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H. R. 3825

To promote competition and economic opportunity in digital markets by eliminating the conflicts of interest that arise from dominant online platforms' concurrent ownership or control of an online platform and certain other businesses.

IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 2021

Ms. JAYAPAL (for herself, Mr. GOODEN of Texas, Mr. CICILLINE, Mr. BUCK, and Mr. NADLER) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To promote competition and economic opportunity in digital markets by eliminating the conflicts of interest that arise from dominant online platforms' concurrent ownership or control of an online platform and certain other businesses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Ending Platform Monopolies Act''.

SEC. 2. UNLAWFUL CONFLICTS OF INTEREST.

(a) VIOLATION.—As of the date an online platform is designated as a covered platform under subsection 6(a), it shall be unlawful for a covered platform operator to own, control, or have a beneficial interest in a line of business other than the covered platform that—

(1) utilizes the covered platform for the sale or provision of products or services;

(2) offers a product or service that the covered platform requires a business user to purchase or utilize as a condition for access to the covered platform, or as a condition for preferred status or placement of a business user's product or services on the covered platform; or

(3) gives rise to a conflict of interest.

(b) CONFLICT OF INTEREST.—For purposes of this section, the term ''conflict of interest'' includes the conflict of interest that arises when—

(1) a covered platform operator owns or controls a line of business, other than the covered platform; and

(2) the covered platform's ownership or control of that line of business creates the incentive and ability for the covered platform to—

(A) advantage the covered platform operator's own products, services, or lines of business

on the covered platform over those of a competing business or a business that constitutes nascent or potential competition to the covered platform operator; or

(B) exclude from, or disadvantage, the products, services, or lines of business on the covered platform of a competing business or a business that constitutes nascent or potential competition to the covered platform operator.

SEC. 3. ENFORCEMENT.

(a) IN GENERAL.—The Commission and the Department of Justice shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or the Clayton Act (15 U.S.C. 12 et seq.), as appropriate, were incorporated into and made a part of this Act.

(b) UNFAIR METHODS OF COMPETITION.—A violation of this Act shall also constitute an unfair method of competition under section 5 of the Federal Trade Commission Act (15 U.S.C. 5).

(c) CIVIL PENALTIES.—Any person, or any individual who is an officer, director, partner, or employee of a person, who fails to comply with any provision of this Act

within two years of the Commission or Department of Justice designating a covered platform under section 6(a), shall be liable to the United States for a civil penalty in an amount not more than the greater of—

(1) 15 percent of the total average daily United States revenue of the person for the previous calendar year; or

(2) 30 percent of the total average daily United States revenue of the person in any line of business affected or targeted by the unlawful conduct during the period of the unlawful conduct.

(d) COMMISSION INDEPENDENT LITIGATION AUTHORITY.—If the Commission has reason to believe that a covered platform violated this Act, the Commission may commence a civil action, in its own name by any of its attorneys designated by it for such purpose, to recover a civil penalty and seek other appropriate relief in a district court of the United States against the covered platform operator.

SEC. 4. LIMITATIONS ON BOARD MEMBERSHIP AND OTHER SERVICE.

(a) IN GENERAL.—An individual who is an officer, director, employee, including an agent, representative, or contractor, of a covered platform or who has control over the covered platform may not serve at the same time as

an officer, director, employee, or other institution-affiliated party, including as an agent, representative, or contractor, of a formerly affiliated person.

(b) TERMINATION OF SERVICE.—Any individual whose service violates subsection (a) as of the date an online platform is designated as a covered platform under subsection 6(a), shall terminate such service as soon as is practicable and in no event, later than the end of the 60-day period beginning on the date the online platform is designated as a covered platform.

SEC. 5. DEFINITIONS.

For purposes of this Act:

(1) ANTITRUST LAWS.—The term ''antitrust laws'' has the meaning given the term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12).

(2) BENEFICIAL INTEREST.—The term ''Beneficial Interest'' means with respect to a person, having access to competitively sensitive information or the ability to affect the person's strategic decisions.

(3) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(4) CONTROL.—The term ''control'' with respect to a person means—

(A) holding 25 percent or more of the stock of the person;

(B) having the right to 25 percent or more of the profits of the person;

(C) having the right to 25 percent or more of the assets of the person, in the event of the person's dissolution;

(D) if the person is a corporation, having the power to designate 25 percent or more of the directors of the person;

(E) if the person is a trust, having the power to designate 25 percent or more of the trustees; or

(F) otherwise exercises substantial control over the person.

