

117TH CONGRESS
2D SESSION

S. 3847

To prohibit certain anticompetitive mergers, to amend the Clayton Act to permit the Federal Trade Commission and the Department of Justice to reject proposed acquisitions, to implement procedures for retrospective reviews and breaking up anticompetitive consummated acquisitions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 16, 2022

Ms. WARREN (for herself, Mr. BOOKER, Mr. SANDERS, Ms. BALDWIN, Mr. SCHATZ, Mr. WHITEHOUSE, Mr. BLUMENTHAL, Mr. MERKLEY, and Mr. MARKEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit certain anticompetitive mergers, to amend the Clayton Act to permit the Federal Trade Commission and the Department of Justice to reject proposed acquisitions, to implement procedures for retrospective reviews and breaking up anticompetitive consummated acquisitions, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prohibiting Anti-
5 competitive Mergers Act of 2022”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds that—

3 (1) the Constitution of the United States pro-
4 hibits political or economic oligarchies, which are in-
5 compatible with a republican form of government;

6 (2) the antitrust laws, including the Sherman
7 Act (15 U.S.C. 1 et seq.), the Clayton Act (15
8 U.S.C. 12 et seq.), and the Federal Trade Commis-
9 sion Act (15 U.S.C. 41 et seq.), were enacted to pro-
10 hibit political and economic oligarchies, to protect
11 fair, open, and competitive markets, and to prevent
12 corporations from abusing their power to stifle com-
13 petition and improperly influence democratic proc-
14 esses;

15 (3) Federal courts have misinterpreted the anti-
16 trust laws to the detriment of consumers, workers,
17 society, and the United States political economy, in-
18 cluding by enhancing the misguided and narrowly
19 defined “consumer welfare standard,” as described
20 by the Supreme of the United States in *Reiter v.*
21 *Sonotone Corp.*, 442 U.S. 330 (1979), and its prog-
22 eny;

23 (4) concentrated economic power creates con-
24 centrated political power, allowing giant corporations
25 to invest growing sums of money into influencing
26 government to tilt laws and rules in their favor;

1 (5) over the last 4 decades, powerful corpora-
2 tions have unconstitutionally amassed too much in-
3 fluence over the United States economy, stifling
4 competition in United States markets and harming
5 workers, consumers, customer choice, sellers, small
6 and minority-owned businesses (including farms and
7 ranches), local, rural, and low-income communities,
8 communities of color, privacy, quality, entrepreneur-
9 ship, and innovation;

10 (6) in 1975, 109 companies pocketed half of all
11 profits generated by firms in the United States
12 whereas in 2015, the top 30 firms did so;

13 (7) startup rates fell by more than half over the
14 last 4 decades in industries that saw an increase in
15 concentration;

16 (8) dominant corporations, which often under-
17 invest in their operations and infrastructure, expose
18 consumers in the United States to the risks of con-
19 centrated and brittle supply chains, such as short-
20 ages of essential goods and increased prices;

21 (9) market concentration in essential markets,
22 including those for medical equipment, food, and re-
23 tail, can pose serious national-security risks during
24 crisis events such as the COVID–19 pandemic;

1 (10) market concentration is associated with
2 lower wages, and evidence shows that in more con-
3 centrated markets, giant corporations are less likely
4 to pass on productivity gains to workers in the form
5 of higher wages and more likely to engage in
6 antiworker labor practices, which disproportionately
7 harm female workers and workers of color;

8 (11) corporate consolidation has especially
9 harmed rural communities, low-income communities,
10 and communities of color, as demonstrated by the
11 impact of the recent Sprint and T-Mobile merger on
12 low-income customers who purchase prepaid plans;

13 (12) Federal agencies other than the Federal
14 Trade Commission and the Department of Justice
15 may have particular expertise with respect to the
16 competitive effects of an acquisition and should play
17 a stronger role in antitrust enforcement;

18 (13) State attorneys general may have critical
19 local knowledge or regional concerns about the com-
20 petitive effects of an acquisition and should play a
21 stronger role in antitrust enforcement;

22 (14) section 7A of the Clayton Act (15 U.S.C.
23 18a) (referred to in this section as “section 7A”)
24 was enacted to allow the antitrust agencies to review
25 acquisitions before consummation;

1 (15) the recent explosion of filings under sec-
2 tion 7A has overwhelmed the Federal Trade Com-
3 mission and the Department of Justice, a phe-
4 nomenon exacerbated by strict statutory deadlines
5 for the review process and an onerous judicial proc-
6 ess to obtain injunctions to block acquisitions likely
7 to lessen competition;

8 (16) the antitrust agencies should be empow-
9 ered to reject acquisitions that they review under
10 section 7A, and those decisions should be treated as
11 reviewable agency actions;

12 (17) the use of structural and behavioral rem-
13 edies to protect competition and prevent monopo-
14 listic behavior has proven ineffective across various
15 industries;

16 (18) the Federal Trade Commission and the
17 Department of Justice have the authority under ex-
18 isting law to conduct retrospective reviews of any
19 consummated acquisition at any time, regardless of
20 whether the acquisition was nonreportable or the
21 government opposed the acquisition before its con-
22 summation;

23 (19) because some data about the competitive
24 effects of an acquisition will necessarily emerge after
25 consummation, it is critical that the Federal Trade

1 Commission and the Department of Justice conduct
2 retrospective reviews of acquisitions in order to rem-
3 edy anticompetitive acquisitions, including through
4 unwinding;

5 (20) an acquisition may have competitive effects
6 in markets beyond the lines of commerce of the
7 transaction, particularly when a party has an exten-
8 sive business ecosystem; and

9 (21) excessive market concentration must be
10 remedied to restore and protect competition in the
11 United States and ensure the United States econ-
12 omy and democracy benefit workers, consumers, cus-
13 tomer choice, sellers, small and minority-owned busi-
14 nesses (including farms and ranches), local, rural,
15 and low-income communities, communities of color,
16 privacy, quality, entrepreneurship, and innovation.

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

18 (1) ban the most anticompetitive acquisitions;

19 (2) restore and protect the competitive process;

20 (3) amend section 7A to empower the antitrust
21 agencies to reject acquisitions before consummation
22 through agency action;

23 (4) reduce the burdens of contemporary merger
24 litigation placed on Federal and State officials;

1 (5) establish a greater role for Federal agencies
2 and State attorneys general in the merger-review
3 process;

4 (6) establish procedures for retrospective re-
5 views;

6 (7) break up acquisitions consummated during
7 the 21st century that have lessened competition and
8 harmed the competitive process;

9 (8) ensure that the structure of the United
10 States economy is competitive and fair in order to
11 safeguard the nation against economic and political
12 oligarchies; and

13 (9) uphold the mandate in the Constitution of
14 the United States to promote a flourishing democ-
15 racy by promoting meaningful competition through-
16 out all segments of the United States economy.

17 **SEC. 3. DEFINITIONS.**

18 The first section of the Clayton Act (15 U.S.C. 12)
19 is amended by striking subsections (a) and (b) and insert-
20 ing the following:

21 **“SECTION 1. DEFINITIONS; SHORT TITLE.**

22 “(a) DEFINITIONS.—In this Act:

23 “(1) ACQUISITION.—The term ‘acquisition’
24 means—

25 “(A) any merger;

1 “(B) any direct or indirect acquisition of
 2 the whole or any part of the assets, stock, or
 3 other share capital or the use of such stock by
 4 the voting or granting of proxies or otherwise;
 5 or

6 “(C) any tender offer, joint venture, deal,
 7 or other similar transaction subject to section 7
 8 or 7A.

