

## **AICOA would replace successful American competition policy with rigid rules that have failed in Europe**

*The American Innovation and Choice Online Act (AICOA) would single out the largest digital platforms and prohibit certain practices related to platform design and management. Prohibited conduct includes favoring a platform's own results in searches, conditioning platform access on the use of certain services, and using certain platform data to inform future decisions. The bill is similar to Europe's Digital Markets Act (2022) and would herald a worrying shift in U.S. antitrust policy toward rigid rules and away from economic evidence.*



### **Targets the most widely used digital platforms based only on their large size:**

- Rather than focusing on a firm's market power, AICOA applies to any platform with over \$175 billion in annual revenue and at least 34% of customers in the U.S.
- Primarily targets Amazon, Google, Meta, and Apple.
- Built on the faulty logic of "big is bad," a rationale that led to antitrust policy that worked against American growth and innovation before being abandoned in this country by the 1980s.

### **Would effectively ban wide classes of pro-competitive conduct that enhance consumer welfare, such as:**

- Google featuring its own maps or shopping results in search results, which enhances platform quality and user experience;
- Amazon requiring third-party sellers that want to sell through Amazon Prime to use Amazon's shipping and logistics infrastructure to preserve consistent speed and reliability of product delivery; and
- Apple preventing third-party messaging services from accessing certain parts of its iOS mobile operating system to safeguard user security.

### **Would replace evidence-based consumer welfare tests with rigid and arbitrary ex-ante rules:**

- Represents a dramatic departure from America's decades-long tradition of evidence-based, case-by-case antitrust enforcement.
- Shifts the burden of proof for violations, essentially treating companies as guilty until proven innocent.

**Bottom Line:** AICOA prioritizes scoring political points against "Big Tech" over continued innovation and the well-being of consumers. It effectively bans several ways

## *Backgrounder*

that platforms compete for users by providing high-quality, reliable, and secure services. It departs from the U.S. approach to antitrust that has contributed greatly to American innovation and prosperity.

Rather than fixing what isn't broken or targeting technology platforms based on size alone, Congress should use its powers of oversight and confirmation to ensure that America's competition authorities at the Department of Justice and Federal Trade Commission enforce competition policy based on the consumer welfare standard.

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