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2D SESSION

H. R. 7030

To promote competition and reduce gatekeeper power in the app economy,
increase choice, improve quality, and reduce costs for consumers.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2022

Mr. JOHNSON of Georgia (for himself, Mr. BUCK, Mr. CICILLINE, Mr. JONES,
Mr. CARSON, and Mr. CAWTHORN) introduced the following bill; which
was referred to the Committee on the Judiciary

A BILL

To promote competition and reduce gatekeeper power in the
app economy, increase choice, improve quality, and re-
duce costs for consumers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Open App Markets
5 Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) APP.—The term “app” means a software
9 application or electronic service that may be run or

1 directed by a user on a computer, a mobile device,
2 or any other general purpose computing device.

3 (2) APP STORE.—The term “app store” means
4 a publicly available website, software application, or
5 other electronic service that distributes apps from
6 third-party developers to users of a computer, a mo-
7 bile device, or any other general purpose computing
8 device.

9 (3) COVERED COMPANY.—The term “covered
10 company” means any person that owns or controls
11 an app store for which users in the United States
12 exceed 50,000,000.

13 (4) DEVELOPER.—The term “developer” means
14 a person that owns or controls an app or an app
15 store.

16 (5) IN-APP PAYMENT SYSTEM.—The term “in-
17 app payment system” means an application, service,
18 or user interface to manage billing or process the
19 payments from users of an app.

20 (6) NONPUBLIC BUSINESS INFORMATION.—The
21 term “nonpublic business information” means non-
22 public data that is—

23 (A) derived from a developer or an app or
24 app store owned or controlled by a developer,

1 including interactions between users and the
2 app or app store of the developer; and

3 (B) collected by a covered company in the
4 course of operating an app store or providing
5 an operating system.

6 **SEC. 3. PROTECTING A COMPETITIVE APP MARKET.**

7 (a) EXCLUSIVITY AND TYING.—A covered company
8 shall not—

9 (1) require developers to use or enable an in-
10 app payment system owned or controlled by the cov-
11 ered company or any of its business partners as a
12 condition of the distribution of an app on an app
13 store or accessible on an operating system;

14 (2) require as a term of distribution on an app
15 store that pricing terms or conditions of sale be
16 equal to or more favorable on its app store than the
17 terms or conditions under another app store; or

18 (3) take punitive action or otherwise impose
19 less favorable terms and conditions against a devel-
20 oper for using or offering different pricing terms or
21 conditions of sale through another in-app payment
22 system or on another app store.

23 (b) INTERFERENCE WITH LEGITIMATE BUSINESS
24 COMMUNICATIONS.—A covered company shall not impose
25 restrictions on communications of developers with the

1 users of an app of the developer through the app or direct
2 outreach to a user concerning legitimate business offers,
3 such as pricing terms and product or service offerings.
4 Nothing in this subsection shall prohibit a covered com-
5 pany from providing a user the option to offer consent
6 prior to the collection and sharing of the data of the user
7 by an app.

8 (c) NONPUBLIC BUSINESS INFORMATION.—A cov-
9 ered company shall not use nonpublic business information
10 derived from a third-party app for the purpose of com-
11 peting with that app.

12 (d) INTEROPERABILITY.—A covered company that
13 controls the operating system or operating system configu-
14 ration on which its app store operates shall allow and pro-
15 vide readily accessible means for users of that operating
16 system to—

17 (1) choose third-party apps or app stores as de-
18 faults for categories appropriate to the app or app
19 store;

20 (2) install third-party apps or app stores
21 through means other than its app store; and

22 (3) hide or delete apps or app stores provided
23 or preinstalled by the app store owner or any of its
24 business partners.

25 (e) SELF-PREFERENCING IN SEARCH.—

1 (1) IN GENERAL.—A covered company shall not
2 provide unequal treatment of apps in an app store
3 through unreasonably preferencing or ranking the
4 apps of the covered company or any of its business
5 partners over those of other apps in organic search
6 results.

7 (2) CONSIDERATIONS.—Unreasonably
8 preferencing—

9 (A) includes applying ranking schemes or
10 algorithms that prioritize apps based on a cri-
11 terion of ownership interest by the covered com-
12 pany or its business partners; and

13 (B) does not include clearly disclosed ad-
14 vertising.

