June 21, 2021

The Honorable Hakeem Jeffries
Member of Congress
2433 Rayburn House Office Building
Washington, DC 20515

The Honorable Ken Buck
Member of Congress
2455 Rayburn House Office Building
Washington, DC 20515

Dear Representatives Jeffries and Buck:

On behalf of our nation's venture capital (VC) investors and the entrepreneurs they support, I write to express our opposition to the *Platform Competition and Opportunity Act of 2021* (H.R. 3826). The U.S. economy is the most dynamic in the world in large part to our vibrant entrepreneurial ecosystem. We appreciate that a goal of your legislation is to increase competition against incumbent technology platforms, a goal shared by many entrepreneurs and their venture capital investors who go to work every day seeking to increase competition and choice in the American economy. However, for entrepreneurs, an acquisition of their company is the most likely liquidity opportunity and is necessary to make startup investment attractive relative to other asset classes that hold for shorter-term. Barring acquisitions of companies by select acquirers would close the door to this opportunity for many startups, depressing the economics of startup investment and therefore creating a significant disincentive for new company formation, job creation, and innovation in our country.

Background on VC and the importance of acquisitions

Venture capital is the fuel for high-growth startups that have transformed the world.[1] Recent examples include Moderna and Zoom, and past examples include Genentech, eBay, and SpaceX. VCs partner with entrepreneurs to build companies. This includes incubating a company within a venture firm, investing in a founder with merely an idea and a business plan, or providing capital and expertise to propel a company as it grows.

For venture-backed companies there are effectively three outcomes: standalone company (often via initial public offering, or IPO); merger or acquisition; or bankruptcy. Company failure is the most common outcome, but the success stories are often hypergrowth companies with an outsized impact. Many entrepreneurs and their investors begin the company building process

[1] VC funds make equity investments in a company and makes the longest-term investment of any asset class. The company's stock is generally illiquid until a company matures after five to fifteen years and as a result there is little actual value until a company goes public or is acquired.

with the hope of creating a standalone, public company. However, in most cases an IPO is not possible, and the only available exit opportunity becomes an acquisition by another company, **with 58% of startups expecting to be acquired.**[2] Over the last decade, the average annual ratio of VC-backed acquisitions to IPOs is approximately 13:1.[3] There are less acquisitions today relative to IPOs, with 886 venture-backed companies having been acquired in 2020, whereas 103 went public.[4]

These acquisitions contribute to the health of the startup ecosystem and the overall economy as entrepreneurs who realize liquidity through the sale of their company regularly go on to found new, innovative companies, and often invest in other startups as angel investors or VCs. Furthermore, acquisitions help power the returns of VC funds, thereby supporting the pensions, endowments, and foundations that invest capital in venture funds. In addition, acquisitions allow VCs to raise new investment funds and invest in the next generation of entrepreneurs. This "recycling effect" is one of the key drivers of dynamism in our economy.

Acquisitions of VC-backed companies have always been more common than IPOs but have become more important to the startup ecosystem in recent years as the public markets have become more challenging for small capitalization companies. The data bears out this reality in stark terms. The number of IPOs per year post-2000 has dropped by more than half relative to the preceding two decades. Companies going public are older than they used to be—the average age of a company undergoing an IPO in the last decade was around 10.7 years as compared to 7.5 years in the 1980s and 8.5 years in the 1990s. Far fewer small capitalization companies go public: between 1980-2000, companies with less than $50 million in annual sales made up about 50 percent of IPOs; post-2000 that number has dropped to about 35 percent. [5]

The reality is most young companies cannot realistically achieve the size and scale necessary to survive in the public markets of today. It has become more expensive and significantly more challenging to manage public companies; much of the infrastructure that supported small companies going public has disappeared; and the public markets have unfortunately become more short-term in nature. The result is that the **U.S. now has roughly *half* the total number of public companies than there were twenty years ago**.[6] Acquisition activity for most of these companies represents their only realistic chance of success.

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[2] "2020 Global Startup Outlook," Silicon Valley Bank (2020) at 7, available at https://www.svb.com/globalassets/library/uploadedfiles/content/trends_and_insights/reports/startup_outlook_report/suo_global_report_2020-final.pdf.

