December 18, 2020

The Honorable Jerrold Nadler
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jim Jordan
U.S. House of Representatives
2142 Rayburn House Office Building
Washington, D.C. 20515

The Honorable David Cicilline
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable F. James Sensenbrenner
U.S. House of Representatives
2142 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Nadler, Ranking Member Jordan, Chairman Cicilline, and Ranking Member Sensenbrenner:

We write to express concern about the quality of the evidence, underlying presumptions, and conclusions in the majority staff report and recommendations on Competition in Digital Markets. We are organizations that represent members of the technology industry—including startups, entrepreneurs, developers, and investors—and are keenly interested in ensuring thoughtful, evidence-based, and economically sound competition policy.

The debate about competition in the technology sector must include the perspective of members of the startup ecosystem. While they are the supposed 'beneficiaries' of action in the competition policy space, a narrow focus on 'big tech' and policy proposals aimed only at perceived abuses by these companies—while ignoring their impacts on smaller firms—may actually harm competition in technology-driven sectors. As the European Union's General Data Protection Regulation (GDPR) illustrates, for example, enacting strict rules designed to regulate the practices of large companies may actually cement the standing of those large companies, while burdening their smaller rivals with elevated barriers to entry and proportionately higher compliance costs.[1] Therefore, we urge the Subcommittee to adopt a fuller appreciation of the state of competition in the app economy and the startup ecosystem, and the costs of government intervention than is reflected in the report.

While the Subcommittee heard from a few voices from within the startup ecosystem and the broader app economy, the report only cites those that agree with its presuppositions, leading to a document that oversimplifies the state of the startup ecosystem and competition in markets characterized by the entry of platforms. Moreover, the report underappreciates the services platforms provide for startups and app makers, sidesteps the robust competition between these

[1] Stapp, Alex. "GDPR After One Year: Costs and Unintended Consequences," Truth on the Market, 24 May 2019. https://truthonthemarket.com/2019/05/24/gdpr-after-one-year-costs-and-unintended-consequences/

platforms for developers and startups, and fails to see the importance of acquisitions as a driver of innovation and startup investment. In order for the U.S. to arrive at the best policies to govern competition in the technology sector, a broader, representative group of stakeholders in the startup ecosystem and the app economy need a prominent seat at the table.

An accurate picture of the health of the American startup ecosystem is necessary to build out a policy environment that will enhance startup growth and competitiveness. However, the report misunderstands, mischaracterizes, and cites outdated evidence about the state of the startup ecosystem. For example, the report cites a 2013 Engine co-branded report as supposed evidence of a decline in startups, but this data only covers the period from 1990 to 2011.[2] Not only does this time period include—and end during—one of the greatest economic hardships since the Great Depression, but it also does not coincide with events on which the report comments, and thus has no explanatory value. More recent data shows that the number of high-technology startups has increased markedly, up 47 percent from 2007 to 2016.[3] The report similarly alleges that "there has also been a sharp reduction in early-stage funding for technology startups," but this is also factually incorrect.[4] Seed, angel, and early-stage VC funding have all trended upward with relative consistency over the past decade, especially when properly accounting for the well-documented data-lag endemic to early-stage funding data.[5]

Understanding the value smaller competitors derive from platform companies is also critical to creating sound policy in this space. Large technology companies, rather than "erod[ing] innovation and entrepreneurship in the U.S. economy," as the report suggests, often provide resources directly and indirectly to startups and entrepreneur support organizations at reduced or no cost, such as cloud computing, best practices and mentorship, or direct investment and business incubation.[6] Some of the most widely-recognized and widely-used entrepreneur programs are beneficiaries of these resources.[7] Beyond such support, products and services offered by larger technology companies have lowered the costs of creating and operating a

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[2] Bond, Slade, Lina Kahn, et al." "Investigation of Competition in Digital Markets," Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary, Oct 2020, p.46. https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf; See also: Ian Hathaway, "Tech Starts: High Technology Business Formation and Job Creation in the United States," Ewing Marion Kauffman Foundation, Aug 2013. https://www.kauffman.org/wp-content/uploads/2019/12/bdstechstartsreport.pdf

[3] Wu, John and Robert Atkinson. "How Technology-Based Start-Ups Support U.S. Economic Growth," Information Technology and Innovation Foundation, Nov 2017. http://www2.itif.org/2017-technology-based-start-ups.pdf?_ga=2.126205709.1214083966.1607879432-98733922.1602690902

[4] Bond, p 47.

[5] Tarhuni, Nizar, James Gelfer, et al. "Venture Monitor," Pitchbook Data Inc., 2020. https://files.pitchbook.com/website/files/pdf/Q3_2020_PitchBook_NVCA_Venture_Monitor.pdf; See also: Jason Rowley, "Small VC Funds Continue To Raise, Despite Pressure From Above," Crunchbase News, 8 Mar 2019.

[6] Bond, p 12.; See also, e.g.: AWS Activate https://aws.amazon.com/activate/; Google for Startups https://startup.google.com/, including Black Founders Fund https://startup.google.com/blackfoundersfund/; Apple Developer Camp https://developer.apple.com/entrepreneur-camp/; Facebook for Startups https://developers.facebook.com/startups/.

