

117TH CONGRESS  
1ST SESSION

# S. 225

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 anti-trust laws, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2021

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

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## 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 2021”.

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) in the United States economy today, the  
19 presence and exercise of market power is substantial  
20 and growing;

21          (5) the presence and exercise of market power  
22 makes it more difficult for people in the United  
23 States to start their own businesses, depresses  
24 wages, and increases economic inequality, with par-  
25 ticularly damaging effects on historically disadvan-  
26 taged communities;

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

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

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

18          (9) horizontal consolidation, vertical consolida-  
19          tion, and conglomerate mergers all have potential to  
20          increase market power and cause anticompetitive  
21          harm;

22          (10) extensive consolidation is reducing com-  
23          petition and threatens to place the American dream  
24          further out of reach for many consumers in the  
25          United States;

1           (11) since 2008, firms in the United States  
2           have engaged in over \$10,000,000,000,000 in merg-  
3           ers and acquisitions;

4           (12) the acquisition of nascent or potential ri-  
5           vals by dominant firms can present significant long-  
6           term threats to competition and innovation;

7           (13) the acquisition, by one of its competitors,  
8           of a maverick firm that plays a disruptive role in the  
9           market—by using an innovative business model or  
10          technology, offering lower prices or new, different  
11          products or services products, or by other means  
12          that benefit consumers—can present a threat to  
13          competition;

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

17          (15) in recent years, some court decisions and  
18          enforcement policies have limited the vitality of the  
19          Clayton Act to prevent harmful consolidation by—

20                (A) discounting previously accepted pre-  
21                sumptions that certain acquisitions are anti-  
22                competitive;

23                (B) focusing inordinately on the effect of  
24                an acquisition on price in the short term, to the

1 exclusion of other potential anticompetitive ef-  
2 fects;

3 (C) underestimating the dangers that hori-  
4 zontal, vertical, and conglomerate mergers will  
5 lower quality, reduce choice, impede innovation,  
6 exclude competitors, increase entry barriers, or  
7 create buyer power, including monopsony  
8 power; and

9 (D) requiring the government to prove  
10 harmful effects of a proposed merger to a near  
11 certainty;

12 (16) anticompetitive exclusionary conduct con-  
13 stitutes a particularly harmful exercise of market  
14 power and a substantial threat to the United States  
15 economy;

16 (17) when dominant sellers exercise market  
17 power, they harm buyers by overcharging them, re-  
18 ducing product or service quality, limiting their  
19 choices, and impairing innovation;

20 (18) when dominant buyers exercise market  
21 power, they harm suppliers by underpaying them,  
22 limiting their business opportunities, and impairing  
23 innovation;

24 (19) when dominant employers exercise market  
25 power, they harm workers by paying them low

1 wages, reducing their benefits, and limiting their fu-  
 2 ture employment opportunities;

3 (20) nascent or potential rivals—even those  
 4 that are unprofitable or inefficient—can be an im-  
 5 portant source of competitive discipline for dominant  
 6 firms;

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

18 (22) the courts of the United States have im-  
 19 properly implied immunity from the antitrust laws  
 20 based on Federal regulatory statutes, even limiting  
 21 the application of statutory antitrust savings clauses  
 22 passed by Congress;

23 (23) the civil remedies currently available to  
 24 cure violations of the Sherman Antitrust Act, includ-  
 25 ing injunctions, equitable monetary relief, and pri-

1       vate damages, have not proven sufficient, on their  
2       own, to deter anticompetitive conduct;

3           (24) in some cases, effective deterrence requires  
4       the imposition of civil penalties, alone or in combina-  
5       tion with existing remedies, including structural re-  
6       lief, behavioral relief, private damages, and equitable  
7       monetary relief, including disgorgement and restituti-  
8       tion; and

9           (25) Federal antitrust enforcement budgets  
10      have failed to keep pace with the growth of the econ-  
11      omy and increasing demands on agency resources,  
12      significantly undermining the ability of the Federal  
13      antitrust agencies to fulfill their law enforcement  
14      missions and contributing to the rise of market  
15      power in the American economy.

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

17           (1) enhance competition throughout the Amer-  
18      ican economy by strengthening antitrust enforce-  
19      ment by the Department of Justice, the Federal  
20      Trade Commission, the State enforcement agencies,  
21      and private parties;

22           (2) revise the legal standard under section 7 of  
23      the Clayton Act to better enable enforcers to arrest  
24      the likely anticompetitive effects of harmful mergers  
25      in their incipiency, as Congress intended, by clari-

1       fying that the potential effects that may justify pro-  
2       hibiting a merger under the Clayton Act include  
3       lower quality, reduced choice, reduced innovation,  
4       the exclusion of competitors, or increased entry bar-  
5       riers, in addition to increased price to buyers or re-  
6       duced price to sellers;

7           (3) amend the Clayton Act to clarify that an  
8       acquisition that tends to create a monopsony violates  
9       the Clayton Act;

10          (4) establish simple, cost-effective decision rules  
11       that require the parties to certain acquisitions that  
12       either significantly increase concentration or are ex-  
13       tremely large bear the burden of establishing that  
14       the acquisition will not materially harm competition;

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

17          (6) enable the Department of Justice and the  
18       Federal Trade Commission to seek civil monetary  
19       penalties, in addition to existing remedies, for viola-  
20       tions of the Sherman Act;

21          (7) give the Department of Justice and the  
22       Federal Trade Commission additional financial re-  
23       sources and enforcement tools to craft remedies for  
24       individual violations that are effective to deter future



1 unlawful conduct and proportionate to the gravity of  
2 the violation;

3 (8) provide further protections for those who  
4 provide evidence of anticompetitive conduct to gov-  
5 ernment enforcers and potential financial rewards  
6 for whistleblowers who provide information to the  
7 government that leads to a criminal fine; and

8 (9) grant successful antitrust plaintiffs the  
9 right to obtain prejudgment interest on damages  
10 awards to further deter anticompetitive conduct and  
11 more fully compensate injured parties.

