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July 21, 2026

The Honorable Brett Guthrie
Chairman, House Committee on Energy and Commerce
United States Congress
2161 Rayburn H.O.B.
Washington, DC 20515

The Honorable Gus Bilirakis
Chairman, Subcommittee on Commerce, Manufacturing, and Trade
United States Congress
2306 Rayburn HOB
Washington, DC 20515

Re: Hearing on Legislation to Strengthen Consumer Product and Service Protections (July 22, 2026)

Dear Representatives Guthrie and Bilirakis:

We write to express concerns about the "App Store Freedom Act" (ASFA). The bill would apply the Federal Trade Commission's consumer protection authority to commercial transactions between app store operators and app developers, blurring the line between consumer protection and competition violations.

The FTC Act prohibits unfair or deceptive acts or practices.[1] This is commonly referred to as the FTC's consumer protection authority; as the name suggests, it centers around protecting *consumers*.[2] Under the FTC Act, an act or practice is "unfair" if it "causes or is likely to cause substantial injury to *consumers* which is not reasonably avoidable by *consumers* themselves and not outweighed by countervailing benefits to *consumers* or to competition."[3] The FTC's 1983 Policy Statement on Deception defines deception as "a representation, omission or practice that is likely to mislead the *consumer* acting reasonably in the circumstances, to the *consumer's* detriment."[4]

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[1] 15 U.S.C. § 45(a)(1).

[2] *See* FEDERAL TRADE COMMISSION, *A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority* § II.1, https://www.ftc.gov/about-ftc/mission/enforcement-authority (last visited July 20, 2026).

[3] 15 U.S.C. § 45(n) (emphasis added).

[4] Fed. Trade Comm'n, Policy Statement on Deception at 2 (appended to Cliffdale Associates, Inc., 103 F.T.C. 110, 174 (1984) (emphasis added).

The FTC has historically exercised this authority principally to prevent harm to human consumers, applying it to business-to-business conduct in only a narrow set of circumstances involving small businesses.[5] While Congress has, at times, authorized the FTC to police unfair or deceptive acts or practices impacting businesses, those laws and the resulting Commission rules protect both businesses *and* consumers—and are primarily concerned with consumer injury.[6] In contrast, ASFA exclusively protects app developers, only indirectly impacting consumers.

In *Negotiated Data Solutions LLC* (*N-Data*), Chair Deborah Majoras dissented from the Commission's use of its consumer protection authority to challenge a patent holder's repudiation of an earlier licensing commitment where the immediate alleged victims were large, sophisticated computer manufacturers. As she explained,

> the FTC has used its authority under Section 5 to protect small businesses against unfair acts and practices. We have taken care to exercise this authority judiciously, however, to protect small businesses, non-profits, churches, and "mom and pop" operations that lack the resources and, in some cases, the experience or understanding to defend themselves adequately against fraud.[7]

"There is a clear qualitative difference[,]" Chair Majoras continued, "between these entities and" larger corporations[8]—namely, that small businesses are positioned similar to consumers in the market, as opposed to "sophisticated" businesses conducting arm's length transactions.[9] Commissioner Ohlhausen later warned that "continu[ing] on the path begun

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[5] *See generally* FEDERAL TRADE COMMISSION, *Protecting Small Businesses: Cases*, https://www.ftc.gov/business-guidance/small-businesses/protecting-small-businesses-cases (last visited July 20, 2026).

[6] *See, e.g.*, Telemarketing Act, 15 U.S.C. § 6102; CAN-SPAM Act, 15 U.S.C. § 7707.

[7] Dissenting Statement of Chairman Majoras at 5, *In re Negotiated Data Solutions LLC*, File No. 0510094 (Jan. 23, 2008), https://www.ftc.gov/sites/default/files/documents/cases/2008/01/080122majoras.pdf#page=5 (footnote omitted) (To highlight the FTC's judicious application of consumer protection authority to business-to-business conduct, Chair Majoras cited: *FTC v. Websource Media, LLC*, No. H-06-1980 (S.D. Tex. filed June 12, 2006) (unfair practice of "cramming" unauthorized charges onto the telephone bills of small businesses); *FTC v. Certified Merchant Services, Ltd.*, No. 4:02CV44 (E.D. Tex. filed February 11, 2002) (unfair practice of unilaterally inserting additional pages that describe substantial, undisclosed charges into credit card processing contracts with small business merchants); *FTC v. IFC Credit Corp.*, No. 07C3155 (N.D. Ill. filed June 6, 2007) (unfair practice of accepting and collecting on invalid, fraudulently induced equipment contracts with small businesses and religious and other nonprofit organizations)).

