



The Honorable Katherine Tai
United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20006

October 4, 2021

Dear Ambassador Tai:

Public Citizen supports the efforts by the Office of the United States Trade Representative (USTR) to review the past U.S. government approach to “digital trade” policies and agreements. Terms included in some past U.S. pacts could conflict with digital governance and anti-monopoly initiatives that safeguard the interests of workers and consumers now being promoted in Congress by Democrats and Republicans alike and considered by various Biden administration agencies.

More broadly, we appreciate the July Executive Order that President Biden issued to address concerns that less competition and more concentration is unhealthy for our economy and our nation. As Supreme Court Justice Louis Brandeis said: *“We can have democracy in this country, or we can have great wealth concentrated in the hands of a few, but we can’t have both.”*

As you develop this new approach, we urge you not to challenge other countries’ digital governance and anti-monopoly policies. From news reports, it appears that Apple and Google are urging U.S. government officials to attack a recently passed South Korean law that would require app stores to allow consumers to use diverse payment systems, not only those controlled by the app store. The law also would forbid app stores from banning developers from listing products with competing platforms.¹ We urge you to refrain from criticizing or otherwise attacking the Korean app store law. And, we request that any reference to such measures be excluded from the various USTR listings of trade barriers, such as the annual National Trade Estimate report.

Specifically, the legislation passed by the South Korean parliament on August 30, 2021 includes amendments to the Telecommunications Business Act that ban “app market business operators” from forcing a particular payment method on mobile content providers by unfairly using its bargaining position.² The amendments also forbid app market business operators from unfairly delaying reviews of mobile content, imposing discriminatory terms and restrictions, unfairly removing mobile contents from their app stores or preventing mobile content providers from selling or featuring their content in other app stores.

From the translation of the amendments that we obtained, it appears that these requirements apply to all app stores, regardless of the “nationality” of the company. Absent such

¹ David McCabe and Jin Yu Young, “*Apple and Google’s Fight in Seoul Tests Biden in Washington*,” The New York Times, August 23, 2021. Available at: <https://www.nytimes.com/2021/08/23/technology/apple-google-south-korea-app-store.html?searchResultPosition=10>.

² Chae Yun-hwan, “*S. Korea passes bill to curb sway of Google, Apple in app store fees*,” Yonhap News Agency, August 31, 2021. Available at: <https://en.yna.co.kr/view/AEN20210830007800320>.

discrimination, there is no “trade” question at issue. Rather, the amendments fall squarely into the domestic policy space of an allied nation choosing to regulate practices that it considers anticompetitive. Indeed, such measures are not uncommon in antitrust laws and competition policies around the world. The fact that the Korean policy could particularly affect American businesses is due exclusively to those businesses’ dominant market position, not because Korea is discriminating against U.S. firms, much less violating trade obligations.

In the era before the Biden administration’s worker-centered trade policy approach, U.S. officials often elevated special interest peeves into U.S. trade policy. That previous practice would be especially inappropriate with respect to this Korean policy initiative: Bipartisan teams of U.S. senators and representatives have introduced legislation in both chambers that would address the same app store anti-competitive practices.³ An investigation by Japan's Fair Trade Commission into anti-competitive practices, policies and fees of certain market-dominating app stores recently led Apple to announce that it will permit redirects to the payment systems of some services listed in the Apple app store.⁴ There also is a European Union anti-trust investigation into app store practices.⁵

The effort by Apple and Google to get U.S. trade officials to protect the firms’ monopolistic business model reflects a broader Big Tech strategy. Namely, Big Tech interests are trying to quietly thwart domestic digital governance and pro-competition policymaking now underway in the U.S. Congress and various U.S. agencies and in countries around the world by misbranding such policies as “barriers to digital trade” or as “disrupting digital trade.” These interests are pushing what they call “digital trade” or “e-commerce” agreements and policies that have almost nothing to do with trade, but that rather would restrict governments from applying common regulatory policies to the digital platforms.

Effectively, these interests are hijacking the “trade” frame to attack the very notion of digital governance and reinvigorated competition policy that the president’s July 2021 Executive Order supports. This ploy includes characterizing as discriminatory any policies that could have a greater effect on a U.S. firm merely because it is a dominant player in a sector, even if such policies are facially neutral and driven by non-discriminatory intent. Big Tech interests also seek to characterize as “censorship” related policies that condition a digital platform’s right to operate on meeting labor, privacy, health or safety, or other standards of general application.

Public Citizen appreciates USTR’s awareness of these problems and is keen for the U.S. government to get out of the business of attacking other countries for enacting non-discriminatory public interest policies that have broad support here. Past U.S. administrations’ attempts to push “trade” rules that in fact have little to do with trade, but rather that promote controversial non-trade agendas of special interests, have fueled broad public anger about “trade”

³ John D. McKinnon, “App Store Competition Targeted by Bipartisan Senate Bill,” *The Wall Street Journal*, August 11, 2021. Available at: https://www.wsj.com/articles/app-store-competition-targeted-by-bipartisan-senate-bill-11628704834?mod=article_inline; Diane Bartz and Stephen Coates, “U.S. House members introduce bill targeting Apple and Google app stores,” *Reuters*, August 13, 2021. Available at: <https://www.reuters.com/technology/us-house-members-introduce-bill-targeting-apple-google-app-stores-2021-08-13/>.

⁴ Jill Disis, Apple relaxes App Store rules for services such as Spotify and Netflix, *CNN*, Sept. 2, 2021, Available at <https://www.cnn.com/2021/09/02/tech/apple-app-store-changes-intl-hnk/index.html>

⁵ *Id.*

and generated significant political fallout. Given growing concerns across the political spectrum about the dangers of Big Tech’s accumulation of power and efforts to evade accountability and oversight, what the Big Tech platforms call “digital trade” agreements and policies will only become ever more controversial as people understand their true agenda over the coming months.

We wish you and your team great success in leading the administration on a trade policy that is consistent with the Biden administration’s domestic goals and agenda, starting with a ceasefire against policies such as that enacted in Korea that discipline abuses by Big Tech interests.

Sincerely,



Robert Weissman
President, Public Citizen



Lori Wallach
Director, Public Citizen’s Global Trade Watch



Burcu Kilic
Director, Public Citizen’s Digital Rights Program