

117TH CONGRESS
1ST SESSION

H. R. 3825

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 2021

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

A BILL

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

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 “Ending Platform Mo-
5 nopolies Act”.

1 **SEC. 2. UNLAWFUL CONFLICTS OF INTEREST.**

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

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

9 (2) offers a product or service that the covered
10 platform requires a business user to purchase or uti-
11 lize as a condition for access to the covered plat-
12 form, or as a condition for preferred status or place-
13 ment of a business user’s product or services on the
14 covered platform; or

15 (3) gives rise to a conflict of interest.

16 (b) CONFLICT OF INTEREST.—For purposes of this
17 section, the term “conflict of interest” includes the conflict
18 of interest that arises when—

19 (1) a covered platform operator owns or con-
20 trols a line of business, other than the covered plat-
21 form; and

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

25 (A) advantage the covered platform opera-
26 tor’s own products, services, or lines of business

1 on the covered platform over those of a com-
2 peting business or a business that constitutes
3 nascent or potential competition to the covered
4 platform operator; or

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

10 **SEC. 3. ENFORCEMENT.**

11 (a) **IN GENERAL.**—The Commission and the Depart-
12 ment of Justice shall enforce this Act in the same manner,
13 by the same means, and with the same jurisdiction, pow-
14 ers, and duties as though all applicable terms and provi-
15 sions of the Federal Trade Commission Act (15 U.S.C.
16 41 et seq.) or the Clayton Act (15 U.S.C. 12 et seq.), as
17 appropriate, were incorporated into and made a part of
18 this Act.

19 (b) **UNFAIR METHODS OF COMPETITION.**—A viola-
20 tion of this Act shall also constitute an unfair method of
21 competition under section 5 of the Federal Trade Commis-
22 sion Act (15 U.S.C. 5).

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

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

5 (1) 15 percent of the total average daily United
6 States revenue of the person for the previous cal-
7 endar year; or

8 (2) 30 percent of the total average daily United
9 States revenue of the person in any line of business
10 affected or targeted by the unlawful conduct during
11 the period of the unlawful conduct.

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

20 **SEC. 4. LIMITATIONS ON BOARD MEMBERSHIP AND OTHER**
21 **SERVICE.**

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

1 an officer, director, employee, or other institution-affili-
2 ated party, including as an agent, representative, or con-
3 tractor, of a formerly affiliated person.

4 (b) **TERMINATION OF SERVICE.**—Any individual
5 whose service violates subsection (a) as of the date an on-
6 line platform is designated as a covered platform under
7 subsection 6(a), shall terminate such service as soon as
8 is practicable and in no event, later than the end of the
9 60-day period beginning on the date the online platform
10 is designated as a covered platform.

11 **SEC. 5. DEFINITIONS.**

12 For purposes of this Act:

13 (1) **ANTITRUST LAWS.**—The term “antitrust
14 laws” has the meaning given the term in subsection
15 (a) of the first section of the Clayton Act (15 U.S.C.
16 12).

17 (2) **BENEFICIAL INTEREST.**—The term “Bene-
18 ficial Interest” means with respect to a person, hav-
19 ing access to competitively sensitive information or
20 the ability to affect the person’s strategic decisions.

21 (3) **COMMISSION.**—The term “Commission”
22 means the Federal Trade Commission.

23 (4) **CONTROL.**—The term “control” with re-
24 spect to a person means—

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

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

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

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

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

14 (F) otherwise exercises substantial control
15 over the person.

16 (5) COVERED PLATFORM.—The term “covered
17 platform” means an online platform—

18 (A) that has been designated as a “covered
19 platform” under section 6(a); or

20 (B) that—

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

1 complaint for an alleged violation of this
2 Act—

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

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

9 (ii) is owned or controlled by a person
10 with net annual sales, or a market capital-
11 ization greater than \$600,000,000,000 at,
12 adjusted for inflation on the basis of the
13 Consumer Price Index, the time of the
14 Commission’s or the Department of Jus-
15 tice’s designation under section 6(a) or any
16 of the two years preceding that time, or at
17 any time in the 2 years preceding the filing
18 of a complaint for an alleged violation of
19 this Act; and

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

24 (6) COVERED PLATFORM OPERATOR.—The
25 term “covered platform operator” means a person

1 that, directly or indirectly, owns or controls a cov-
2 ered platform.

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

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

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

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

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

20 (10) ONLINE PLATFORM.—The term “online
21 platform” means a website, online or mobile applica-
22 tion, operating system, digital assistant, or online
23 service that—

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

4 (B) facilitates the offering, sale, purchase,
5 payment, or shipping of goods or services, in-
6 cluding software applications, between and
7 among consumers or businesses not controlled
8 by the platform; or

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

11 (11) PERSON.—The term “person” has the
12 meaning given the term in subsection (a) of section
13 1 of the Clayton Act (15 U.S.C. 12).

14 **SEC. 6. IMPLEMENTATION.**

15 (a) COVERED PLATFORM DESIGNATION.—

16 (1) The Commission or Department of Justice
17 shall designate whether an entity is a covered plat-
18 form for the purpose of implementing and enforcing
19 this Act. Such designation shall—

20 (A) be based on a finding that the criteria
21 set forth in paragraph (5)(B)(i)–(iii) of section
22 5 are met;

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

1 (C) will apply for years from its issuance
2 regardless of whether there is a change in con-
3 trol or ownership over the covered platform un-
4 less the Commission or the Department of Jus-
5 tice removes the designation pursuant to sub-
6 section (b).

7 (b) REMOVAL OF COVERED PLATFORM DESIGNA-
8 TION.—The Commission or the Department of Justice
9 shall—

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

17 (2) determine whether to grant a request sub-
18 mitted under paragraph (1) not later than 120 days
19 after the date of the filing of such request; and

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

23 **SEC. 7. JUDICIAL REVIEW.**

24 (a) IN GENERAL.—Any party that is subject to a cov-
25 ered platform designation under section 6(a) of this Act,

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

7 (b) TREATMENT OF FINDINGS.—In a proceeding for
8 judicial review of a covered platform designation under
9 section 6(a) of this Act or a final order of the Commission,
10 the findings of the Commission or the Department of Jus-
11 tice as to the facts, if supported by evidence, shall be con-
12 clusive.

13 **SEC. 8. RULES OF CONSTRUCTION.**

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

19 **SEC. 9. SEVERABILITY.**

20 If any provision of this Act, or the application of such
21 provision to any person or circumstance, is held to be un-
22 constitutional, the remainder of this Act, and the applica-
23 tion of the remaining provisions of this Act to any person
24 or circumstance shall not be affected.

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