[8] *Id.*

[9] In its Analysis of the *N-Data* proposed consent order, the majority argued that "[t]he Commission has a 'longstanding position that the statutory prohibition against unfair or deceptive acts or practices includes practices that victimize businesspersons as well as those who purchase products for their own personal or household use,'" citing the FTC's Franchise Rule as an example. Analysis of Proposed Consent Order to Aid Public Comment at 8 n.14, *In re Negotiated Data Solutions LLC*, File No. 051 0094 (Jan. 23, 2008), https://www.ftc.gov/sites/default/files/documents/cases/2008/01/080122analysis.pdf#page=8. But, Chair

in *N-Data*" would lead the FTC to "polic[e] garden variety … business disputes between private parties."[10]

ASFA would force the FTC down the *N-Data* path, stretching its consumer protection authority to regulate the commercial terms on which app stores deal with developers. ASFA refers to consumers only twice, both in the context of "general purpose consumer computing device[s]."[11] Rather than focusing on consumers, ASFA primarily targets business-to-business conduct. The bill's definition of "covered company" applies only to two businesses: Google and Apple.[12] And app "developer[s]" range from major technology companies and small startups to individual programmers.[13]

Specifically, ASFA would require app store providers to grant app developers "access to any interface and hardware and software feature" and "documentation and development information" on "equivalent [] terms of access by the covered company or any business partner."[14] In addition, the bill would prohibit app store providers from enforcing "exclusivity and tying" policies, such as requiring app developers to "use or enable an in-app payment system owned or controlled by the covered company or any business partner" or "tak[ing] punitive action or otherwise impos[ing] less favorable terms and conditions against a developer of an app distributed outside of an app store that is owned or controlled by the

Majoras explained, "[w]hile the Franchise Rule, which requires certain disclosures prior to the sale of a franchise, sometimes protects businesses, it typically protects individual consumers that are purchasing franchises rather than sophisticated corporations." Majoras, *supra* note 7, at 5 n.15. The Chair added that the Franchise Rule exempts "several categories of sophisticated investors." *Id.* (citing 16 C.F.R. § 436.8(a)).

[10] Statement of Commissioner Maureen K. Ohlhausen at 3, *In re Robert Bosch GmbH*, FTC File No. 121-0081 (Nov. 26, 2012), https://www.ftc.gov/sites/default/files/documents/public_statements/statement-commissioner-maureen-ohlhausen/121126boschohlhausenstatement.pdf#page=3.

[11] App Store Freedom Act, H.R. 3209, 119th Cong. §§ 6(1), (2) (2025).

[12] *Id.* § 6(4) ("The term 'covered company' means any person who owns or controls—(A) an app store for which the number of users in the United States exceeds 100,000,000; and(B) the operating system on which such app store operates."). *See generally* GOOGLE PLAY, https://play.google.com/store/apps?hl=en_US (last visited July 20, 2026); APP STORE, https://www.apple.com/app-store/ (last visited July 20, 2026).

[13] *Id.* § 6(5) ("The term 'developer' means a person who owns or controls an app or an app store."). *See App developer survey*, GOV UK (Dec. 5, 2024), https://www.gov.uk/government/publications/app-store-security-and-privacy-app-developer-survey/app-developer-survey (Table 1: Surveyed app developers' profile by company size (based on employees)).

[14] *Id.* § 2(a)(2) ("A covered company, in a timely manner, without cost, and on terms that are equivalent to the terms of access by the covered company or any business partner of the covered company, shall provide to a developer of an app accessible on an operating system, or distributed through an app store, owned or controlled by the covered company—(A) access to any interface and hardware and software feature of the operating system that are generally available to the covered company and any business partner of the covered company; and (B) documentation and development information sufficient to access any such interface and feature.").

covered company."[15] Lastly, ASFA would prohibit app store providers from "impos[ing] any restriction or fee on the communication of a developer of an app … concerning legitimate business offers."[16] All three provisions govern business-to-business conduct.

Violations of ASFA—such as app store providers withholding certain features from developers—would be deemed unfair or deceptive acts or practices.[17] The FTC would have the authority to promulgate rules governing the relationship between app store providers and app developers[18]—*i.e.* rules governing business-to-business conduct. Violators would be subject to "any penalty applicable under the Federal Trade Commission Act," as well as "a civil penalty of not more than $1,000,000 for each violation."[19]

ASFA would be a significant departure from the FTC's traditional use of its consumer protection authority, applying it to disputes between commercial actors. In 1994, Congress codified the FTC's Unfairness Policy Statement, focusing the doctrine on "substantial injury to *consumers*" rather than businesses or competitors.[20] The rare cases where the FTC has applied its consumer protection authority to business-to-business disputes have overwhelmingly involved small businesses that resemble consumers falling for scams.[21] In contrast, ASFA would classify app developers of all sizes as consumers, treating disputes over platform access, payment systems, and other commercial terms as unfair or

