

May 16, 2023

Ambassador Katherine Tai
United States Trade Representative
600 17th Street NW
Washington, D.C. 20508

The Honorable Gina Raimondo
Secretary of Commerce
1401 Constitution Avenue NW
Washington, D.C. 20230

Dear Ambassador Tai and Secretary Raimondo:

As you continue negotiations on a possible digital trade chapter for the Indo-Pacific Economic Framework (IPEF), we urge you to ensure that U.S. proposed text and any final deal will advance fairness and competition in the global digital economy. Specifically, we are aware that Big Tech firms are hard at work trying to shape trade agreements in general and the IPEF in particular to block policies that would prohibit their anticompetitive practices. It is critical that the IPEF does not empower dominant platforms to avoid accountability for monopolistic and discriminatory behavior by branding such policies as “illegal trade discrimination.”

As companies and industry groups that serve internet users globally, we understand the importance of international commercial agreements setting rules of the road. At issue with the IPEF is whose interests such rules will serve. We urge you to prevent Big Tech’s weaponization of the IPEF to undermine policies in the U.S. and Indo-Pacific countries that would promote innovation and competition in the tech industry.

This is a critical juncture for technology policy in the United States. Earlier this year, in his State of the Union address, President Biden urged Congress to pass bipartisan legislation to “prevent big online platforms from giving their own products an unfair advantage.”¹ Congress is considering several bills to accomplish that goal, including the American Innovation and Choice Online Act, Open App Markets Act, and the Advertising Middlemen Endangering Rigorous Internet Competition Accountability (AMERICA) Act.

The IPEF agenda promoted by Big Tech directly conflicts with the Biden administration’s all-of-government approach to competition policy, the administration’s goal of promoting greater competition in the tech sector, and many of the specific legislative proposals that would further this goal. Indeed, various terms that Big Tech interests are trying to impose on the U.S. and other sovereign nations through the IPEF are designed to stall the progress the Biden administration has made to promote competition through antitrust enforcement and the Executive Order on Promoting Competition in the American Economy.²

¹ White House, State of the Union Address (Feb. 7, 2023), <https://www.whitehouse.gov/state-of-the-union-2023/>.

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

The United States is conducting these negotiations with representatives from Australia, Brunei Darussalam, Fiji, Indonesia, Japan, South Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, and Vietnam. Many of these countries have passed legislation or are considering legislation to address anticompetitive conduct by tech platforms. South Korea enacted the world's first national law in 2021 to explicitly address anticompetitive practices of app stores.³ Japan passed the Act on Improving Transparency and Fairness of Digital Platforms.⁴ And, the Australian Competition & Consumer Commission has endorsed regulatory reforms.⁵ While Big Tech interests have sought help from U.S. trade officials to attack these measures under existing trade agreements, the relevant past trade agreements did not include the harmful terms that are being pushed for inclusion in the IPEF.

Big Tech was able to push some such terms into the Trans-Pacific Partnership (TPP), which Congress never approved, and the United States-Mexico-Canada Agreement (USMCA).⁶ As digital businesses, we urge the Biden administration to not make the same TPP and USMCA mistakes in the IPEF.

Specifically, we support non-discrimination rules that forbid countries from having protectionist laws that explicitly treat digital products such as apps, music, games, and other content differently based on where they are produced or the nationality of their owner, or with the predominant intent of discrimination. But we strongly oppose the TPP-USMCA-style rules that categorize any policies that could have a greater *impact* on dominant tech platforms as illegal trade barriers or that similarly target anti-monopoly policies that, appropriately, only apply to the largest, most powerful digital gatekeepers. Neutral laws designed to combat anticompetitive behavior by platforms will necessarily target larger firms with market power – because they have monopoly power, not because they are American. Trade agreements should not limit or undermine such competition policies or neutral laws of general application that apply to entire firms or platforms regardless of national origin.

The lack of transparency of the IPEF process has allowed the views of a few digital firms to dominate while the small and medium tech firms that are the backbone of the industry have been largely excluded from the process. Notably, it is the largest digital gatekeepers that have been selected to serve as formal U.S. trade advisors and thus have special access to draft U.S. positions and text proposals.⁷ Further, it appears that the dominant platforms are also those being

³ Simon Sharwood, Google snubs South Korea's app store payments law, *The Register* (April 6, 2022), https://www.theregister.com/2022/04/06/google_south_korea_app_payments_illegal/.

⁴ Ministry of Economy, Trade and Industry, *Toward Sound Development of Markets Surrounding Digital Platforms*, https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/index.html.

⁵ Australian Competition & Consumer Commission, *Digital platform services inquiry - September 2022 interim report - Regulatory reform* (Nov. 11, 2022), <https://www.accc.gov.au/about-us/publications/serial-publications/digital-platform-services-inquiry-2020-2025/digital-platform-services-inquiry-september-2022-interim-report-regulatory-reform>.

⁶ See *Trans-Pacific Partnership Agreement*, art. 14.4: Non-Discriminatory Treatment of Digital Products, Feb. 4, 2016; *United States-Mexico-Canada Agreement*, art.19.4: Non-Discriminatory Treatment of Digital Products, Dec. 10, 2019.

⁷ *Rethink Trade, LOADED: Corporate Interests Dominate the Official U.S. Government Trade Advisory System*, <https://rethinktrade.org/ustr-advisors/>.

solicited by administration officials for guidance on the IPEF rules.⁸ Meanwhile, the majority of U.S. tech businesses or associations that represent their interests, as well as Congress, have been denied a seat at the table.

A more competitive global tech industry will benefit the digital economy in both the United States and Indo-Pacific countries. Given the goal of the IPEF is to enhance the economic vitality and resilience of the United States and its allies, certainly it is not in the national interest for Big Tech special interests to be allowed to hijack the pact to undermine fundamental competition principles or economic security goals. As such, the undersigned strongly urge you to ensure that the previously highlighted mistakes of the TPP-USMCA language are not repeated in IPEF.

Signed,

Andi
Brave Software
Coalition for App Fairness
Digital Content Next
Dots
Efani Secure Mobile
Kelkoo Group
LI Toy & Game
Malloc, Inc.
Proton
Responsible Online Commerce Coalition
Skiff World, Inc.
Thexyz
Tutanota
Yelp
YMOZ

⁸ Emily Birnbaum and Leah Nysten, Google, Amazon Lobbyists Helped US Shape New Indo-Pacific Trade Framework, Bloomberg (May 2, 2023), <https://www.bloomberg.com/news/articles/2023-05-02/google-amazon-lobbyists-helped-shape-new-trade-framework?sref=q0qR8k34>.