12 **SEC. 3. DEFINITION.**

13 In this Act the term “antitrust laws”—

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

16 (2) includes—

17 (A) section 5 of the Federal Trade Com-  
18 mission Act (15 U.S.C. 45) to the extent that  
19 such section applies to unfair methods of com-  
20 petition; and

21 (B) this Act and the amendments made by  
22 this Act.

1 **SEC. 4. UNLAWFUL ACQUISITIONS.**

2 (a) MARKET POWER.—Section 1(a) of the Clayton  
3 Act (15 U.S.C. 12(a)) is amended by adding at the end  
4 the following:

5 “the term ‘market power’ in this Act means the  
6 ability of a person, or a group of persons acting in  
7 concert, to profitably impose terms or conditions on  
8 counterparties, including terms regarding price,  
9 quantity, product or service quality, or other terms  
10 affecting the value of consideration exchanged in the  
11 transaction, that are more favorable to the person or  
12 group of persons imposing them than what the per-  
13 son or group of persons could obtain in a competi-  
14 tive market.”.

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

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

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

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

24 “In a case brought by the United States, the Federal  
25 Trade Commission, or a State attorney general, a court  
26 shall determine that the effect of an acquisition described

1 in this section may be to create an appreciable risk of ma-  
2 terially lessening competition or to tend to create a monop-  
3 oly or a monopsony, in or affecting commerce, if—

4 “(1) the acquisition would lead to a significant  
5 increase in market concentration in any relevant  
6 market;

7 “(2)(A) the acquiring person has a market  
8 share of greater than 50 percent or otherwise has  
9 significant market power, as a seller or a buyer, in  
10 any relevant market, and as a result of the acquisi-  
11 tion, the acquiring person would obtain control over  
12 entities or assets that compete or have a reasonable  
13 probability of competing with the acquiring person  
14 in the same relevant market; or

15 “(B) as a result of the acquisition, the acquir-  
16 ing person would obtain control over entities or as-  
17 sets that have a market share of greater than 50  
18 percent or otherwise have significant market power,  
19 as a seller or a buyer, in any relevant market, and  
20 the acquiring person competes or has a reasonable  
21 probability of competing with the entities or assets  
22 over which it would obtain control, as result of the  
23 acquisition, in the same relevant market;

24 “(3) the acquisition would lead to the combina-  
25 tion of entities or assets that compete or have a rea-

1       sonable probability of competing in a relevant mar-  
2       ket, and either the acquiring person or the entities  
3       or assets over which it would obtain control pre-  
4       vents, limits, or disrupts coordinated interaction  
5       among competitors in a relevant market or has a  
6       reasonable probability of doing so;

7               “(4) the acquisition—

8                       “(A) would likely enable the acquiring per-  
9                       son to unilaterally and profitably exercise mar-  
10                      ket power or materially increase its ability to do  
11                      so; or

12                     “(B) would materially increase the prob-  
13                     ability of coordinated interaction among com-  
14                     petitors in any relevant market; or

15               “(5)(A) the acquisition is not a transaction that  
16       is described in section 7A(c); and

17               “(B)(i) as a result of such acquisition, the ac-  
18       quiring person would hold an aggregate total  
19       amount of the voting securities and assets of the ac-  
20       quired person in excess of \$5,000,000,000 (as ad-  
21       justed and published for each fiscal year beginning  
22       after September 30, 2022, in the same manner as  
23       provided in section 8(a)(5) to reflect the percentage  
24       change in the gross national product for such fiscal

1 year compared to the gross national product for the  
 2 year ending September 30, 2021); or

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

7 “(II) as a result of such acquisition, the acquir-  
 8 ing person would hold an aggregate total amount of  
 9 the voting securities and assets of the acquired per-  
 10 son in excess of \$50,000,000 (as so adjusted and  
 11 published),

12 unless the acquiring or acquired person establish, by  
 13 a preponderance of the evidence, that the effect of  
 14 the acquisition will not be to create an appreciable  
 15 risk of materially lessening competition or tend to  
 16 create a monopoly or a monopsony. In this para-  
 17 graph, the term ‘materially’ means more than a de  
 18 minimis amount.”.

19 **SEC. 5. POST-SETTLEMENT DATA.**

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

22 “(l)(1) Each person who enters into an agreement  
 23 with the Federal Trade Commission or the United States  
 24 to resolve a proceeding brought under the antitrust laws  
 25 or under the Federal Trade Commission Act (15 U.S.C.

1 41 et seq.) regarding an acquisition with respect to which  
 2 notification is required under this section shall, on an an-  
 3 nual basis during the 5-year period beginning on the date  
 4 on which the agreement is entered into, submit to the Fed-  
 5 eral Trade Commission or the Assistant Attorney General,  
 6 as applicable, information sufficient for the Federal Trade  
 7 Commission or the United States, as applicable, to assess  
 8 the competitive impact of the acquisition, including—

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

12           “(B) the source, and the resulting magnitude  
 13       and extent, of any cost-saving efficiencies or any  
 14       benefits to consumers or trading partners that were  
 15       claimed as a benefit of the acquisition and the extent  
 16       to which any cost savings were passed on to con-  
 17       sumers or trading partners; and

18           “(C) the effectiveness of any divestitures or any  
 19       conditions placed on the acquisition in fully restoring  
 20       competition.

