

Congress of the United States

Washington, DC 20515

December 12, 2023

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

We strongly support your whole-of-government competition policy agenda, and greatly appreciate your administration's recent action at the World Trade Organization (WTO) to ensure that our trade policy aligns with those efforts. We are concerned that opponents of your agenda are continuing their efforts to use trade-related attacks to undermine our allies' efforts to rein in abuses by major technology companies.

We urge you to continue to reject claims that the European Union's *Digital Markets Act* (DMA) constitutes an illegal barrier to trade. The DMA will protect consumers and spur competition in the tech industry. The United States' trade policy must support the European Union's efforts to rein in Big Tech and facilitate similar American policies, rather than impair them.

As you know, Big Tech firms have aggressively fought common sense, bipartisan legislation in Congress. For example, last Congress, Big Tech spent hundreds of millions of dollars to stop the bipartisan *American Innovation and Choice Online Act* (AICOA) from being enacted.¹ While we continue to build momentum for this legislation, thus far Big Tech and its allies have stonewalled Congress from enacting other sensible, bipartisan bills to safeguard data privacy, stop the spread of disinformation, protect kids' safety and security online, increase competition in app stores, and address the crisis in local news.

Your administration has made immense strides in combating the abuses of Big Tech. After you issued a government-wide order directing agencies to promote competition in all sectors of the economy,² regulators across the administration took steps to protect consumers, workers, and small businesses, including in the tech sector. The Federal Trade Commission (FTC) has taken action against platforms that violate privacy protections,³ trick consumers,⁴ steal wages,⁵ and

¹ Bloomberg, "Big Tech's \$95 Million Spending Spree Leaves Antitrust Bill on Brink of Defeat," Anna Edgerton and Emily Birnbaum, September 6, 2022, <https://www.bloomberg.com/news/articles/2022-09-06/tech-giants-spree-leaves-antitrust-bill-on-brink-of-defeat>; Bloomberg, "Tech Industry's Ad Push Stalling Antitrust Bill, Klobuchar Says," Alexandra Barinka and Mark Gurman, September 6, 2022, <https://www.bloomberg.com/news/articles/2022-09-06/tech-industry-s-ad-push-stalling-antitrust-bill-klobuchar-says>.

² The White House, "Executive Order on Promoting Competition in the American Economy," press release, July 9, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

limit consumers' ability to repair their own items.⁶ The Department of Justice (DOJ) has brought suit against Google for illegally monopolizing digital advertising markets⁷ and the online search market.⁸ The Office of the United States Trade Representative (USTR) withdrew support for Trump-era digital trade proposals at the WTO that conflict with, and could have undermined, the tech regulation and competition bills supported by your administration and bipartisan members of Congress. We applaud all that you have done to “stand[] up to special interests” and “to hold big technology companies accountable for the harms they cause.”⁹

We must support our allies' efforts to do the same. Last year the European Parliament adopted the *Digital Markets Act* (DMA), groundbreaking legislation to ensure “fair and open digital markets.”¹⁰ The DMA requires the largest online platforms, dubbed “gatekeepers,” to comply with basic protections for business and individual users such as allowing business users to promote products outside the gatekeeper's platform; ensuring business users can access data they generate on the gatekeeper's platform; prohibiting gatekeepers from tracking an individual user for advertising purposes; and guaranteeing individual users can choose which payment, browsing, and other services to use on their devices.¹¹ All told, the DMA will ensure that innovators and small businesses can compete in the online marketplace without facing unfair

³ Federal Trade Commission, “Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars over FTC Allegations of Privacy Violations and Unwanted Charges,” press release, December 19, 2022, <https://www.ftc.gov/news-events/news/press-releases/2022/12/fortnite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations>.

⁴ Federal Trade Commission, “Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars over FTC Allegations of Privacy Violations and Unwanted Charges,” press release, December 19, 2022, <https://www.ftc.gov/news-events/news/press-releases/2022/12/fortnite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations>; Federal Trade Commission, “FTC Takes Action Against Amazon for Enrolling Consumers in Amazon Prime Without Consent and Sabotaging Their Attempts to Cancel,” press release, June 21, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-takes-action-against-amazon-enrolling-consumers-amazon-prime-without-consent-sabotaging-their>.

⁵ Federal Trade Commission, “FTC Returns Nearly \$60 Million to Drivers Whose Tips Were Illegally Withheld by Amazon,” press release, November 2, 2021, <https://www.ftc.gov/news-events/news/press-releases/2021/11/ftc-returns-nearly-60-million-drivers-whose-tips-were-illegally-withheld-amazon>.

