

116TH CONGRESS
1ST SESSION

S. 306

To promote merger enforcement and protect competition through adjusting premerger filing fees, increasing antitrust enforcement resources, and improving the information provided to antitrust enforcers.

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2019

Ms. KLOBUCHAR (for herself, Mr. MARKEY, Mr. BLUMENTHAL, Ms. HIRONO, Mr. DURBIN, Mr. BOOKER, Ms. BALDWIN, Mr. KING, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To promote merger enforcement and protect competition through adjusting premerger filing fees, increasing antitrust enforcement resources, and improving the information provided to antitrust enforcers.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Merger Enforcement
5 Improvement Act”.

1 **SEC. 2. PREMERGER NOTIFICATION FILING FEES.**

2 Section 605 of Public Law 101–162 (15 U.S.C. 18a
3 note) is amended—

4 (1) in subsection (b)—

5 (A) in paragraph (1)—

6 (i) by striking “\$45,000” and insert-
7 ing “\$30,000”;

8 (ii) by striking “\$100,000,000” and
9 inserting “\$161,500,000”;

10 (iii) by striking “2004” and inserting
11 “2020”; and

12 (iv) by striking “2003” and inserting
13 “2019”;

14 (B) in paragraph (2)—

15 (i) by striking “\$125,000” and insert-
16 ing “\$100,000”;

17 (ii) by striking “\$100,000,000” and
18 inserting “\$161,500,000”;

19 (iii) by striking “but less” and insert-
20 ing “but is less”; and

21 (iv) by striking “and” at the end;

22 (C) in paragraph (3)—

23 (i) by striking “\$280,000” and insert-
24 ing “\$250,000”; and

25 (ii) by striking the period at the end
26 and inserting “but is less than

1 \$1,000,000,000 (as so adjusted and pub-
2 lished);”; and

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

4 “(4) \$400,000 if the aggregate total amount
5 determined under section 7A(a)(2) of the Clayton
6 Act (15 U.S.C. 18a(a)(2)) is not less than
7 \$1,000,000,000 (as so adjusted and published) but
8 is less than \$2,000,000,000 (as so adjusted and
9 published);

10 “(5) \$800,000 if the aggregate total amount
11 determined under section 7A(a)(2) of the Clayton
12 Act (15 U.S.C. 18a(a)(2)) is not less than
13 \$2,000,000,000 (as so adjusted and published) but
14 is less than \$5,000,000,000 (as so adjusted and
15 published); and

16 “(6) \$2,250,000 if the aggregate total amount
17 determined under section 7A(a)(2) of the Clayton
18 Act (15 U.S.C. 18a(a)(2)) is not less than
19 \$5,000,000,000 (as so adjusted and published).”;
20 and

21 (2) by adding at the end the following:

22 “(c)(1) For each fiscal year commencing after Sep-
23 tember 30, 2020, the filing fees in this section shall be
24 increased as of October 1 each year by an amount equal
25 to the percentage increase, if any, in the Producer Price

1 Index, as determined by the Department of Commerce or
 2 its successor, for the year then ended over the level so
 3 established for the year ending September 30, 2019.

4 “(2) As soon as practicable, but not later than Janu-
 5 ary 31 of each year, the Federal Trade Commission shall
 6 publish the adjusted amounts required by this section.

7 “(3) The Federal Trade Commission shall not adjust
 8 amounts required by this section if the percentage increase
 9 described in paragraph (1) is less than 1 percent.

10 “(4) An amount adjusted under this section shall be
 11 rounded to the nearest multiple of \$5,000.”.

12 **SEC. 3. POST-SETTLEMENT DATA.**

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

15 “(l)(1) Each person who enters into an agreement
 16 with the Federal Trade Commission or the United States
 17 to resolve a proceeding brought under the antitrust laws
 18 or under the Federal Trade Commission Act (15 U.S.C.
 19 41 et seq.) regarding an acquisition with respect to which
 20 notification is required under this section shall, on an an-
 21 nual basis during the 5-year period beginning on the date
 22 on which the agreement is entered into, submit to the Fed-
 23 eral Trade Commission or the Assistant Attorney General,
 24 as applicable, information sufficient for the Federal Trade

1 Commission or the United States, as applicable, to assess
2 the competitive impact of the acquisition, including—

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

6 “(B) the source, and the resulting magnitude
7 and extent, of any cost-saving efficiencies or any
8 consumer benefits that were claimed as a benefit of
9 the acquisition and the extent to which any cost sav-
10 ings were passed on to consumers; and

11 “(C) the effectiveness of any divestitures or any
12 conditions placed on the acquisition in preventing or
13 mitigating harm to competition.

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

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

21 “(A) shall require that the information de-
22 scribed in paragraph (1) be in such form and con-
23 tain such documentary material and information rel-
24 evant to a proposed acquisition as is necessary and
25 appropriate to enable the Federal Trade Commission

1 and the Assistant Attorney General to assess the
 2 competitive impact of the acquisition under para-
 3 graph (1); and

4 “(B) may—

5 “(i) define the terms used in this sub-
 6 section;

7 “(ii) exempt, from the requirements of this
 8 section, information not relevant in assessing
 9 the competitive impact of the acquisition under
 10 paragraph (1); and

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

14 **SEC. 4. FEDERAL TRADE COMMISSION STUDY.**

15 Not later than 2 years after the date of enactment
 16 of this Act, the Federal Trade Commission, in consulta-
 17 tion with the Securities and Exchange Commission, shall
 18 conduct and publish a study, using any compulsory proc-
 19 ess necessary, relying on public data and information if
 20 available and sufficient, and incorporating public comment
 21 on—

22 (1) the extent to which an institutional investor
 23 or related institutional investors have ownership or
 24 control interests in competitors in moderately con-
 25 centrated or concentrated markets;

1 (2) the economic impacts of such overlapping
2 ownership or control; and

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

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

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

11 (1) conduct a study to assess the success of
12 merger remedies required by the Department of Jus-
13 tice or the Federal Trade Commission in consent de-
14 crees entered into since 6 years prior to the date of
15 enactment of this Act, including the impact on main-
16 taining competition, a comparison of structural and
17 conduct remedies, and the viability of divested as-
18 sets; and

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

22 (b) UPDATE.—The Comptroller General of the
23 United States shall—

24 (1) update the study under paragraph (1) 3
25 years and 6 years after the date of enactment of this

1 Act based on the information provided under section
2 7A(1) of the Clayton Act, as added by section 3 of
3 this Act; and

4 (2) identify specific remedies or alleged merger
5 benefits that require additional information or re-
6 search.

7 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

8 (a) IN GENERAL.—There is authorized to be appro-
9 priated for fiscal year 2020—

10 (1) \$180,606,000 for the Antitrust Division of
11 the Department of Justice; and

12 (2) \$342,000,000 for the Federal Trade Com-
13 mission.

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