15 (f) OPEN APP DEVELOPMENT.—A covered company
16 shall provide access to operating system interfaces, devel-
17 opment information, and hardware and software features
18 to developers on a timely basis and on terms that are
19 equivalent or functionally equivalent to the terms for ac-
20 cess by similar apps or functions provided by the covered
21 company or to its business partners.

22 **SEC. 4. PROTECTING THE SECURITY AND PRIVACY OF**
23 **USERS.**

24 (a) IN GENERAL.—

1 (1) NO VIOLATION.—Subject to section (b), a
2 covered company shall not be in violation of section
3 3 for an action that is—

4 (A) necessary to achieve user privacy, secu-
5 rity, or digital safety;

6 (B) taken to prevent spam or fraud;

7 (C) necessary to prevent unlawful infringe-
8 ment of preexisting intellectual property; or

9 (D) taken to prevent a violation of, or
10 comply with, Federal or State law.

11 (2) PRIVACY AND SECURITY PROTECTIONS.—In
12 paragraph (1), the term “necessary to achieve user
13 privacy, security, or digital safety” includes—

14 (A) allowing an end user to opt in, and
15 providing information regarding the reasonable
16 risks, prior to enabling installation of the third-
17 party apps or app stores;

18 (B) removing malicious or fraudulent apps
19 or app stores from an end user device;

20 (C) providing an end user with the tech-
21 nical means to verify the authenticity and origin
22 of third-party apps or app stores; and

23 (D) providing an end user with option to
24 limit the collection sharing of the data of the
25 user with third-party apps or app stores.

1 (b) REQUIREMENTS.—Subsection (a) shall only apply
2 if the covered company establishes by a preponderance of
3 the evidence that the action described in that subsection
4 is—

5 (1) applied on a demonstrably consistent basis
6 to—

7 (A) apps of the covered company or its
8 business partners; and

9 (B) other apps;

10 (2) not used as a pretext to exclude, or impose
11 unnecessary or discriminatory terms on, third-party
12 apps, in-app payment systems, or app stores; and

13 (3) narrowly tailored and could not be achieved
14 through a less discriminatory and technically pos-
15 sible means.

16 **SEC. 5. ENFORCEMENT.**

17 (a) ENFORCEMENT.—

18 (1) IN GENERAL.—The Federal Trade Commis-
19 sion, the Attorney General, and any attorney general
20 of a State subject to the requirements in paragraph
21 (3) shall enforce this Act in the same manner, by
22 the same means, and with the same jurisdiction,
23 powers, and duties as though all applicable terms
24 and provisions of the Federal Trade Commission Act
25 (15 U.S.C. 41 et seq.), the Sherman Act (15 U.S.C.

1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), and Antitrust Civil Process Act (15 U.S.C. 1311 et seq.), as appropriate, were incorporated into and made a part of this Act.

(2) FEDERAL TRADE COMMISSION INDEPENDENT LITIGATION AUTHORITY.—If the Federal Trade Commission has reason to believe that a covered company violated this Act, the Federal Trade Commission may commence a civil action, in its own name by any of its attorneys designated by it for such purpose, to recover a civil penalty and seek other appropriate relief in a district court of the United States against the covered company.

(3) PARENS PATRIAE.—Any attorney general of a State may bring a civil action in the name of such State for a violation of this Act as parens patriae on behalf of natural persons residing in such State, in any district court of the United States having jurisdiction of the defendant, and may secure any form of relief provided for in this section.

(b) SUITS BY DEVELOPERS INJURED.—

(1) IN GENERAL.—Except as provided in paragraph (3), any developer injured by reason of anything forbidden in this Act may sue therefor in any district court of the United States in the district in

1 which the defendant resides or is found or has an
2 agent, without respect to the amount in controversy,
3 and shall recover threefold the damages by the devel-
4 oper sustained and the cost of suit, including a rea-
5 sonable attorney's fee. The court may award under
6 this paragraph, pursuant to a motion by such devel-
7 oper promptly made, simple interest on actual dam-
8 ages for the period beginning on the date of service
9 of the pleading of the developer setting forth a claim
10 under this Act and ending on the date of judgment,
11 or for any shorter period therein, if the court finds
12 that the award of such interest for such period is
13 just in the circumstances. In determining whether
14 an award of interest under this paragraph for any
15 period is just in the circumstances, the court shall
16 consider only—

17 (A) whether the developer or the opposing
18 party, or either party's representative, made
19 motions or asserted claims or defenses so lack-
20 ing in merit as to show that such party or rep-
21 resentative acted intentionally for delay or oth-
22 erwise acted in bad faith;

23 (B) whether, in the course of the action in-
24 volved, the developer or the opposing party, or
25 either party's representative, violated any appli-

1 cable rule, statute, or court order providing for
2 sanctions for dilatory behavior or otherwise pro-
3 viding for expeditious proceedings; and

4 (C) whether the developer or the opposing
5 party, or either party's representative, engaged
6 in conduct primarily for the purpose of delaying
7 the litigation or increasing the cost thereof.