⁶ Federal Trade Commission, “FTC to Ramp Up Law Enforcement Against Illegal Repair Restrictions,” press release, July 21, 2021, <https://www.ftc.gov/news-events/news/press-releases/2021/07/ftc-ramp-law-enforcement-against-illegal-repair-restrictions>.

⁷ U.S. Department of Justice, “Justice Department Sues Google for Monopolizing Digital Advertising Technologies,” press release, January 24, 2023, <https://www.justice.gov/opa/pr/justice-department-sues-google-monopolizing-digital-advertising-technologies>.

⁸ NPR, “United States takes on Google in biggest tech monopoly trial of 21st century,” Dara Kerr, September 12, 2023, <https://www.npr.org/2023/09/12/1198558372/doj-google-monopoly-antitrust-trial-search-engine>.

⁹ The White House, “FACT SHEET: Biden-Harris Administration Announces Key Actions to Advance Tech Accountability and Protect the Rights of the American Public,” press release, October 4, 2022, <https://www.whitehouse.gov/ostp/news-updates/2022/10/04/fact-sheet-biden-harris-administration-announces-key-actions-to-advance-tech-accountability-and-protect-the-rights-of-the-american-public/>.

¹⁰ European Commission, “The Digital Markets Act: ensuring fair and open digital markets,” https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en.

terms and conditions.¹² It will also empower consumers with more options, fairer prices, and better data protections.¹³

Dominant online platforms are racing to neuter the DMA so they can continue smothering competition and skirting privacy protections. The European Commission designated an initial set of gatekeepers earlier this fall.¹⁴ Those gatekeepers – Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft – must comply with the DMA from March 2024 onward.¹⁵ The gatekeepers were chosen based on neutral criteria such as market capitalization and number of active end users and business users in the EU.¹⁶ But the tech giants, their trade associations, and their allies in government erroneously claim that the DMA is an illegal trade barrier because it disproportionately affects U.S. companies.¹⁷

The DMA shares many similarities with the bipartisan *American Innovation and Choice Online Act* that your administration supports.¹⁸ Last year, DOJ sent a views letter on behalf of the Biden Administration explaining that the agency “views the rise of dominant platforms as presenting a threat to open markets and competition, with risks for consumers, businesses, innovation, resiliency, global competitiveness, and our democracy.”¹⁹ The letter concluded that “the Department strongly supports the principles and goals animating the legislation.”²⁰

We have seen this playbook before. In their annual submissions for USTR’s National Trade Estimates report, Big Tech interests have attacked other countries’ competition policies and other platform accountability laws that they oppose as illegal trade barriers.²¹ In digital trade negotiations for the proposed Indo-Pacific Economic Framework for Prosperity (IPEF),

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Reuters, “How the EU’s Digital Markets Act challenges Big Tech,” Martin Coulter, September 6, 2023, <https://www.reuters.com/technology/how-eus-digital-markets-act-challenges-big-tech-2023-09-06/>.

¹⁵ Cyber Risk GmbH, “The Digital Markets Act (DMA),” <https://www.eu-digital-markets-act.com/>.

¹⁶ European Commission, “Digital Markets Act: Commission designates six gatekeepers,” press release, September 6, 2023, https://ec.europa.eu/commission/presscorner/detail/en/IP_23_4328; European Commission, “Questions and Answers: Digital Markets Act: Ensuring fair and open digital markets*,” press release, September 6, 2023, https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2349.

¹⁷ The American Prospect, “The EU’s Tough New Rules for Tech,” Robert Kuttner, October 3, 2023, <https://prospect.org/world/2023-10-03-eus-tough-new-rules-for-tech/>.

¹⁸ American Innovation and Choice Online Act, S. 2033, <https://www.congress.gov/bill/118th-congress/senate-bill/1094?s=3&r=1>.

¹⁹ Letter from Peter H. Hyun, Acting Assistant Attorney General to U.S. Representatives Jerrold Nadler, Jim Jordan, David Cicilline, and Ken Buck, March 28, 2022, <https://www.justice.gov/ola/page/file/1488741/download>.

²⁰ *Id.*

²¹ Rethink Trade, ““Digital Trade” Doublespeak: Big Tech’s Hijack of Trade Lingo to Attack Anti-Monopoly and Competition Policies,” Daniel Rangel, Taylor Buck, Erick Peinert and Lori Wallach, November 2, 2022, <https://rethinktrade.org/reports/digital-trade-doublespeak-big-techs-hijack-of-trade-lingo-to-attack-anti-monopoly-and-competition-policies/>.

