117TH CONGRESS
1ST SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

Mr. BLUMENTHAL (for himself, Mrs. BLACKBURN, and Ms. KLOBUCHAR) in-
troduced the following bill; which was read twice and referred to the Com-
mittee on _____

A BILL

To promote competition and reduce gatekeeper power in the
app economy, increase choice, improve quality, and re-
duce 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:

8   (1) APP.—The term "App" means a software

9   application or electronic service that may be run or

1 directed by a user on a computer, a mobile device,

2 or any other general purpose computing device.

3   (2) APP STORE.—The term "App Store" means

4 a publicly available website, software application, or

5 other electronic service that distributes Apps from

6 third-party developers to users of a computer, a mo-

7 bile device, or any other general purpose computing

8 device.

9   (3) COVERED COMPANY.—The term "Covered

10 Company" means any person that owns or controls

11 an App Store for which users in the United States

12 exceed 50,000,000.

13   (4) DEVELOPER.—The term "developer" means

14 a person that owns or controls an App or an App

15 Store.

16   (5) IN-APP PAYMENT SYSTEM.—The term "In-

17 App Payment System" means an application, serv-

18 ice, or user interface to process the payments from

19 users of an App.

20   (6) NON-PUBLIC BUSINESS INFORMATION.—

21 The term "non-public business information" means

22 non-public data that is—

23   (A) derived from a developer or an App or

24 App Store owned or controlled by a developer,

1   including interactions between users and the

2   App or App Store of the developer; and

3   (B) collected by a Covered Company in the

4   course of operating an App Store or providing

5   an operating system.

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

7   (a) EXCLUSIVITY AND TYING.—A Covered Company

8 shall not—

9   (1) require developers to use an In-App Pay-

10   ment System owned or controlled by the Covered

11   Company or any of its business partners as a condi-

12   tion of being distributed on an App Store or acces-

13   sible on an operating system;

14   (2) require as a term of distribution on an App

15   Store that pricing terms or conditions of sale be

16   equal to or more favorable on its App Store than the

17   terms or conditions under another App Store; or

18   (3) take punitive action or otherwise impose

19   less favorable terms and conditions against a devel-

20   oper for using or offering different pricing terms or

21   conditions of sale through another In-App Payment

22   System or on another App Store.

23   (b) INTERFERENCE WITH LEGITIMATE BUSINESS

24 COMMUNICATIONS.—A Covered Company shall not impose

25 restrictions on communications of developers with the

4

1 users of the App through an App or direct outreach to

2 a user concerning legitimate business offers, such as pric-

3 ing terms and product or service offerings.

4 (c) NON-PUBLIC BUSINESS INFORMATION.—A Cov-

5 ered Company shall not use non-public business informa-

6 tion derived from a third-party App for the purpose of

7 competing with that App.

8 (d) INTEROPERABILITY.—A Covered Company that

9 controls the operating system or operating system configu-

10 ration on which its App Store operates shall allow and pro-

11 vide the readily accessible means for users of that oper-

12 ating system to—

13 (1) choose third-party Apps or App Stores as

14 defaults for categories appropriate to the App or

15 App Store;

16 (2) install third-party Apps or App Stores

17 through means other than its App Store; and

18 (3) hide or delete Apps or App Stores provided

19 or preinstalled by the App Store owner or any of its

20 business partners.

21 (e) SELF-PREFERENCING IN SEARCH.—

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

23 not provide unequal treatment of Apps in an App

24 Store through unreasonably preferencing or ranking

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

2   ness partners over those of other Apps.

3   (2)   CONSIDERATIONS.—Unreasonably

4   preferencing—

5   (A) includes applying ranking schemes or

6   algorithms that prioritize Apps based on a cri-

7   terion of ownership interest by the Covered

8   Company or its business partners; and

9   (B) does not include clearly disclosed ad-

10   vertising.

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

12   system interfaces, development information, and hardware

13   and software features shall be provided to developers on

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

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

16   or functions provided by the Covered Company or to its

17   business partners.

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

19   **USERS.**

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

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

22   tion 3 for an action that is—

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

24   or digital safety;

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

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

2   with, Federal or State law.

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

4 the Covered Company establishes by clear and convincing

5 evidence that the action described is—

6   (1) applied on a demonstrably consistent basis

7   to Apps of the Covered Company or its business

8   partners and to other Apps;

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

10   unnecessary or discriminatory terms on, third-party

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

12   (3) narrowly tailored and could not be achieved

13   through a less discriminatory and technically pos-

14   sible means.

