trillion dollars in value.² That situation is unique in some respects, but these are not adjustments at the margins.³ Before moving forward with further proposals, legislators may want to consider whether the current system needs fixing and whether these proposals actually make things better.

This article discusses this regulatory spree from two perspectives: that of consumers and that of software developers. We find that the current system is marked by high levels of innovation, and seems to benefit both consumers (who get valuable products for free) and developers (who have easy access to users through uniform operating systems, and benefit from acquisitions as an exit option). Subsequently, we examine legislative and regulatory trends through the lens of two pieces of proposed legislation in the U.S., namely the AICOA and PCOA, and find that the bills will make things worse and not better.

I. THE *STATUS QUO*: CONSUMERS GET GREAT PRODUCTS FOR FREE

The prevalence of proposals to regulate tech companies suggest that politicians believe tech companies are problematic. But, do their constituents feel the same way? The average reader may be surprised to learn that as an empirical proposition, they don't.

The survey results above put this into stark relief.⁴ From a 2021 sample of over 1,000 respondents, 90 percent viewed Google favorably, with other major tech companies trailing just behind (in an interesting contrast, the U.S. Congress, responsible for much of the pending tech regulation, lags much further behind with a favorability rating of 23 percent).⁵

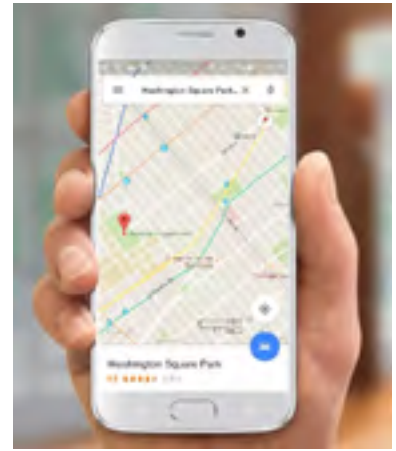
The reasoning behind this discrepancy is likely practical in nature. Over the past couple of decades, tech companies have created products that make people's lives easier, and in most cases have found a way to make those products free to consumers, with other companies (i.e. advertisers) footing the bill. Anyone old enough to have had to print out mapquest directions, or (God forbid) consult a road atlas, understands how far technology has come in a relatively short period of time.

2 Jing Yhan, Keith Zhai, & Quentinn Webb, China's Corporate Crackdown Is Just Getting Started. Signs Point to More Tumult Ahead, Wall Street Journal (Aug. 5, 2021) ("From a peak in February, some \$1.1 trillion of market value has vanished from the stocks of six top Chinese technology companies, including Alibaba and Tencent. That is a drop of more than 40%.").

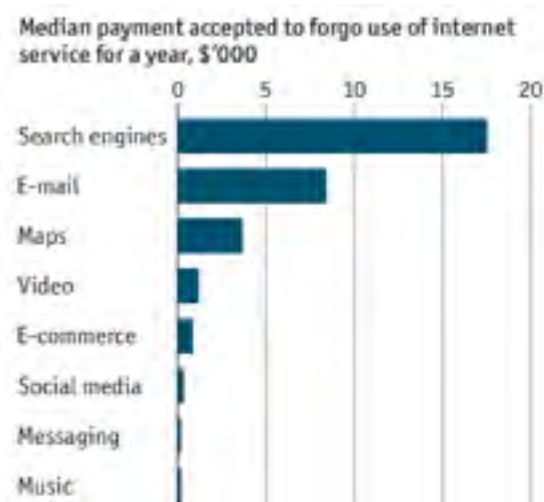
3 Among other things, Jack Ma, the CEO of one of China's largest tech companies, Alibaba, went conspicuously missing during the relevant period. Liza Lin, Where Is Jack Ma? Alibaba's Founder Has Kept a Low Profile Since October, Tech entrepreneur was last seen publicly when he criticized Chinese regulators for stifling innovation in the financial industry, Wall Street Journal (Jan. 5, 2021).

