Center for American Entrepreneurship

House Bill to Ban Acquisitions Threatens America's Startup Ecosystem

On June 11, 2021, the Platform Competition and Opportunity Act (PCOA) was introduced in the House of Representatives as part of a legislative package intended "to promote opportunity, innovation, and consumer choice in the digital marketplace." Sponsored by Rep. Hakeem Jeffries (D-NY) and Rep. Ken Buck (R-CO), the bill would prohibit "certain acquisitions by dominant online platforms" – although the phrase "dominant online platform" is not defined. The bill was passed out of the House Judiciary Committee on June 24th by a vote of 24-17 vote, with significant dissension from both Democrats and Republicans.

As written, the bill, in fact, threatens opportunity, innovation, and consumer choice by endangering the nation's startup ecosystem. The bill would ban many acquisitions of startups by larger companies – transactions that serve as a critical "exit" for startup founders, employees, and investors, driving the innovation flywheel whereby one generation of startups helps fund the next. Moreover, by endangering the nation's startup ecosystem, the bill represents a serious threat to the health and vitality of the U.S. economy at a time when policymakers should be taking every step to strengthen the post-COVID recovery.

The Importance of Startups to the Economy

- Thriving entrepreneurship is critical to a strong and growing economy. Repeated research in recent years has demonstrated that new businesses – "startups" – account disproportionately for the innovations that drive productivity growth, economic growth, and net new job creation.

- Startups are extremely fragile – a third fail by their second year, half by their fifth. But those that survive tend to innovate, grow, and create jobs at very rapid rates.

The Importance of Acquisitions to the Startup Ecosystem

- For fragile startups, there are three principal outcomes: fail, go public, or be acquired. Given the risks inherent in launching a new business, failure is the most common outcome.

- Many entrepreneurs dream of taking their company public, but accomplishing that goal requires scale that most startups never achieve.

- Acquisition, therefore, is the most likely avenue for entrepreneurs and their employees to realize the value of what they have created. In 2019, ten times as many startups were acquired as went public, according to the National Venture Capital Association.

- Indeed, according to a recent report by Silicon Valley Bank, nearly 60 percent of startups expect to be acquired.

- Acquisitions enable startup investors to reclaim their invested capital, realize any gains on those investments, and recycle their capital into the next generation of startups, fueling the ongoing process of innovation-led economic growth and job creation.

- A 2017 analysis of merger and acquisition activity across 48 countries demonstrated that an active merger and acquisition market is important to thriving entrepreneurship and economic growth, and that nations with policies that discourage or obstruct mergers and acquisitions have significantly lower startup investment activity.

PCOA Threatens the Startup Ecosystem

- The Platform Competition and Opportunity Act threatens the startup ecosystem by obstructing the most common positive outcome for entrepreneurs and their investors, and thereby short-circuiting the process by which value-creating innovation helps fund the next generation of new businesses.

- The bill would prohibit acquisitions by "covered platforms" unless an acquiror is able to demonstrate "by clear and convincing evidence" that the proposed acquisition does not entail a current, "nascent or potential" competitor, and would not enhance or increase the acquiror's market position – and applies an overly broad definition of competition as "competition for a user's attention."

- The bill would even block minority, non-controlling investments in startups.

- Were it currently the law, the Act would likely have blocked more than 100 acquisitions in just the past five years.

- If investors are unable to liquidate investments to reclaim capital and potential gains, they won't risk their capital by investing. And without investors, there is no startup ecosystem.

- Moreover, by designating acquisition by certain companies as presumptively anti-competitive, PCOA puts the federal government in charge of picking winners and losers.

A Solution in Search of a Problem

- The federal government already has the authority to block anti-competitive mergers – and has been very successful. Between 2010 and 2020, the government won 79 percent of mergers challenged in federal court.

What Others Are Saying

- "Acquisitions contribute to the health of the startup ecosystem by allowing entrepreneurs to realize liquidity. These entrepreneurs often go on to create new companies or invest in others, a dynamic that has supported the vibrant entrepreneurial ecosystem that sets our country apart. If acquisitions are made more difficult it will chill the creation of new high growth companies that produce new American jobs. We urge lawmakers to reject the *Platform Competition and Opportunity Act*."
  National Venture Capital Association President and CEO Bobby Franklin.

- "Outlawing new acquisitions by certain tech platforms would disrupt America's tech startup ecosystem, which is the envy of the world. This dynamic risk-taking and entrepreneurship has been a key driver of economic growth, quality job creation, innovation and U.S. competitiveness. Do politicians and regulators have a crystal ball into the future of the market, and possible new innovations that will emerge? We think not. If implemented, entrepreneurship and investment would be irreparably harmed."
  Small Business and Entrepreneurship Council President and CEO Karen Kerrigan

- "Startups and serial entrepreneurs often focus on creating new, innovative technologies, with the goal of selling to a larger company that can bring the product to scale. This procompetitive exchange has clear synergies and benefits consumers by making the latest innovations widely available...Making it harder for startups to get acquired – or injecting uncertainty about acquisitions being unwound down the road – will hurt the ability of some new and small tech companies to raise funding and get off the ground."
  Letter to House Judiciary Committee
  The App Association, Developers Alliance and Engine