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

24       “(3) The Federal Trade Commission, with the con-  
 25       currence of the Assistant Attorney General, by rule in ac-

1 cordance with section 553 of title 5, United States Code,  
2 and consistent with the purposes of this section—

3 “(A) shall require that the information de-  
4 scribed in paragraph (1) be in such form and con-  
5 tain such documentary material and information rel-  
6 evant to an acquisition as is necessary and appro-  
7 priate to enable the Federal Trade Commission and  
8 the Assistant Attorney General to assess the com-  
9 petitive impact of the acquisition under paragraph  
10 (1); and

11 “(B) may—

12 “(i) define the terms used in this sub-  
13 section;

14 “(ii) exempt, from the requirements of this  
15 section, information not relevant in assessing  
16 the competitive impact of the acquisition under  
17 paragraph (1); and

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

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

22 Not later than 2 years after the date of enactment  
23 of this Act, the Federal Trade Commission, in consulta-  
24 tion with the Securities and Exchange Commission, shall  
25 conduct and publish a study, using any compulsory proc-

1 ess necessary, relying on public data and information if  
2 available and sufficient, and incorporating public comment  
3 on—

4 (1) the extent to which an institutional investor  
5 or related institutional investors have ownership or  
6 control interests in competitors in moderately con-  
7 centrated or concentrated markets;

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

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

14 **SEC. 7. GAO STUDIES.**

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

18 (1) conduct a study to assess the success of  
19 merger remedies required by the Department of Jus-  
20 tice or the Federal Trade Commission in consent de-  
21 crees entered into since 6 years prior to the date of  
22 enactment of this Act, including the impact on main-  
23 taining competition, a comparison of structural and  
24 conduct remedies, and the viability of divested as-  
25 sets; and



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

4           (b) UPDATE.—The Comptroller General of the  
 5   United States shall—

6           (1) update the study under paragraph (1) 3  
 7           years and 6 years after the date of enactment of this  
 8           Act based on the information provided under section  
 9           7A(1) of the Clayton Act, as added by section 5 of  
 10          this Act; and

11          (2) identify specific remedies or alleged merger  
 12          benefits that require additional information or re-  
 13          search.

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

15          (a) DEFINITIONS.—In this section—

16          (1) the term “agency” has the meaning given  
 17          the term in section 551 of title 5, United States  
 18          Code;

19          (2) the term “covered company” means any  
 20          company that has, at any time, been required to  
 21          make a filing under section 7A of the Clayton Act  
 22          (15 U.S.C. 18a);

23          (3) the term “Office” means the Office of the  
 24          Competition Advocate established under subsection  
 25          (b);

1           (4) the term “Chairman” means the Chairman  
2 of the Commission; and

3           (5) the term “Commission” means the Federal  
4 Trade Commission.

5       (b) ESTABLISHMENT.—There is established within  
6 the Federal Trade Commission the Office of the Competi-  
7 tion Advocate.

8       (c) COMPETITION ADVOCATE.—

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

11               (A) report directly to the Chairman; and

12               (B) be appointed by the Chairman, with  
13 the concurrence of a majority of the Commis-  
14 sion, including at least 1 Commissioner who is  
15 not a member of the same political party of the  
16 majority members of the Commission, from  
17 among individuals having experience in advo-  
18 cating for the promotion of competition.

19           (2) COMPENSATION.—The annual rate of pay  
20 for the Competition Advocate shall be equal to the  
21 highest rate of annual pay for other senior execu-  
22 tives who report to the Chairman of the Commis-  
23 sion.

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

4           (A) during the 2-year period ending on the  
5       date of appointment as Competition Advocate;  
6       or

7           (B) during the 5-year period beginning on  
8       the date on which the person ceases to serve as  
9       the Competition Advocate.

10       (d) STAFF OF OFFICE.—The Competition Advocate,  
11   after consultation with the Chairman of the Commission,  
12   shall retain or employ independent counsel, research staff,  
13   and service staff, as the Competition Advocate determines  
14   is necessary to carry out the functions, powers, and duties  
15   of the Office.

16       (e) DUTIES AND POWERS.—The Competition Advo-  
17   cate shall—

18           (1) recommend processes or procedures that  
19       will allow the Federal Trade Commission and the  
20       Antitrust Division of the Department of Justice to  
21       improve the ability of each agency to solicit reports  
22       from consumers, small businesses, and employees  
23       about possible anticompetitive practices or adverse  
24       effects of concentration;

1           (2) publicly provide recommendations to other  
 2       Federal agencies about administrative actions that  
 3       may have anticompetitive effects and the potential  
 4       harm to competition if those actions are carried out;

5           (3) provide recommendations to other Federal  
 6       agencies about administrative actions that may have  
 7       procompetitive effects and the potential benefit to  
 8       competition if those actions are carried out;

9           (4) publish periodic reports on—

10               (A) market competition and its impact on  
 11               the United States, local geographic areas, and  
 12               different demographic and socioeconomic  
 13               groups; and

14               (B) the success of remedies required by the  
 15               Department of Justice or the Federal Trade  
 16               Commission in consent decrees;

17           (5) collect data regarding concentration levels  
 18       across industries and the impact and degree of anti-  
 19       trust enforcement; and

20           (6) standardize the types and formats of data  
 21       reported and collected.

22       (f) SUBPOENA AUTHORITY.—

23           (1) IN GENERAL.—The Competition Advocate  
 24       may either require the submission of or accept vol-  
 25       untary submissions of periodic and other reports

1 from any covered company for the purpose of assess-  
2 ing competition and its impact on the United States,  
3 local geographic areas, and different demographic  
4 and socioeconomic groups.