4 Elizabeth Lopatto, Verge tech survey 2021, (Oct. 6, 2021).

5 Congress and the Public, Gallup (Dec. 2021).



Put more quantitatively, tech companies have created vast amounts of consumer surplus. Consumer surplus is the difference between how much consumers pay for a product and what they are willing to pay for it (representing the value consumers get from a transaction). Empiricists have quantified that the median consumer values digital maps at \$3,648 per year.⁶ Over a billion people use Google Maps and Apple Maps actively.⁷ Since both products are free to consumers, this suggests that every year Apple and Google together create over a trillion dollars in consumer surplus through their map apps. Not bad



⁶ Erik Brynjolfsson, Avinash Collis, & Felix Eggers, Using massive online choice experiments to measure changes in well-being, PNAS (April 9, 2019).

⁷ Dane Glasgow, Google Maps updates to get you through the holidays (Nov. 17, 2020) (“Even in a pandemic, more than 1 billion people still turn to Google Maps to navigate their new normal.”); Apple delivers all-new Apple Maps across Canada (Dec. 10, 2020) (“Maps helps hundreds of millions of people in over 200 countries and territories discover new places, navigate, and explore the world.”).

for two companies that were not in the navigation market two decades ago (or in Apple's case, even a decade ago). Look at the home screen of an average smartphone (or for the more quantitatively inclined, the data below) and it is apparent that this is one example of many.⁸

Low levels of competition result in increased prices, and reduced supply, quality, and innovation.⁹ By contrast, tech today seems to be characterized by rapid innovation and low-to-zero cost products that are made widely available – all markers of a thriving competitive environment. Should policy makers believe there is a dearth of competition in tech, they should produce tangible evidence before taking disruptive actions.

II. PENDING ANTITRUST LEGISLATION MAY DISRUPT BUSINESS MODELS THAT HAVE MADE THESE PRODUCTS FREE TO CONSUMERS

Policymakers should also ensure that proposed solutions don't cause more harm than good. As noted above, many tech products are currently made free to consumers, because tech companies are able to recoup their investments and turn a profit through other avenues, such as selling ads. But the pending legislation may disrupt this business model. For example, Google search is free and, as demonstrated by the chart above, produces significant consumer surplus. Google recoups its investments by selling access to ads through their ad products. Google ad products also allow advertisers to place ads on other sites and apps, making them general online advertising competitors.

Under pending legislation under discussion in the U.S. Senate (discussed in greater detail below), Google's practice of displaying ads served by its ad products on Search, but not third-party ads, could be challenged as self-preferencing under the latest legislative proposals.¹⁰ This could disrupt a business model that has provided substantial value to consumers. More generally, broad prohibitions against established business models risk restricting tech companies' ability to monetize products through cross-product initiatives (that often make those products free to consumers) - something vertically integrated firms do regularly.

III. PENDING ANTITRUST LEGISLATION MAY DISRUPT BUSINESS MODELS THAT BENEFIT DEVELOPERS

If the current system is not hurting consumers (and proposed solutions risk harming consumers), what other concerns might these proposals be addressing? The logical next possibility is that the proposals will help protect developers who operate on big tech companies' platforms (and form another side of the marketplace). To evaluate whether developers will benefit, it's worth taking a closer look at two pieces of legislation recently introduced in the U.S. Senate: The American Innovation and Choice Online Act (the AICOA) and the Platform Competition and Opportunities Acts (the "PCOA").

The American Innovation and Choice Online Act ("AICOA") Risks Harming Developers by Increasing Fragmentation. The AICOA prohibits "self-preferencing," as well as a number of other specific types of conduct (e.g. pre-installing applications and preventing users from uninstalling them).¹¹ The prohibition on self-preferencing is broad, preventing companies who own "covered platforms" (i.e. the so-called "GAFAMs") from using them to "prefer" their own products and services "in a manner that . . . materially harm[s] competition."^{12,13} Defendants found to have self-preferenced, or to have violated the other prohibitions, can defend their actions through affirmative defenses

8 How much would you pay to keep using Google?, Many internet services are free to consumers, but still valuable, *The Economist* (April 25th, 2018).