9 “(2) ANTITRUST AGENCY.—The term ‘antitrust
 10 agency’ means—

11 “(A) the Federal Trade Commission; or

12 “(B) the Antitrust Division of the Depart-
 13 ment of Justice.

14 “(3) ANTITRUST LAWS.—The term ‘antitrust
 15 laws’ means—

16 “(A) the Sherman Act (15 U.S.C. 1 et
 17 seq.);

18 “(B) the Federal Trade Commission Act
 19 (15 U.S.C. 41 et seq.);

20 “(C) this Act; and

21 “(D) any other similar Federal or State
 22 law designed or intended to prohibit, restrict, or
 23 regulate actions having the purpose or effect of
 24 monopolization, restraint of trade, or lessening

1 competition (including through merger or acqui-
2 sition).

3 “(4) CRITICAL TRADING PARTNER.—The term
4 ‘critical trading partner’ means a person that has
5 the ability to restrict, impede, or foreclose access to
6 its inputs, customers, partners, goods, services, tech-
7 nology, platform, facilities, or tools in a way that
8 harms the competitive process or limits the ability of
9 the customers or suppliers of the person to carry out
10 business effectively.

11 “(5) DISQUALIFYING BEHAVIOR.—The term
12 ‘disqualifying behavior’ means—

13 “(A) violating an order issued by an anti-
14 trust agency;

15 “(B) entering into any nonprosecution
16 agreement or deferred prosecution agreement
17 with the Department of Justice;

18 “(C) paying a fine, penalty, or settlement
19 (including class-action settlements) exceeding
20 \$1,000,000 to an antitrust agency, a State or
21 county, or private party if the underlying dis-
22 pute is based on a violation of antitrust law;

23 “(D) being convicted of any felony by a
24 State court or court of the United States; or

1 “(E) being found liable for violating any
2 antitrust law by a State court or court of the
3 United States.

4 “(6) DOMINANT FIRM.—The term ‘dominant
5 firm’ means a person that—

6 “(A) has annual revenues exceeding
7 \$5,000,000,000 (as adjusted and published for
8 each fiscal year beginning after September 30,
9 2022, in the same manner as provided in sec-
10 tion 8(a)(5) to reflect the percentage change in
11 the gross national product for such fiscal year
12 compared to the gross national product for the
13 year ending September 30, 2021);

14 “(B) is a financial institution, an equity
15 fund, or a registered investment adviser under
16 section 203 of the Investment Advisers Act of
17 1940 (15 U.S.C. 80b–3), if the party or the ul-
18 timate parent entity of such party has greater
19 than \$10,000,000,000 (as so adjusted and pub-
20 lished) in capitalization, commitments, or assets
21 under management; or

22 “(C) has greater than 20 percent of any
23 relevant market.

1 “(7) FAILING-FIRM DEFENSE.—The term ‘fail-
2 ing-firm defense’ means a defense that an acquisi-
3 tion is unlikely to be anticompetitive because—

4 “(A) the party being acquired is in danger
5 of immediate insolvency;

6 “(B) the party being acquired is not able
7 to reorganize successfully under chapter 11 of
8 title 11, United States Code;

9 “(C) the party being acquired has made
10 unsuccessful good-faith efforts to elicit reason-
11 able alternative offers that would keep the as-
12 sets of the party in the relevant markets and
13 pose a less severe danger to competition than
14 does the proposed acquisition; and

15 “(D) the acquiring party is the only avail-
16 able purchaser.

17 “(8) LABOR MARKET.—The term ‘labor market’
18 includes—

19 “(A) commuting zones, as defined by the
20 Department of Agriculture;

21 “(B) the 6-digit Standard Occupational
22 Classification codes for a particular job classi-
23 fication; and

1 “(C) other definitions as the Federal
2 Trade Commission and the Department of Jus-
3 tice may promulgate by regulation.

4 “(9) NONREPORTABLE ACQUISITION.—The
5 term ‘nonreportable acquisition’ means any acquisi-
6 tion for which the parties are not required to file no-
7 tification under section 7A.

8 “(10) PARTY.—The term ‘party’ means, for a
9 given acquisition, a person required to file notifica-
10 tion under section 7A.

11 “(11) PERSON.—The term ‘person’ has the
12 meaning given the term in section 8 of the Sherman
13 Act (15 U.S.C. 7).

14 “(12) PLATFORM.—The term ‘platform’ means
15 any person’s website, online or mobile application,
16 operating system, digital assistant, online adver-
17 tising exchange, or online service that—

18 “(A) operates or provides the main inter-
19 face between different users or market partici-
20 pants, such as individuals, advertisers, or pro-
21 viders of content, services, and goods; and

22 “(B) allows for exchanges of at least some
23 goods, services, or content that the person does
24 not own.

1 “(13) PLATFORM CONFLICT OF INTEREST.—

2 The term ‘platform conflict of interest’ means the
3 conflict of interest that arises when a person owns
4 or controls a platform while simultaneously—

5 “(A) owning or controlling a line of busi-
6 ness that competes against third parties on that
7 platform, if the person has the ability and in-
8 centive to, or does, advantage its own business
9 on the platform over third-party competitors on
10 the platform or disadvantage the business of
11 third-party competitors on the platform; or

12 “(B) representing both buyers and sellers
13 for transactions or business on the platform.

14 “(14) PROHIBITED MERGER.—The term ‘pro-
15 hibited merger’ means an acquisition—

16 “(A) in which—

17 “(i) the Herfindahl-Hirschman Index
18 would be greater than 1,800 in any rel-
19 evant market; and

20 “(ii) the increase in the Herfindahl-
21 Hirschman Index would be more than 100
22 in such relevant market;

23 “(B) in which the acquiring person would
24 have a market share of greater than 33 percent
25 of any relevant market (excluding labor mar-

1 kets) or greater than 25 percent of any labor
2 market as an employer; or

3 “(C) that would result in the acquiring
4 person holding an aggregate total amount of
5 the voting securities and assets of the acquired
6 person in excess of \$5,000,000,000 (as so ad-
7 justed and published).

8 “(15) RELEVANT AGENCY.—The term ‘relevant
9 agency’ means the Office of Advocacy of the Small
10 Business Administration, the Minority Business De-
11 velopment Agency of the Department of Commerce,
12 the National Labor Relations Board, any Federal
13 agency required to review an acquisition under Fed-
14 eral law, or any Federal agency with substantial reg-
15 ulatory authority over a party involved in an acquisi-
16 tion (including persons or financial institutions in-
17 volved with financing the acquisition) as identified
18 by the parties, the Federal Trade Commission, or
19 the Assistant Attorney General.

20 “(16) RELEVANT MARKET.—The term ‘relevant
21 market’—

22 “(A) means any line of commerce, product
23 market, service market, or labor market impli-
24 cated by an acquisition; and

“(B) includes a geographic area if geography limits the willingness or ability—

“(i) of some customers to substitute some products;

“(ii) of some suppliers to serve some customers; or

“(iii) of some workers to provide labor.

“(17) STATE ATTORNEY GENERAL.—The term ‘State attorney general’ has the meaning given the term in section 4G.

“(18) ULTIMATE PARENT ENTITY.—The term ‘ultimate parent entity’ has the meaning given the term in section 801.1 of title 16, Code of Federal Regulations.

“(b) SHORT TITLE.—This Act may be cited as the ‘Clayton Act’.”.

SEC. 4. BANNING ALL PROHIBITED MERGERS AND STRENGTHENING ANTITRUST AGENCY ENFORCEMENT.