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

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

11 (B) the information is not available from a  
12 public source or another agency.

13 (3) MITIGATION OF REPORT BURDEN.—Before  
14 requiring the submission of a report from any com-  
15 pany required to make a filing under section 7A of  
16 the Clayton Act (15 U.S.C. 18a), the Competition  
17 Advocate shall—

18 (A) coordinate with other agencies or au-  
19 thority; and

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

22 (g) DATA CENTER.—

23 (1) ESTABLISHMENT.—There is established  
24 within the Office the Data Center.

25 (2) DUTIES.—The Data Center shall—

1 (A) collect, validate, and maintain data ob-  
 2 tained from agencies, as defined in section 551  
 3 of title 5, United States Code, commercial data  
 4 providers, publicly available data sources, and  
 5 any covered company; and

6 (B) prepare and publish, in a manner that  
 7 is easily accessible to the public—

8 (i) a concentration database;

9 (ii) a merger enforcement database;

10 (iii) any other database that the Com-  
 11 petition Advocate determines is necessary  
 12 to carry out the duties of the Office; and

13 (iv) the format and standards for Of-  
 14 fice data, including standards for reporting  
 15 financial transaction and position data to  
 16 the Office.

17 (3) REGULATIONS.—The Competition Advocate  
 18 shall promulgate regulations relating to the collec-  
 19 tion and standardizing of data under paragraph (2).

20 (4) CONFIDENTIALITY.—

21 (A) IN GENERAL.—The Data Center may  
 22 not disclose any confidential data collected  
 23 under paragraph (2).

24 (B) REQUIREMENTS.—Data obtained from  
 25 an agency shall be subject to the same confiden-

1           tiality requirements and protection as the agen-  
2           cy providing the data.

3           (C) INFORMATION SECURITY.—The Com-  
4           petition Advocate shall ensure that data col-  
5           lected and maintained by the Data Center are  
6           kept secure and protected against unauthorized  
7           disclosure.

8           (h) DIVISION OF MARKET ANALYSIS.—

9           (1) ESTABLISHMENT.—There is established  
10          within the Office the Division of Market Analysis.

11          (2) LEADERSHIP.—The head of the Division of  
12          Market Analysis shall be the Director of Market  
13          Analysis, who shall—

14               (A) report directly to the Competition Ad-  
15               vocate; and

16               (B) be appointed by the Competition Advo-  
17               cate, with the concurrence of a majority of the  
18               Commission, including at least one Commis-  
19               sioner who is not a member of the same polit-  
20               ical party of the majority members of the Com-  
21               mission.

22          (3) DIVISION STAFF.—The Division of Market  
23          Analysis shall retain or employ independent legal,  
24          economic, research, and service staff sufficient to

1 carry out the functions, powers, and duties of the  
2 Division.

3 (4) DUTIES AND POWERS.—The Division of  
4 Market Analysis—

5 (A) shall, at the direction of the Competi-  
6 tion Advocate or the Commission, conduct in-  
7 vestigations of markets or industry sectors to  
8 analyze the competitive conditions and dynam-  
9 ics affecting such markets or industry sectors,  
10 including the effects that market concentration,  
11 mergers and acquisitions, certain types of  
12 agreements, and other forms of business con-  
13 duct have on competition, consumers, workers  
14 and innovation, and shall publish reports on the  
15 results of such investigations;

16 (B) shall, at the direction of the Competi-  
17 tion Advocate or the Commission, conduct in-  
18 vestigations concerning the competitive effects  
19 of acquisitions that have been consummated no  
20 less than 2 years prior to the start of the inves-  
21 tigation, which shall include recommendations  
22 concerning appropriate enforcement action to  
23 remedy any anticompetitive effects discovered  
24 and may include assessments of—



1 (i) the conditions of the relevant mar-  
 2 kets affected by the acquisition, over the  
 3 period since the acquisition was con-  
 4 summated, including, but not limited to,  
 5 the potential impact that the acquisition  
 6 has had on—

7 (I) the prices of goods or serv-  
 8 ices, including wages in any affected  
 9 labor markets;

10 (II) the output and quality of  
 11 goods and services;

12 (III) the entry or exit of competi-  
 13 tors;

14 (IV) innovation;

15 (V) consumer choice and product  
 16 variety;

17 (VI) the opportunity of suppliers  
 18 and works to sell their product or  
 19 services;

20 (VII) coordinated interaction be-  
 21 tween competitors; and

22 (VIII) subsequent mergers and  
 23 acquisitions activity;

24 (ii) whether the acquiring person or  
 25 its successors in interest—

1 (I) complied with all obligations  
2 under any agreement with the Federal  
3 Trade Commission, the United States,  
4 or State law enforcement authorities  
5 to resolve a proceeding brought under  
6 the antitrust laws; and

7 (II) achieved measurable, trans-  
8 action-specific efficiencies, which did  
9 not arise from anticompetitive reduc-  
10 tions of output, as a result of the ac-  
11 quisition; and

12 (iii) whether any agreements with the  
13 Federal Trade Commission or the United  
14 States to resolve a proceeding brought  
15 under the antitrust laws regarding the ac-  
16 quisition was effective in mitigating the  
17 anticompetitive effects from the acqui-  
18 sition;

19 (C) shall rely on public data and informa-  
20 tion, public comment, information from other  
21 Federal agencies, information from the Data  
22 Center, information obtained pursuant to the  
23 Competition Advocate's subpoena authority  
24 under subsection (f) of this section and may use  
25 compulsory process under section 6(b) of the

1 Federal Trade Commission Act (15 U.S.C.  
 2 46(b)) as necessary to carry out the functions  
 3 set forth in subsections (h)(3)(A) and (h)(3)(B)  
 4 of this section; and

5 (D) shall report any evidence it obtains  
 6 that any person, partnership, or corporation has  
 7 engaged in transactions or conduct that may  
 8 constitute of a violation of the antitrust law to  
 9 the Commission, which may institute further in-  
 10 vestigation, initiate enforcement proceedings, or  
 11 refer such evidence to the Attorney General.