9 Bruce Hoffman & Garrett Shinn, Self-preferencing and antitrust: harmful solutions for an improbable problem, *CPI Antitrust Chronicle* (June, 2021) p.7 ("An 'anticompetitive' outcome means that one of several possibilities is occurring in the market: overall, prices are rising, output is falling, or innovation or quality is decreasing.").

10 This business model could be challenged under a number of provisions in the American Online Choice and Innovation Act ("AICOA"), which was recently voted out of the Senate Judiciary committee, and which is discussed in greater detail below. Particularly, it could be challenged under AICOA Sec. 3(a)(1), which prohibits companies who own "covered platforms" from using them to "prefer" their own products and services "in a manner that . . . materially harm[s] competition." And it could be challenged under AICOA Sec. 3(a)(5), which would prohibit Google from "condition[ing] access to [Search] on the use of [other Google products]."

11 AICOA Sec. 3(a).

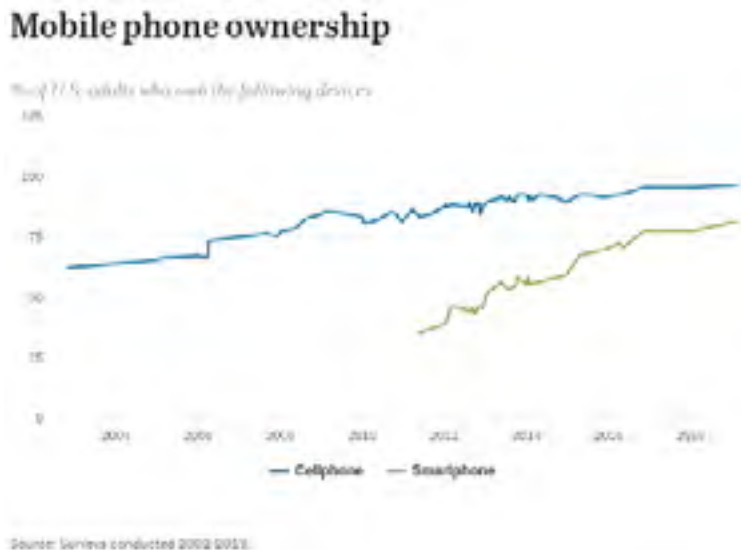
12 A "covered platform" is an online service, owned by a large company, that has a large number of active regular or business users. AICOA Sec. 2(a)(5). Practically, the term applies to (most) products and services owned by Google, Amazon, Facebook, Apple, and Microsoft (the GAFAMs).

13 AICOA Sec. 3(a)(1).

(e.g. showing that actions were taken to “enhance core platform functionality”), but as defined, those defenses are likely to be of limited value.¹⁴

But what exactly constitutes preferencing? Is it “preferencing” if Google shows its own Restaurant reviews, but only links to Yelp’s? And how will this change the status quo for developers? The answer is that it will likely impede innovation by reducing consistency and compatibility.

To see why, it’s worth looking at the evolution of mobile operating systems. While smartphones are ubiquitous today, that has not always been the case. Instead, smartphones are largely a product of the last decade.¹⁵



One of the factors responsible for this rise has been the (relatively) recent standardization of mobile operating systems. Before the rise of smartphones, the most popular mobile operating system was Symbian OS.¹⁶ But Symbian OS was not a single operating system. Symbian OS was often customized, and as a result was varied by OEM and sometimes device. This fragmentation prevented developers from building out the robust ecosystem of apps that make smartphones what they are today.¹⁷

Particularly, developers could not rely on a consistent set of APIs and SDKs to build their applications. Symbian was said to be so disjointed that Google had to develop around 300 different versions of Google Maps for it (purchasing hundreds of devices so that it could test each version manually). This was surely burdensome for Google, even if it could afford to devote hundreds of developers to maintaining compatibility. But start up and mid-size development shops do not have the same vast scale or staffing budget. For them, the cost of keeping up with Symbian’s fragmentation would have been prohibitive. Unsurprisingly, during this period, mobile applications were relatively primitive. In the mobile ecosystem today, users can hail cars and order groceries on their phone; back then, Snake was the cutting edge of mobile tech.

