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2D SESSION

S. 4308

To reform the antitrust laws to better protect competition in the American economy, to amend the Clayton Act to modify the standard for an unlawful acquisition, to deter anticompetitive exclusionary conduct that harms competition and consumers, to enhance the ability of the Department of Justice and the Federal Trade Commission to enforce the antitrust laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 9, 2024

Ms. KLOBUCHAR (for herself, Mr. BLUMENTHAL, Mr. WHITEHOUSE, Ms. HIRONO, Mr. BOOKER, Mr. WELCH, Mr. WARNER, Mr. WYDEN, Mr. HEINRICH, Mr. MARKEY, Mr. SCHATZ, and Ms. SMITH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To reform the antitrust laws to better protect competition in the American economy, to amend the Clayton Act to modify the standard for an unlawful acquisition, to deter anticompetitive exclusionary conduct that harms competition and consumers, to enhance the ability of the Department of Justice and the Federal Trade Commission to enforce the antitrust laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Competition and Anti-
3 trust Law Enforcement Reform Act of 2024”.

4 **SEC. 2. FINDINGS AND PURPOSES.**

5 (a) FINDINGS.—Congress finds that—

6 (1) competitive markets, in which multiple
7 firms compete to buy and sell products and services,
8 are critical to ensuring economic opportunity for all
9 people in the United States and providing resilience
10 to the economy during unpredictable times;

11 (2) when companies compete, businesses offer
12 the highest quality and choice of goods and services
13 for the lowest possible prices to consumers and other
14 businesses;

15 (3) competition fosters small business growth,
16 reduces economic inequality, and spurs innovation
17 and job creation;

18 (4) competitive markets are crucial for the
19 United States global economic competitiveness and
20 national security;

21 (5) in the United States economy today, the
22 presence and exercise of market power is substantial
23 and growing;

24 (6) the presence and exercise of market power
25 makes it more difficult for people in the United
26 States to start their own businesses, depresses

1 wages, and increases economic inequality, with par-
2 ticularly damaging effects on historically disadvan-
3 taged communities;

4 (7) market power and undue market concentra-
5 tion contribute to the consolidation of political
6 power, undermining the health of democracy in the
7 United States;

8 (8) the anticompetitive effects of monopoly
9 power or buyer market power include higher prices,
10 lower quality, lessened choice, reduced innovation,
11 foreclosure of competitors, and increased entry bar-
12 riers;

13 (9) monopsony power or seller market power al-
14 lows a firm to force suppliers of goods or services to
15 accept below market prices or to force workers to ac-
16 cept below market wages, resulting in lower quality
17 products and services, reduced opportunities for sup-
18 pliers and workers, reduced availability of products
19 and services for consumers, reduced innovation, fore-
20 closure of competitors, and increased entry barriers;

21 (10) horizontal consolidation, vertical consolida-
22 tion, and conglomerate mergers all have the poten-
23 tial to increase market power and cause anticompeti-
24 tive harm;

1 (11) extensive consolidation is reducing com-
2 petition and threatens to place the American dream
3 further out of reach for many consumers in the
4 United States;

5 (12) since 2008, firms in the United States
6 have engaged in over \$10,000,000,000,000 in merg-
7 ers and acquisitions;

8 (13) the acquisition of nascent or potential ri-
9 vals by dominant firms can present significant long-
10 term threats to competition and innovation and
11 harm the global economic competitiveness of the
12 United States;

13 (14) the acquisition, by one of its competitors,
14 of a maverick firm that plays a disruptive role in the
15 market, by using an innovative business model or
16 technology, offering lower prices or new, different
17 products or services products, or by other means
18 that benefit consumers, often presents a threat to
19 competition;

20 (15) section 7 of the Clayton Act (15 U.S.C.
21 18) is the primary line of defense against anti-
22 competitive mergers;

23 (16) in recent years, some court decisions and
24 enforcement policies have limited the vitality of the
25 Clayton Act to prevent harmful consolidation by—

1 (A) discounting previously accepted pre-
2 sumptions that certain acquisitions are anti-
3 competitive;

4 (B) focusing inordinately on the effect of
5 an acquisition on price in the short term, to the
6 exclusion of other potential anticompetitive ef-
7 fects;

8 (C) underestimating the dangers that hori-
9 zontal, vertical, and conglomerate mergers will
10 lower quality, reduce choice, impede innovation,
11 exclude competitors, increase entry barriers, or
12 create buyer power, including monopsony
13 power;

14 (D) failing to properly account for direct
15 evidence of competitive harm, including intent
16 evidence; and

17 (E) requiring the government to prove
18 harmful effects of a proposed merger to a near
19 certainty;

20 (17) anticompetitive exclusionary conduct con-
21 stitutes a particularly harmful exercise of market
22 power and a substantial threat to the United States
23 economy;

24 (18) when dominant sellers exercise market
25 power, they harm buyers by overcharging them, re-

1 ducing product or service quality, limiting their
2 choices, and impairing innovation;

3 (19) when dominant buyers exercise market
4 power, they harm suppliers by underpaying them,
5 limiting their business opportunities, and impairing
6 innovation;

7 (20) when dominant employers exercise market
8 power, they harm workers by paying them low
9 wages, reducing their benefits, and limiting their fu-
10 ture employment opportunities;

11 (21) nascent or potential rivals, even those that
12 are unprofitable or inefficient, are an important
13 source of competitive discipline for dominant firms;

14 (22) antitrust enforcement against anticompeti-
15 tive exclusionary conduct has been impeded when
16 courts have declined to rigorously examine the facts
17 in favor of relying on inaccurate economic assump-
18 tions that are inconsistent with contemporary eco-
19 nomic learning, such as presuming that market
20 power is not durable and can be expected to self-cor-
21 rect, that monopolies can drive as much or more in-
22 novation than a competitive market, that above-cost
23 pricing cannot harm competition, and other flawed
24 assumptions;

1 (23) the courts of the United States have im-
2 properly implied immunity from the antitrust laws
3 based on Federal regulatory statutes, even limiting
4 the application of statutory antitrust savings clauses
5 passed by Congress;

6 (24) the civil remedies currently available to
7 cure violations of the Sherman Antitrust Act, includ-
8 ing injunctions, equitable monetary relief, and pri-
9 vate damages, have not proven sufficient, on their
10 own, to deter anticompetitive conduct;

11 (25) in some cases, effective deterrence requires
12 the imposition of civil penalties, alone or in combina-
13 tion with existing remedies, including structural re-
14 lief, behavioral relief, private damages, and equitable
15 monetary relief, including disgorgement and restituti-
16 on; and

17 (26) Federal antitrust enforcement budgets
18 have failed to keep pace with the growth of the econ-
19 omy and increasing demands on agency resources,
20 significantly undermining the ability of the Federal
21 antitrust agencies to fulfill their law enforcement
22 missions and contributing to the rise of market
23 power in the American economy.

24 (b) PURPOSES.—The purposes of this Act are to—

1 (1) enhance competition throughout the Amer-
2 ican economy by strengthening antitrust enforce-
3 ment by the Department of Justice, the Federal
4 Trade Commission, the State enforcement agencies,
5 and private parties;

6 (2) revise the legal standard under section 7 of
7 the Clayton Act to better enable enforcers to arrest
8 the likely anticompetitive effects of harmful mergers
9 in their incipiency, as Congress intended, by clari-
10 fying that the potential effects that may justify pro-
11 hibiting a merger under the Clayton Act include
12 lower quality, reduced choice, reduced innovation,
13 the exclusion of competitors, or increased entry bar-
14 riers, in addition to increased price to buyers or re-
15 duced price to sellers;

16 (3) amend the Clayton Act to clarify that an
17 acquisition that tends to create a monopsony violates
18 the Clayton Act;

19 (4) establish simple, cost-effective decision rules
20 that require the parties to certain acquisitions that
21 either significantly increase concentration or are ex-
22 tremely large bear the burden of establishing that
23 the acquisition will not materially harm competition;

24 (5) prohibit and deter exclusionary conduct that
25 harms competition, particularly by dominant firms;

1 (6) enable the Department of Justice and the
2 Federal Trade Commission to seek civil monetary
3 penalties, in addition to existing remedies, for viola-
4 tions of the Sherman Act;

5 (7) give the Department of Justice and the
6 Federal Trade Commission additional financial re-
7 sources and enforcement tools to craft remedies for
8 individual violations that are effective to deter future
9 unlawful conduct and proportionate to the gravity of
10 the violation;

11 (8) provide further protections for those who
12 provide evidence of anticompetitive conduct to gov-
13 ernment enforcers and potential financial rewards
14 for whistleblowers who provide information to the
15 government that leads to a criminal fine; and

16 (9) grant successful antitrust plaintiffs the
17 right to obtain prejudgment interest on damages
18 awards to further deter anticompetitive conduct and
19 increase compensation to injured parties.