12 **SEC. 9. EXCLUSIONARY CONDUCT.**

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

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

17 “(a) DEFINITIONS.—In this section:

18 “(1) EXCLUSIONARY CONDUCT.—

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

21 “(i) materially disadvantages 1 or  
 22 more actual or potential competitors; or

23 “(ii) tends to foreclose or limit the  
 24 ability or incentive of 1 or more actual or  
 25 potential competitors to compete.

“(B) LIMITATIONS.—

“(i) Applying for or enforcing a patent, trademark, or copyright, unless such applications or enforcement actions are baseless or made in bad faith or in violation of a legal obligation, shall not alone constitute exclusionary conduct, but such actions may be considered as part of a course of conduct that constitutes exclusionary conduct.

“(ii) Conduct that is necessary to comply with Federal or State law shall not alone constitute exclusionary conduct, but such actions may be considered as part of a course of conduct that constitutes exclusionary conduct.

“(2) MARKET POWER.—The term ‘market power’ means the ability of a person, or a group of persons acting in concert, to profitably impose terms or conditions on counterparties, including terms regarding price, quantity, product or service quality, or other terms affecting the value of consideration exchanged in the transaction, that are more favorable to the person or group of persons imposing

1       them than what the person or group of persons  
2       could obtain in a competitive market.

3       “(b) VIOLATION.—

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

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

12      “(c) PRESUMPTION.—

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

20              “(A) has a market share of greater than  
21              50 percent as a seller or a buyer in the relevant  
22              market; or

23              “(B) otherwise has significant market  
24              power in the relevant market.

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

4                   “(A) distinct procompetitive benefits of the  
5                   exclusionary conduct in the relevant market  
6                   eliminate the risk of harming competition pre-  
7                   sented by the exclusionary conduct;

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

14                  “(C) the exclusionary conduct does not  
15                  present an appreciable risk of harming competi-  
16                  tion.

17           “(d) CONSIDERATIONS.—If the presumption in sub-  
18           section (c) does not apply, the determination of whether  
19           exclusionary conduct presents an appreciable risk of harm-  
20           ing competition shall be based on the totality of the cir-  
21           cumstances, which may include consideration of—

22                   “(1) the extent to which any distinct procom-  
23                   petitive benefits of the exclusionary conduct substan-  
24                   tially eliminate the risk of harming competition pre-  
25                   sented by the exclusionary conduct; and

1           “(2) whether 1 or more persons, not including  
 2           any person participating in or facilitating the exclu-  
 3           sionary conduct, have entered or expanded their  
 4           presence in the market, substantially eliminating the  
 5           risk of harming competition presented by the exclu-  
 6           sionary conduct.

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

10           “(1) that the unilateral conduct of the defend-  
 11           ant altered or terminated a prior course of dealing  
 12           between the defendant and a person subject to the  
 13           exclusionary conduct;

14           “(2) that the defendant treated persons subject  
 15           to the exclusionary conduct differently than the de-  
 16           fendant treated other persons;

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

20           “(4) that a defendant with significant market  
 21           power in a relevant market has recouped or is likely  
 22           to recoup the losses it incurred or incurs from below-  
 23           cost pricing for products or services in the relevant  
 24           market;

1           “(5) that the conduct of the defendant makes  
2           no economic sense apart from its tendency to harm  
3           competition;

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

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

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

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

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

23          (b) FEDERAL TRADE COMMISSION ACT.—



1           (1) CIVIL PENALTIES.—Section 5 of the Fed-  
 2       eral Trade Commission Act (15 U.S.C. 45) is  
 3       amended by adding at the end the following:

4       “(p) CIVIL PENALTY FOR VIOLATION OF SECTION  
 5   26A OF THE CLAYTON ACT.—The Commission may com-  
 6   mence a civil action in a district court of the United States  
 7   against any person, partnership, or corporation who vio-  
 8   lates subsection (a)(1) respecting an unfair method of  
 9   competition that constitutes a violation of section 26A of  
 10   the Clayton Act to recover a civil penalty, which shall ac-  
 11   crue to the United States, in an amount not more than  
 12   the greater of—

13           “(1) 15 percent of the total United States reve-  
 14       nues of the person, partnership, or corporation for  
 15       the previous calendar year; or

16           “(2) 30 percent of the United States revenues  
 17       of the person, partnership, or corporation in any line  
 18       of commerce affected or targeted by the unlawful  
 19       conduct during the period of the unlawful conduct.”.

20       (2) COMMISSION LITIGATION AUTHORITY.—Sec-  
 21       tion 16(a)(2) of the Federal Trade Commission Act  
 22       (15 U.S.C. 56(a)(2)) is amended—

23           (A) in subparagraph (D), by striking “or”  
 24       after the semicolon;

25           (B) in subparagraph (E)—

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

3 (ii) by inserting “or” after the semi-  
4 colon; and

5 (C) by inserting after subparagraph (E)  
6 the following:

7 “(F) to recover civil penalties under sec-  
8 tion 5(p) of this Act;”.