monopoly tech platforms argued that other nations' competition policies would subject U.S. firms to "illegal trade discrimination."²² Industry groups cited these spurious discrimination concerns when asking the USTR to push back against Canada's *Online News Act*,²³ which, like the bipartisan *Journalism Competition and Preservation Act* in the U.S.,²⁴ would require Big Tech platforms to pay for the news they profit from. They also attacked South Korean legislation that is similar to the *Open App Markets Act*,²⁵ another bipartisan congressional proposal to rein in companies like Google and Apple from using their dominant app stores to extort app developers.²⁶ As a bicameral group of legislators told Ambassador Katherine Tai and Secretary Raimondo earlier this year, "it is not 'trade discrimination' for the U.S. government or any of our trading partners to regulate Google, Meta, Apple, Microsoft, and Amazon to protect online competition . . . it is common sense, and trade-pact terms should in no way inhibit it."²⁷

Thankfully, USTR has seen through these ploys. We were heartened to hear Ambassador Tai, who leads negotiations on digital trade for the U.S., note that in the trade context, domestic regulatory "measures that may look like they have a discriminatory effect may or may not be advanced with a discriminatory intent."²⁸ Ambassador Tai correctly observed that the intent behind domestic regulation is critical to determining whether such a policy is in fact discriminatory.²⁹ The DMA is not discriminatory because it does not target companies, platforms, services, investors or digital products by their national origin. Rather, it establishes a framework for regulating anticompetitive behavior by the largest firms in the digital market.³⁰ And if the effect of the DMA lands predominantly on massive tech corporations based in the United States, it is because they have engaged in anticompetitive tactics to achieve dominance in the industry, not because they are American.

²² Letter from Senator Elizabeth Warren to Ambassador Katherine Tai and Commerce Secretary Gina Raimondo, April 21, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.04.21%20Letter%20to%20USTR,%20Commerce%20re.%20digital%20trade%20and%20competition.pdf>.

²³ The Globe and Mail, "Biden urged to raise Canadian bills' impact on Google, Facebook, Netflix, Disney," Marie Woolf, March 22, 2023, <https://www.theglobeandmail.com/politics/article-biden-urged-to-raise-canadian-bills-impact-on-google-facebook-netflix/>.

²⁴ Journalism Competition and Preservation Act of 2023, S. 1094, <https://www.congress.gov/bill/118th-congress/senate-bill/1094>.

²⁵ Open App Markets Act, S. 2710, <https://www.congress.gov/bill/117th-congress/senate-bill/2710>.

²⁶ Reuters, "South Korea approves rules on app store law targeting Apple, Google," Joyce Lee, March 8, 2022, <https://www.reuters.com/technology/skorea-approves-rules-app-store-law-targeting-apple-google-2022-03-08/>.

²⁷ Letter from Senator Elizabeth Warren to Ambassador Katherine Tai and Commerce Secretary Gina Raimondo, April 21, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.04.21%20Letter%20to%20USTR,%20Commerce%20re.%20digital%20trade%20and%20competition.pdf>.

²⁸ Center for American Progress, "President Biden's Worker-Centered Trade Policy: A Conversation With Ambassador Katherine Tai," October 10, 2023, at 58:46, <https://www.americanprogress.org/events/president-bidens-worker-centered-trade-policy-a-conversation-with-ambassador-katherine-tai/>.

²⁹ *Id.*

³⁰ European Commission, "Questions and Answers: Digital Markets Act: Ensuring fair and open digital markets*," https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2349.

Under your leadership, the FTC and DOJ have made significant strides in promoting competition to the benefit of workers, consumers, and small businesses, while resisting pressure from huge multinational corporations and their lobbyists. USTR has ensured that your trade policies support, rather than undermine, your administration's goals, including by withdrawing support for Trump-era proposals at the WTO that would have mislabeled facially neutral competition policies as illegal trade barriers.

Your administration must remain steadfast in the face of Big Tech's misleading trade discrimination claims. We urge you to continue to reject any trade or policy proposals that deem the DMA to be discriminatory nor an illegal trade barrier so as to protect the pro-competition priorities that your administration shares with our European allies.

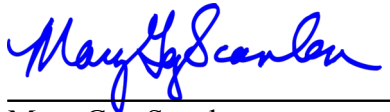
Sincerely,



Elizabeth Warren
United States Senator



Amy Klobuchar
United States Senator



Mary Gay Scanlon
Member of Congress



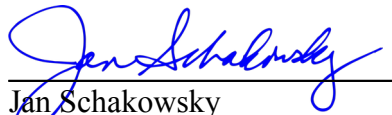
Henry C. "Hank" Johnson, Jr.
Member of Congress




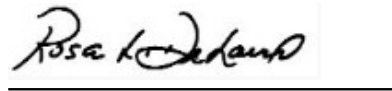
Bernard Sanders
United States Senator



Pramila Jayapal
Member of Congress


Jan Schakowsky
Member of Congress


Lori Trahan
Member of Congress


Rosa L. DeLauro
Member of Congress