



The Daily Dish

A Bad Penny Always Turns Up

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“A bad penny always turns up” is just the old-fashioned way of saying Senators Grassley and Klobuchar will always introduce the American Innovation and Choice Online Act ([AICOA](#)), despite the fact that it has gone nowhere in previous Congresses and that it mimics the European Union’s highly detrimental and unsuccessful Digital Markets Act ([DMA](#)). The DMA is [credited](#) with delaying access to the new artificial intelligence (AI) version of Apple’s Siri until 2027.

On the substance, AICOA is deeply flawed. According to the authors:

AICOA only covers platforms that (1) have at least \$175 billion in average annual gross revenue and (2) reach at least 34% of U.S. subscriber households or 34% of U.S. monthly active users over the age of 12.

Covered platforms are prohibited from:

- *Unfairly favoring their own products or services.*
- *Misusing nonpublic business-user data to copy and compete against small businesses.*
- *Unfairly limiting competitors’ access to key platform features.*
- *Blocking business users from accessing or moving their own data from one digital platform to another.*
- *Retaliating against users or business users who raise legal concerns.*
- *Unfairly enforcing terms of service in ways that harm competition.*
- *Conditioning companies’ access to the platform, or product placement on the platform, on purchase or use of unrelated services.*
- *Locking users into default settings.*

- *Skewing ranking or presentation against similarly situated business users.*

There are several observations in order. First, the bill reflects the discredited “big is bad” anti-trust sentiment of the Biden-Khan era. You can “misbehave” as much as you want until you hit \$175 billion in revenue. That makes no sense.

Second, most of the activities listed above refer to competitors of the platforms. Prior to the Biden Administration, competition policy was governed by the consumer welfare standard. What mattered was whether actions harmed or benefited consumers. Focusing on competitors misses the point; policymakers should not have any interest in the success or failure of particular competitors outside of their impact on consumers.

Finally, most the focus is on the first bullet item. At issue are situations in which a tech company both operates a platform and competes with other firms to offer goods and services on that platform. For example, Amazon sells its [AmazonBasics](#) over its online store, and Apple offers its own applications through its app store. The concern is that “self-preferencing” - having a preference for the products of the platform operator - will damage competition.

Is this bad? As noted in the past, if you Google “[American Action Forum](#),” the search results helpfully include a Google map showing our location, an image of the exterior of the building so you get a dose of brutalist architecture, and the helpful ability to find the Renwick Gallery, a 3-minute walk away (AAF makes everyone think of art). These features make me as happy as pro-growth tax reform. But they preference Google products.

The alternative would be to pop up a dialogue box asking me if I wanted a map, and then giving me a choice of Apple maps, Google maps, or another alternative. Similarly, there could be a query about whether I wanted to search for an image with a choice among Yahoo, Google, Flickr, Picsearch or another. None of this would enhance my welfare.

The fundamental error of AICOA is to lose the focus on consumer welfare, with knock-on detrimental effects on competition and innovation.