(a) BANNING ALL PROHIBITED MERGERS.—Section 7 of the Clayton Act (15 U.S.C. 18) is amended—

(1) in the first and second undesignated paragraphs, by striking “lessen competition, or to tend to create a monopoly” each place the term appears

1 and inserting “harm the competitive process, or cre-
 2 ate or help maintain a monopoly, a monopsony, mar-
 3 ket power, or unfair methods of competition”;

4 (2) in the first, second, and third undesignated
 5 paragraph, by inserting “(including labor)” after
 6 “any activity affecting commerce” each place the
 7 term appears; and

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

9 “Any prohibited merger shall be unlawful under
 10 this section.

11 “Neither quantitative evidence nor a definition
 12 of a relevant market or market share shall be re-
 13 quired to establish a violation under this section.

14 “Harms to the competitive process include the
 15 harms described in section 7A.”.

16 (b) STRENGTHENING ANTITRUST AGENCY ENFORCE-
 17 MENT.—

18 (1) MANDATORY HSR FILINGS.—Section 7A(a)
 19 of the Clayton Act (15 U.S.C. 18a(a)) is amended—

20 (A) in the matter preceding paragraph (1),
 21 by inserting “, subject to subsection (b),” be-
 22 fore “the waiting”;

23 (B) in paragraph (1), by striking “and” at
 24 the end;

1 (C) in paragraph (2)(B)(ii)(III), by strik-
 2 ing the period at the end and inserting “; and”;
 3 and

4 (D) by inserting after paragraph
 5 (2)(B)(ii)(III) the following:

6 “(3)(A) as a result of such acquisition, the ac-
 7 quiring person would hold an aggregate total
 8 amount of the voting securities and assets of the ac-
 9 quired person of \$50,000,000 (as so adjusted and
 10 published) or more; and

11 “(B) the acquiring person, or the person whose
 12 voting securities or assets are being acquired—

13 “(i) has annual revenues in excess of
 14 \$5,000,000,000 (as so adjusted and published);
 15 or

16 “(ii) is a financial institution, an equity
 17 fund, or a registered investment adviser under
 18 section 203 of the Investment Advisers Act of
 19 1940 (15 U.S.C. 80b–3), if the person or the
 20 ultimate parent entity of the person has greater
 21 than \$10,000,000,000 (as so adjusted and pub-
 22 lished) in capitalization, commitments, or assets
 23 under management.”.

1 (2) EMPOWERING THE ANTITRUST AGENCIES
2 TO REJECT ACQUISITIONS.—Section 7A of the Clay-
3 ton Act (15 U.S.C. 18a) is amended—

4 (A) in subsection (b)—

5 (i) in paragraph (1)(B)—

6 (I) by striking “thirtieth” and in-
7 serting “120th”; and

8 (II) by striking “fifteenth” and
9 inserting “60th”; and

10 (ii) in paragraph (2), by striking “the
11 Assistant” and all that follows through the
12 period at the end and inserting “on dem-
13 onstration of an emergency may, in indi-
14 vidual cases, terminate the waiting period
15 specified in paragraph (1) and allow any
16 person to proceed with any acquisition sub-
17 ject to this section, upon a vote of the Fed-
18 eral Trade Commission or approval of the
19 Assistant Attorney General, and promptly
20 shall cause to be published in the Federal
21 Register a notice that details the justifica-
22 tion of such decision. The waiting period
23 may not be terminated under this para-
24 graph without the approval of all relevant

1 agencies and States that have received ma-
2 terials pursuant to subsection (l).”;

3 (B) in subsection (e), by adding at the end
4 the following:

5 “(3) No person shall acquire, directly or indi-
6 rectly, any voting securities or assets of another per-
7 son under subsection (a) unless—

8 “(A)(i) the waiting period expires or is ter-
9 minated; and

10 “(ii) the Federal Trade Commission or the
11 Assistant Attorney General has not rejected the
12 acquisition; or

13 “(B) an appropriate court issues a final,
14 nonappealable order reversing the decision of
15 the Federal Trade Commission or the Assistant
16 Attorney General to reject the acquisition.

17 “(4)(A) Not later than 15 days after the date
18 on which the Federal Trade Commission and the As-
19 sistant Attorney General receive a notification filed
20 under subsection (a), the Federal Trade Commission
21 and the Assistant Attorney General shall determine
22 whether the Federal Trade Commission or the As-
23 sistant Attorney General shall review the acquisition,
24 which shall be publicly announced.

1 “(B) If no decision is made under subpara-
2 graph (A) before the expiration of the 15-day period,
3 the Federal Trade Commission shall review the ac-
4 quisition, which shall be publicly announced.

5 “(5) Not later than 120 days after the date on
6 which the Federal Trade Commission and the As-
7 sistant Attorney General receive a notification filed
8 under subsection (a), the Federal Trade Commission
9 or the Assistant Attorney General shall determine
10 whether to reject the acquisition.

11 “(6)(A) The Federal Trade Commission or the
12 Assistant Attorney General shall provide—

13 “(i) an opportunity for public comment
14 during the 60-day period beginning on the date
15 on which a public announcement is made under
16 paragraph (4); and

17 “(ii) the public with—

18 “(I) notice of a notification filed
19 under subsection (a); and

20 “(II) a summary of all documentary
21 material and information described in sub-
22 section (d).

23 “(B) The Federal Trade Commission or the As-
24 sistant Attorney General shall consider any public

1 comments submitted under this paragraph before
2 making a determination under paragraph (5).

3 “(7)(A) Harms to the competitive process may
4 include, without limitation, harms to workers (in-
5 cluding significant layoffs or harms to existing col-
6 lective bargaining agreements, retirees, worker bene-
7 fits and compensation, or labor conditions), con-
8 sumers (including patients, renters, and students),
9 customer choice, sellers, small or minority-owned
10 businesses (including farms and ranches), local,
11 rural, or low-income communities, communities of
12 color, privacy, quality (including health and safety),
13 entrepreneurship, or innovation.

14 “(B) When evaluating whether an acquisition is
15 likely to harm the competitive process, the Federal
16 Trade Commission or the Assistant Attorney Gen-
17 eral shall consider—

18 “(i) effects in any relevant market (includ-
19 ing labor markets), cross-market effects or im-
20 pacts on the lines of commerce of the parties
21 beyond any relevant markets, impacts through-
22 out the supply chains or business ecosystems of
23 the parties, and impacts on small or minority-
24 owned businesses (including farms and

1 ranches), local, rural, or low-income commu-
2 nities, and communities of color; and

3 “(ii) the history of—

4 “(I) express collusion in any relevant
5 market;

6 “(II) acquisitions by a party in any
7 relevant market during the preceding 5-
8 year period; and

9 “(III) any anticompetitive effects that
10 followed previous acquisitions of the par-
11 ties, including—

12 “(aa) increased prices for con-
13 sumers;

14 “(bb) reduced wages for workers;

15 “(cc) reductions in safety for
16 consumers or workers;

17 “(dd) increased injuries or deaths
18 for consumers or workers;

19 “(ee) bankruptcy or financial dis-
20 tress of acquired companies;

21 “(ff) significant worker layoffs;
22 and

23 “(gg) reduced investments in re-
24 search and development.

1 “(C) The Federal Trade Commission or the As-
2 sistant Attorney General may determine that the ac-
3 quisition is likely to harm the competitive process if
4 the history described in subparagraph (B)(ii) is sig-
5 nificant or extensive.