9 (c) ENFORCEMENT GUIDELINES.—

10 (1) IN GENERAL.—Not later than 1 year after  
11 the date of enactment of this Act, the Attorney Gen-  
12 eral and the Federal Trade Commission shall issue  
13 joint guidelines outlining policies, practices, and ana-  
14 lytical techniques relating to agency enforcement  
15 under section 26A of the Clayton Act, as added by  
16 section 4 of this Act, with the goal of promoting  
17 transparency and deterring violations of section 26A  
18 of the Clayton Act.

19 (2) UPDATES.—The Attorney General and the  
20 Federal Trade Commission shall update the joint  
21 guidelines issued under subsection (a), as needed to  
22 reflect current agency policies and practices, but not  
23 less frequently than once every 5 years beginning on  
24 the date of enactment of this Act.

25 (3) PUBLIC NOTICE AND COMMENT.—

(A) GUIDELINES.—Before issuing guidelines under subsection (c)(1) or (c)(2), the Attorney General and the Federal Trade Commission shall publish proposed guidelines in draft form and provide public notice and opportunity for comment for not less than 60 days after the date on which the guidelines are published.

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

**SEC. 10. CIVIL PENALTIES FOR SHERMAN ACT VIOLATIONS.**

(a) CIVIL PENALTY AMENDMENTS.—

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

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

(B) by adding at the end the following  
“(b)(1) Every person who violates this section shall be liable to the United States for a civil penalty of not more than the greater of—

“(A) 15 percent of the total United States revenues of the person for the previous calendar year; or

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

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

8           (2) SECTION 2 OF THE SHERMAN ACT.—Section  
9           2 of the Sherman Antitrust Act (15 U.S.C. 2) is  
10          amended—

11                   (A) by striking “Every” and inserting “(a)  
12           Every”; and

13                   (B) by adding at the end the following

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

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

19                   “(B) 30 percent of the United States revenues  
20           of the person in any part of the trade or commerce  
21           related to or targeted by the unlawful conduct under  
22           this section during the period of the unlawful con-  
23           duct.

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

1           (3) FEDERAL TRADE COMMISSION ACT.—Sec-  
2           tion 5 of the Federal Trade Commission Act (15  
3           U.S.C. 45) is amended by adding at the end the fol-  
4           lowing:

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

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

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

21                 “(B) 30 percent of the United States revenues  
22                 of the person, partnership, or corporation in any line  
23                 of commerce related to or targeted by the unlawful  
24                 conduct described in paragraph (1) during the pe-  
25                 riod of the unlawful conduct.”.

1 (b) RULE OF CONSTRUCTION.—

2 (1) CIVIL PENALTIES.—The civil penalties pro-  
 3 vided in subsection (b) of section 1 of the Sherman  
 4 Act (15 U.S.C. 1), subsection (b) of section 2 of the  
 5 Sherman Act (15 U.S.C. 2), and subsection (o) of  
 6 section 5 of the Federal Trade Commission Act (15  
 7 U.S.C. 45), as added by subsection (a) of this sec-  
 8 tion, are in addition to, and not in lieu of, any other  
 9 remedy provided by Federal law, including under—

10 (A) section 4 or 16 of the Clayton Act (15  
 11 U.S.C. 15, 26); or

12 (B) section 13(b) of the Federal Trade  
 13 Commission Act (15 U.S.C. 53(b)).

14 (2) AUTHORITIES.—Nothing in this paragraph  
 15 may be construed to affect any authority of the At-  
 16 torney General or the Federal Trade Commission  
 17 under any other provision of law.

18 **SEC. 11. JOINT CIVIL PENALTY GUIDELINES.**

19 (a) IN GENERAL.—Not later than 1 year after the  
 20 date of enactment of this Act, the Attorney General and  
 21 the Federal Trade Commission shall issue joint guidelines  
 22 reflecting agency policies for determining the appropriate  
 23 amount of a civil penalty to be sought under sections 1(b)  
 24 and 2(b) of the Sherman Act (15 U.S.C. 1, 2), section  
 25 26A(f) of the Clayton Act, and sections 5(o) and 5(p) of

1 the Federal Trade Commission Act (15 U.S.C. 45), as  
 2 added by of this Act, with the goal of promoting trans-  
 3 parency and crafting remedies for individual violations  
 4 that are effective in deterring future unlawful conduct and  
 5 proportionate to the gravity of the violation.

6 (b) CONSIDERATIONS.—In establishing the guidelines  
 7 described in subsection (a), the Attorney General and the  
 8 Federal Trade Commission shall consider the relevant fac-  
 9 tors to be used for calculating an appropriate civil penalty  
 10 for a particular violation, including—

- 11 (1) the volume of commerce affected;
- 12 (2) the duration and severity of the unlawful  
 13 conduct;
- 14 (3) the intent of the person undertaking the un-  
 15 lawful conduct;
- 16 (4) the extent to which the unlawful conduct  
 17 was egregious or a clear violation of the law;
- 18 (5) whether the civil penalty is to be applied in  
 19 combination with other remedies, including—
  - 20 (A) structural remedies, behavioral condi-  
 21 tions, or equitable disgorgement; or
  - 22 (B) other remedies available under section  
 23 4, 4A, 15, or 16 of the Clayton Act (15 U.S.C.  
 24 15, 15a, 25, 26) or section 13(b) of the Federal  
 25 Trade Commission Act (15 U.S.C. 53(b));

1           (6) whether the person has previously engaged  
2           in the same or similar anticompetitive conduct; and

3           (7) whether the person undertook the conduct  
4           in violation of a preexisting consent decree or court  
5           order.