Freeing up developers to concentrate on coding has generated rapid innovation (and saved developers from technical frustration). Smartphones started taking off in 2011, as iOS and Android — both of which are uniform — began to surpass Symbian.¹⁸ As developers were able to maintain compatibility with orders of magnitude fewer resources, they were able to spend more time building great apps. As smartphones acquired more great apps, more people bought them.

14 AICOA Sec. 3(b) contains exceptions for conduct that falls into certain delineated categories (e.g. protecting user privacy or enhancing core platform functionality), but requires defendants to show that their conduct was “narrowly tailored” (not overbroad), “nonpretextual,” and “reasonably necessary” to achieve one of the delineated purposes. The “narrow tailoring” language evokes the “strict scrutiny” standard of review applied in constitutional law cases, where courts require the government to show that there are no less restrictive means of achieving an underlying government interest. While the expression is likely no longer precisely accurate, for many years “strict scrutiny” was considered “strict in theory, fatal in fact.” *Wittmer v. Peters*, 87 F.3d 916, 918 (7th Cir. 1996) (“It used to be thought that subject to strict scrutiny was a euphemism for absolutely forbidden (strict in theory, fatal in fact, was the refrain”). In all events, it is a difficult standard to meet.

15 Mobile phone ownership over time Pew Research Center (showing smart phone ownership taking off from 2011 onwards).

16 Worldwide smartphone sales, Wikipedia (showing Symbian as the most popular mobile operating system until late 2010).

17 The Developers Alliance highlighted the impact of fragmentation on developers in our 2021 Android intervention before the General Court of the European Union.

18 *Id.*

The AICOA presents a threat to this uniformity. Under the AICOA, iOS and Android would be prohibited from “preferencing” their own apps and services.^{19,20} This may hamper Apple and Google’s ability to distribute basic device functionality to end users. The statute seems to prohibit Apple and Google from pre-installing first-party apps (e.g. a navigation app or a calendar app) on their operating systems, limiting consumer functionality out of the box. More importantly for developers, the text of the statute also seems to apply to component services and related APIs within mobile operating systems.

For example, the AICOA could prevent Apple and Google from offering out of the box location services (which might be construed as foreclosing third-party location service providers, and preferencing first-party location services, or as requiring OEMs to take location services with the mobile operating system).²¹ The AICOA exacerbates this problem by offering no guidance on where a “covered platform” ends and other “apps and services” begin: Which category do the APIs and SDKs within an OS fall into?

As a result, under the AICOA, Apple and Google would face legal risk for all first-party APIs and SDKs attached to their mobile operating systems, where a third-party may want the opportunity to provide those services instead. Incorporating a first-party service in lieu of a third-party service arguably preferences that first-party service over potentially competing third-party services.

So what happens if Android and iOS no longer come with default first-party services? Following the 2020 EC Android decision barring pre-installation of Google search, Google added choice screens for users to pick their own default search engines.²² The AICOA may mean more choice screens (for mobile operating system component services that Apple and Google are no longer able to provide as first-party defaults) and by consequence, more fragmentation (as user selections could vary by device). While a handful of developers may profit by getting to provide previously first-party services, the majority of developers may again end up having to deal with a fragmented ecosystem. This threatens the compatibility that has fueled the mobile ecosystem over the last decade.

In addition to fragmentation costs, developers also face uncertainty over whether third parties will be able to seamlessly replace first-party services (or whether they will be forced to work with inferior alternatives). Where third parties are not currently providing services, they will have to build offerings from scratch. While they get up to speed, developers will be forced to handle the resulting quality issues.