20 **SEC. 3. DEFINITION.**

21 In this Act the term “antitrust laws”—

22 (1) has the meaning given that term in the first
23 section of the Clayton Act (15 U.S.C. 12); and

24 (2) includes—

1 (A) section 5 of the Federal Trade Com-
2 mission Act (15 U.S.C. 45) to the extent that
3 such section applies to unfair methods of com-
4 petition; and

5 (B) this Act and the amendments made by
6 this Act.

7 **SEC. 4. UNLAWFUL ACQUISITIONS.**

8 (a) MARKET POWER.—Subsection (a) of the first sec-
9 tion of the Clayton Act (15 U.S.C. 12) is amended by add-
10 ing at the end the following:

11 “The term ‘market power’ in this Act means the abil-
12 ity of a person, or a group of persons acting in concert,
13 to profitably impose terms or conditions on counterparties,
14 including terms regarding price, quantity, product or serv-
15 ice quality, or other terms affecting the value of consider-
16 ation exchanged in the transaction, that are more favor-
17 able to the person or group of persons imposing them than
18 what the person or group of persons could obtain in a com-
19 petitive market.”.

20 (b) UNLAWFUL ACQUISITIONS.—Section 7 of the
21 Clayton Act (15 U.S.C. 18) is amended—

22 (1) in the first and second undesignated para-
23 graphs, by striking “substantially to lessen” each
24 place that term appears and inserting “to create an
25 appreciable risk of materially lessening”;

1 (2) by inserting “or a monopsony” after “mo-
2 nopoly” each place that term appears; and

3 (3) by adding at the end the following:

4 “In a case brought by the United States, the Federal
5 Trade Commission, or a State attorney general, a court
6 shall determine that the effect of an acquisition described
7 in this section may be to create an appreciable risk of ma-
8 terially lessening competition or to tend to create a monop-
9 oly or a monopsony, in or affecting commerce, if—

10 “(1) the acquisition would lead to a significant
11 increase in market concentration in any relevant
12 market;

13 “(2) the acquisition would increase the ability
14 and incentive to engage in exclusionary conduct, as
15 defined in section 26A of the Clayton Act;

16 “(3)(A) the acquiring person has a market
17 share of greater than 50 percent or otherwise has
18 significant market power, as a seller or a buyer, in
19 any relevant market, and as a result of the acquisi-
20 tion, the acquiring person would obtain control over
21 entities or assets that compete or have a reasonable
22 probability of competing with the acquiring person
23 in the same relevant market; or

24 “(B) as a result of the acquisition, the acquir-
25 ing person would obtain control over entities or as-

1 sets that have a market share of greater than 50
2 percent or otherwise have significant market power,
3 as a seller or a buyer, in any relevant market, and
4 the acquiring person competes or has a reasonable
5 probability of competing with the entities or assets
6 over which it would obtain control, as a result of the
7 acquisition, in the same relevant market;

8 “(4) the acquisition would lead to the combina-
9 tion of entities or assets that compete or have a rea-
10 sonable probability of competing in a relevant mar-
11 ket, and either the acquiring person or the entities
12 or assets over which it would obtain control pre-
13 vents, limits, or disrupts coordinated interaction
14 among competitors in a relevant market or has a
15 reasonable probability of doing so;

16 “(5) the acquisition—

17 “(A) would likely enable the acquiring per-
18 son to unilaterally and profitably exercise mar-
19 ket power or materially increase its ability to do
20 so; or

21 “(B) would materially increase the prob-
22 ability of coordinated interaction among com-
23 petitors in any relevant market; or

24 “(6)(A) the acquisition is not a transaction that
25 is described in section 7A(c); and

1 “(B)(i) as a result of such acquisition, the ac-
2 quiring person would hold an aggregate total
3 amount of the voting securities and assets of the ac-
4 quired person in excess of \$5,000,000,000 (as ad-
5 justed and published for each fiscal year beginning
6 after September 30, 2024, in the same manner as
7 provided in section 8(a)(5) to reflect the percentage
8 change in the gross national product for such fiscal
9 year compared to the gross national product for the
10 year ending September 30, 2023; or

11 “(ii)(I) the person acquiring or the person being
12 acquired has assets, net annual sales, or a market
13 capitalization greater than \$100,000,000,000 (as so
14 adjusted and published); and

15 “(II) as a result of such acquisition, the acquir-
16 ing person would hold an aggregate total amount of
17 the voting securities and assets of the acquired per-
18 son in excess of \$50,000,000 (as so adjusted and
19 published), unless the acquiring or acquired person
20 establishes, by a preponderance of the evidence, that
21 the effect of the acquisition will not be to create an
22 appreciable risk of materially lessening competition
23 or will not tend to create a monopoly or a monop-
24 sony. In this paragraph, the term ‘materially’ means
25 more than a de minimis amount”.

1 **SEC. 5. POST-PROCEEDING DATA.**

2 Section 7A of the Clayton Act (15 U.S.C. 18a) is
3 amended by adding at the end the following:

4 “(1)(1) Each person who resolves a proceeding
5 brought under the antitrust laws by the Federal Trade
6 Commission or United States by entering into an agree-
7 ment or by the final judgment in a Federal or administra-
8 tive court regarding an acquisition with respect to which
9 notification is required under this section shall, on an an-
10 nual basis during the 5-year period beginning on the date
11 on which the agreement is entered into, file with the Fed-
12 eral Trade Commission or the Assistant Attorney General,
13 as applicable, and the Competition Advocate, information
14 sufficient for the Federal Trade Commission or the United
15 States, as applicable, to assess the competitive impact of
16 the acquisition, including—

17 “(A) the pricing, availability, and quality of any
18 product or service, or inputs thereto, in any market,
19 that was covered by the agreement;

20 “(B) the source, and the resulting magnitude
21 and extent, of any cost-saving efficiencies or any
22 benefits to consumers or trading partners that were
23 claimed as a benefit of the acquisition and the extent
24 to which any cost savings were passed on to con-
25 sumers or trading partners; and

1 “(C) the effectiveness of any divestitures or any
2 conditions placed on the acquisition in fully restoring
3 competition.

4 “(2) The requirement to provide the information de-
5 scribed in paragraph (1) shall be included in an agreement
6 described in that paragraph.

7 “(3) The Federal Trade Commission, with the con-
8 currence of the Assistant Attorney General, by rule in ac-
9 cordance with section 553 of title 5, United States Code,
10 and consistent with the purposes of this section—

11 “(A) shall require that the information de-
12 scribed in paragraph (1) be in such form and con-
13 tain such documentary material and information rel-
14 evant to an acquisition as is necessary and appro-
15 priate to enable the Federal Trade Commission and
16 the Assistant Attorney General to assess the com-
17 petitive impact of the acquisition under paragraph
18 (1); and

19 “(B) may—

20 “(i) define the terms used in this sub-
21 section;

22 “(ii) exempt, from the requirements of this
23 section, information not relevant in assessing
24 the competitive impact of the acquisition under
25 paragraph (1); and

1 “(iii) prescribe such other rules as may be
2 necessary and appropriate to carry out the pur-
3 poses of this section.”.

4 “(4) The chief executive officer, chief financial offi-
5 cer, general counsel, or a corporate officer of similar au-
6 thority shall certify, under penalty of perjury, the accuracy
7 of a report under this subsection.”.

8 **SEC. 6. FEDERAL TRADE COMMISSION STUDY.**

9 (a) IN GENERAL.—Not later than 2 years after the
10 date of enactment of this Act, the Federal Trade Commis-
11 sion, in consultation with the Securities and Exchange
12 Commission, shall conduct and publish a study, pursuant
13 to section 6(b) of the Federal Trade Commission Act, rely-
14 ing on public data and information if available and suffi-
15 cient, and incorporating public comment on—

16 (1) the extent to which an institutional investor
17 or related institutional investors have ownership or
18 control interests in competitors in moderately con-
19 centrated or concentrated markets;

20 (2) the impacts of such overlapping ownership
21 or control on competition; and

22 (3) the mechanisms by which an institutional
23 investor could affect competition among the compa-
24 nies in which it invests and whether such mecha-
25 nisms are prevalent.