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

12          (d) PUBLIC NOTICE AND COMMENT.—

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

20               (2) INAPPLICABILITY OF RULEMAKING PROVI-  
21               SIONS.—The provisions of section 553 of title 5,  
22               United States Code, shall not apply to the guidelines  
23               issued under this section.



1 **SEC. 12. FEDERAL TRADE COMMISSION LITIGATION AU-**  
2 **THORITY.**

3 Section 16(a)(2) of the Federal Trade Commission  
4 Act (15 U.S.C. 56(a)(2)) is amended—

5 (1) in subparagraph (D), by striking “or” at  
6 the end;

7 (2) in subparagraph (E)—

8 (A) by moving the margins 2 ems to the  
9 left; and

10 (B) by striking the semicolon and inserting  
11 “; or”; and

12 (3) by inserting after subparagraph (E) the fol-  
13 lowing:

14 “(F) to recover civil penalties under sec-  
15 tion 5(o) of this Act;”.

16 **SEC. 13. MARKET DEFINITION.**

17 (a) IN GENERAL.—Establishing liability under the  
18 antitrust laws does not require the definition of a relevant  
19 market, except when the definition of a relevant market  
20 is required, to establish a presumption or to resolve a  
21 claim, under a statutory provision that explicitly ref-  
22 erences the terms “relevant market”, “market concentra-  
23 tion”, or “market share”. Statutory references to the term  
24 “line of commerce” shall not constitute an exception to  
25 the foregoing rule that establishing liability under the

1 antitrust laws does not require the definition of a relevant  
2 market.

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

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

20 **SEC. 14. LIMITATIONS ON IMPLIED IMMUNITY FROM THE**  
21 **ANTITRUST LAWS.**

22 (a) IN GENERAL.—In any action or proceeding to en-  
23 force the antitrust laws with respect to conduct that is  
24 regulated under Federal statute, no court or adjudicatory  
25 body may find that the Federal statute, or any rule or

1 regulation promulgated in accordance with the Federal  
 2 statute, implicitly precludes application of the antitrust  
 3 laws to the conduct unless—

4 (1) a Federal agency or department actively  
 5 regulates the conduct under the Federal statute;

6 (2) the Federal statute does not include any  
 7 provision preserving the rights, claims, or remedies  
 8 under the applicable antitrust laws or under any  
 9 area of law that includes the antitrust laws; and

10 (3) Federal agency or department rules or regu-  
 11 lations, adopted by rulemaking or adjudication, ex-  
 12 plicitly require or authorize the defendant to under-  
 13 take the conduct.

14 (b) EXISTING FEDERAL REGULATION.—In any ac-  
 15 tion or proceeding described in subsection (a), the anti-  
 16 trust laws shall be applied fully and without qualification  
 17 or limitation, and the scope of the antitrust laws shall not  
 18 be defined more narrowly on account of the existence of  
 19 Federal rules, regulations, or regulatory agencies or de-  
 20 partments, unless application of the antitrust laws is pre-  
 21 cluded or limited by—

22 (1) an explicit exemption from the antitrust  
 23 laws under a Federal statute; or

24 (2) an implied immunity that satisfies the re-  
 25 quirements under subsection (a).

1 **SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated for fiscal year  
3 2022—

4 (1) \$484,500,000 for the Antitrust Division of  
5 the Department of Justice; and

6 (2) \$651,000,000 for the Federal Trade Com-  
7 mission.

8 **SEC. 16. WHISTLEBLOWER PROTECTIONS.**

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

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

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

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

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

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

“(B) to cause to be filed, testify in, participate in, or otherwise assist a Federal Government investigation or a Federal Government proceeding filed or about to be filed (with any knowledge of the employer) relating to any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the applicable antitrust laws.

“(2) LIMITATION ON PROTECTIONS.—Paragraph (1) shall not apply to any covered individual if—

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

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

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

tion of an investigation by the Federal Government of a violation of the applicable antitrust laws.

“(3) DEFINITIONS.—In this section:

“(A) APPLICABLE ANTITRUST LAWS.—The term ‘applicable antitrust laws’ means section 1, 2, or 3 of the Sherman Act (15 U.S.C. 1, 2, and 3) or section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section applies to unfair methods of competition.

“(B) COVERED INDIVIDUAL.—The term ‘covered individual’ means an employee, contractor, subcontractor, or agent of an employer.

“(C) EMPLOYER.—The term ‘employer’ means a person, or any officer, employee, contractor, subcontractor, or agent of such person.

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

“(i) a Federal regulatory or law enforcement agency; or

“(ii) any Member of Congress or committee 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 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) COVERED ENFORCEMENT ACTION.—The  
 9 term ‘covered enforcement action’ means any crimi-  
 10 nal action brought by the Attorney General under  
 11 the antitrust laws that results in criminal fines ex-  
 12 ceeding \$1,000,000.

13 “(3) ORIGINAL INFORMATION.—The term  
 14 ‘original information’ means information that—

15 “(A) is derived from the independent  
 16 knowledge or analysis of a whistleblower;

17 “(B) is not known to the Attorney General  
 18 or the Department of Justice from any other  
 19 source, unless the whistleblower is the original  
 20 source of the information; and

21 “(C) is not exclusively derived from an al-  
 22 legation made in a judicial or administrative  
 23 hearing, in a governmental report, hearing,  
 24 audit, or investigation, or from the news media,  
 25 unless the whistleblower is a source of the infor-  
 26 mation.

1           “(4) WHISTLEBLOWER.—The term ‘whistle-  
 2       blower’ means any individual who provides, or 2 or  
 3       more individuals acting jointly who provide, informa-  
 4       tion relating to a violation of the antitrust laws to  
 5       the Department of Justice, in a manner established  
 6       by the Department of Justice.