If replacing first-party services with third-party services results in longer-term quality issues, developers will have to handle those as well. *Ex-ante*, it is not certain that third-party services will ever catch up to the first-party alternatives developers currently rely on. In fact, the incentives underlying vertical platform integration suggest that where Apple and Google have chosen to rely on first-party services, it is because they believe they are better able to provide those services.²³

Take iOS as an example, iOS helps connect iPhone users with app developers. Users find iOS valuable because of the applications it makes available. And developers find iOS valuable because it provides them a means of distributing their applications to users. This value is characterized by positive feedback loops (and corresponding negative feedback loops as well). As more people use iOS, it becomes more valuable to developers (who can reach more users) and as more developers make iOS apps, it becomes more valuable to users (who get a greater selection of high quality apps). The reverse is true as well, if users begin leaving iOS (perhaps because app quality or selection falls), the incentive for developers to build iOS apps decreases, and a negative feedback loop could result.

So given these incentives, why does Apple choose to offer certain APIs and SDKs as first-party services? It is unlikely that Apple is using this as a tactic to leverage iOS’s market power to siphon off profits that could otherwise be earned by third-party services. Where iOS possesses market power, there are easier ways for Apple to translate that market power into increased earnings (e.g. by raising the price of an iPhone or offering more subscription services).

19 Both iOS and Android would be considered covered platforms under the AICOA. AICOA Sec. 2(a)(5).

20 AICOA Sec. 3(a)(1).

21 This practice could be challenged under a number of provisions in the AICOA. Particularly, it could be challenged under AICOA Sec. 3(a)(1), which prohibits companies who own “covered platforms” from using them to “prefer” their own products and services “in a manner that . . . materially harm[s] competition.” And it could be challenged under AICOA Sec. 3(a)(5), which would prohibit Apple and Google from “condition[ing] access to [their mobile operating systems] on use of [their other products and services].”

22 Sam Schechner, *Some Google Search Rivals Lose Footing on Android System* (Sept. 28, 2020) (“Since March, Alphabet Inc. owned Google has been showing people in Europe who set up new mobile devices running the company’s Android operating system what it calls a ‘choice screen,’ a list of rival search engines that they can select as the device’s default.”).

23 Where indirect network effects are present, declines on either side of the market can accelerate due to negative feedback loops. E.g. Catherine Tucker, *Network Effects and Market Power: What Have We Learned in the Last Decade?*, Antitrust (2018).

Instead, it is more likely that Apple believes offering these APIs and SDKs as first-party services will increase the value of the platform to users or developers, which will result in more users and developers, which will create a positive feedback loop increasing iOS's overall value (and by consequence iOS's market power and Apple's profits). If Apple believed offering those services as first-party decreased the platforms' value to either users or developers, the stick of negative feedback loops would amplify Apple's incentives not to provide such services.

In sum, Apple's incentive is to only offer services as first-party where it believes it can do a better job than third-party alternatives. Similarly, Android — which is also a platform characterized by indirect network effects — is also only incentivized to offer services as first-party where it believes it can do a better job than third-party alternatives. Despite Apple and Google's incentives to use first-party default services where they will benefit users and developers, and the benefits of standardization, the AICOA limits both companies' abilities to design their products as they see fit. This will likely make life more difficult for developers, and will decrease the value of phones to users as well.

IV. THE PCOA RISKS INCREASING THE COST OF CAPITAL FOR DEVELOPERS AND CHILLING INNOVATION

In the U.S., some legislative proposals attempt to rein in merger and acquisition activity among the biggest tech companies. One such proposal is the Platform Competition and Opportunity Act (PCOA), a bill introduced in both the Senate and the House of Representatives. Under the PCOA, all acquisitions by covered platforms are presumed to be unlawful, and the burden is on the defendant to prove that it falls into a few narrow exemptions.²⁴ If passed, the PCOA would drastically reduce the number of acquisitions undertaken by covered platforms.