1 (b) EXEMPTION FROM PAPERWORK REDUCTION
2 ACT.—Chapter 35 of title 44, United States Code, shall
3 not apply to the collection of information under subsection
4 (a).

5 **SEC. 7. GAO STUDIES.**

6 (a) IN GENERAL.—Not later than 18 months after
7 the date of enactment of this Act, the Comptroller General
8 of the United States shall—

9 (1) conduct and publish a study to assess the
10 success of merger remedies required by the Depart-
11 ment of Justice or the Federal Trade Commission in
12 consent decrees entered into during the 8-year pe-
13 riod ending on the date on which the study is con-
14 ducted, including the impact on maintaining com-
15 petition, a comparison of structural and conduct
16 remedies, and the viability of divested assets; and

17 (2) conduct a study on the impact of mergers
18 and acquisitions on wages, employment, innovation,
19 and new business formation.

20 (b) UPDATE.—The Comptroller General of the
21 United States shall—

22 (1) update the study under subsection (a)(1)
23 every 4 years after the date of enactment of this
24 Act, as added by section 5 of this Act; and

1 (2) identify specific remedies or alleged merger
2 benefits that require additional information or re-
3 search.

4 **SEC. 8. OFFICE OF COMPETITION ADVOCATE.**

5 (a) DEFINITIONS.—In this section—

6 (1) the term “agency” has the meaning given
7 that term in section 551 of title 5, United States
8 Code;

9 (2) the term “Chair” means the Chair of the
10 Commission;

11 (3) the term “Commission” means the Federal
12 Trade Commission;

13 (4) the term “covered company” means any
14 company that has, at any time, been required to
15 make a filing under section 7A of the Clayton Act
16 (15 U.S.C. 18a); and

17 (5) the term “Office” means the Office of the
18 Competition Advocate established under subsection

19 (b).

20 (b) ESTABLISHMENT.—There is established within
21 the Federal Trade Commission the Office of the Competi-
22 tion Advocate.

23 (c) COMPETITION ADVOCATE.—

24 (1) IN GENERAL.—The head of the Office shall
25 be the Competition Advocate, who shall—

1 (A) report directly to, and be under the su-
2 pervision of, the Chair, but the Chair shall not
3 prevent or prohibit the Competition Advocate
4 from initiating, carrying out, or completing any
5 of its duties under this section;

6 (B) be appointed by the Chair with the ap-
7 proval of the Commission, including at least 1
8 Commissioner who is not a member of the same
9 political party as the Chair, from among indi-
10 viduals having experience in advocating for the
11 promotion of competition; and

12 (C) serve a term of 7 years and shall not
13 be removable except upon a unanimous vote of
14 the Commission.

15 (2) COMPENSATION.—The annual rate of pay
16 for the Competition Advocate shall be equal to the
17 highest rate of annual pay for other senior execu-
18 tives who report to the Chair of the Commission.

19 (3) LIMITATION ON SERVICE.—An individual
20 who serves as the Competition Advocate may not be
21 employed by the Commission—

22 (A) during the 2-year period ending on the
23 date of appointment as Competition Advocate;
24 and

1 (B) during the 5-year period beginning on
2 the date on which the person ceases to serve as
3 the Competition Advocate.

4 (d) STAFF OF OFFICE.—The Commission shall allo-
5 cate funds from the Commission budget to the Office of
6 the Competition Advocate sufficient for the Competition
7 Advocate to retain or employ such counsel, research staff,
8 and service staff necessary to carry out the functions, pow-
9 ers, and duties of the Office.

10 (e) DUTIES AND POWERS.—The Competition Advo-
11 cate shall—

12 (1) recommend processes or procedures that
13 will allow the Federal Trade Commission and the
14 Antitrust Division of the Department of Justice to
15 improve the ability of each agency to solicit reports
16 from consumers, small businesses, and workers
17 about possible anticompetitive practices or adverse
18 effects of concentration;

19 (2) provide recommendations to other agencies
20 about agency actions that may have anticompetitive
21 effects and the potential harm to competition;

22 (3) provide recommendations to other agencies
23 about agency actions that may have procompetitive
24 effects and the potential benefit to competition;

25 (4) publish periodic reports on—

1 (A) the effects of remedies required by the
2 Department of Justice or the Federal Trade
3 Commission in consent decrees;

4 (B) the effects of law enforcement actions,
5 whether successful or not, including settle-
6 ments, preliminary injunctions, court-mandated
7 remedies, or any other remedy imposed by a
8 court or agreed to by the Department of Justice
9 or Federal Trade Commission;

10 (C) the effects of a decision by the Depart-
11 ment of Justice or the Federal Trade Commis-
12 sion to allow any merger or transaction to move
13 forward without a consent decree or bringing a
14 law enforcement action;

15 (D) the effects of decisions and opinions
16 issues by State and Federal courts related to
17 the antitrust laws on competition and the fu-
18 ture enforcement of the antitrust laws; and

19 (E) the effects of other agency actions, in-
20 cluding rulemakings, on competition;

21 (5) provide recommendations to the Federal
22 Trade Commission and Department of Justice about
23 the effectiveness of policy statements, guidelines, or
24 practices to improve the enforcement of the antitrust
25 laws;

1 (6) report any evidence the Competition Advoca-
2 cate obtains that any person, partnership, or cor-
3 poration has engaged in transactions or conduct that
4 may constitute of a violation of the antitrust laws,
5 or any settlement, agreement, or consent decree re-
6 lated to a potential violation of the antitrust laws, to
7 the Commission, which may institute further inves-
8 tigation, initiate enforcement proceedings, or refer
9 such evidence to the Attorney General;

10 (7) request such information or assistance as
11 may be necessary for carrying out the duties and
12 powers described in this subsection from any agency
13 or unit thereof, including the Commission. The head
14 of any agency shall, insofar as is practicable and not
15 in contravention of any existing statutory restriction
16 or regulation of the agency from which the informa-
17 tion is requested, furnish to the Competition Advoca-
18 cate such information or assistance;

19 (8) have discretion to decide whether to release
20 the recommendations of the Competition Advocate
21 publicly;

22 (9) have access to all information and data col-
23 lected and retained by the Office of Market Analysis
24 and Data; and

1 (10) submit all recommendations or reports to
2 the Committee on the Judiciary of the Senate and
3 the Committee on the Judiciary of the House of
4 Representatives.

5 (f) SUBPOENA AUTHORITY.—

6 (1) IN GENERAL.—The Competition Advocate
7 may either accept voluntary submissions of periodic
8 and other reports from any covered company, or
9 compel the production of such a report by subpoena
10 for the purpose of carrying out its duties and powers
11 in subsection (e).

12 (2) INDEPENDENT SUBPOENA AUTHORITY.—

13 Upon a finding that a covered company will not sub-
14 mit, or has not submitted, a sufficient report volun-
15 tarily, the Competition Advocate may, under its own
16 independent authority, and notwithstanding any ju-
17 risdictional limitations in the Federal Trade Com-
18 mission Act applicable to the Commission's inves-
19 tigative authority, compel the submission of a peri-
20 odic or other reports from any covered company by
21 issuing a subpoena.

22 (3) ENFORCEMENT.—The Competition Advo-
23 cate shall have independent authority to bring an ac-
24 tion in any appropriate Federal court to enforce any
25 subpoena issued under this subsection.

1 (4) WRITTEN FINDING.—Before issuing a sub-
2 poena to collect the information described in para-
3 graph (1), the Competition Advocate shall make a
4 written finding that—

5 (A) the data is required to carry out the
6 functions of the Competition Advocate; and

7 (B) the information is not available from a
8 public source, from the covered company on a
9 voluntary basis, or another agency.

10 (5) MITIGATION OF REPORT BURDEN.—Before
11 requiring the submission of a report from any cov-
12 ered company, the Competition Advocate shall—

13 (A) coordinate with other agencies or au-
14 thority; and

15 (B) whenever possible, rely on information
16 available from such agencies or authority.

