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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R. ____

To promote competition and reduce gatekeeper power in the app economy, increase choice, improve quality, and reduce costs for consumers.

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IN THE HOUSE OF REPRESENTATIVES

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Mr. JOHNSON of Georgia introduced the following bill; which was referred to the Committee on _____

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A BILL

To promote competition and reduce gatekeeper power in the app economy, increase choice, improve quality, and reduce costs for consumers.

1   *Be it enacted by the Senate and House of Representa-*

2   *tives of the United States of America in Congress assembled,*

3   **SECTION 1. SHORT TITLE.**

4   This Act may be cited as the "Open App Markets

5   Act".

6   **SEC. 2. DEFINITIONS.**

7   In this Act:

2

1   (1) APP.—The term "App" means a software
2 application or electronic service that may be run or
3 directed by a user on a computer, a mobile device,
4 or any other general purpose computing device.

5   (2) APP STORE.—The term "App Store" means
6 a publicly available website, software application, or
7 other electronic service that distributes Apps from
8 third-party developers to users of a computer, a mo-
9 bile device, or any other general purpose computing
10 device.

11   (3) COVERED COMPANY.—The term "Covered
12 Company" means any person that owns or controls
13 an App Store for which users in the United States
14 exceed 50,000,000.

15   (4) DEVELOPER.—The term "developer" means
16 a person that owns or controls an App or an App
17 Store.

18   (5) IN-APP PAYMENT SYSTEM.—The term "In-
19 App Payment System" means an application, serv-
20 ice, or user interface to process the payments from
21 users of an App.

22   (6) NON-PUBLIC BUSINESS INFORMATION.—
23 The term "non-public business information" means
24 non-public data that is—

1   (A) derived from a developer or an App or
2   App Store owned or controlled by a developer,
3   including interactions between users and the
4   App or App Store of the developer; and

5   (B) collected by a Covered Company in the
6   course of operating an App Store or providing
7   an operating system.

8 **SEC. 3. PROTECTING A COMPETITIVE APP MARKET.**

9   (a) EXCLUSIVITY AND TYING.—A Covered Company
10 shall not—

11   (1) require developers to use an In-App Pay-
12   ment System owned or controlled by the Covered
13   Company or any of its business partners as a condi-
14   tion of being distributed on an App Store or acces-
15   sible on an operating system;

16   (2) require as a term of distribution on an App
17   Store that pricing terms or conditions of sale be
18   equal to or more favorable on its App Store than the
19   terms or conditions under another App Store; or

20   (3) take punitive action or otherwise impose
21   less favorable terms and conditions against a devel-
22   oper for using or offering different pricing terms or
23   conditions of sale through another In-App Payment
24   System or on another App Store.

1 (b) INTERFERENCE WITH LEGITIMATE BUSINESS
2 COMMUNICATIONS.—A Covered Company shall not impose
3 restrictions on communications of developers with the
4 users of the App through an App or direct outreach to
5 a user concerning legitimate business offers, such as pric-
6 ing terms and product or service offerings.

7 (c) NON-PUBLIC BUSINESS INFORMATION.—A Cov-
8 ered Company shall not use non-public business informa-
9 tion derived from a third-party App for the purpose of
10 competing with that App.

11 (d) INTEROPERABILITY.—A Covered Company that
12 controls the operating system or operating system configu-
13 ration on which its App Store operates shall allow and pro-
14 vide the readily accessible means for users of that oper-
15 ating system to—

16 (1) choose third-party Apps or App Stores as
17 defaults for categories appropriate to the App or
18 App Store;

19 (2) install third-party Apps or App Stores
20 through means other than its App Store; and

21 (3) hide or delete Apps or App Stores provided
22 or preinstalled by the App Store owner or any of its
23 business partners.

24 (e) SELF-PREFERENCING IN SEARCH.—

5

1   (1) IN GENERAL.—A Covered Company shall

2 not provide unequal treatment of Apps in an App

3 Store through unreasonably preferencing or ranking

4 the Apps of the Covered Company or any of its busi-

5 ness partners over those of other Apps.

6   (2)   CONSIDERATIONS.—Unreasonably

7 preferencing—

8   (A) includes applying ranking schemes or

9   algorithms that prioritize Apps based on a cri-

10   terion of ownership interest by the Covered

11   Company or its business partners; and

12   (B) does not include clearly disclosed ad-

13   vertising.

14 (f) OPEN APP DEVELOPMENT.—Access to operating

15 system interfaces, development information, and hardware

16 and software features shall be provided to developers on

17 a timely basis and on terms that are equivalent or func-

18 tionally-equivalent to the terms for access by similar Apps

19 or functions provided by the Covered Company or to its

20 business partners.

21 **SEC. 4. PROTECTING THE SECURITY AND PRIVACY OF**

22   **USERS.**

23 (a) IN GENERAL.—Subject to section (b), a Covered

24 Company shall not be in violation of a subsection of sec-

25 tion 3 for an action that is—

1   (1) necessary to achieve user privacy, security,

2   or digital safety;

3   (2) taken to prevent spam or fraud; or

4   (3) taken to prevent a violation of, or comply

5   with, Federal or State law.