6 “(D) When evaluating an acquisition for which
7 any party (or its ultimate parent entity) is a domi-
8 nant firm, the Federal Trade Commission or the As-
9 sistant Attorney General may determine that the ac-
10 quisition is likely to harm the competitive process
11 if—

12 “(i) another party offers overlapping, com-
13 peting, or functionally equivalent services or
14 products;

15 “(ii) another party is a nascent competitor
16 or maverick;

17 “(iii) another party is a critical trading
18 partner in the supply chains or business eco-
19 systems of the parties; or

20 “(iv) the acquisition would create a plat-
21 form conflict of interest.

22 “(8)(A) The decision of the Federal Trade
23 Commission or the Assistant Attorney General not
24 to reject an acquisition under subsection (a) shall—

1 “(i) be made publicly available by the date
2 on which the waiting period expires or is termi-
3 nated;

4 “(ii) include a summary of the review proc-
5 ess and identify the factors considered in mak-
6 ing the decision not to reject the acquisition,
7 which shall include (as relevant or applicable)
8 the possible harms listed in paragraph (7);

9 “(iii) have no precedential value for any
10 future decisions regarding whether to reject an
11 acquisition by the same or different persons;

12 “(iv) shall not preclude the Federal Trade
13 Commission, the Assistant Attorney General, or
14 a State attorney general from investigating the
15 acquisition, seeking to unwind the acquisition,
16 or seeking to impose remedies on the parties to
17 the acquisition at a later date; and

18 “(v) shall have no bearing on the legality
19 of the acquisition if the acquisition is challenged
20 through judicial proceedings.

21 “(B) During the waiting period (or any exten-
22 sion thereof), neither the Federal Trade Commission
23 nor the Assistant Attorney General may enter into
24 any settlement agreement (including commitments
25 to structural or behavioral remedies) with the parties

1 to an acquisition under subsection (a) when deciding
2 whether to reject the acquisition.

3 “(C) If the Federal Trade Commission or the
4 Assistant Attorney General declines to reject an ac-
5 quisition under subsection (a) by the end of the
6 waiting period, the Federal Trade Commission or
7 the Assistant Attorney General, respectively, may
8 issue an order requiring the parties to hold their as-
9 sets separate for a period not to exceed 60 days.

10 “(9)(A) The Federal Trade Commission or the
11 Assistant Attorney General shall reject an acquisi-
12 tion described in subsection (a) if—

13 “(i) the acquisition is a prohibited merger;

14 “(ii) the acquisition is likely to harm the
15 competitive process or create or help maintain
16 a monopoly, a monopsony, market power, or
17 unfair methods of competition, as determined
18 by the Federal Trade Commission or the Assist-
19 ant Attorney General, respectively;

20 “(iii) a party to the acquisition (or its ulti-
21 mate parent entity)—

22 “(I) is a dominant firm; and

23 “(II) has consummated 2 or more ac-
24 quisitions in any relevant market during
25 the preceding 5-year period;

1 “(iv) a relevant agency objects to the ac-
2 quisition on the basis of a substantive justifica-
3 tion as described in subsection (l);

4 “(v) during the waiting period or during
5 the 10-year period ending on the date on which
6 notification under subsection (a) is filed, a
7 party to the acquisition engaged in any dis-
8 qualifying behavior; or

9 “(vi) the Federal Trade Commission or the
10 Assistant Attorney General, respectively, deter-
11 mines that—

12 “(I) all information and documentary
13 materials have not been supplied; or

14 “(II) the supplied information is not
15 adequately responsive.

16 “(B) The decision of the Federal Trade Com-
17 mission or the Assistant Attorney General to reject
18 an acquisition under subsection (a) shall—

19 “(i) be made publicly available before the
20 date on which the waiting period expires or is
21 terminated;

22 “(ii) identify which of the 5 categories of
23 rejection was or were the basis of the decision
24 and include, as applicable—

1 “(I) a statement explaining why the
2 acquisition is a prohibited merger;

3 “(II) a substantive justification for
4 the decision, including—

5 “(aa) an explanation of how the
6 acquisition is likely to harm the com-
7 petitive process or create or help
8 maintain a monopoly, a monopsony,
9 market power, or unfair methods of
10 competition, including (as applicable
11 or relevant) an analysis of how the ac-
12 quisition would likely harm workers
13 (including significant layoffs or harms
14 to existing collective bargaining agree-
15 ments, retirees, worker benefits and
16 compensation, or labor conditions),
17 consumers (including patients, rent-
18 ers, and students), customer choice,
19 sellers, small or minority-owned busi-
20 nesses (including farms and ranches),
21 local, rural, or low-income commu-
22 nities, communities of color, privacy,
23 quality (including health and safety),
24 entrepreneurship, or innovation;

1 “(bb) an explanation of why, in
2 light of the factors described in item
3 (aa), the acquisition was rejected; and

4 “(cc) a response to public com-
5 ments that addresses major counter-
6 arguments to the justification for the
7 decision to reject;

8 “(III) a statement explaining which
9 party is a dominant firm and identifying 2
10 or more consummated acquisitions by the
11 party in a relevant market during the pre-
12 ceding 5-year period;

13 “(IV) the substantive justification re-
14 ceived from an objecting relevant agency in
15 accordance with subsection (l);

16 “(V) a statement identifying any dis-
17 qualifying behavior of a party during the
18 waiting period or during the 10-year period
19 ending on the date on which notification is
20 filed under subsection (a); or

21 “(VI) an explanation of how the infor-
22 mation and documentary materials sub-
23 mitted by the parties were not adequately
24 responsive; and

1 “(iii) have no precedential value for any
2 future decisions regarding whether to reject an
3 acquisition by the same or different persons.

4 “(10)(A) Any party to an acquisition rejected
5 by the Federal Trade Commission or the Assistant
6 Attorney General under this section may bring an
7 action under this paragraph in the appropriate dis-
8 trict court of the United States to challenge the de-
9 cision of the Federal Trade Commission or the As-
10 sistant Attorney General to reject the acquisition,
11 and no other person or entity shall have a cause of
12 action under this paragraph.

13 “(B) A decision of the Federal Trade Commis-
14 sion or the Assistant Attorney General to reject an
15 acquisition under this section shall be considered a
16 matter of discretion, and the reviewing court shall
17 hold unlawful and set aside the decision only if the
18 decision’s findings and conclusions are found to be
19 arbitrary, capricious, an abuse of discretion, or oth-
20 erwise not in accordance with this section.

21 “(C) The parties to a rejected acquisition may
22 not file suit to challenge the decision more than 60
23 days after the decision is made public.

24 “(D) In judicial proceedings challenging a deci-
25 sion to reject an acquisition, a court shall give def-

erence to any definition of a relevant market or market share alleged by the Federal Trade Commission or the Assistant Attorney General and may not offset any anticompetitive harms alleged by the Federal Trade Commission or the Assistant Attorney General with any procompetitive benefits.

“(11) Nothing in this subsection may be construed to preclude the Federal Trade Commission or the Assistant Attorney General from reviewing or investigating a nonreportable acquisition before or after its consummation.”; and

(C) by striking subsection (f).