17 (6) CONFIDENTIALITY.—Information reported
18 to or otherwise obtained by the Competition Advo-
19 cate shall be subject to the same confidentiality re-
20 quirements and protection applicable to information
21 reported to or otherwise obtained by the Commis-
22 sion.

1 **SEC. 9. OFFICE OF MARKET ANALYSIS AND DATA.**

2 (a) ESTABLISHMENT.—There is established, within
3 the Federal Trade Commission, an Office of Market Anal-
4 ysis and Data.

5 (b) DUTIES.—The Office of Market Analysis and
6 Data shall, in consultation with the Bureau of Economics,
7 assist the Federal Trade Commission in—

8 (1) collecting, validating, and maintaining data
9 obtained from agencies, as defined in section 551 of
10 title 5, United States Code, commercial data pro-
11 viders, publicly available data sources, any covered
12 company, and any data obtained by the Commission
13 pursuant to its authority under section 6(b) of the
14 Federal Trade Commission Act (15 U.S.C. 46(b)),
15 for the purpose of carrying out the functions in
16 paragraphs (2) through (6);

17 (2) preparing and publishing, in a manner that
18 is easily accessible to the public—

19 (A) a concentration database;

20 (B) a merger enforcement database; and

21 (C) any other database that the Commis-
22 sion determines is necessary to carry out the
23 duties of the Office;

24 (3) collecting and publishing data regarding
25 concentration levels across industries and the impact
26 and degree of antitrust enforcement;

1 (4) standardizing the types and formats of data
2 reported and collected, including standards for re-
3 porting financial transaction and position data;

4 (5) publishing reports regarding competitive
5 conditions and dynamics affecting markets or indus-
6 try sectors, in the United States, local geographic
7 markets, different demographic and socioeconomic
8 groups (including the effects that market concentra-
9 tion, mergers and acquisitions, certain types of
10 agreements, and other forms of business conduct
11 have on competition), consumers, workers, innova-
12 tion, the economic competitiveness of the United
13 States, economic resilience, and national security;
14 and

15 (6) publishing reports concerning the competi-
16 tive effects of acquisitions, which shall include rec-
17 ommendations concerning appropriate enforcement
18 action to remedy any anticompetitive effects discov-
19 ered, and may include assessments of—

20 (A) the conditions of the relevant markets
21 affected by the acquisition, over the period since
22 the acquisition was consummated, including,
23 but not limited to, the potential impact that the
24 acquisition has had on—

- 1 (i) the prices of goods or services, in-
2 cluding wages in any affected labor mar-
3 kets;
- 4 (ii) the output and quality of goods
5 and services;
- 6 (iii) the entry or exit of competitors;
- 7 (iv) innovation;
- 8 (v) consumer choice and product vari-
9 ety;
- 10 (vi) the opportunity of suppliers and
11 vendors to sell their products or services;
- 12 (vii) coordinated interaction between
13 competitors; and
- 14 (viii) subsequent mergers and acquisi-
15 tions activity;
- 16 (B) whether the acquiring person or its
17 successors in interest—
- 18 (i) complied with all obligations under
19 any agreement with the Federal Trade
20 Commission, the United States, or State
21 law enforcement authorities to resolve a
22 proceeding brought under the antitrust
23 laws; and
- 24 (ii) achieved measurable, transaction-
25 specific efficiencies, which did not arise

1 from anticompetitive reductions of output,
2 as a result of the acquisition; and

3 (C) whether any agreements with the Fed-
4 eral Trade Commission or the United States or
5 remedies imposed by a Federal court to resolve
6 a proceeding brought under the antitrust laws
7 regarding the acquisition was effective in miti-
8 gating the anticompetitive effects from the ac-
9 quisition.

10 (c) INFORMATION SECURITY.—The Commission shall
11 ensure that data collected and maintained by the Office
12 of Market Analysis and Data is kept secure and protected
13 against unauthorized disclosure.

14 (d) REGULATIONS.—The Commission may, under
15 section 553 of title 5, United States Code, promulgate reg-
16 ulations relating to the collection and standardizing of
17 data under subsection (b).

18 **SEC. 10. EXCLUSIONARY CONDUCT.**

19 (a) IN GENERAL.—The Clayton Act (15 U.S.C. 12
20 et seq.) is amended by inserting after section 26 (15
21 U.S.C. 26a) the following:

22 **“SEC. 26A. EXCLUSIONARY CONDUCT.**

23 “(a) DEFINITIONS.—In this section:

24 “(1) EXCLUSIONARY CONDUCT.—

1 “(A) IN GENERAL.—The term ‘exclu-
2 sionary conduct’ means conduct that—

3 “(i) materially disadvantages 1 or
4 more actual or potential competitors; or

5 “(ii) tends to foreclose or limit the
6 ability or incentive of 1 or more actual or
7 potential competitors to compete.

8 “(B) LIMITATIONS.—

9 “(i) IN GENERAL.—Applying for or
10 enforcing a patent, trademark, or copy-
11 right, unless such applications or enforce-
12 ment actions are baseless or made in bad
13 faith or in violation of a legal obligation,
14 shall not alone constitute exclusionary con-
15 duct, but such actions may be considered
16 as part of a course of conduct that con-
17 stitutes exclusionary conduct.

18 “(ii) CONDUCT.—Conduct that is nec-
19 essary to comply with Federal or State law
20 shall not alone constitute exclusionary con-
21 duct, but such actions may be considered
22 as part of a course of conduct that con-
23 stitutes exclusionary conduct.

24 “(2) MARKET POWER.—The term ‘market
25 power’ means the ability of a person, or a group of

1 persons acting in concert, to profitably impose terms
2 or conditions on counterparties, including terms re-
3 garding price, quantity, product or service quality,
4 or other terms affecting the value of consideration
5 exchanged in the transaction, that are more favor-
6 able to the person or group of persons imposing
7 them than what the person or group of persons
8 could obtain in a competitive market.

9 “(b) VIOLATION.—

10 “(1) IN GENERAL.—It shall be unlawful for a
11 person, acting alone or in concert with other per-
12 sons, to engage in exclusionary conduct that pre-
13 sents an appreciable risk of harming competition.

14 “(2) UNFAIR METHOD OF COMPETITION.—A
15 violation of paragraph (1) shall also constitute an
16 unfair method of competition under section 5 of the
17 Federal Trade Commission Act (15 U.S.C. 45).

18 “(c) PRESUMPTION.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (2), exclusionary conduct shall be presumed to
21 present an appreciable risk of harming competition
22 and shall be a violation of subsection (b)(1) if the
23 exclusionary conduct is undertaken, with respect to
24 a relevant market, by a person or by a group of
25 more than 1 person acting in concert that—

1 “(A) has a market share of greater than
2 50 percent as a seller or a buyer in the relevant
3 market; or

4 “(B) otherwise has significant market
5 power in the relevant market.

6 “(2) EXCEPTION.—Paragraph (1) shall not
7 apply if the defendant establishes, by a preponder-
8 ance of the evidence, that—

9 “(A) distinct procompetitive benefits of the
10 exclusionary conduct in the relevant market
11 eliminate the risk of harming competition pre-
12 sented by the exclusionary conduct;

13 “(B) 1 or more persons, not including any
14 person participating in or facilitating the exclu-
15 sionary conduct, have entered or expanded their
16 presence in the market with the effect of elimi-
17 nating the risk of harming competition posed by
18 the exclusionary conduct; or

19 “(C) the exclusionary conduct does not
20 present an appreciable risk of harming competi-
21 tion.

22 “(d) CONSIDERATIONS.—If the presumption in sub-
23 section (c) does not apply, the determination of whether
24 exclusionary conduct presents an appreciable risk of harm-

1 ing competition shall be based on the totality of the cir-
2 cumstances, which may include consideration of—

3 “(1) the extent to which any distinct procom-
4 petitive benefits of the exclusionary conduct substan-
5 tially eliminate the risk of harming competition pre-
6 sented by the exclusionary conduct; and

7 “(2) whether 1 or more persons, not including
8 any person participating in or facilitating the exclu-
9 sionary conduct, have entered or expanded their
10 presence in the market, substantially eliminating the
11 risk of harming competition presented by the exclu-
12 sionary conduct.

