



May 23, 2022

The Honorable Alan Davidson
Administrator
National Telecommunications and
Information Administration
United States Department of Commerce
Washington, DC 20230

Re: Request for Comment on Developing a Report on Competition in the Mobile App Ecosystem Docket No. 220418-0099

Dear Administrator Davidson:

The U.S. Chamber of Commerce (“the Chamber”) respectfully submits these comments in response to the National Telecommunications and Information Administration (“NTIA”) request for comment (“RFC”) on *Developing a Report on Competition in the Mobile App Ecosystem*. The RFC poses a wide range of questions on competition in the mobile application ecosystem in response to President Biden’s Executive Order on *Promoting Competition in the American Economy*. The Chamber believes competition is core to our free market economy, and government attempts to manage competition rarely produce a better outcome for consumers. The Chamber takes issue with the faulty premise that underlies the Executive Order which suggests the American economy suffers from a concentration problem. As NTIA, the Federal Trade Commission (“FTC”), and the Department of Justice (“DOJ”) develops the report, we encourage consultation with other relevant federal agencies that may have equities in the mobile app ecosystem.

Importance of the App Economy

The app ecosystem is an important segment of the U.S. economy, totaling nearly \$1.7 trillion and employing, directly and indirectly, 5.9 million Americans.¹ Mobile applications touch a wide range of business community stakeholders including those in healthcare, the gig economy, banking and financial services, sports and entertainment, and news media. The private sector views the mobile app ecosystem as a way to provide novel customer services (e.g. mobile banking, restaurant delivery) as

¹ <https://actonline.org/wp-content/uploads/2020-App-economy-Report.pdf>

well as to offer entirely new products and business models (e.g. mobile app gaming, ridesharing), ultimately benefiting American consumers. Consequently, continued innovation and vibrancy of the mobile app ecosystem and ability to offer new products is of paramount importance to the business community broadly.

Interoperability

Question 9 asks about the role of interoperability in “supporting and advancing a competitive mobile app ecosystem.” Also, Question 9(c) focuses on the role of data portability. The Chamber supports market-based approaches centered on voluntary consensus standards produced through standards setting organizations to enabling interoperability and data portability. Government mandates should be avoided. Instead, policymakers should seek solutions to incentivize interoperability and data portability solutions.

That said, we broadly support increased interoperability in the marketplace, and notes that interoperability is made possible through industry led standards. Interoperability relies on overcoming technical challenges that can only be successfully achieved through the development of voluntary standards, that also need to take into account privacy and security considerations.

Data portability is already present in a wide range of applications and supported by voluntary consensus standards. Importantly, data portability is often used as a competitive advantage to differentiate between products and services in the marketplace, a market that includes the mobile app ecosystem.

Specific to healthcare and related apps, Health, and Human Services (HHS), through the 21st Century Cures Act, was tasked with improving patient healthcare data interoperability. The Office of the National Coordinator and Centers for Medicare and Medicaid services (CMS) have promulgated related rulemaking, which includes the use of standardized application programming interfaces (APIs) to enable patients to move their data in a standardized, secure way to an app of their choosing. Additionally, consensus-building groups such as Health Level Seven International (HL7) are supporting multi-stakeholder input for standards to support the healthcare data interoperability goals. We encourage NTIA to also work with ONC and CMS to discuss best practices and lessons learned, and to also discuss impact and considerations to app markets related to sensitive data, such as healthcare.

Privacy and Cybersecurity Considerations

Several questions relate to privacy and cybersecurity considerations in the mobile app ecosystem. Broadly, privacy and cybersecurity considerations are not

entirely unique to the mobile app ecosystem and policymakers should avoid prescribing specific privacy and cybersecurity solutions for mobile apps.

The U.S. Chamber strongly supports the enactment of federal data privacy legislation that addresses the growing patchwork of state data privacy laws, which will ultimately harm consumers and create uncertainty for businesses. In addition, the U.S. Chamber believes that cybersecurity concerns can be addressed through public-private partnerships and critical tools such as the National Institute of Standards and Technology's Cybersecurity Framework.

Appropriate Role of Government

The government plays a significant role in the app economy through engagement on facilitating the development of voluntary standards, promoting data privacy, protecting intellectual property, and any relevant sector-specific regulatory regimes. This context should be kept in mind regarding any proposals to further regulate the mobile app economy.

Question 27 focuses on the role of federal government in fostering healthy competition in the mobile app market. Critically, the federal government already has tools to address any anti-competitive concerns in the mobile app marketplace through existing antitrust legal frameworks and the Chamber encourages the government to deploy those tools to address exclusionary conduct. We believe that existing antitrust laws are sufficient to address any anticompetitive concerns that arise in the mobile app ecosystem. Antitrust should remain a law of general application, be guided by consumer welfare, and evaluated under the rule of reason.

Through this lens, we strongly oppose legislation which would upend antitrust law and violate these core antitrust principles. Managing outcomes in the market by prohibiting certain business practices is an approach consistent with regulation, not antitrust.

In sum, antitrust law is adequate to ensure the functioning of the mobile app market. Should policymakers contemplate novel regulatory frameworks to govern the mobile app market, Congress would need to adopt legislation to support such a regulatory framework, doing so without relying on changes to antitrust law.

Conclusion

Thank you for considering our comments. We look forward to collaborating with NTIA on this issue moving forward to ensure a vibrant and innovative mobile app

ecosystem. If you have any questions, please reach out to Matt Furlow at mfurlow@uschamber.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Furlow', with a stylized flourish at the end.

Matt Furlow
Policy Director
Chamber Technology Engagement Center
U.S. Chamber of Commerce