15 **SEC. 5. ENFORCEMENT.**

16   (a) ENFORCEMENT.—

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

18   sion, the Attorney General, and any attorney general

19   of a State subject to the requirements in paragraph

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

21   the same means, and with the same jurisdiction,

22   powers, and duties as though all applicable terms

23   and provisions of the Federal Trade Commission Act

24   (15 U.S.C. 41 et seq.) or the Clayton Act (15 U.S.C.

1   12 et seq.), as appropriate, were incorporated into

2   and made a part of this Act.

3   (2) UNFAIR METHODS OF COMPETITION.—A

4   violation of this Act shall also constitute an unfair

5   method of competition under section 5 of the Fed-

6   eral Trade Commission Act (15 U.S.C. 5).

7   (3) FEDERAL TRADE COMMISSION INDE-

8   PENDENT LITIGATION AUTHORITY.—If the Federal

9   Trade Commission has reason to believe that a Cov-

10   ered Company violated this Act, the Federal Trade

11   Commission may commence a civil action, in its own

12   name by any of its attorneys designated by it for

13   such purpose, to recover a civil penalty and seek

14   other appropriate relief in a district court of the

15   United States against the covered platform operator.

16   (4) PARENS PATRIAE.—Any attorney general of

17   a State may bring a civil action in the name of such

18   State for a violation of this Act as parens patriae on

19   behalf of natural persons residing in such State, in

20   any district court of the United States having juris-

21   diction of the defendant, and may secure any form

22   of relief provided for in this section.

23   (b) SUITS BY DEVELOPERS INJURED.—

24   (1) IN GENERAL.—Any developer who shall be

25   injured by reason of anything forbidden in this Act

1 may sue therefor in any district court of the United

2 States in the district in which the defendant resides

3 or is found or has an agent, without respect to the

4 amount in controversy, and shall recover threefold

5 the damages by him sustained, and the cost of suit,

6 including a reasonable attorney's fee. The court may

7 award under this subsection, pursuant to a motion

8 by such developer promptly made, simple interest on

9 actual damages for the period beginning on the date

10 of service of such developer's pleading setting forth

11 a claim under this Act and ending on the date of

12 judgment, or for any shorter period therein, if the

13 court finds that the award of such interest for such

14 period is just in the circumstances. In determining

15 whether an award of interest under this subsection

16 for any period is just in the circumstances, the court

17 shall consider only—

18 (A) whether such developer or the opposing

19 party, or either party's representative, made

20 motions or asserted claims or defenses so lack-

21 ing in merit as to show that such party or rep-

22 resentative acted intentionally for delay, or oth-

23 erwise acted in bad faith;

24 (B) whether, in the course of the action in-

25 volved, such developer or the opposing party, or

9

1   either party's representative, violated any appli-

2   cable rule, statute, or court order providing for

3   sanctions for dilatory behavior or otherwise pro-

4   viding for expeditious proceedings; and

5   (C) whether such developer or the opposing

6   party, or either party's representative, engaged

7   in conduct primarily for the purpose of delaying

8   the litigation or increasing the cost thereof.

9   (2) INJUNCTIVE RELIEF.—Any developer shall

10 be entitled to sue for and have injunctive relief, in

11 any court of the United States having jurisdiction

12 over the parties, against threatened loss or damage

13 by a violation of this Act, when and under the same

14 conditions and principles as injunctive relief against

15 threatened conduct that will cause loss or damage is

16 granted by courts of equity, under the rules gov-

17 erning such proceedings, and upon the execution of

18 proper bond against damages for an injunction im-

19 providently granted and a showing that the danger

20 of irreparable loss or damage is immediate, a pre-

21 liminary injunction may issue. In any action under

22 this paragraph in which the plaintiff substantially

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

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

1 **SEC. 6. RULE OF CONSTRUCTION.**

2   Nothing in this Act shall be construed to limit any

3 authority of the Attorney General or the Federal Trade

4 Commission under the antitrust laws (as defined in the

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

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

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

8 law.

9 **SEC. 7. SEVERABILITY.**

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

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

12 unconstitutional, the remaining provisions of this Act, and

13 the application of the provision held to be unconstitutional

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

15 thereby.