(3) ENHANCED HSR FILING REQUIREMENTS.—
Section 7A(d) of the Clayton Act (15 U.S.C. 18a(d)) is amended—

(A) in paragraph (1), by striking “and” at the end;

(B) by redesignating paragraph (2) as paragraph (5); and

(C) by inserting after paragraph (1) the following:

“(2) shall require that the notification required under subsection (a) include, in addition to the information described in paragraph (1)—

1 “(A) basic information on the acquiring
2 person and the person whose voting securities
3 or assets are being acquired, including—

4 “(i) the names of each executive offi-
5 cer and board member of each person;

6 “(ii) the annual revenues of each per-
7 son for each year of the 5-year period end-
8 ing on the date on which the notification
9 will be filed;

10 “(iii) all lines of business, assets, and
11 investments of each person;

12 “(iv) all data assets of each person;

13 “(v) all intellectual-property assets of
14 each person, including patents, copyrights,
15 and trademarks;

16 “(vi) all trade secrets, as defined in
17 section 1839 of title 18, United States
18 Code, of each person;

19 “(vii) contact information for the 10
20 largest customers of each person (as appli-
21 cable); and

22 “(viii) contact information for the 10
23 largest suppliers of each person (as appli-
24 cable);

1 “(B) the stated justification for the acqui-
2 sition, including—

3 “(i) what, if any, nonpublic informa-
4 tion was used to inform a decision to enter
5 the acquisition;

6 “(ii) what, if any, publicly available
7 information was processed using artificial
8 intelligence, algorithms, or other auto-
9 mated data processing systems to inform a
10 decision to enter the acquisition; and

11 “(iii) if relevant, how the failing-firm
12 defense applies, including a list of good-
13 faith efforts to elicit reasonable alternative
14 offers and reasons the offers were unsuc-
15 cessful;

16 “(C) any proposed plans to benefit work-
17 ers, consumers, customer choice, sellers, small
18 or minority-owned businesses (including farms
19 and ranches), local, rural, or low-income com-
20 munities, communities of color, privacy, quality,
21 entrepreneurship, and innovation, including
22 plans to—

23 “(i) use new expertise, resources, and
24 additional revenues to reduce prices;

25 “(ii) increase quality;

1 “(iii) increase privacy;

2 “(iv) increase worker pay, benefits,
3 and conditions;

4 “(v) invest in local, rural, or low-in-
5 come communities or communities of color;
6 and

7 “(vi) invest in research and develop-
8 ment;

9 “(D) the projected impact of the acquisi-
10 tion on the competitive process, workers (in-
11 cluding significant layoffs or harms to existing
12 collective bargaining agreements, retirees, work-
13 er benefits and compensation, or labor condi-
14 tions), consumers (including patients, renters,
15 and students), customer choice, sellers, small
16 and minority-owned businesses (including farms
17 and ranches), local, rural, and low-income com-
18 munities, communities of color, privacy, quality
19 (including health and safety), entrepreneurship,
20 and innovation;

21 “(E) a list of all other significant competi-
22 tors (including entrants or potential entrants)
23 and competing products;

24 “(F) estimated market shares in the rel-
25 evant markets of the acquisition for each person

1 and any significant competitors identified in
2 subparagraph (E) for the current year and each
3 of the previous 2 years;

4 “(G) a list of every merger, acquisition,
5 sale of assets, or divestiture consummated by
6 each party during the preceding 10-year period,
7 whether or not the party was required to file a
8 notification under subsection (a);

9 “(H) a list of each person or financial in-
10 stitution that provided or will provide financing
11 for the acquisition (including debt, equity, and
12 all other sources) and the amount provided;

13 “(I) an affirmation from each party that it
14 has not engaged in any disqualifying behavior
15 during the 10-year period ending on the date on
16 which the notification will be filed;

17 “(J) a list of States that would be im-
18 pacted by the acquisition;

19 “(K) a list of Federal agencies with sub-
20 stantial regulatory authority over each party (or
21 the persons or financial institutions involved
22 with financing the acquisition); and

23 “(L) whether any party (or its ultimate
24 parent entity) is a dominant firm;

1 “(3) shall evaluate the stated justification for
2 the acquisition to determine if the justification com-
3 ports with the information provided under paragraph
4 (2);

5 “(4) shall determine if the acquisition or com-
6 bination of data assets described in paragraph (2)
7 would violate the antitrust laws, including if the ac-
8 quisition or combination of data assets is likely to
9 harm the competitive process or create or help main-
10 tain a monopoly, a monopsony, market power, or un-
11 fair methods of competition; and”.

12 (4) INCREASED WAITING PERIOD.—Section
13 7A(e) of the Clayton Act (15 U.S.C. 18a(e)) is
14 amended—

15 (A) by striking “30” each place the term
16 appears and inserting “120”; and

17 (B) by striking “15” each place the term
18 appears and inserting “60”.

19 (5) HSR SHARING.—Section 7A of the Clayton
20 Act (15 U.S.C. 18a) is amended by adding at the
21 end the following:

22 “(1) HSR SHARING.—

23 “(1) SUBMISSION TO STATES.—Not later than
24 7 days after the date on which information or docu-
25 mentary material relevant to a proposed acquisition

1 is filed with the Federal Trade Commission and As-
2 sistant Attorney General under this section, the Fed-
3 eral Trade Commission and the Assistant Attorney
4 General shall submit to each State attorney general
5 of any State identified by the parties under sub-
6 section (d), and to any State attorney general of a
7 State that the Federal Trade Commission or the As-
8 sistant Attorney General determines would be im-
9 pacted by the acquisition—

10 “(A) notification of the proposed acquisi-
11 tion; and

12 “(B) a copy of all documents submitted in
13 relation to the acquisition.

14 “(2) SHARING WITH AGENCIES.—For each ac-
15 quisition filed under subsection (a), the Federal
16 Trade Commission or the Assistant Attorney Gen-
17 eral shall—

18 “(A) send notice of the proposed acquisi-
19 tion to any Federal agency—

20 “(i) required to review the acquisition
21 under Federal law;

22 “(ii) determined to have substantial
23 regulatory authority over a party involved
24 in the acquisition; or

1 “(iii) identified by the parties under
2 subsection (d);

3 “(B) provide to each Federal agency noti-
4 fied under subparagraph (A) a copy of all docu-
5 ments submitted in relation to the acquisition
6 not later than 30 days after the date on which
7 the waiting period described in subsection
8 (b)(1) begins; and

9 “(C) reject the acquisition if—

10 “(i) any Federal agency with substan-
11 tial regulatory authority objects to the ac-
12 quisition on the basis that the acquisition
13 would harm the competitive process or ma-
14 terially harm the interests of the United
15 States as a customer, trading partner, or
16 stakeholder;

17 “(ii) the Office of Advocacy of the
18 Small Business Administration objects to
19 the acquisition on the basis that the acqui-
20 sition would materially harm small busi-
21 nesses (including farms and ranches);

22 “(iii) the Minority Business Develop-
23 ment Agency of the Department of Com-
24 merce objects to the acquisition on the
25 basis that the acquisition would materially

1 harm minority-owned businesses (including
2 farms and ranches); or

3 “(iv) the National Labor Relations
4 Board objects to the acquisition on the
5 basis that—

6 “(I) the acquisition would help
7 create or maintain a monopsony or
8 unfair labor practice (including the re-
9 fusal of the parties to preserve, ex-
10 pand, or effectuate collective bar-
11 gaining agreements covering workers
12 impacted by the acquisition, as appli-
13 cable); or

14 “(II) the acquisition would mate-
15 rially harm workers (including signifi-
16 cant layoffs or harms to existing col-
17 lective bargaining agreements, retir-
18 ees, worker benefits and compensa-
19 tion, or labor conditions).

20 “(3) SUBSTANTIVE JUSTIFICATIONS FOR OB-
21 JECTIONS.—If a relevant agency objects to an acqui-
22 sition under paragraph (3), the relevant agency shall
23 submit to the Federal Trade Commission or the As-
24 sistant Attorney General, as applicable, a sub-
25 stantive justification for the objection before the

1 date on which the waiting period expires or is termi-
2 nated.