13 “(e) LIMITATIONS.—Although the following cir-
14 cumstances may constitute evidence of a violation of sub-
15 section (b)(1), such violation does not require finding—

16 “(1) that the unilateral conduct of the defend-
17 ant altered or terminated a prior course of dealing
18 between the defendant and a person subject to the
19 exclusionary conduct;

20 “(2) that the defendant treated persons subject
21 to the exclusionary conduct differently than the de-
22 fendant treated other persons;

23 “(3) that any price of the defendant for a prod-
24 uct or service was below any measure of the costs
25 to the defendant of providing the product or service;

1 “(4) that a defendant with significant market
2 power in a relevant market has recouped or is likely
3 to recoup the losses it incurred or incurs from below-
4 cost pricing for products or services in the relevant
5 market;

6 “(5) that the conduct of the defendant makes
7 no economic sense apart from its tendency to harm
8 competition;

9 “(6) that the risk of harming competition pre-
10 sented by the conduct of the defendant or any re-
11 sulting actual harm to competition have been quan-
12 tified or proven with quantitative evidence; or

13 “(7) that when a defendant operates a multi-
14 sided platform business, the conduct of the defend-
15 ant presents an appreciable risk of harming competi-
16 tion on more than 1 side of the multi-sided platform.

17 “(f) CIVIL PENALTIES.—Any person who violates
18 subsection (b)(1) shall be liable to the United States for
19 a civil penalty, which may be recovered in a civil action
20 brought by the Attorney General of the United States, of
21 not more than the greater of—

22 “(1) 15 percent of the total United States reve-
23 nues of the person for the previous calendar year; or

24 “(2) 30 percent of the United States revenues
25 of the person in any line of commerce affected or

1 targeted by the unlawful conduct during the period
2 of the unlawful conduct.”.

3 (b) FEDERAL TRADE COMMISSION AUTHORITY.—

4 (1) IN GENERAL.—The Clayton Act (15 U.S.C.
5 12 et seq.) is amended by inserting after section
6 26A, as added by subsection (a), the following:

7 **“SEC. 26B. CIVIL PENALTIES.**

8 “(a) CIVIL PENALTY FOR VIOLATION OF SECTION
9 26A OF THE CLAYTON ACT.—The Commission may com-
10 mence a civil action in a district court of the United States
11 against any person, partnership, or corporation who vio-
12 lates section 26A(b)(1) to recover a civil penalty, which
13 shall accrue to the United States, in an amount not more
14 than the greater of—

15 “(1) 15 percent of the total United States reve-
16 nues of the person, partnership, or corporation for
17 the previous calendar year; or

18 “(2) 30 percent of the United States revenues
19 of the person, partnership, or corporation in any line
20 of commerce affected or targeted by the unlawful
21 conduct during the period of the unlawful conduct.

22 “(b) COMMISSION LITIGATION AUTHORITY.—Except
23 as otherwise provided in section 16(a)(3) of the Federal
24 Trade Commission Act (15 U.S.C. 56(a)(3)), the Commis-
25 sion shall have exclusive authority to commence or defend,

1 and supervise the litigation of, any civil action authorized
2 under section 26A and any appeal of such action in its
3 own name by any of its attorneys designated by it for such
4 purpose, unless the Commission authorizes the Attorney
5 General to do so. The Commission shall inform the Attor-
6 ney General of the exercise of such authority, and such
7 exercise shall not preclude the Attorney General from in-
8 tervening on behalf of the United States in such action
9 and any appeal of such action as may be otherwise pro-
10 vided by law.”.

11 (c) ENFORCEMENT GUIDELINES.—

12 (1) IN GENERAL.—Not later than 1 year after
13 the date of enactment of this Act, the Attorney Gen-
14 eral and the Federal Trade Commission shall issue
15 joint guidelines outlining policies, practices, and ana-
16 lytical techniques relating to agency enforcement
17 under section 26A of the Clayton Act, as added by
18 subsection (a) of this section, with the goal of pro-
19 moting transparency and deterring violations of such
20 section 26A.

21 (2) UPDATES.—The Attorney General and the
22 Federal Trade Commission shall update the joint
23 guidelines issued under subsection (a), as needed to
24 reflect current agency policies and practices, but not

1 less frequently than once every 5 years beginning on
2 the date of enactment of this Act.

3 (3) PUBLIC NOTICE AND COMMENT.—

4 (A) GUIDELINES.—Before issuing guide-
5 lines under paragraph (1) or (2), the Attorney
6 General and the Federal Trade Commission
7 shall publish proposed guidelines in draft form
8 and provide public notice and opportunity for
9 comment for not less than 60 days after the
10 date on which the guidelines are published.

11 (B) INAPPLICABILITY OF RULEMAKING
12 PROVISIONS.—The provisions of section 553 of
13 title 5, United States Code, shall not apply to
14 the guidelines issued under this section.

15 **SEC. 11. PENALTIES FOR SHERMAN ACT VIOLATIONS.**

16 (a) CIVIL PENALTY AMENDMENTS.—

17 (1) SECTION 1 OF THE SHERMAN ACT.—Section
18 1 of the Sherman Antitrust Act (15 U.S.C. 1) is
19 amended—

20 (A) by striking “Every” and inserting “(a)

21 Every”; and

22 (B) by adding at the end the following:

23 “(b)(1) Every person who violates this section shall
24 be liable to the United States for a civil or criminal penalty
25 of not more than the greater of—

1 “(A) 15 percent of the total United States reve-
2 nues of the person for the previous calendar year; or

3 “(B) 30 percent of the United States revenues
4 of the person in any part of the trade or commerce
5 related to or targeted by the unlawful conduct under
6 this section during the period of the unlawful con-
7 duct.

8 “(2) A penalty under this section may be recovered
9 in a civil or criminal action brought by the United
10 States.”.

11 (2) SECTION 2 OF THE SHERMAN ACT.—Section
12 2 of the Sherman Antitrust Act (15 U.S.C. 2) is
13 amended—

14 (A) by striking “Every” and inserting “(a)
15 Every”; and

16 (B) by adding at the end the following

17 “(b)(1) Every person who violates this section shall
18 be liable to the United States for a civil penalty of not
19 more than the greater of—

20 “(A) 15 percent of the total United States reve-
21 nues of the person for the previous calendar year; or

22 “(B) 30 percent of the United States revenues
23 of the person in any part of the trade or commerce
24 related to or targeted by the unlawful conduct under

1 this section during the period of the unlawful con-
2 duct.

3 “(2) A civil penalty under this section may be recov-
4 ered in a civil action brought by the United States.”.

5 (3) SECTION 5 OF THE FEDERAL TRADE COM-
6 MISSION ACT.—Section 5 of the Federal Trade Com-
7 mission Act (15 U.S.C. 45) is amended by adding at
8 the end the following:

9 “(o)(1) The Commission may commence a civil action
10 in a district court of the United States against any person,
11 partnership, or corporation for a violation of subsection
12 (a)(1) respecting an unfair method of competition that
13 constitutes a violation of sections 1 or 2 of the Sherman
14 Act (15 U.S.C. 1, 2) and to recover a civil penalty for
15 such violation.

16 “(2) In an action under paragraph (1), any person,
17 partnership, or corporation found to have violated sub-
18 section (a)(1) respecting an unfair method of competition
19 that constitutes a violation of section 1 or 2 of the Sher-
20 man Act (15 U.S.C. 1, 2) shall be liable for a civil penalty
21 of not more than the greater of—

22 “(A) 15 percent of the total United States reve-
23 nues of the person, partnership, or corporation for
24 the previous calendar year; or

1 “(B) 30 percent of the United States revenues
2 of the person, partnership, or corporation in any line
3 of commerce related to or targeted by the unlawful
4 conduct described in paragraph (1) during the pe-
5 riod of the unlawful conduct.”.

6 (4) SECTION 16 OF THE FEDERAL TRADE COM-
7 MISSION ACT.—Section 16(a)(2) of the Federal
8 Trade Commission Act (15 U.S.C. 56(a)(2)) is
9 amended—

10 (A) in subparagraph (D), by striking “or”
11 at the end;

12 (B) in subparagraph (E)—

13 (i) by moving the margins 2 ems to
14 the left; and

15 (ii) by striking the semicolon and in-
16 serting “; or”; and

17 (C) by inserting after subparagraph (E)
18 the following:

19 “(F) to recover civil penalties under section
20 5(o);”.