To block a merger under current U.S. law, the government must demonstrate that the merger may “substantially . . . lessen competition.”²⁵ This requires the government to have a basis for blocking transactions, but is not overly exacting. Over the past twenty years, the federal government has challenged approximately 780 mergers.²⁶ It has lost eleven times.²⁷ In other words, the status quo is already that the government usually wins in merger cases.

The PCOA would take this a step further, blocking most, if not all, reportable mergers valued at or over 50 million dollars by Google, Amazon, Facebook, Apple, and Microsoft (the GAFAMs).²⁸ The PCOA establishes a presumption that any such acquisition by a GAFAM company is unlawful. To overcome that presumption, the company has to establish, by clear and convincing evidence (a high bar):

1. That the acquired assets do not compete with any of their covered platforms (i.e. most of their products and services) and are not a nascent or potential competitor to any of their covered platforms;²⁹ and
2. That the acquired assets would not enhance or increase any of their covered platforms' market position or ability to maintain its market position.³⁰

²⁴ As in the AICOA, a “covered platform” under the PCOA is an online service, owned by a large company, that has a large number of active regular or business users. In practice, it applies to most products and services owned by Google, Amazon, Facebook, Apple, and Microsoft (the GAFAMs).

²⁵ Clayton Act Sec. 7 (15 U.S.C § 18).

²⁶ Coalition Letter on Mergers and Acquisitions, (Oc. 5, 2021) (“When the government chooses to intervene, it almost always wins. Over the past twenty years the federal enforcement agencies have challenged approximately 780 mergers. In that same period, the merging parties have won in court only eleven times.”).

²⁷ *Id.*

²⁸ Like the AICOA, the PCOA applies to “covered platform operators,” i.e. companies that own “covered platforms.” The definition for “covered platform” is the same in the PCOA. As noted above, it applies to any online service, owned by a company with a market cap over \$550 billion, that has a large number of active regular or business users. In practice it applies to most products and services owned by Google, Amazon, Facebook, Apple, and Microsoft (the GAFAMs), and nothing else.

²⁹ PCOA Sec. 2(b)(3)(A)-(B).

³⁰ PCOA Sec. 2(c)(3)(C)-(D).

Competition and Potential Competition. In addition to shifting the burden of proof from the plaintiff to the defendant, this prohibits many mergers that would be legal today. Current law prohibits mergers and acquisitions that “substantially lessen competition.”³¹ Under that standard, competitors and potential competitors can combine, as long as the effect is not a substantial lessening of competition in the market. By contrast, under the PCOA, the GAFAMs could not acquire any competitor or potential competitor—regardless of whether the net effect on competition would be positive or negative.

Further, the PCOA construes competition broadly, stating that the term includes competition “for a user’s attention.”³² What is the definition of a “user’s attention,” and how can users’ attention be quantified (without infringing on privacy)? More importantly, this definition of competition expands the scope of relevant markets. People often switch rapidly between various apps on their phones, checking messaging apps, scrolling social media, playing games, reading the news, and checking the weather. If user attention is used to draw the boundaries of relevant markets, apps serving entirely different functions might be grouped together. Under the PCOA, where acquisitions of any competitor (or potential competitor) are prohibited, such a broad market definition would make acquisitions difficult, if not impossible. The situation is compounded by global regulators extending the “nascent or potential competitor” logic and applying it to acquisitions that are not yet even present in their markets. Under this logic, a nascent competitor a world away, with no aspirations to compete in the regulator’s jurisdiction, can be locked out of an acquisition.³³

Enhance, Increase, Maintain Market Position. Compounding the issue, the PCOA prohibits the GAFAMs from engaging in any acquisition that would maintain or enhance the market position of any of their covered platforms (i.e. most of their products) or of any of their products or services offered on or directly related to one of their covered platforms (i.e. almost all of their products). By definition, a product’s market position increases as it becomes more successful. As such, the PCOA would essentially prohibit the GAFAMs from making any acquisitions that could make any of their products more successful.