3 “(m) CERTIFICATION.—

4 “(1) INDIVIDUALS.—

5 “(A) PROHIBITION.—No individual who
6 certifies a notification filed under subsection (a)
7 on behalf of an entity may, within the notifica-
8 tion or during the waiting period, knowingly—

9 “(i) falsify, conceal, or cover up by
10 any trick, scheme, or device a material
11 fact;

12 “(ii) make any materially false, ficti-
13 tious, or fraudulent statement or represen-
14 tation; or

15 “(iii) make or use any false writing or
16 document knowing the same to contain any
17 materially false, fictitious, or fraudulent
18 statement or entry.

19 “(B) PENALTY.—Any individual who vio-
20 lates subparagraph (A) shall be fined not more
21 than \$10,000,000, imprisoned for not more
22 than 5 years, or both.

23 “(2) CEO LIABILITY.—A chief executive officer
24 of an entity shall be deemed liable for any violation
25 of paragraph (1) committed by an officer or em-

1 ployee of the entity if the chief executive officer
 2 knew or should have known of the violation.

3 “(3) ENTITY.—An entity described in para-
 4 graph (1) shall be fined, for each violation, not more
 5 than 5 percent of the revenues that the ultimate
 6 parent entity of the entity earned during the 1-year
 7 period ending on the date on which the notification
 8 is filed.”.

9 (6) ADDITIONAL FTC ENFORCEMENT.—Section
 10 5(a)(2) of the Federal Trade Commission Act (15
 11 U.S.C. 45(a)(2)) is amended by striking “, except
 12 banks” and all that follows through “said Act,”.

13 (c) RULEMAKING.—Not later than 1 year after the
 14 date of enactment of this Act, the Federal Trade Commis-
 15 sion and the Department of Justice shall promulgate regu-
 16 lations to further define harms to the competitive process,
 17 including harms to workers, consumers, customer choice,
 18 sellers, small and minority-owned businesses, local, rural,
 19 and low-income communities, communities of color, pri-
 20 vacy, quality, entrepreneurship, and innovation.

21 **SEC. 5. ADDITIONAL ENFORCEMENT BY STATE ATTORNEYS**

22 **GENERAL.**

23 (a) IN GENERAL.—

24 (1) CIVIL ACTION.—No later than 60 days after
 25 the end of the waiting period, a State attorney gen-

1 eral of a State that would be impacted by an acqui-
 2 sition filed under section 7A of the Clayton Act (15
 3 U.S.C. 18a) may bring an action under this para-
 4 graph in the appropriate district court of the United
 5 States to obtain an injunction enjoining the con-
 6 summation of the acquisition.

7 (2) INJUNCTION.—The court shall grant the in-
 8 junction described in paragraph (1) if the State at-
 9 torney general demonstrates by a preponderance of
 10 the evidence that under section 7A of the Clayton
 11 Act (15 U.S.C. 18a)—

12 (A) the acquisition is a prohibited merger;

13 (B) the acquisition is likely to harm the
 14 competitive process or create or help maintain
 15 a monopoly, a monopsony, market power, or
 16 unfair methods of competition; or

17 (C) during the waiting period or during
 18 the 10-year period ending on the date on which
 19 notification under subsection (a) is filed, a
 20 party to the acquisition engaged in any dis-
 21 qualifying behavior.

22 (3) HARMS TO THE COMPETITIVE PROCESS.—
 23 The State attorney general may use any direct or in-
 24 direct evidence to demonstrate that an acquisition is
 25 likely to harm the competitive process, including, but

1 not limited to, the harms described in section 7A of
2 the Clayton Act (15 U.S.C. 18a).

3 (4) BALANCING PROHIBITED.—The court may
4 not offset any anticompetitive harms demonstrated
5 under paragraph (2) or (3) with any procompetitive
6 benefits.

7 (5) DEFERENCE.—The court shall give def-
8 erence to any definition of a relevant market or mar-
9 ket share alleged by the State attorney general.

10 (6) STAY OF PROCEEDINGS.—The court shall
11 stay all judicial proceedings under this section re-
12 garding an acquisition filed under section 7A of the
13 Clayton Act (15 U.S.C. 18a) until the end of the
14 waiting period. The stay shall be lifted at the end of
15 the waiting period if the Federal Trade Commission
16 or the Assistant Attorney General declines to reject
17 the acquisition.

18 (7) DISMISSAL.—The court shall dismiss with
19 prejudice any claims filed under paragraph (1) if the
20 Federal Trade Commission or the Assistant Attor-
21 ney General rejects the acquisition.

22 (8) TEMPORARY INJUNCTION.—The court shall
23 issue an injunction temporarily enjoining the con-
24 summation of the acquisition during the judicial pro-
25 ceedings under this section.

1 (b) NONREPORTABLE ACQUISITIONS.—A State attor-
 2 ney general of a State that would be impacted by a pro-
 3 spective nonreportable acquisition may bring an action
 4 (which shall be subject to the procedures described in
 5 paragraph (a)) under this paragraph in the appropriate
 6 district court of the United States to obtain an injunction
 7 enjoining the consummation of the acquisition.

8 **SEC. 6. BREAKING UP PROHIBITED MERGERS; PROCESS**
 9 **FOR RETROSPECTIVE REVIEWS.**

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

12 “(n) RETROSPECTIVE REVIEW.—

13 “(1) RETROSPECTIVE REVIEW OF CON-
 14 SUMMATED ACQUISITIONS.—

15 “(A) REVIEW.—

16 “(i) IN GENERAL.—The Federal
 17 Trade Commission and the Assistant At-
 18 torney General may retrospectively review
 19 any consummated acquisition, including
 20 nonreportable acquisitions.

21 “(ii) COORDINATION.—

22 “(I) IN GENERAL.—The Federal
 23 Trade Commission and the Assistant
 24 Attorney General may coordinate the
 25 review of a consummated acquisition

1 with any State attorney general if the
2 State was impacted by the acquisition
3 or any Federal agency deemed to have
4 substantial regulatory authority over
5 the parties to the acquisition (includ-
6 ing persons or financial institutions
7 involved with financing the acquisi-
8 tion).

9 “(II) COMPULSORY PROCESS.—

10 The Federal Trade Commission, the
11 Assistant Attorney General, and any
12 coordinating State attorney general or
13 Federal agency may use their respec-
14 tive compulsory processes to conduct
15 the reviews.

16 “(B) REMEDY.—Upon reviewing an acqui-
17 sition described in subparagraph (A), the Fed-
18 eral Trade Commission or the Assistant Attor-
19 ney General shall order a remedy to restore
20 competition or otherwise address the anti-
21 competitive impacts of the acquisition (which
22 shall include unwinding the acquisition or re-
23 quiring that the acquiring person make
24 divestitures, which, to the extent practicable,
25 shall be specified, standalone business units or

1 lines), if the Federal Trade Commission or the
2 Assistant Attorney General, respectively, acting
3 in coordination with any State attorney general
4 or Federal agency (as applicable), determines
5 that—

6 “(i) the acquisition resulted in a post-
7 acquisition market share of greater than
8 50 percent of any relevant market (includ-
9 ing labor markets);

10 “(ii) the acquisition resulted in a
11 Herfindahl-Hirschman Index greater than
12 2,500 in any relevant market and in-
13 creased the Herfindahl-Hirschman Index
14 by more than 200 in such relevant market;

15 “(iii) the acquisition has brought ma-
16 terial harm to the competitive process;

17 “(iv) if applicable, the acquiring per-
18 son has failed to satisfy the stated jus-
19 tification of the acquisition or the acquisi-
20 tion did not result in the benefits described
21 in the stated justification submitted under
22 subsection (d)(2); or

23 “(v)(I) the acquisition is a con-
24 summated nonreportable acquisition; and

1 “(II)(aa) the acquisition is a prohib-
 2 ited merger; or

3 “(bb) after the date of enactment of
 4 this subparagraph, the acquiring person or
 5 the acquired person engaged in disquali-
 6 fying behavior during the 10-year period
 7 ending on the date on which the nonreport-
 8 able acquisition was consummated.