[3] "NVCA Yearbook," National Venture Capital Association (2020) at 37-29, https://nvca.org/wp-content/uploads/2021/03/NVCA-2021-Yearbook.pdf.

[4] Id.

[5] "Initial Public Offerings: Updated Statistics," Professor Jay Ritter, University of Florida, available at https://site.warrington.ufl.edu/ritter/files/IPO-Statistics.pdf.

[6] *Capital Formation, Smaller Companies, and the Declining Nature of Initial Public Offerings,* Jeffrey M. Solomon, available at https://www.sec.gov/spotlight/investor-advisory-committee-2012/jeffrey-solomon-presentation.pdf.

Specific concerns with H.R. 3826

The *Platform Competition and Opportunity Act* would effectively bar acquisitions by companies with a market capitalization of $600 billion or more that have at least 50 million U.S.-based monthly active users or least 100,000 U.S.-based monthly active business users. Specific concerns with H.R. 3826 include:

•H.R. 3826 would make it harder for startups to be acquired by reducing the number of potential acquirers. The impact of this is considerable: fewer potential acquirers would mean a reduced sales price for the company due to less bidders, resulting in less profitability for the entrepreneurs. This reduced profitability will make new company formation less attractive than it currently is relative to other opportunities, thereby negatively impacting employment, wages, and innovation.

•Had H.R. 3826 been in place, it likely would have barred the acquisition or at least 100 venture-backed companies in just the last five years.[7] This harsh penalty would be applied without any nuanced analysis of the benefits of the acquisition or to the long-term prospects of the startup.

•H.R. 3826 would disproportionately impact startups in emerging ecosystems. In recent years, startup and venture capital activity has seen impressive growth off the coasts, thereby spreading entrepreneurial activity into new pockets of the country. But because companies in these regions do not tend to grow large enough to go onto the public markets, acquisitions are the far more common exit opportunity[8]. H.R. 3826 would endanger the recent growth in emerging ecosystems by closing off potential acquirers of startups.

•One unintended consequence of this dynamic is that many startup founders are former employees at large technology companies. If entrepreneurship becomes less attractive then these individuals are more likely to remain employed at incumbent companies, reducing economic dynamism and thereby strengthening the hand of the very companies that H.R. 3826 is designed to curtail.

•H.R. 3826 applies exclusions to its general ban on acquisitions by certain companies. However, these exclusions are so challenging to meet that H.R. 3826 is effectively a ban on acquisitions by select companies. For example, one exclusion is that the acquiree does not “compete with the covered platform or with the covered platform operator for the sale or provision of *any product or service*.”[9] The companies subject to H.R. 3826 are large, multi-faceted entities that arguably “compete” with vast amounts of smaller companies outside the core business of the acquirer. Another exclusion is that the acquiree does not “constitute nascent or potential competition to the covered platform [.]”[10] In most cases, this is impossible to determine, especially for the government which is not a market participant and therefore does not have the relevant experience or expertise to make judgment calls on which companies may compete years down the road.

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[7] Source: Pitchbook data

[8] Based on M&A data and IPO data from January 1, 2010 to June 21, 2021. Source: Pitchbook data, downloaded June 21, 2021.

[9] *See Platform Competition and Opportunity Act of 2021*, section 2 (b)(2)(a) (Emphasis added).

[10] *See Platform Competition and Opportunity Act of 2021*, section 2 (b)(2)(b)

Ultimately, the exclusions within H.R. 3826 are not exclusions at all, which makes H.R. 3826 an effective ban on acquisitions by certain large companies.

•Because H.R. 3826 bars the purchase of "the whole or *any part of the stock or other share capital*," the bill goes beyond restricting acquisitions and appears to bar even minority, non-controlling investments into startups. Corporate Venture Capital (CVC) is the practice of minority equity investments by existing corporate entities into startup companies. CVC activity has been a growing and important source of capital for startups in recent years. In addition to providing capital to startups, CVCs also serve as important business partners as the new company scales. H.R. 3826 threatens to cut off this source of capital and potential customer base even though an acquisition has not occurred.

Thank you for considering our views.

Sincerely,

Bobby Franklin
President & CEO

CC: Chairman Jerrold Nadler
Ranking Member Jim Jordan
Chairman David Cicilline