21 (b) RULE OF CONSTRUCTION.—The civil penalties
22 provided in subsection (b) of section 1 of the Sherman
23 Act (15 U.S.C. 1), subsection (b) of section 2 of the Sher-
24 man Act (15 U.S.C. 2), and subsection (o) of section 5
25 of the Federal Trade Commission Act (15 U.S.C. 45), as

1 added by subsection (a) of this section, are in addition
2 to, and not in lieu of, any other remedy provided by Fed-
3 eral law, including under—

4 (1) section 4 or 16 of the Clayton Act (15
5 U.S.C. 15, 26); or

6 (2) section 13(b) of the Federal Trade Commis-
7 sion Act (15 U.S.C. 53(b)).

8 **SEC. 12. JOINT CIVIL PENALTY GUIDELINES.**

9 (a) IN GENERAL.—Not later than 1 year after the
10 date of enactment of this Act, the Attorney General and
11 the Federal Trade Commission shall issue joint guidelines
12 reflecting agency policies for determining the appropriate
13 amount of a civil penalty to be sought under sections 1(b)
14 and 2(b) of the Sherman Act (15 U.S.C. 1, 2), section
15 26A(f) of the Clayton Act, as added by section 10(a) of
16 this Act, and section 5(o) of the Federal Trade Commis-
17 sion Act (15 U.S.C. 45), as added by section 11(a) of this
18 Act, with the goal of promoting transparency and seeking
19 remedies for individual violations that are effective in de-
20 terring future unlawful conduct and proportionate to the
21 gravity of the violation.

22 (b) CONSIDERATIONS.—In determining civil penalty
23 amounts under sections 1(b) and 2(b) of the Sherman Act
24 (15 U.S.C. 1, 2), section 26A(f) of the Clayton Act, as
25 added by section 10(a) of this Act, and section 5(o) of

1 the Federal Trade Commission Act (15 U.S.C. 45), as
2 added by section 11(a) of this Act, a district court of the
3 United States shall consider—

4 (1) the volume of commerce affected;

5 (2) the duration and severity of the unlawful
6 conduct;

7 (3) the intent of the person undertaking the un-
8 lawful conduct;

9 (4) the extent to which the unlawful conduct
10 was egregious or a clear violation of the law;

11 (5) whether the civil penalty is to be applied in
12 combination with other remedies, including—

13 (A) structural remedies, behavioral condi-
14 tions, or equitable disgorgement; or

15 (B) other remedies available under section
16 4, 4A, 15, or 16 of the Clayton Act (15 U.S.C.
17 15, 15a, 25, 26) or section 13(b) of the Federal
18 Trade Commission Act (15 U.S.C. 53(b));

19 (6) whether the person has previously engaged
20 in the same or similar anticompetitive conduct;

21 (7) the extent to which the penalty will act to
22 deter future violations of the antitrust laws; and

23 (8) whether the person undertook the conduct
24 in violation of a preexisting consent decree or court
25 order.

1 (c) UPDATES.—The Attorney General and the Fed-
2 eral Trade Commission shall update the joint guidelines
3 issued under subsection (a), as needed to reflect current
4 agency policies and practices, but not less frequently than
5 once every 5 years beginning on the date of enactment
6 of this Act.

7 (d) PUBLIC NOTICE AND COMMENT.—

8 (1) GUIDELINES.—Before issuing guidelines
9 under subsection (a) or subsection (c), the Attorney
10 General and the Federal Trade Commission shall
11 publish proposed guidelines in draft form and pro-
12 vide public notice and opportunity for comment for
13 not less than 60 days after the date on which the
14 guidelines are published.

15 (2) INAPPLICABILITY OF RULEMAKING PROVI-
16 SIONS.—The provisions of section 553 of title 5,
17 United States Code, shall not apply to the guidelines
18 issued under this section.

19 **SEC. 13. MARKET DEFINITION.**

20 (a) IN GENERAL.—Establishing liability under the
21 antitrust laws does not require the definition of a relevant
22 market, except when the definition of a relevant market
23 is required, to establish a presumption or to resolve a
24 claim, under a statutory provision that explicitly ref-
25 erences the terms “relevant market”, “market concentra-

1 tion”, or “market share”. Statutory references to the term
2 “line of commerce” shall not constitute an exception to
3 the foregoing rule that establishing liability under the
4 antitrust laws does not require the definition of a relevant
5 market.

6 (b) DIRECT EVIDENCE.—If direct evidence in the
7 record is sufficient to prove actual or likely harm to com-
8 petition, an appreciable risk to competition sufficient to
9 satisfy the applicable statutory standard, or that the effect
10 of an acquisition subject to section 7 of the Clayton Act
11 (15 U.S.C. 18) may be to create an appreciable risk of
12 materially lessening competition or to tend to create a mo-
13 nopoly or a monopsony, neither a court nor the Federal
14 Trade Commission shall require definition of a relevant
15 market in order to evaluate the evidence, to find liability,
16 or to find that a claim has been stated under the antitrust
17 laws.

18 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion may be construed to prevent a court or the Federal
20 Trade Commission from considering evidence relating to
21 the definition of proposed relevant markets to evaluate the
22 merits of a claim under the antitrust laws.

1 **SEC. 14. LIMITATIONS ON IMPLIED IMMUNITY FROM THE**
2 **ANTITRUST LAWS.**

3 (a) IN GENERAL.—In any action or proceeding to en-
4 force the antitrust laws with respect to conduct that is
5 regulated under Federal statute, no court or adjudicatory
6 body may find that the Federal statute, or any rule or
7 regulation promulgated in accordance with the Federal
8 statute, implicitly precludes application of the antitrust
9 laws to the conduct unless—

10 (1) a Federal agency or department actively
11 regulates the conduct under the Federal statute;

12 (2) the Federal statute does not include any
13 provision preserving the rights, claims, or remedies
14 under the applicable antitrust laws or under any
15 area of law that includes the antitrust laws; and

16 (3) Federal agency or department rules or regu-
17 lations, adopted by rulemaking or adjudication, ex-
18 plicitly require or authorize the defendant to under-
19 take the conduct.

20 (b) EXISTING FEDERAL REGULATION.—In any ac-
21 tion or proceeding described in subsection (a), the anti-
22 trust laws shall be applied fully and without qualification
23 or limitation, and the scope of the antitrust laws shall not
24 be defined more narrowly on account of the existence of
25 Federal rules, regulations, or regulatory agencies or de-

1 departments, unless application of the antitrust laws is pre-
2 cluded or limited by—

- 3 (1) an explicit exemption from the antitrust
4 laws under a Federal statute; or
5 (2) an implied immunity that satisfies the re-
6 quirements under subsection (a).

7 **SEC. 15. WHISTLEBLOWER PROTECTIONS.**

8 (a) PROTECTIONS FOR CIVIL WHISTLEBLOWERS.—
9 The Clayton Act (15 U.S.C. 12 et seq.) is amended by
10 inserting after section 27 (15 U.S.C. 26b) the following:

11 **“SEC. 27A. ANTI-RETALIATION PROTECTION FOR CIVIL**
12 **WHISTLEBLOWERS.**

13 “(a) WHISTLEBLOWER PROTECTIONS FOR EMPLOY-
14 EES, CONTRACTORS, SUBCONTRACTORS, AND AGENTS.—

15 “(1) IN GENERAL.—No employer may dis-
16 charge, demote, suspend, threaten, harass, or in any
17 other manner discriminate against a covered indi-
18 vidual in the terms and conditions of employment of
19 the covered individual because of any lawful act done
20 by the covered individual—

21 “(A) to provide or cause to be provided to
22 the Federal Government or a person with su-
23 pervisory authority over the covered individual
24 (or such other person working for the employer
25 who has the authority to investigate, discover,

1 or terminate misconduct) information relating
2 to any violation of, or any act or omission the
3 covered individual reasonably believes to be a
4 violation of, the applicable antitrust laws; or

5 “(B) to cause to be filed, testify in, partici-
6 pate in, or otherwise assist a Federal Govern-
7 ment investigation or a Federal Government
8 proceeding filed or about to be filed (with any
9 knowledge of the employer) relating to any vio-
10 lation of, or any act or omission the covered in-
11 dividual reasonably believes to be a violation of,
12 the applicable antitrust laws.

