

117TH CONGRESS
2D SESSION

H. R. 3843

IN THE SENATE OF THE UNITED STATES

OCTOBER 11, 2022

Received

AN ACT

To protect competition and promote antitrust enforcement
by adjusting premerger filing fees to increase antitrust
enforcement resources.

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; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Merger Filing Fee Modernization Act of 2022”.

4 (b) TABLE OF CONTENTS.—The table of contents of
5 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MODERNIZING MERGER FILING FEE COLLECTIONS;
ACCOUNTABILITY REQUIREMENTS; LIMITATION ON FUNDING

Sec. 101. Modification of premerger notification filing fees.

Sec. 102. Reporting requirements for merger fee collections.

TITLE II—DISCLOSURE OF SUBSIDIES BY FOREIGN
ADVERSARIES

Sec. 201. Findings and purpose.

Sec. 202. Mergers involving foreign government subsidies.

TITLE III—VENUE FOR STATE ANTITRUST ENFORCEMENT

Sec. 301. Venue for State Antitrust Enforcement.

6 **TITLE I—MODERNIZING MERG-**
7 **ER FILING FEE COLLEC-**
8 **TIONS; ACCOUNTABILITY RE-**
9 **QUIREMENTS; LIMITATION**
10 **ON FUNDING**

11 **SEC. 101. MODIFICATION OF PREMERGER NOTIFICATION**
12 **FILING FEES.**

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

15 (1) in subsection (b)—

16 (A) in paragraph (1)—

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

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

3 (iii) by striking “2004” and inserting
4 “2023”; and

5 (iv) by striking “2003” and inserting
6 “2022”;

7 (B) in paragraph (2)—

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

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

12 (iii) by striking “but less” and insert-
13 ing “but is less”; and

14 (iv) by striking “and” at the end;

15 (C) in paragraph (3)—

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

18 (ii) by striking the period at the end
19 and inserting “but is less than
20 \$1,000,000,000 (as so adjusted and pub-
21 lished);”; and

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

23 “(4) \$400,000 if the aggregate total amount
24 determined under section 7A(a)(2) of the Clayton
25 Act (15 U.S.C. 18a(a)(2)) is not less than

1 \$1,000,000,000 (as so adjusted and published) but
2 is less than \$2,000,000,000 (as so adjusted and
3 published);

4 “(5) \$800,000 if the aggregate total amount
5 determined under section 7A(a)(2) of the Clayton
6 Act (15 U.S.C. 18a(a)(2)) is not less than
7 \$2,000,000,000 (as so adjusted and published) but
8 is less than \$5,000,000,000 (as so adjusted and
9 published); and

10 “(6) \$2,250,000 if the aggregate total amount
11 determined under section 7A(a)(2) of the Clayton
12 Act (15 U.S.C. 18a(a)(2)) is not less than
13 \$5,000,000,000 (as so adjusted and published).”;
14 and

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

16 “(c)(1) For each fiscal year commencing after Sep-
17 tember 30, 2023, the filing fees in this section shall be
18 increased by an amount equal to the percentage increase,
19 if any, in the Consumer Price Index, as determined by
20 the Department of Labor or its successor, for the year
21 then ended over the level so established for the year ending
22 September 30, 2022.

23 “(2) As soon as practicable, but not later than Janu-
24 ary 31 of each year, the Federal Trade Commission shall
25 publish the adjusted amounts required by paragraph (1).

1 “(3) The Federal Trade Commission shall not adjust
2 amounts required by paragraph (1) if the percentage in-
3 crease described in paragraph (1) is less than 1 percent.

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

6 **SEC. 102. REPORTING REQUIREMENTS FOR MERGER FEE**
7 **COLLECTIONS.**

8 (a) FTC AND DOJ JOINT REPORT.—For each of fis-
9 cal years 2023 through 2027, the Federal Trade Commis-
10 sion and Department of Justice shall jointly and annually
11 report to the Congress on the operation of section 7A of
12 the Clayton Act (15 U.S.C. 18a) and shall include in such
13 report the following:

14 (1) The amount of funds made available to the
15 Federal Trade Commission and the Department of
16 Justice, respectively, from the premerger notification
17 filing fees under this section, as adjusted by the
18 Merger Filing Fee Modernization Act of 2022, as
19 compared to the funds made available to the Federal
20 Trade Commission and the Department of Justice,
21 respectively, from premerger notification filing fees
22 as the fees were determined in fiscal year 2022.

23 (2) The total revenue derived from premerger
24 notification filing fees, by tier, by the Federal Trade

1 Commission and the Department of Justice, respec-
2 tively.

3 (3) The gross cost of operations of the Federal
4 Trade Commission, by Budget Activity, and the
5 Antitrust Division of the Department of Justice, re-
6 spectively.

7 (b) FTC REPORT.—The Federal Trade Commission
8 shall include in the report required under subsection (a),
9 in addition to the requirements under subsection (a), for
10 the previous fiscal year—

11 (1) for actions with respect to which the record
12 of the vote of each member of the Federal Trade
13 Commission is on the public record of the Federal
14 Trade Commission, a list of each action with respect
15 to which the Federal Trade Commission took or de-
16 clined to take action on a 3 to 2 vote; and

17 (2) for all actions for which the Federal Trade
18 Commission took a vote, the percentage of such ac-
19 tions that were decided on a 3 to 2 vote.

