

117TH CONGRESS  
2D SESSION

# S. 3847

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

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## IN THE SENATE OF THE UNITED STATES

MARCH 16, 2022

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

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

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

2 (a) FINDINGS.—Congress finds that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (1) ban the most anticompetitive acquisitions;

19 (2) restore and protect the competitive process;

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

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

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

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

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

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

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

17 **SEC. 3. DEFINITIONS.**

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

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

22          “(a) DEFINITIONS.—In this Act:

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

25                          “(A) any merger;

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

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

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

11           “(A) the Federal Trade Commission; or

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

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

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

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

20           “(C) this Act; and

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           “(13) PLATFORM CONFLICT OF INTEREST.—

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

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

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

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

16                   “(A) in which—

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

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

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

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

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

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

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

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

1 “(B) includes a geographic area if geog-  
 2 raphy limits the willingness or ability—

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

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

7 “(iii) of some workers to provide  
 8 labor.

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

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

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

18 **SEC. 4. BANNING ALL PROHIBITED MERGERS AND**  
 19 **STRENGTHENING ANTITRUST AGENCY EN-**  
 20 **FORCEMENT.**

21 (a) BANNING ALL PROHIBITED MERGERS.—Section  
 22 7 of the Clayton Act (15 U.S.C. 18) is amended—

23 (1) in the first and second undesignated para-  
 24 graphs, by striking “lessen competition, or to tend  
 25 to create a monopoly” each place the term appears

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

4                   (A) in subsection (b)—

5                           (i) in paragraph (1)(B)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17               “(ii) the public with—

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

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

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

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

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

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

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

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

3 “(ii) the history of—

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

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

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

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

14 “(bb) reduced wages for workers;

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

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

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

21 “(ff) significant worker layoffs;  
22 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

22 “(I) is a dominant firm; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1       erence to any definition of a relevant market or mar-  
 2       ket share alleged by the Federal Trade Commission  
 3       or the Assistant Attorney General and may not off-  
 4       set any anticompetitive harms alleged by the Federal  
 5       Trade Commission or the Assistant Attorney Gen-  
 6       eral with any procompetitive benefits.

7           “(11) Nothing in this subsection may be con-  
 8       strued to preclude the Federal Trade Commission or  
 9       the Assistant Attorney General from reviewing or in-  
 10      vestigating a nonreportable acquisition before or  
 11      after its consummation.”; and

12           (C) by striking subsection (f).

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

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

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

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

22           “(2) shall require that the notification required  
 23      under subsection (a) include, in addition to the in-  
 24      formation described in paragraph (1)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25                   “(ii) increase quality;



1 “(iii) increase privacy;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 “(1) HSR SHARING.—

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

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

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

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

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

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

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

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

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

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

9 “(C) reject the acquisition if—

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

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

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

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

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

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

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

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

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

3 “(m) CERTIFICATION.—

4 “(1) INDIVIDUALS.—

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

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

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

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

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

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

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

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

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

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

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

### 22            **GENERAL.**

23        (a) IN GENERAL.—

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



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

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

12            (A) the acquisition is a prohibited merger;

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

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

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

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

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

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

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

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

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

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

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

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

12 “(n) RETROSPECTIVE REVIEW.—

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

15 “(A) REVIEW.—

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

21 “(ii) COORDINATION.—

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

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

9 “(II) COMPULSORY PROCESS.—

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

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

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

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

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

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

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

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

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

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

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

11 “(A) REVIEW.—

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

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

24 “(iii) COORDINATION.—

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

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

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

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

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

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

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

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

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



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

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

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

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

“(3) STATE ATTORNEYS GENERAL.—

“(A) CONSUMMATED ACQUISITIONS.—

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

“(ii) CIVIL ACTION.—

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

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

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

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

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

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

3 “(B) PROHIBITED MERGERS.—

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

9 “(ii) CIVIL ACTION.—

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

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

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

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

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

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

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

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

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

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

13 “(5) JUDICIAL REVIEW.—

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

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

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

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

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

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

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

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

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

16      (a) DISTRICT COURTS.—

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

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

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

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

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

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

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



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

5 **SEC. 8. FUNDING.**

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

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

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

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

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

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

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

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

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

11 **SEC. 10. SEVERABILITY.**

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

19 (b) EXCLUSIVE JURISDICTION.—

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

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

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

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

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

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

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

○