13 “(2) LIMITATION ON PROTECTIONS.—Para-
14 graph (1) shall not apply to any covered individual
15 if—

16 “(A) the covered individual planned and
17 initiated a violation or attempted violation of
18 the applicable antitrust laws;

19 “(B) the covered individual planned and
20 initiated a violation or attempted violation of a
21 criminal law in conjunction with a violation or
22 attempted violation of the applicable antitrust
23 laws; or

24 “(C) the covered individual planned and
25 initiated an obstruction or attempted obstruc-

1 tion of an investigation by the Federal Govern-
2 ment of a violation of the applicable antitrust
3 laws.

4 “(3) DEFINITIONS.—In this section:

5 “(A) APPLICABLE ANTITRUST LAWS.—The
6 term ‘applicable antitrust laws’ means section
7 1, 2, or 3 of the Sherman Act (15 U.S.C. 1, 2,
8 and 3) or section 5 of the Federal Trade Com-
9 mission Act (15 U.S.C. 45) to the extent that
10 such section applies to unfair methods of com-
11 petition.

12 “(B) COVERED INDIVIDUAL.—The term
13 ‘covered individual’ means an employee, con-
14 tractor, subcontractor, or agent of an employer.

15 “(C) EMPLOYER.—The term ‘employer’
16 means a person, or any officer, employee, con-
17 tractor, subcontractor, or agent of such person.

18 “(D) FEDERAL GOVERNMENT.—The term
19 ‘Federal Government’ means—

20 “(i) a Federal regulatory or law en-
21 forcement agency; or

22 “(ii) any Member of Congress or com-
23 mittee of Congress.

1 “(E) PERSON.—The term ‘person’ has the
2 same meaning as in subsection (a) of the first
3 section of the Clayton Act (15 U.S.C. 12(a)).

4 “(b) ENFORCEMENT ACTION.—

5 “(1) IN GENERAL.—A covered individual who
6 alleges discharge or other discrimination by any em-
7 ployer in violation of subsection (a) may seek relief
8 under subsection (c) by—

9 “(A) filing a complaint with the Secretary
10 of Labor; or

11 “(B) if the Secretary of Labor has not
12 issued a final decision within 180 days of the
13 filing of the complaint and there is no showing
14 that such delay is due to the bad faith of the
15 claimant, bringing an action at law or equity
16 for de novo review in the appropriate district
17 court of the United States, which shall have ju-
18 risdiction over such an action without regard to
19 the amount in controversy.

20 “(2) PROCEDURE.—

21 “(A) IN GENERAL.—A complaint filed with
22 the Secretary of Labor under paragraph (1)(A)
23 shall be governed under the rules and proce-
24 dures set forth in section 42121(b) of title 49,
25 United States Code.

1 “(B) EXCEPTION.—Notification made
2 under section 42121(b)(1) of title 49, United
3 States Code, shall be made to any individual
4 named in the complaint and to the employer.

5 “(C) BURDENS OF PROOF.—An action
6 brought under paragraph (1)(B) shall be gov-
7 erned by the legal burdens of proof set forth in
8 section 42121(b) of title 49, United States
9 Code.

10 “(D) STATUTE OF LIMITATIONS.—A com-
11 plaint under paragraph (1)(A) shall be filed
12 with the Secretary of Labor not later than 180
13 days after the date on which the violation of
14 this section occurs.

15 “(E) CIVIL ACTIONS TO ENFORCE.—If a
16 person fails to comply with an order or prelimi-
17 nary order issued by the Secretary of Labor
18 pursuant to the procedures set forth in section
19 42121(b) of title 49, United States Code, the
20 Secretary of Labor or the person on whose be-
21 half the order was issued may bring a civil ac-
22 tion to enforce the order in the district court of
23 the United States for the judicial district in
24 which the violation occurred.

25 “(c) REMEDIES.—

1 “(1) IN GENERAL.—A covered individual pre-
2 vailing in any action under subsection (b)(1) shall be
3 entitled to all relief necessary to make the covered
4 individual whole.

5 “(2) COMPENSATORY DAMAGES.—Relief for any
6 action under paragraph (1) shall include—

7 “(A) reinstatement with the same seniority
8 status that the covered individual would have
9 had, but for the discrimination;

10 “(B) the amount of back pay, with inter-
11 est; and

12 “(C) compensation for any special damages
13 sustained as a result of the discrimination in-
14 cluding litigation costs, expert witness fees, and
15 reasonable attorney’s fees.

16 “(d) RIGHTS RETAINED BY WHISTLEBLOWERS.—
17 Nothing in this section shall be deemed to diminish the
18 rights, privileges, or remedies of any covered individual
19 under any Federal or State law, or under any collective
20 bargaining agreement.”.

21 (b) WHISTLEBLOWER REWARD.—The Antitrust
22 Criminal Penalty Enhancement and Reform Act of 2004
23 (15 U.S.C. 1 note) is amended by inserting after section
24 216 (15 U.S.C. 7a–3) the following:

1 **“SEC. 217. CRIMINAL ANTITRUST WHISTLEBLOWER INCEN-**
2 **TIVES.**

3 “(a) DEFINITIONS.—In this section the following
4 definitions shall apply:

5 “(1) ANTITRUST LAWS.—The term ‘antitrust
6 laws’ means section 1 or 3 of the Sherman Act (15
7 U.S.C. 1 and 3).

8 “(2) COLLECTED PROCEEDS.—The term ‘col-
9 lected proceeds’ means any sanctions, fines, pen-
10 alties, or awards obtained in any covered enforce-
11 ment action, whether by judgment, settlement, or a
12 deferred prosecution agreement.

13 “(3) COVERED ENFORCEMENT ACTION.—The
14 term ‘covered enforcement action’ means any crimi-
15 nal action brought by the Attorney General under
16 the antitrust laws that results in collected proceeds
17 exceeding \$1,000,000.

18 “(4) ORIGINAL INFORMATION.—The term
19 ‘original information’ means information that—

20 “(A) is derived from the personal knowl-
21 edge of a whistleblower;

22 “(B) is not known to the Attorney General
23 or the Department of Justice from any other
24 source, unless the whistleblower is the original
25 source of the information;

1 “(C) is not exclusively derived from an al-
2 legation made in a judicial or administrative
3 hearing, in a governmental report, hearing,
4 audit, or investigation, or from the news media,
5 unless the whistleblower is a source of the infor-
6 mation; and

7 “(D) is not already required to be disclosed
8 to the Department of Justice or another Fed-
9 eral agency.

10 “(5) RELATED ACTION.—The term ‘related ac-
11 tion’, when used with respect to any covered enforce-
12 ment action brought by the Attorney General, means
13 any criminal action brought by another United
14 States entity that is based upon the original infor-
15 mation provided by a whistleblower that led to the
16 successful enforcement action by the Attorney Gen-
17 eral.

18 “(6) WHISTLEBLOWER.—The term ‘whistle-
19 blower’ means any individual who provides informa-
20 tion relating to a violation of the antitrust laws to
21 the Department of Justice, in a manner established
22 by the Department of Justice.

23 “(b) AWARDS.—

24 “(1) IN GENERAL.—In a covered enforcement
25 action, or related action, the Attorney General, sub-

1 ject to subsection (c), may pay an award or awards
2 to a whistleblower who voluntarily provided original
3 information to the Department of Justice that led to
4 the successful enforcement of the covered enforce-
5 ment action, or related action, in an amount not less
6 than 10 percent and not more than 30 percent, in
7 total, of what has been collected of the criminal fine
8 imposed in the covered enforcement action or related
9 action under the antitrust laws;

10 “(2) PAYMENT.—Any amount paid under para-
11 graph (1) shall be paid from the criminal fine col-
12 lected in the covered enforcement action.

13 “(c) DETERMINATION OF AMOUNT OF AWARD; DE-
14 NIAL OF AWARD.—

15 “(1) DETERMINATION OF AMOUNT OF
16 AWARD.—

17 “(A) DISCRETION.—The determination of
18 the amount of an award made under subsection
19 (b) shall be in the discretion of the Attorney
20 General.

21 “(B) CRITERIA.—In determining the
22 amount of an award made under subsection (b),
23 the Attorney General shall take into consider-
24 ation—

1 “(i) the significance of the informa-
2 tion provided by the whistleblower to the
3 success of the covered enforcement action;

4 “(ii) the degree of assistance and co-
5 operation provided by the whistleblower in
6 a covered enforcement action;

7 “(iii) the interest of the Department
8 of Justice in deterring criminal violations
9 of the antitrust laws by making awards to
10 whistleblowers who provide information
11 that leads to the successful covered en-
12 forcement actions; and

13 “(iv) such additional relevant factors
14 as the Attorney General may establish.