(5) COVERED PLATFORM.—The term ''covered platform'' means an online platform—

(A) that has been designated as a ''covered platform'' under section 6(a); or

(B) that—

(i) at the time of the Commission's or the Department of Justice's designation under section 6(a), or any of the twelve months preceding that time, or in any of the 12 months preceding the filing of a

complaint for an alleged violation of this Act—

(I) has at least 50,000,000 United States-based monthly active users on the online platform; or

(II) has at least 100,000 United States-based monthly active business users on the platform;

(ii) is owned or controlled by a person with net annual sales, or a market capitalization greater than $600,000,000,000 at, adjusted for inflation on the basis of the Consumer Price Index, the time of the Commission's or the Department of Justice's designation under section 6(a) or any of the two years preceding that time, or at any time in the 2 years preceding the filing of a complaint for an alleged violation of this Act; and

(iii) is a critical trading partner for the sale or provision of any product or service offered on or directly related to the online platform.

(6) COVERED PLATFORM OPERATOR.—The term ''covered platform operator'' means a person

that, directly or indirectly, owns or controls a covered platform.

(7) CRITICAL TRADING PARTNER.—The term ''critical trading partner'' means an entity that has the ability to restrict or impede—

(A) the access of a business user to its users or customers; or

(B) the access of a business user to a tool or service that it needs to effectively serve its users or customers.

(8) BUSINESS USER.—The term ''business user'' means a person that utilizes or plans to utilize the covered platform for the sale or provision of products or services.

(9) FORMERLY AFFILIATED PERSON.—The term ''formerly affiliated person'' means a person that was owned or controlled by a covered platform prior to termination of the affiliation described in section 3.

(10) ONLINE PLATFORM.—The term ''online platform'' means a website, online or mobile application, operating system, digital assistant, or online service that—

(A) enables a user to generate content that can be viewed by other users on the platform or to interact with other content on the platform;

(B) facilitates the offering, sale, purchase, payment, or shipping of goods or services, including software applications, between and among consumers or businesses not controlled by the platform; or

(C) enables user searches or queries that access or display a large volume of information.

(11) PERSON.—The term ''person'' has the meaning given the term in subsection (a) of section 1 of the Clayton Act (15 U.S.C. 12).

SEC. 6. IMPLEMENTATION.

(a) COVERED PLATFORM DESIGNATION.—

(1) The Commission or Department of Justice shall designate whether an entity is a covered platform for the purpose of implementing and enforcing this Act. Such designation shall—

(A) be based on a finding that the criteria set forth in paragraph (5)(B)(i)–(iii) of section 5 are met;

(B) be issued in writing and published in the Federal Register; and

(C) will apply for years from its issuance regardless of whether there is a change in control or ownership over the covered platform unless the Commission or the Department of Justice removes the designation pursuant to subsection (b).

(b) REMOVAL OF COVERED PLATFORM DESIGNATION.—The Commission or the Department of Justice shall—

(1) consider whether its designation of a covered platform pursuant to subsection (a) should be removed prior to the expiration of the 10-year period if the covered platform operator files a request with the Commission or the Department of Justice, which shows that the online platform is no longer a critical trading partner;

(2) determine whether to grant a request submitted under paragraph (1) not later than 120 days after the date of the filing of such request; and

(3) obtain the concurrence of the Commission or the Department of Justice, as appropriate, before granting a request submitted under paragraph (1).

SEC. 7. JUDICIAL REVIEW.

(a) IN GENERAL.—Any party that is subject to a covered platform designation under section 6(a) of this Act,

a final order issued in any district court of the United States, or a final order of the Commission issued in an administrative adjudicative proceeding may within 30 days of the issuance of such designation or order, petition for review of such designation or order in the United States Court of Appeals for the District of Columbia Circuit.

(b) TREATMENT OF FINDINGS.—In a proceeding for judicial review of a covered platform designation under section 6(a) of this Act or a final order of the Commission, the findings of the Commission or the Department of Justice as to the facts, if supported by evidence, shall be conclusive.

SEC. 8. RULES OF CONSTRUCTION.

Nothing in this Act shall be construed to limit any authority of the Attorney General or the Federal Trade Commission under the antitrust laws, the Federal Trade Commission Act (15 U.S.C. 45), or any other provision of law or to limit the application of any law.

SEC. 9. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, and the application of the remaining provisions of this Act to any person or circumstance shall not be affected.

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