20 (c) SUMMARY.—The Federal Trade Commission and
21 the Department of Justice shall make the report required
22 under subsection (a) available to the Committees on the
23 Judiciary of the House of Representatives and of the Sen-
24 ate, and shall, for fiscal years 2023 through 2027, no later
25 than July 1, present a summary of the joint annual report

1 for the preceding fiscal year, including the information re-
2 quired in subsections (a) and (b) of this section, to the
3 Committees on the Judiciary of the House of Representa-
4 tives and of the Senate.

5 **TITLE II—DISCLOSURE OF SUB-** 6 **SIDIES BY FOREIGN ADVER-** 7 **SARIES**

8 **SEC. 201. FINDINGS AND PURPOSE.**

9 (a) FINDINGS.—Congress finds the following:

10 (1) Foreign subsidies, which can take the form
11 of direct subsidies, grants, loans (including below-
12 market loans), loan guarantees, tax concessions,
13 preferential government procurement policies, or
14 government ownership or control, can distort the
15 competitive process by enabling the subsidized firm
16 to submit a bid higher than other firms in the mar-
17 ket, or otherwise change the incentives of the firm
18 in ways that undermine competition following an ac-
19 quisition.

20 (2) Foreign subsidies are particularly problem-
21 atic when granted by countries or entities that con-
22 stitute a strategic or economic threat to United
23 States interests.

24 (3) The Made in China 2025 plan, states that
25 the Chinese Communist Party will “support enter-

1 prises to carry out mergers and acquisitions (M&A),
2 equity investment, and venture capital overseas”.

3 (4) The 2020 report to Congress from the bi-
4 partisan U.S.-China Economic and Security Review
5 Commission concluded that the Chinese Government
6 subsidizes companies with a goal of their expanding
7 into the United States and other countries, finding
8 that “[t]his process assists Chinese national cham-
9 pions in surpassing and supplanting global market
10 leaders”. The report warns that the risk is particu-
11 larly acute when it comes to emerging technologies,
12 where China seeks to “surpass and displace the
13 United States altogether [and that] [f]ailure to ap-
14 preciate the gravity of this challenge and defend
15 U.S. competitiveness would be dire . . . [and] risks
16 setting back U.S. economic and technological
17 progress for decades”.

18 (5) In remarks before the Hudson Institute on
19 December 8, 2020, FTC Commissioner Noah Phil-
20 lips stated, “[O]ne area where antitrust needs to
21 reckon with the strategic interests of other nations
22 is when we scrutinize mergers or conduct involving
23 state-owned entities . . . companies that are con-
24 trolled, to varying degrees, by the state . . . [and]

1 often are a government tool for implementing indus-
2 trial policies or to protect national security”.

3 (b) PURPOSE.—The purpose of this section is to re-
4 quire parties providing pre-merger notifications to include
5 in the notification required under section 7A of the Clay-
6 ton Act (15 U.S.C. 18a) information concerning subsidies
7 they receive from countries or entities that are strategic
8 or economic threats to the United States.

9 **SEC. 202. MERGERS INVOLVING FOREIGN GOVERNMENT**
10 **SUBSIDIES.**

11 (a) DEFINITION.—In this section, the term “foreign
12 entity of concern” has the meaning given the term in sec-
13 tion 40207 of the Infrastructure Investment and Jobs Act
14 (42 U.S.C. 18741(a)).

15 (b) ACCOUNTING FOR FOREIGN GOVERNMENT SUB-
16 SIDIES.—A person required to file a notification under
17 section 7A of the Clayton Act (15 U.S.C. 18a) that re-
18 ceived a subsidy from a foreign entity of concern shall in-
19 clude in such notification content regarding such subsidy.

20 (c) AUTHORITY OF ANTITRUST REGULATORS.—The
21 Federal Trade Commission, with the concurrence of the
22 Assistant Attorney General in charge of the Antitrust Di-
23 vision of the Department of Justice, and in consultation
24 with the Chairperson of the Committee on Foreign Invest-
25 ment in the United States, the Secretary of Commerce,

1 the Chair of the United States International Trade Com-
 2 mission, the United States Trade Representative, and the
 3 heads of other appropriate agencies, and by rule in accord-
 4 ance with section 553 of title 5, United States Code, shall
 5 require that the notification required under subsection (b)
 6 be in such form and contain such documentary material
 7 and information relevant to a proposed acquisition as is
 8 necessary and appropriate to enable the Federal Trade
 9 Commission and the Assistant Attorney General in charge
 10 of the Antitrust Division of the Department of Justice to
 11 determine whether such acquisition may, if consummated,
 12 violate the antitrust laws.

13 (d) EFFECTIVE DATE.—Subsection (b) shall take ef-
 14 fect on the date on which the rule described in subsection
 15 (c) takes effect.

16 **TITLE III—VENUE FOR STATE** 17 **ANTITRUST ENFORCEMENT**

18 **SEC. 301. VENUE FOR STATE ANTITRUST ENFORCEMENT.**

19 Section 1407 of title 28, United States Code, is
 20 amended—

21 (1) in subsection (g) by inserting “or a State”
 22 after “United States” and striking “; but shall not
 23 include section 4A of the Act of October 15, 1914,
 24 as added July 7, 1955 (69 Stat. 282; 15 U.S.C.
 25 15a)”;

1 (2) by striking subsection (h).

Passed the House of Representatives September 29,
2022.

Attest: CHERYL L. JOHNSON,
Clerk.