6   (b) REQUIREMENTS.—Section (a) shall only apply if

7 the Covered Company establishes by clear and convincing

8 evidence that the action described is—

9   (1) applied on a demonstrably consistent basis

10   to Apps of the Covered Company or its business

11   partners and to other Apps;

12   (2) not used as a pretext to exclude, or impose

13   unnecessary or discriminatory terms on, third-party

14   Apps, In-App Payment Systems, or App Stores; and

15   (3) narrowly tailored and could not be achieved

16   through a less discriminatory and technically pos-

17   sible means.

18 **SEC. 5. ENFORCEMENT.**

19   (a) ENFORCEMENT.—

20   (1) IN GENERAL.—The Federal Trade Commis-

21   sion, the Attorney General, and any attorney general

22   of a State subject to the requirements in paragraph

23   (4) shall enforce this Act in the same manner, by

24   the same means, and with the same jurisdiction,

25   powers, and duties as though all applicable terms

1 and provisions of the Federal Trade Commission Act
2 (15 U.S.C. 41 et seq.) or the Clayton Act (15 U.S.C.
3 12 et seq.), as appropriate, were incorporated into
4 and made a part of this Act.

5   (2) UNFAIR METHODS OF COMPETITION.—A
6 violation of this Act shall also constitute an unfair
7 method of competition under section 5 of the Fed-
8 eral Trade Commission Act (15 U.S.C. 5).

9   (3) FEDERAL TRADE COMMISSION INDE-
10 PENDENT LITIGATION AUTHORITY.—If the Federal
11 Trade Commission has reason to believe that a Cov-
12 ered Company violated this Act, the Federal Trade
13 Commission may commence a civil action, in its own
14 name by any of its attorneys designated by it for
15 such purpose, to recover a civil penalty and seek
16 other appropriate relief in a district court of the
17 United States against the covered platform operator.

18   (4) PARENS PATRIAE.—Any attorney general of
19 a State may bring a civil action in the name of such
20 State for a violation of this Act as parens patriae on
21 behalf of natural persons residing in such State, in
22 any district court of the United States having juris-
23 diction of the defendant, and may secure any form
24 of relief provided for in this section.

25 (b) SUITS BY DEVELOPERS INJURED.—

1   (1) IN GENERAL.—Any developer who shall be
2   injured by reason of anything forbidden in this Act
3   may sue therefor in any district court of the United
4   States in the district in which the defendant resides
5   or is found or has an agent, without respect to the
6   amount in controversy, and shall recover threefold
7   the damages by him sustained, and the cost of suit,
8   including a reasonable attorney's fee. The court may
9   award under this subsection, pursuant to a motion
10   by such developer promptly made, simple interest on
11   actual damages for the period beginning on the date
12   of service of such developer's pleading setting forth
13   a claim under this Act and ending on the date of
14   judgment, or for any shorter period therein, if the
15   court finds that the award of such interest for such
16   period is just in the circumstances. In determining
17   whether an award of interest under this subsection
18   for any period is just in the circumstances, the court
19   shall consider only—

20   (A) whether such developer or the opposing
21   party, or either party's representative, made
22   motions or asserted claims or defenses so lack-
23   ing in merit as to show that such party or rep-
24   resentative acted intentionally for delay, or oth-
25   erwise acted in bad faith;

1 (B) whether, in the course of the action in-
2 volved, such developer or the opposing party, or
3 either party's representative, violated any appli-
4 cable rule, statute, or court order providing for
5 sanctions for dilatory behavior or otherwise pro-
6 viding for expeditious proceedings; and

7 (C) whether such developer or the opposing
8 party, or either party's representative, engaged
9 in conduct primarily for the purpose of delaying
10 the litigation or increasing the cost thereof.

11 (2) INJUNCTIVE RELIEF.—Any developer shall
12 be entitled to sue for and have injunctive relief, in
13 any court of the United States having jurisdiction
14 over the parties, against threatened loss or damage
15 by a violation of this Act, when and under the same
16 conditions and principles as injunctive relief against
17 threatened conduct that will cause loss or damage is
18 granted by courts of equity, under the rules gov-
19 erning such proceedings, and upon the execution of
20 proper bond against damages for an injunction im-
21 providently granted and a showing that the danger
22 of irreparable loss or damage is immediate, a pre-
23 liminary injunction may issue. In any action under
24 this paragraph in which the plaintiff substantially

1 prevails, the court shall award the cost of suit, in-

2 cluding a reasonable attorney's fee, to such plaintiff.

3 **SEC. 6. RULE OF CONSTRUCTION.**

4 Nothing in this Act shall be construed to limit any

5 authority of the Attorney General or the Federal Trade

6 Commission under the antitrust laws (as defined in the

7 first section of the Clayton Act (15 U.S.C. 12), the Fed-

8 eral Trade Commission Act (15 U.S.C. 41 et seq.), or any

9 other provision of law or to limit the application of any

10 law.

11 **SEC. 7. SEVERABILITY.**

12 If any provision of this Act, or the application of such

13 a provision to any person or circumstance, is held to be

14 unconstitutional, the remaining provisions of this Act, and

15 the application of the provision held to be unconstitutional

16 to any other person or circumstance, shall not be affected

17 thereby.