8 (2) INJUNCTIVE RELIEF.—Except as provided
9 in paragraph (3), any developer shall be entitled to
10 sue for and have injunctive relief, in any court of the
11 United States having jurisdiction over the parties,
12 against threatened loss or damage by a violation of
13 this Act, when and under the same conditions and
14 principles as injunctive relief against threatened con-
15 duct that will cause loss or damage is granted by
16 courts of equity, under the rules governing such pro-
17 ceedings, and upon the execution of proper bond
18 against damages for an injunction improvidently
19 granted and a showing that the danger of irrep-
20 arable loss or damage is immediate, a preliminary
21 injunction may issue. In any action under this para-
22 graph in which the plaintiff substantially prevails,
23 the court shall award the cost of suit, including a
24 reasonable attorney's fee, to such plaintiff.

1 (3) FOREIGN STATE-OWNED ENTERPRISES.—A
2 developer of an app that is owned by, or under the
3 control of, a foreign state may not bring an action
4 under this subsection.

5 **SEC. 6. REPORTING.**

6 Not later than 3 years after the date of enactment
7 of this Act, the Federal Trade Commission, the Comp-
8 troller General of the United States, and the Antitrust Di-
9 vision of the Department of Justice shall each separately
10 review and provide an in-depth analysis of the impact of
11 this Act on competition, innovation, barriers to entry, and
12 concentrations of market power or market share after the
13 date of enactment of this Act.

14 **SEC. 7. RULE OF CONSTRUCTION.**

15 Nothing in this Act may be construed—

16 (1) to limit—

17 (A) any authority of the Attorney General
18 or the Federal Trade Commission under the
19 antitrust laws (as defined in the first section of
20 the Clayton Act (15 U.S.C. 12), the Federal
21 Trade Commission Act (15 U.S.C. 41 et seq.),
22 or any other provision of law; or

23 (B) the application of any law;

24 (2) to require—

1 (A) a covered company to provide service
2 under a hardware or software warranty for
3 damage caused by third-party apps or app
4 stores installed through means other than the
5 app store of the covered company; or

6 (B) customer service for the installation or
7 operation of third-party apps or app stores de-
8 scribed in subparagraph (A);

9 (3) to prevent an action taken by a covered
10 company that is reasonably tailored to protect the
11 rights of third parties under section 106, 1101,
12 1201, or 1401 of title 17, United States Code, or
13 rights actionable under sections 32 or 43 of the Act
14 entitled “An Act to provide for the registration and
15 protection of trademarks used in commerce, to carry
16 out the provisions of certain international conven-
17 tions, and for other purposes”, approved July 5,
18 1946 (commonly known as the “Lanham Act” or the
19 “Trademark Act of 1946”) (15 U.S.C. 1114, 1125),
20 or corollary State law;

21 (4) to require a covered company to license any
22 intellectual property, including any trade secrets,
23 owned by or licensed to the covered company;

24 (5) to prevent a covered company from assert-
25 ing preexisting rights of the covered company under

1 intellectual property law to prevent the unlawful use
2 of any intellectual property owned by or duly li-
3 censed to the covered company; or

4 (6) to require a covered company to inter-
5 operate or share data with persons or business users
6 that—

7 (A) are on any list maintained by the Fed-
8 eral Government by which entities are identified
9 as limited or prohibited from engaging in eco-
10 nomic transactions as part of United States
11 sanctions or export control regimes; or

12 (B) have been identified by the Federal
13 Government as national security, intelligence, or
14 law enforcement risks.

15 **SEC. 8. SEVERABILITY.**

16 If any provision of this Act, or the application of such
17 a provision to any person or circumstance, is held to be
18 unconstitutional, the remaining provisions of this Act, and
19 the application of such provisions to any person or cir-
20 cumstance shall not be affected thereby.

21 **SEC. 9. EFFECTIVE DATE.**

22 This Act shall take effect on the date that is 180 days
23 after the date of enactment of this Act.

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