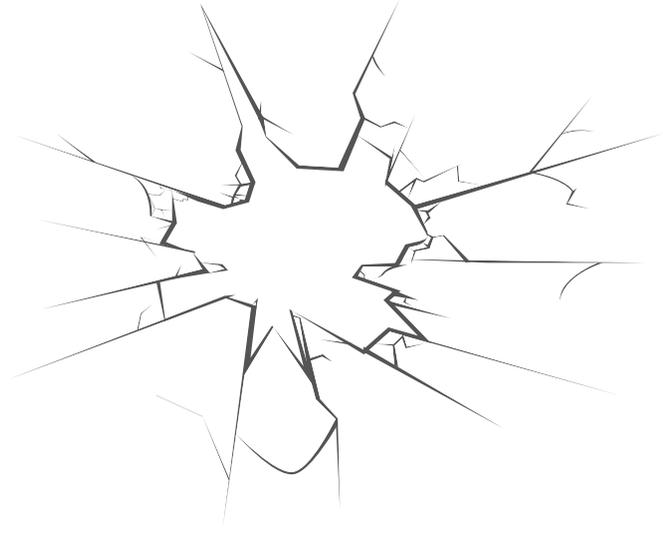


**Senator Coons, Experts:**

# **AICOA RAISES SERIOUS CONCERNS THAT WILL HARM US COMPETITIVENESS AND NATIONAL SECURITY**

**(S. 2992 AND H.R. 3816)**



Senators Klobuchar, Grassley, and other cosponsors recently introduced S. 2992, "The American Innovation and Choice Online Act" (AICOA) to the Senate Judiciary Committee for markup.

## **Senator Coons expressed strong concerns:**

"I have significant concerns to balance about whether this bill achieves the right balance between the costs and inefficiencies between litigation and compliances and potentially unintended consequences on the competitiveness globally of our digital democracy principles on the world stage and whether or not we are achieving enough progress on combatting anti-competitive behavior on the other."

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## **Experts agree:**

**Doug Kelly**

**American Edge Project**

"Rather than passing legislation that handcuffs America's most innovative technology companies, Washington lawmakers should focus on bolstering our domestic innovation and slowing China's theft of American technology. There's too much at stake to get this wrong."

**Malena Daley**

**Progressive Policy Institute**

"The disregard for the bill's implications regarding consumer welfare raises an important question: Who is antitrust legislation meant to benefit? In theory, promotion of competition on online platforms may lower prices and increase choice, but the line of thinking promoted by this bill turns a blind eye to the reality of how users and businesses engage with internet services. For consumers, integrated online services are a valued feature of the products provided by platforms. By taking this integration away or requiring that it be offered at cost, Americans who depend on these services will be left worse off with the passage of this bill."

## **Keith Kratch**

**Former Under Secretary of State for Economic Growth, Energy, and the Environment**

"The first thing we got to make sure is that we don't handcuff our businesses. And I know there is some legislation that says things like 'software companies have to always open up their interfaces'. That means the Chinese can always get the data. Or that you can't make an acquisition. We have to be careful."

## **Patrick Hedger**

**Taxpayers Protection Alliance**

"What is perhaps most concerning about this bill is that it would grant sweeping new powers to the FTC. The bill would give FTC broad discretion to determine which antitrust cases to take up under the bill and would give the FTC the power to bring enforcement action themselves. Because businesses are inherently always looking out for their own interests, the FTC could soon find a wide license to regulate anything and everything on a whim."

## **Mikolaj Barczentewicz**

**University of Surrey and International Center for Law and Economics**

"All U.S. bills considered here introduce some interoperability mandates and none of them do so in a way that would effectively safeguard information privacy and security."

"Both ACIOA and AICOA allow for affirmative defenses that a service provider could use if sued under the statute. While those defenses mention privacy and security, they are narrow and would not prevent service providers from incurring significant litigation costs. Hence, just like the provisions of the DMA, they would heavily incentivize covered service providers not to adopt the most effective protections of privacy and security."

## **Aurelien Portuese**

**Information and Technology Innovation Foundation**

"Finally, given these three fundamental flaws of the bill (i.e. size thresholds, prohibition of pro-competitive practices, and rules of per se illegality), there are two potential outcomes: either courts and agencies will aggressively enforce the bill, in which case the unintended consequences described will unfold at the expense of American consumers and innovation, or courts and agencies will refrain from applying the obligations contained in the bill, in a similar manner to the poorly enforced Robinson-Patman Act of 1936, because the statutory obligations and prohibitions appear utterly disconnected from market reality and consumer considerations. Should they choose the latter alternative, it will be no better solution. So, senators should refrain from adopting the bill. Disapplied laws harm the legislature, the credibility of lawmakers, and ultimately the institution of Congress."

**Arthur Sidney**

**Computer & Communications Industry Association**

"Congress should engage its national security committees to solicit briefings and technical assistance from U.S. intelligence, counterintelligence, and foreign policy agencies to evaluate the risks before proceeding to approve these bills targeting the U.S. tech sector."

"It is ironic that earlier this year, the Senate passed legislation to bolster U.S. competitiveness and innovation in the tech domain vis-a-vis China and other foreign competitors and only a few months later, Congress is attempting to dismantle and chill innovation with these newly introduced bills, which themselves are not antitrust bills but instead amount to government-mandated industrial policy."