7       “(b) AWARDS.—

8           “(1) IN GENERAL.—In a covered enforcement  
 9       action, the Attorney General, subject to subsection  
 10      (c), may pay an award or awards to 1 or more whis-  
 11      tleblowers who voluntarily provided original informa-  
 12      tion to the Department of Justice that led to the  
 13      successful enforcement of the covered enforcement  
 14      action, in an amount equal to not more than 30 per-  
 15      cent, in total, of what has been collected of the  
 16      criminal fine imposed in the covered enforcement ac-  
 17      tion under the antitrust laws.

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

21       “(c) DETERMINATION OF AMOUNT OF AWARD; DE-  
 22      TERMINATION OF AWARD.—

23           “(1) DETERMINATION OF AMOUNT OF  
 24      AWARD.—

1           “(A) DISCRETION.—The determination of  
2           the amount of an award made under subsection  
3           (b) shall be in the discretion of the Attorney  
4           General.

5           “(B) CRITERIA.—In determining the  
6           amount of an award made under subsection (b),  
7           the Attorney General shall take into consider-  
8           ation—

9                   “(i) the significance of the informa-  
10                  tion provided by the whistleblower to the  
11                  success of the covered enforcement action;

12                  “(ii) the degree of assistance and co-  
13                  operation provided by the whistleblower in  
14                  a covered enforcement action;

15                  “(iii) the interest of the Department  
16                  of Justice in deterring criminal violations  
17                  of the antitrust laws by making awards to  
18                  whistleblowers who provide information  
19                  that lead to the successful covered enforce-  
20                  ment actions; and

21                  “(iv) such additional relevant factors  
22                  as the Attorney General may establish.

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

1           “(A) to any whistleblower who is, or was at  
2           the time the whistleblower acquired the original  
3           information submitted to the Commission, a  
4           member, officer, or employee of—

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

7                   “(ii) any law enforcement organiza-  
8                   tion;

9           “(B) to any whistleblower who is convicted  
10          of a criminal violation related to the covered en-  
11          forcement action for which the whistleblower  
12          otherwise could receive an award under this sec-  
13          tion;

14          “(C) to any whistleblower who was an  
15          originator or leader of or who coerced any other  
16          party to participate in the activity giving rise to  
17          liability under the antitrust laws in the covered  
18          enforcement action for which the whistleblower  
19          otherwise could receive an award under this sec-  
20          tion;

21          “(D) to any whistleblower who fails to re-  
22          spond fully and truthfully to all inquiries of the  
23          Department of Justice relating to the original  
24          information or intentionally withholds informa-  
25          tion relating to the original information;

1           “(E) to any whistleblower who commits,  
 2           participates in, or attempts to commit or par-  
 3           ticipate in any crimes after disclosing the origi-  
 4           nal information to the Department of Justice;  
 5           or

6           “(F) to any whistleblower who fails to sub-  
 7           mit information to the Department of Justice in  
 8           such form as the Department may require.

9           “(d) REPRESENTATION.—

10           “(1) PERMITTED REPRESENTATION.—Any  
 11           whistleblower who makes a claim for an award under  
 12           subsection (b) may be represented by counsel.

13           “(2) REQUIRED REPRESENTATION.—Any whis-  
 14           tleblower who makes a claim for an award under  
 15           subsection (b) may be represented by counsel.

16           “(A) IN GENERAL.—Any whistleblower  
 17           who anonymously makes a claim for an award  
 18           under subsection (b) shall be represented by  
 19           counsel if the whistleblower anonymously sub-  
 20           mits the information upon which the claim is  
 21           based.

22           “(B) DISCLOSURE OF IDENTITY.—Prior to  
 23           the payment of an award, a whistleblower shall  
 24           disclose the identity of the whistleblower and  
 25           provide such other information as the Attorney

1           General or the Department of Justice may re-  
2           quire, directly or through counsel for the whis-  
3           tleblower.

4           “(e) APPEALS.—Any determination made under this  
5   section, including whether, to whom, or in what amount  
6   to make awards, shall be in the discretion of the Attorney  
7   General. Any such determination, except the determina-  
8   tion of the amount of an award if the award was made  
9   in accordance with subsection (b), may be appealed to the  
10  appropriate court of appeals of the United States not more  
11  than 30 days after the determination is issued by the At-  
12  torney General. The court shall review the determination  
13  made by the Attorney General in accordance with section  
14  706 of title 5.”.

15 **SEC. 17. PREJUDGMENT INTEREST.**

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

19       “(a) Except as provided in subsection (b), any person  
20  who shall be injured in his business or property by reason  
21  of anything forbidden in the antitrust laws may sue there-  
22  for in any district court of the United States in the district  
23  in which the defendant resides or is found or has an agent,  
24  without respect to the amount in controversy, and shall  
25  recover threefold the damages by him sustained, the cost

1 of suit, including a reasonable attorney’s fee, and simple  
 2 interest on threefold the damages by him sustained for  
 3 the period beginning on the date of service of such per-  
 4 son’s pleading setting forth a claim under the antitrust  
 5 laws and ending on the date of judgment.”.

6 **SEC. 18. ADDITIONAL REMEDIES; RULES OF CONSTRUC-**  
 7 **TION.**

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

14 (b) **RULES OF CONSTRUCTION.**—Nothing in this Act  
 15 may be construed to—

16 (1) impair or limit the applicability of any of  
 17 the antitrust laws; and

18 (2) prohibit any other remedy provided by Fed-  
 19 eral law.

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