[7] E.g., Bunker Labs, an incubator for veteran founders; Change Catalyst; Capital Factory; Startup Grind, et al.

startup dramatically. Cloud-based computing and analytics tools have reduced costs significantly, while ad networks and software platforms have made it easier and reduced the time needed to reach a large customer base.[8]

For instance, software platforms like Google Play and the Apple App Store bundle together a variety of services for developers that software companies previously had to cobble together separately, at a much higher cost. These services include developer tools, privacy controls, intellectual property policing, marketing, payment processing, and a wide variety of application programming interfaces (APIs).[9] And even as the quality of this bundle has improved over the years, the relative cost has not increased for app companies. In fact, at least one platform has reduced its fees for smaller firms relying on in-app purchases, weighing against perceptions of software platforms as raising costs to harm potential rivals.[10]

If policies suggested in this report increase costs for the large companies, as they are likely to do, the procompetitive provision of these services benefitting entrepreneurs—including diverse and underrepresented entrepreneurs—will go away, and costs for smaller competitors will increase. Where other policies have increased costs for large technology companies, such as taxes on digital services in the United Kingdom, the companies have increased prices for their services.[11] A similar pattern of increasing costs and dialing back discounted services is likely to play out in the United States if the recommendations of this report are implemented. For nascent technology ventures with slim operating costs and bootstrap budgets, even small increases in expenses could force them out of business. This will reduce the number of successful startups, harm competition, and cement the standing of large incumbents—all counter to the goals of the report.

Failing to see the importance of acquisitions for driving innovation in the startup ecosystem—as the report does—is similarly likely to reduce the number of successful startups and harm competition. For many startups, being acquired is sought-after. In a 2019 survey, 50 percent of startup executives said they expected acquisition to be a "realistic long-term goal for [their]

[8] "Competition in the Mobile App Ecosystem," Application Developers Alliance, Jun 2016. https://static1.squarespace.com/static/53864718e4b07a1635424cdd/t/57d06a96f7e0ab4e5fecc317/1473276573641/Competition+in+the+Mobile+App+Ecosystem+Final+Report.pdf; See also: Hans Peter Bech, "Cost of Startups Decline and Funding Becomes Easier to Obtain," TBKConsult, 30 May 2012. https://tbkconsult.com/cost-of-startups-decline-and-funding-becomes-easier-to-obtain/

[9] Reed, Morgan. "Testimony before the House Committee on the Judiciary, Subcommittee on Antitrust, Commercial, and Administrative Law, "Online Platforms and Market Power 2: Innovation and Entrepreneurship," 16 Jul 2019. https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=2258

[10] "Apple Announces App Store Small Business Program," Apple Inc., 18 Nov 2020. https://www.apple.com/newsroom/2020/11/apple-announces-app-store-small-business-program/

[11] Vincent, James. "Apple, Google, and Amazon respond to European tech taxes by passing on costs," The Verge, 2 Sep 2020. https://www.theverge.com/2020/9/2/21418114/european-uk-digital-tax-services-apple-google-amazon-raise-prices

company," while only 18 percent said initial public offering (IPO).[12] This is reflective of the fewer IPOs occuring today compared to during the dot-com era, which is due in part to increased regulation, heightened deal scrutiny, and global competition for capital.[13] Unnecessarily limiting mergers and acquisitions in the technology sector will chill startup growth and innovation by closing off an avenue for exits and altering incentives for investment.

While some acquisitions certainly deserve regulatory scrutiny, presuming all acquisitions by larger companies to be anticompetitive fails to see the procompetitive nature of acquisitions in the technology sector. Startups and serial entrepreneurs often focus on creating new, innovative technologies, with the goal of selling to a larger company that can bring the product to scale.[14] This procompetitive exchange has clear synergies and benefits consumers by making the latest innovations widely available. Past completed acquisitions can also serve as a track record of success, enabling entrepreneurs to attract capital for their future ventures. Making it harder for startups to get acquired—or injecting uncertainty about acquisitions being unwound down the road—will hurt the ability of some new and small tech companies to raise funding and get off the ground.

We appreciate the Subcommittee's interest in a policy environment that fosters competition in technology-driven sectors and supports the success of American startups. However, by focusing on four large technology companies, we believe the report misses the forest for the trees. Instead of focusing on punitive measures for industry incumbents that carry undoubted negative externalities for the startup ecosystem, Congress should focus on promoting pro-startup, procompetitive policies that will bring net benefits to the startup ecosystem and the app economy. We look forward to working with policymakers to identify and advance those pro-startup, procompetitive policies.

Sincerely,

ACT | The App Association

Developers Alliance

Engine

cc: The Honorable Members of the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Antitrust, Commercial and Administrative Law

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[12] "US Startup Outlook 2019," Silicon Valley Bank, 2019. https://www.svb.com/globalassets/library/uploadedfiles/content/trends_and_insights/reports/startup_outlook_report/us/svb-suo-us-report-2019.pdf

[13] Gangemi, Jeffrey. "M&As are Up, IPOs are Down. What's the Story?," Cornell SC Johnson School of Business, 28 Feb 2019. https://business.cornell.edu/hub/2019/02/28/mas-are-up-ipos-are-down-whats-the-story/

[14] Phillips, Gordon, and Alexei Zhdanov. "R&D and the Incentives from Merger and Acquisition Activity," NBER Working Paper, Aug 2012. https://www.nber.org/system/files/working_papers/w18346/w18346.pdf