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[15] *Id.* §§ 2(b)(1)(A)-(B) ("A covered company may not—(A) require, as a condition for an app to be accessible on an operating system or distributed through an app store that is owned or controlled by the covered company, that—(i) a developer of the app use or enable an in-app payment system owned or controlled by the covered company or any business partner of the covered company; or (ii) pricing or other terms of sale be equal to or more favorable on such operating system or app store than on another operating system or app store; or (B) take punitive action or otherwise impose less favorable terms and conditions against a developer of an app distributed outside of an app store that is owned or controlled by the covered company—(i) for using or offering different pricing or other terms of sale on an app store or through an in-app payment system that is not owned or controlled by the covered company; or (ii) on the basis that such app provides access to a third-party app that is not owned or controlled by the covered company through remote electronic services rather than through download from an operating system or an app store that is owned or controlled by the covered company.").

[16] *Id.* § 2(b)(2)(A) ("A covered company may not impose any restriction or fee on the communication of a developer of an app accessible on an operating system or distributed through an app store that is owned or controlled by the covered company with a user of the app, whether through such app or direct outreach to such user, concerning legitimate business offers, including pricing or other terms of sale and product or service offerings.").

[17] *Id.* § 3(a)(1).

[18] *Id.* § 3(a)(2)(A). *See also* 15 U.S.C. § 57.

[19] H.R. 3209, 119th Cong. (2025) §§ 3(a)(2)(B)-(3)(A).

[20] *See* J. Howard Beales, *The FTC's Use of Unfairness Authority: Its Rise, Fall, and Resurrection*, FEDERAL TRADE COMMISSION (May 30, 2003), https://www.ftc.gov/news-events/news/speeches/ftcs-use-unfairness-authority-its-rise-fall-resurrection.

[21] Majoras, *supra* note 7. *See generally* FEDERAL TRADE COMMISSION, *supra* note 5 (for example, "Business Directory Scams," "Unauthorized Phone Charges," and "Office Supply Scam").

deceptive—regardless of whether the protected developer is an individual programmer, a startup, or a multinational corporation.

Even small app developers seeking better access to app stores are qualitatively different from "mom and pop" operations deceived into paying an unauthorized invoice. The conduct regulated by ASFA does target consumers; it concerns competition and the contractual terms on which businesses deal with one another.

App store providers preferencing their own apps or those of business partners is a competition issue, not an unfair or deceptive act or practice harming consumers. As Commissioner Bill Kovacic explained in his dissent in *N-Data*, if "all business enterprises—including large companies—fall within the class of consumers whose injury is a worthy subject of unfairness scrutiny[,]" then the FTC's consumer protection authority "subsumes" its separate competition authority, rendering the Sherman and Clayton Acts "superfluous."[22] This use of consumer protection authority to address conduct involving sophisticated businesses in *N-Data* was widely regarded as "highly unusual"[23] and "a dramatic departure in policy."[24] ASFA would codify that exceptional theory into law for a major sector of the digital economy while imposing significant civil penalties.

Any new law governing how app stores deal with app developers should be enforced through the FTC's competition authority, with violations treated as unfair methods of competition.[25] Alternatively, if the Committee wishes to attach civil penalties, it should consider treating violations of ASFA as standalone offenses unrelated to Section 5 of the FTC Act.

Thank you for your attention to our concerns.

Sincerely,

Andy Jung
AI Policy Counsel
TechFreedom

Berin Szóka
President
TechFreedom

[22] Dissenting Statement of Commissioner William E. Kovacic, *In re Negotiated Data Solutions, LLC* at 3, File No. 051-0094 (Jan. 23, 2008), https://www.ftc.gov/sites/default/files/documents/cases/2008/01/080122kovacic.pdf#page=3.

[23] Dentons, *FTC uses unique, long-dormant authority to challenge patent troll's alleged breach of licensing commitment to standard-setting organization*, LEXOLOGY (Jan 28, 2008), https://www.lexology.com/library/detail.aspx?g=5d6f068f-fa6a-4712-ae70-53ccaced9d72.

[24] Anne Layne-Farrar, *Patents in Motion: The Troubling Implications of the N-Data Settlement*, GCP (Mar. 2009), https://competitionpolicyinternational.com/assets/0d358061e11f2708ad9d62634c6c40ad/Layne-Mar-09_2_.pdf#page=4.

[25] *See* FEDERAL TRADE COMMISSION, *supra* note 2, § II.2.