Further, the PCOA states that an acquisition that “results in access to additional data may, without more,” enhance or increase the acquiring company’s market position or ability to maintain market position. This is extremely broad. As developers are aware, nearly every online product or service results in some access to data: Every time a user accesses a web page, makes an online purchase, taps “like” on an image in a photosharing app, sends an email, or watches a video, data is generated. It’s difficult to imagine any tech acquisition—and certainly any acquisition valued at 50 million dollars or more—that would not result in access to additional data.

If acquisitions that will make companies more successful are prohibited (including any acquisitions that increase the purchaser’s access to data), it is hard to imagine what acquisitions will be left. Particularly, it is hard to imagine what acquisitions will be left that the companies would want to engage in. In effect, the PCOA may ultimately prohibit the GAFAMs from making any large tech acquisitions.

Effect on Developers. Why does this matter for developers? There are really only three possible outcomes for a tech-startup: get acquired, scale up (and throw off cash or go public), or fail. If a tech company chooses to scale up, the goal is generally to launch an IPO. This process can be long and painstaking, requires significant capital investment, and a very different set of management skills for an entrepreneur. As a result, many start-ups rely heavily on mergers and acquisitions as a more efficient way to seek exit—allowing them to pay back investors, turn a profit, and move on to new innovation.

When it comes to mergers and acquisitions, the GAFAMs are an important set of buyers. Between 2010 and 2020, Amazon, Apple, Facebook, and Google collectively acquired over 400 companies.³⁴ The PCOA effectively eliminates this M&A exit option for developers whose products are successful enough to achieve a valuation of 50 million or more. Even if developers find another buyer, the substantial loss of competition from the GAFAMs could result in lower bids and a deflated sale prices.

As a corollary, the existence of M&A as an exit path incentivizes start-up investment. Without M&A as an exit option, investors may not see a clear path to recouping their investment in start-ups, and may therefore be reluctant to invest in them. This would make fundraising more challenging for developers, which would chill innovation and new company formation.

31 Clayton Act Sec. 7 (15 U.S.C § 18).

32 PCOA Sec. 2(c) (“For purposes of this Act, competition, nascent competition, or potential competition for ‘the sale or provision of any product or service’ includes competition for a user’s attention.”).

33 The Developers Alliance is an intervenor in the UK’s Competition Appeal Tribunal regarding the *Meta/Giphy* merger.

34 House Subcommittee on Antitrust’s “Investigation on Competition in Digital Markets.”

The Developers Alliance recently issued a statement opposing the PCOA for this very reason:³⁵

"In our February 2021 polls of the developer community, we found that more than half of developers believe being acquired is beneficial to them, and an even larger percentage see the benefits to acquisition, even if they aren't currently pursuing it. Congress however believes they know what is better for small businesses than the developers who run these companies. While developers believe in a robust FTC and antitrust provisions and the need to enforce them, this bill shows there is a fundamental misunderstanding of the beneficial role acquisition plays in a thriving, dynamic, and highly competitive tech ecosystem."

Mergers and acquisitions are essential to healthy competition and innovation in the digital start-up ecosystem, and in turn, to developers.³⁶ By restricting large companies' ability to acquire start-ups, the PCOA denies developers access to critical potential buyers. This artificially deflates the financial rewards of successful innovation, which will chill such innovation.

V. CONCLUSION

Over the past several decades, tech companies have innovated to provide great products to consumers for free. While most people are happy about this, politicians seem not to be. Driven by the perception that tech needs fixing, in the U.S., Europe, and recently Asia, politicians have begun proposing disruptive antitrust legislation targeting tech companies. These proposals threaten the business models that have made these great products free to consumers, and risk harming developers by increasing fragmentation and raising the cost of capital. Before it is too late, policymakers should step back to consider the consequences of their actions.

³⁵ The statement can be attributed to Sarah Richard, Policy Counsel & Head of US Policy at the Developers Alliance.

³⁶ See, generally, Sam Bowman & Sam Dumitriu; Better Together: The Procompetitive Effects of Mergers in Tech, (Oct. 2021).



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