9 “(2) IMMEDIATE RETROSPECTIVE REVIEW OF
 10 PROHIBITED MERGERS.—

11 “(A) REVIEW.—

12 “(i) IN GENERAL.—Except as pro-
 13 vided in clause (ii), the Federal Trade
 14 Commission and the Assistant Attorney
 15 General shall immediately review every
 16 prohibited merger consummated on or
 17 after January 1, 2000, for which the par-
 18 ties were required to file a notification
 19 under this section.

20 “(ii) APPLICABILITY.—For the pur-
 21 poses of this subparagraph, prohibited
 22 mergers shall be defined without adjust-
 23 ment to any dollar amounts.

24 “(iii) COORDINATION.—

1 “(I) IN GENERAL.—The Federal
2 Trade Commission and the Assistant
3 Attorney General may coordinate the
4 review of a prohibited merger with
5 any State attorney general if the
6 State was impacted by the prohibited
7 merger or any Federal agency deemed
8 to have substantial regulatory author-
9 ity over the parties to the prohibited
10 merger (including persons or financial
11 institutions involved with financing
12 the prohibited merger).

13 “(II) COMPULSORY PROCESS.—
14 The Federal Trade Commission, the
15 Assistant Attorney General, and any
16 coordinating State attorney general or
17 Federal agency may use their respec-
18 tive compulsory processes to conduct
19 the reviews.

20 “(B) REMEDY.—Upon reviewing a prohib-
21 ited merger described in subparagraph (A), the
22 Federal Trade Commission or the Assistant At-
23 torney General shall order a remedy to restore
24 competition or otherwise address the anti-
25 competitive impacts of the acquisition (which

1 shall include unwinding the acquisition or re-
2 quiring that the acquiring person make
3 divestitures, which, to the extent practicable,
4 shall be specified, standalone business units or
5 lines), if the Federal Trade Commission or the
6 Assistant Attorney General, respectively, acting
7 in coordination with any State attorney general
8 or Federal agency (as applicable), determines
9 that the prohibited merger—

10 “(i) resulted in a post-acquisition
11 market share of greater than 50 percent of
12 any relevant market (including labor mar-
13 kets);

14 “(ii) resulted in a Herfindahl-
15 Hirschman Index greater than 2,500 in
16 any relevant market and increased the
17 Herfindahl-Hirschman Index by more than
18 200 in such relevant market; or

19 “(iii) brought material harm to the
20 competitive process.

21 “(C) DEADLINES.—The Federal Trade
22 Commission and the Assistant Attorney General
23 shall—

24 “(i) not later than 180 days after the
25 date of enactment of this subsection, estab-

lish and implement a process to carry out
the review required under subparagraph
(A); and

“(ii) not later than 4 years after the
date of enactment of this subsection—

“(I) complete the review required
under subparagraph (A); and

“(II) implement the remedies re-
quired under subparagraph (B).

“(3) STATE ATTORNEYS GENERAL.—

“(A) CONSUMMATED ACQUISITIONS.—

“(i) REVIEW.—A State attorney gen-
eral of a State impacted by a con-
summated acquisition may review the ac-
quisition in accordance with paragraph (1),
including by using compulsory process.

“(ii) CIVIL ACTION.—

“(I) IN GENERAL.—Upon review-
ing an acquisition described in clause
(i), the State attorney general may
bring an action under this clause in
the appropriate district court of the
United States seeking a remedy to re-
store competition or otherwise address
the anticompetitive impacts of the ac-

quisition (which shall include
unwinding the acquisition or requiring
that the acquiring person make
divestitures, which, to the greatest extent
practicable, shall be specified,
standalone business units or lines).

“(II) COURT REMEDY.—The
court shall grant the remedy described
in subclause (I) if the State attorney
general demonstrates by a preponderance
of the evidence that the remedy
would have been proper under paragraph
(1)(B), unless the parties to the
acquisition demonstrate by clear and
convincing evidence that unwinding
would not have been proper under
paragraph (1)(B).

“(III) BALANCING LIMITED.—
The court may not offset a demonstrated
anticompetitive harm with a procompetitive
benefit unless the benefit applies to the
same population impacted by the harm.

“(IV) DEFERENCE.—The court
shall give deference to any definition

1 of a relevant market or market share
2 alleged by the State attorney general.

3 “(B) PROHIBITED MERGERS.—

4 “(i) REVIEW.—A State attorney gen-
5 eral of a State impacted by a prohibited
6 merger may review the prohibited merger
7 in accordance with paragraph (2), includ-
8 ing by using compulsory process.

9 “(ii) CIVIL ACTION.—

10 “(I) IN GENERAL.—Upon review-
11 ing a prohibited merger described in
12 clause (i), the State attorney general
13 may bring an action under this clause
14 in the appropriate district court of the
15 United States seeking a remedy to re-
16 store competition or otherwise address
17 the anticompetitive impacts of the
18 prohibited merger (which shall include
19 unwinding the prohibited merger or
20 requiring that the acquiring person
21 make divestitures, which, to the great-
22 est extent practicable, shall be speci-
23 fied, standalone business units or
24 lines).

1 “(II) COURT REMEDY.—The
 2 court shall grant the remedy described
 3 in subclause (I) if the State attorney
 4 general demonstrates by a preponder-
 5 ance of the evidence that imposing the
 6 remedy would have been proper under
 7 paragraph (2)(B), unless the parties
 8 to the prohibited merger demonstrate
 9 by clear and convincing evidence that
 10 imposing the remedy would not have
 11 been proper under paragraph (2)(B).

12 “(III) BALANCING LIMITED.—
 13 The court may not offset a dem-
 14 onstrated anticompetitive harm with a
 15 procompetitive benefit unless the ben-
 16 efit applies to the same population im-
 17 pacted by the harm.

18 “(IV) DEFERENCE.—The court
 19 shall give deference to any definition
 20 of a relevant market or market share
 21 alleged by the State attorney general.

22 “(4) DOMINANT FIRMS.—In addition to any
 23 other harms to the competitive process that may be
 24 determined or established, the Federal Trade Com-
 25 mission, the Assistant Attorney General, or a State

1 attorney general may also determine or establish
2 that a prohibited merger has brought material harm
3 to the competitive process if—

4 “(A) any party (or its ultimate parent enti-
5 ty) was a dominant firm; and

6 “(B)(i) another party was a nascent com-
7 petitor or maverick;

8 “(ii) another party was a critical trading
9 partner in the supply chains or business eco-
10 systems of the parties; or

11 “(iii) the acquisition created a platform
12 conflict of interest.

13 “(5) JUDICIAL REVIEW.—

14 “(A) IN GENERAL.—Any party to an ac-
15 quisition reviewed by the Federal Trade Com-
16 mission or the Assistant Attorney General
17 under paragraph (1) or (2) may bring an action
18 under this paragraph in the appropriate district
19 court of the United States to challenge a deci-
20 sion of the Federal Trade Commission or the
21 Assistant Attorney General made under this
22 subsection to order a remedy, and no other per-
23 son or entity shall have a cause of action under
24 this paragraph.