15 “(2) DENIAL OF AWARD.—No award under
16 subsection (b) shall be made—

17 “(A) to any whistleblower who is, or was at
18 the time the whistleblower who acquired the
19 original information submitted to the Commis-
20 sion, a member, officer, or employee of—

21 “(i) any branch, agency, or instru-
22 mentality of the Federal Government; or

23 “(ii) any law enforcement organiza-
24 tion;

1 “(B) to any whistleblower who is convicted
2 of a criminal violation related to the covered en-
3 forcement action for which the whistleblower
4 otherwise could receive an award under this sec-
5 tion;

6 “(C) to any whistleblower who was an
7 originator or leader of or who coerced any other
8 party to participate in the activity giving rise to
9 liability under the antitrust laws in the covered
10 enforcement action for which the whistleblower
11 otherwise could receive an award under this sec-
12 tion;

13 “(D) to any whistleblower who fails to re-
14 spond to provide timely, truthful, continuing,
15 and complete cooperation to the Department of
16 Justice relating to the original information or
17 intentionally withholds information relating to
18 the original information;

19 “(E) to any whistleblower who commits,
20 participates in, or attempts to commit or par-
21 ticipate in any crimes after disclosing the origi-
22 nal information to the Department of Justice;

23 “(F) to any whistleblower who fails to sub-
24 mit information to the Department of Justice in
25 such form as the Department may require, or

1 failed to report relevant information to the De-
2 partment known to the whistleblower when the
3 whistleblower first reported the information to
4 the Department;

5 “(G) to any whistleblower who fails to sub-
6 mit information to the Department of Justice in
7 such form as the Department may require as
8 prescribed by regulation;

9 “(H) to any whistleblower who planned
10 and initiated an obstruction or attempted ob-
11 struction of an investigation by the Department
12 of Justice of a violation of the antitrust laws;
13 or

14 “(I) to any whistleblower who engages in
15 conduct that would disqualify the whistleblower
16 if the whistleblower were a leniency applicant
17 under the Leniency Program of the Antitrust
18 Division.

19 “(d) REPRESENTATION.—Any whistleblower who
20 makes a claim for an award under subsection (b) may be
21 represented by counsel.

22 “(e) APPEALS.—Any determination made under this
23 section, including whether, to whom, or in what amount
24 to make awards, shall be in the discretion of the Attorney
25 General. Any such determination, except the determina-

1 tion of the amount of an award if the award was made
2 in accordance with subsection (b), may be appealed to the
3 appropriate court of appeals of the United States not more
4 than 30 days after the determination is issued by the At-
5 torney General. The court shall review the determination
6 made by the Attorney General in accordance with section
7 706 of title 5, United States Code.”.

8 **SEC. 16. PREJUDGMENT INTEREST.**

9 Section 4 of the Clayton Act (15 U.S.C. 15) is
10 amended by striking subsection (a) and inserting the fol-
11 lowing:

12 “(a) Except as provided in subsection (b), any person
13 who shall be injured in his business or property by reason
14 of anything forbidden in the antitrust laws may sue there-
15 for in any district court of the United States in the district
16 in which the defendant resides or is found or has an agent,
17 without respect to the amount in controversy, and shall
18 recover threefold the damages by him sustained, the cost
19 of suit, including a reasonable attorney’s fee, and simple
20 interest on threefold the damages by him sustained for
21 the period beginning on the date of service of such per-
22 son’s pleading setting forth a claim under the antitrust
23 laws and ending on the date of judgment.”.

1 **SEC. 17. NO FORCED ARBITRATION FOR ANTITRUST DIS-**
2 **PUTES.**

3 (a) IN GENERAL.—Title 9, United States Code, is
4 amended by adding at the end the following:

5 **“CHAPTER 5—ARBITRATION ANTITRUST**
6 **DISPUTES**

7 **“§ 501. Definitions**

8 “In this chapter—

9 “(1) the term ‘antitrust dispute’ means a dis-
10 pute—

11 “(A) arising from an alleged violation of
12 the antitrust laws (as defined in subsection (a)
13 of the first section of the Clayton Act (15
14 U.S.C. 12(a))) or State antitrust laws; and

15 “(B) in which the plaintiffs seek certifi-
16 cation as a class under rule 23 of the Federal
17 Rules of Civil Procedure or a comparable rule
18 or provision of State law;

19 “(2) the term ‘predispute arbitration agree-
20 ment’ means an agreement to arbitrate a dispute
21 that has not yet arisen at the time of the making
22 of the agreement; and

23 “(3) the term ‘predispute joint-action waiver’
24 means an agreement, whether or not part of a
25 predispute arbitration agreement, that would pro-
26 hibit, or waive the right of, one of the parties to the

1 agreement to participate in a joint, class, or collec-
2 tive action in a judicial, arbitral, administrative, or
3 other forum, concerning a dispute that has not yet
4 arisen at the time of the making of the agreement.

5 **“§ 502. No validity or enforceability**

6 “(a) IN GENERAL.—Notwithstanding any other pro-
7 vision of this title, no predispute arbitration agreement or
8 predispute joint-action waiver shall be valid or enforceable
9 with respect to an antitrust dispute.

10 “(b) APPLICABILITY.—An issue as to whether this
11 chapter applies with respect to a dispute shall be deter-
12 mined under Federal law. The applicability of this chapter
13 to an agreement to arbitrate and the validity and enforce-
14 ability of an agreement to which this chapter applies shall
15 be determined by a court, rather than an arbitrator, irre-
16 spective of whether the party resisting arbitration chal-
17 lenges the arbitration agreement specifically or in conjunc-
18 tion with other terms of the contract containing such
19 agreement, and irrespective of whether the agreement pur-
20 ports to delegate such determinations to an arbitrator.”.

21 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

22 (1) IN GENERAL.—Title 9 of the United States
23 Code is amended—

24 (A) in section 2, by inserting “or 5” before
25 the period at the end;

1 (B) in section 208, by inserting “or 5” be-
 2 fore the period at the end; and

3 (C) in section 307, by inserting “or 5” be-
 4 fore the period at the end.

5 (2) TABLE OF CHAPTERS.—The table of chap-
 6 ters for title 9, United States Code, is amended by
 7 adding at the end the following:

“5. Arbitration of antitrust disputes 501”.

8 **SEC. 18. ADDITIONAL REMEDIES; RULES OF CONSTRUC-**
 9 **TION.**

10 (a) ADDITIONAL REMEDIES.—The rights and rem-
 11 edies provided under this Act are in addition to, not in
 12 lieu of, any other rights and remedies provided by Federal
 13 law, including under section 4, 4A, 15, or 16 of the Clay-
 14 ton Act (15 U.S.C. 15, 15a, 25, 26) or section 13(b) of
 15 the Federal Trade Commission Act (15 U.S.C. 53(b)).

16 (b) RULES OF CONSTRUCTION.—Nothing in this Act
 17 may be construed to—

18 (1) impair or limit the applicability of any of
 19 the antitrust laws; and

20 (2) prohibit any other remedy provided by Fed-
 21 eral law.

22 **SEC. 19. AUTHORIZATION OF APPROPRIATIONS.**

23 (a) FISCAL YEAR 2025.—There is authorized to be
 24 appropriated for fiscal year 2025—

1 (1) \$535,000,000 for the Antitrust Division of
2 the Department of Justice; and

3 (2) \$725,000,000 for the Federal Trade Com-
4 mission.

5 (b) SUBSEQUENT YEARS.—Beginning in fiscal year
6 2026, and each fiscal year thereafter, all premerger notifi-
7 cation filing fees collected pursuant to section 7A of the
8 Clayton Act (15 U.S.C. 18a) shall—

9 (1) be retained and used for expenses necessary
10 for the enforcement of antitrust and kindred laws by
11 the Antitrust Division of the Department of Justice
12 and the Federal Trade Commission, to remain avail-
13 able until expended; and

14 (2) shall be treated as direct spending described
15 in section 250(c)(8)(A) of the Balanced Budget and
16 Emergency Deficit Control Act of 1985 (2 U.S.C.
17 900(c)(8)(A)).

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