



PELICAN INSTITUTE FOR PUBLIC POLICY

U.S. Senator Bill Cassidy
520 Hart Senate Office Building
Washington, D.C. 20510

U.S. Senator John Kennedy
416 Russell Senate Building
Washington, D.C. 20510

June 20, 2022

Dear Senators Cassidy and Kennedy,

The Pelican Institute for Public Policy serves as Louisiana's leading free market organization. We are writing to share concerns regarding the proposed American Innovation and Choice Online Act (AICOA) and to urge you to vote against it. AICOA would significantly rewrite large portions of American antitrust law. Currently, antitrust law targets firms based on their impact to American consumers. If AICOA is enacted, the focus will shift to the size of the firm even if there is no negative impact on Americans. The potential change in antitrust law would put Americans' online privacy at risk by not allowing companies to screen applications before they are used by consumers, opening the door for potential malware and theft of private information.

AICOA Would Upend Conservative Victories in Antitrust Law and Empower Federal Regulators

One of the most significant victories of the conservative legal movement is reining in antitrust law. Previously, antitrust law was little more than a rubber stamp for government to decide how a particular market structure should operate. The conservative legal movement fought back against government management of the American economy and instituted the consumer welfare standard, which ensures that antitrust law is focused on benefits to the American people.

AICOA represents a return to an antitrust era before this conservative victory. Instead of focusing on the welfare of American people, AICOA would automatically apply to companies of a certain size as long as they run an online platform. Also, it would change the burden of proof, requiring that the government only show a preponderance of evidence that violations of the law were found. Such violations could result in a fine of ten percent of a company's annual revenue.

These changes are concerning enough when limited to the companies covered by this legislation, but with the current makeup of the Federal Trade Commission and Department of Justice, it's unlikely these will be the only companies targeted.

Already, the head of the Federal Trade Commission has shown a desire to expand antitrust law to accomplish goals such as environmental justice, fighting misinformation, and labor fairness; issues that are unrelated to consumer welfare. Opening the door to dramatic antitrust law changes will almost certainly be used by activists to further their own agenda and potentially attack oil and gas companies that are vital to our state's economy.

Passing AICOA Would Cost Consumers

By any measure, inflation is the top concern of Americans. Inflation is nearing ten percent and with many Louisianans living paycheck to paycheck, inflation is felt more heavily in Louisiana than almost anywhere else in the nation.

Many of the companies targeted by this legislation have made it easier for Louisianans to buy consumer goods at cheaper prices. Whether it's offering generic products to consumers or simply providing the tools to allow people to find the best deals, the people of the Pelican State rely on such options to stretch their budget.

AICOA would not only initially remove these products from the market, but it could later be expanded to include companies like Costco. Antitrust should be focused on consumer prices, but this legislation would exacerbate our current problems.

AICOA Would Reduce Americans' Online Privacy

Since AICOA targets technology companies, it comes with a host of requirements tailored to those entities. The most concerning requirement is a prohibition "delaying the capacity of a business user to access or interoperate with the same platform, operating system, or hardware or software features that are available to the products, services.... except where such access would lead to a significant cybersecurity risk".

This provision would essentially turn any platform into a common carrier of any application that wanted to use its operating system. This would have profound negative impacts on Americans' privacy.

The platforms covered in this legislation are able to protect the privacy of Americans by acting as screeners for bad actors. Americans trust that when they download an app from the app store that it doesn't contain malware or steal their personal information. AICOA would stop the platform providers from ensuring apps are acting in good faith rather than stealing users' information and privacy.

With privacy being Americans top tech concern, this would be a mistake.

Passing AICOA Would Be a Mistake

The people of Louisiana are dealing with economic uncertainty not seen in at least a decade. Now is not the time to add more uncertainty by passing legislation that would significantly reorder the American economy and return antitrust law back to the days when it was a tool of the government to manage free markets. AIOCA also runs the risk of empowering activist agencies to target one of the most important economic drivers of our state, the oil and gas industry. Finally, it threatens to compromise the privacy of every American by weakening the protections of the products they use.

The Pelican Institute urges you to vote against the American Innovation and Choice Online Act.

Sincerely,

A handwritten signature in dark ink, appearing to read "Daniel Erspamer". The signature is fluid and cursive, with a large initial "D" and "E".

CEO of the Pelican Institute for Public Policy, Daniel Erspamer