1 “(B) STANDARDS OF REVIEW.—A decision
2 by the Federal Trade Commission or the Assist-
3 ant Attorney General to order a remedy under
4 this section shall be considered a matter of dis-
5 cretion, and the reviewing court shall hold un-
6 lawful and set aside the decision only if the de-
7 cision’s findings and conclusions are found to
8 be arbitrary, capricious, an abuse of discretion,
9 or otherwise not in accordance with this section.

10 “(C) BALANCING LIMITED.—The court
11 may not offset an anticompetitive harm alleged
12 by the Federal Trade Commission or the Assist-
13 ant Attorney General with a procompetitive
14 benefit unless the benefit applies to the same
15 population impacted by the harm.

16 “(D) DEFERENCE.—The court shall give
17 deference to any definition of a relevant market
18 or market share alleged by the Federal Trade
19 Commission or the Assistant Attorney General.

20 “(6) PUBLIC FINDINGS AND DECISIONS.—All
21 findings and decisions (including decisions to initiate
22 a retrospective review and decisions whether or not
23 to order a remedy) described in this subsection shall
24 be made publicly available. Any decision to order a
25 remedy shall include a substantive justification.

1 “(7) ADDITIONAL PROCESSES.—Not later than
 2 180 days after the date of enactment of this sub-
 3 section, the Federal Trade Commission and the As-
 4 sistant Attorney General shall—

5 “(A) establish procedures for the stake-
 6 holders of a consummated acquisition to submit
 7 complaints regarding any adverse impacts of
 8 the acquisition to the Federal Trade Commis-
 9 sion, the Assistant Attorney General, and their
 10 respective State attorneys general; and

11 “(B) establish guidelines for when com-
 12 plaints received under subparagraph (i) will
 13 trigger a mandatory retrospective review under
 14 paragraph (1).”.

15 **SEC. 7. EXCLUSIVE JURISDICTION.**

16 (a) DISTRICT COURTS.—

17 (1) IN GENERAL.—The United States District
 18 Court for the District of Columbia shall have exclu-
 19 sive jurisdiction to determine the validity of any de-
 20 cision made by the Federal Trade Commission or
 21 the Assistant Attorney General under the amend-
 22 ments made by sections 4 and 6 of this Act.

23 (2) ACTIONS BROUGHT BY STATE ATTORNEYS
 24 GENERAL.—

1 (A) Except as provided in subparagraph
2 (B), if a State attorney general brings an action
3 under section 5 or subsection (n) of section 7A
4 of the Clayton Act, as added by section 6 of
5 this Act, the district court of the United States
6 for the judicial district in which the capital of
7 the State is located shall have exclusive jurisdic-
8 tion.

9 (B) In the event that multiple State attor-
10 neys general bring actions regarding the same
11 acquisition, those actions shall be consolidated
12 in the United States District Court for the Dis-
13 trict of Columbia or a district court with juris-
14 diction under this section.

15 (b) COURT OF APPEALS.—The United States Court
16 of Appeals for the District of Columbia Circuit shall have
17 exclusive jurisdiction of appeals from all decisions under
18 subsection (a).

19 (c) SUPREME COURT.—The Supreme Court of the
20 United States shall not have appellate jurisdiction of any
21 appeal from a decision under subsection (a) or (b).

22 (d) EXCLUSIVE REMEDIES.—The causes of action
23 authorized by this Act and amendments made by this Act
24 shall be the exclusive remedies available to any person in-
25 jured or adversely affected by a decision of the Federal

1 Trade Commission or the Assistant Attorney General of
2 the Antitrust Division of the Department of Justice made
3 under this Act or under the amendments made by this
4 Act.

5 **SEC. 8. FUNDING.**

6 (a) **AUTHORIZATIONS OF APPROPRIATIONS.**—There
7 is authorized to be appropriated for fiscal year 2023 and
8 each fiscal year thereafter—

9 (1) \$1,000,000,000 for the Federal Trade Com-
10 mission; and

11 (2) \$1,000,000,000 for the Antitrust Division
12 of the Department of Justice.

13 (b) **FINES AND PENALTIES.**—The Federal Trade
14 Commission and the Antitrust Division of the Department
15 of Justice may use any funds from fines, penalties, and
16 settlements not returned to consumers for their respective
17 future operations.

18 (c) **ADDITIONAL APPROPRIATIONS.**—To the extent
19 there are insufficient funds from fines, penalties, settle-
20 ments, and fees received by the Federal Trade Commis-
21 sion and the Antitrust Division of the Department of Jus-
22 tice for the costs of their respective programs, projects,
23 and activities, there are appropriated, out of monies in the
24 Treasury not otherwise appropriated, for fiscal year 2023

1 and each fiscal year thereafter such sums as are necessary
2 for the costs of such programs, projects, and activities.

3 **SEC. 9. RULES OF CONSTRUCTION.**

4 Nothing in this Act, or an amendment made by this
5 Act, may be construed to limit—

6 (1) any authority of the Federal Trade Com-
7 mission, the Assistant Attorney General, any State
8 attorney general, or any Federal agency under the
9 antitrust laws or any other provision of law; or

10 (2) the application of any law.

11 **SEC. 10. SEVERABILITY.**

12 (a) IN GENERAL.—If any provision of this Act, an
13 amendment made by this Act, or the application of such
14 provision or amendment to any person or circumstance is
15 held to be unconstitutional, the remainder of this Act and
16 of the amendments made by this Act, and the application
17 of the remaining provisions of this Act and amendments
18 to any person or circumstance shall not be affected.

19 (b) EXCLUSIVE JURISDICTION.—

20 (1) DISTRICT COURT.—The United States Dis-
21 trict Court for the District of Columbia shall have
22 exclusive jurisdiction over any action challenging the
23 constitutionality or lawfulness of any provision of
24 this Act, any amendment made by this Act, or any

1 regulation promulgated under this Act or an amend-
2 ment made by this Act.

3 (2) COURT OF APPEALS.—The United States
4 Court of Appeals for the District of Columbia Cir-
5 cuit shall have exclusive jurisdiction of appeals from
6 all decisions under paragraph (1).

7 (3) SUPREME COURT.—The Supreme Court of
8 the United States shall not have appellate jurisdic-
9 tion of any appeal from a decision under paragraph
10 (1) or (2).

11 (c) DECISIONS BY ANTITRUST AGENCIES.—Except
12 as provided in this Act, no Federal, State, or Territorial
13 court shall have jurisdiction or power to consider the valid-
14 ity of decisions made by the Federal Trade Commission
15 or the Assistant Attorney General under this Act, or under
16 the amendments made by this Act, or to stay, restrain,
17 enjoin, or set aside, in whole or in part, any provision of
18 this Act authorizing such decisions made by the Federal
19 Trade Commission or the Assistant Attorney General or
20 making effective any such decisions made by the Federal
21 Trade Commission or the Assistant Attorney General, or
22 any provision of any such decisions made by the Federal
23 Trade Commission or the Assistant Attorney General, or
24 to restrain or enjoin the enforcement of any such decisions

1 made by the Federal Trade Commission or the Assistant
2 Attorney General.

3 (d) ACTIONS BY STATE ATTORNEY GENERALS.—Ex-
4 cept as provided in this Act, no Federal, State, or Terri-
5 torial court shall have jurisdiction or power to review ac-
6 tions brought by a State attorney general under this Act,
7 or under an amendment made by this Act, or to stay, re-
8 strain, enjoin, or set aside, in whole or in part, any provi-
9 sion of this Act authorizing such actions brought by a
10 State attorney general under this Act, or to restrain or
11 enjoin the enforcement of any related judicial decisions.

○