

117TH CONGRESS
1ST SESSION

S. 225

To reform the antitrust laws to better protect competition in the American economy, to amend the Clayton Act to modify the standard for an unlawful acquisition, to deter anticompetitive exclusionary conduct that harms competition and consumers, to enhance the ability of the Department of Justice and the Federal Trade Commission to enforce the antitrust laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2021

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

A BILL

To reform the antitrust laws to better protect competition in the American economy, to amend the Clayton Act to modify the standard for an unlawful acquisition, to deter anticompetitive exclusionary conduct that harms competition and consumers, to enhance the ability of the Department of Justice and the Federal Trade Commission to enforce the antitrust laws, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Competition and Anti-
3 trust Law Enforcement Reform Act of 2021”.

4 **SEC. 2. FINDINGS AND PURPOSES.**

5 (a) FINDINGS.—Congress finds that—

6 (1) competitive markets, in which multiple
7 firms compete to buy and sell products and services,
8 are critical to ensuring economic opportunity for all
9 people in the United States and providing resilience
10 to the economy during unpredictable times;

11 (2) when companies compete, businesses offer
12 the highest quality and choice of goods and services
13 for the lowest possible prices to consumers and other
14 businesses;

15 (3) competition fosters small business growth,
16 reduces economic inequality, and spurs innovation
17 and job creation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 exclusion of other potential anticompetitive ef-
2 fects;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **SEC. 3. DEFINITION.**

13 In this Act the term “antitrust laws”—

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

16 (2) includes—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 “(4) the acquisition—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 “(B) may—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (a) DEFINITIONS.—In this section—

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

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

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

25 (b);

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

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

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

8 (c) COMPETITION ADVOCATE.—

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

11 (A) report directly to the Chairman; and

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

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

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

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

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

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

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

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

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

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

9 (4) publish periodic reports on—

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

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

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

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

22 (f) SUBPOENA AUTHORITY.—

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

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

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

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

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

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

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

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

22 (g) DATA CENTER.—

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

25 (2) DUTIES.—The Data Center shall—

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

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

8 (i) a concentration database;

9 (ii) a merger enforcement database;

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

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

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

20 (4) CONFIDENTIALITY.—

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

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

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

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

8 (h) DIVISION OF MARKET ANALYSIS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (IV) innovation;

15 (V) consumer choice and product
16 variety;

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

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

22 (VIII) subsequent mergers and
23 acquisitions activity;

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

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

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

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

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

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

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

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

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

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

17 “(a) DEFINITIONS.—In this section:

18 “(1) EXCLUSIONARY CONDUCT.—

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

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

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

1 “(B) LIMITATIONS.—

2 “(i) Applying for or enforcing a pat-
3 ent, trademark, or copyright, unless such
4 applications or enforcement actions are
5 baseless or made in bad faith or in viola-
6 tion of a legal obligation, shall not alone
7 constitute exclusionary conduct, but such
8 actions may be considered as part of a
9 course of conduct that constitutes exclu-
10 sionary conduct.

11 “(ii) Conduct that is necessary to
12 comply with Federal or State law shall not
13 alone constitute exclusionary conduct, but
14 such actions may be considered as part of
15 a course of conduct that constitutes exclu-
16 sionary conduct.

17 “(2) MARKET POWER.—The term ‘market
18 power’ means the ability of a person, or a group of
19 persons acting in concert, to profitably impose terms
20 or conditions on counterparties, including terms re-
21 garding price, quantity, product or service quality,
22 or other terms affecting the value of consideration
23 exchanged in the transaction, that are more favor-
24 able to the person or group of persons imposing

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

3 “(b) VIOLATION.—

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

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

12 “(c) PRESUMPTION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (b) FEDERAL TRADE COMMISSION ACT.—

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

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

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

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

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

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

25 (B) in subparagraph (E)—

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

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

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

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

9 (c) ENFORCEMENT GUIDELINES.—

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

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

25 (3) PUBLIC NOTICE AND COMMENT.—

1 (A) GUIDELINES.—Before issuing guide-
2 lines under subsection (c)(1) or (c)(2), the At-
3 torney General and the Federal Trade Commis-
4 sion shall publish proposed guidelines in draft
5 form and provide public notice and opportunity
6 for comment for not less than 60 days after the
7 date on which the guidelines are published.

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

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

13 (a) CIVIL PENALTY AMENDMENTS.—

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

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

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

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

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

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

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

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

13 (B) by adding at the end the following

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

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

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

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

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

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

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

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

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

1 (b) RULE OF CONSTRUCTION.—

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

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

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

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

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

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

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

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

11 (1) the volume of commerce affected;

12 (2) the duration and severity of the unlawful
13 conduct;

14 (3) the intent of the person undertaking the un-
15 lawful conduct;

16 (4) the extent to which the unlawful conduct
17 was egregious or a clear violation of the law;

18 (5) whether the civil penalty is to be applied in
19 combination with other remedies, including—

20 (A) structural remedies, behavioral condi-
21 tions, or equitable disgorgement; or

22 (B) other remedies available under section
23 4, 4A, 15, or 16 of the Clayton Act (15 U.S.C.
24 15, 15a, 25, 26) or section 13(b) of the Federal
25 Trade Commission Act (15 U.S.C. 53(b));

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

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

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

12 (d) PUBLIC NOTICE AND COMMENT.—

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

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

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

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

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

7 (2) in subparagraph (E)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 “(B) to cause to be filed, testify in, partici-
6 pate in, or otherwise assist a Federal Govern-
7 ment investigation or a Federal Government
8 proceeding filed or about to be filed (with any
9 knowledge of the employer) relating to any vio-
10 lation of, or any act or omission the covered in-
11 dividual reasonably believes to be a violation of,
12 the applicable antitrust laws.

13 “(2) LIMITATION ON PROTECTIONS.—Para-
14 graph (1) shall not apply to any covered individual
15 if—

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

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

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

1 tion of an investigation by the Federal Govern-
2 ment of a violation of the applicable antitrust
3 laws.

4 “(3) DEFINITIONS.—In this section:

5 “(A) APPLICABLE ANTITRUST LAWS.—The
6 term ‘applicable antitrust laws’ means section
7 1, 2, or 3 of the Sherman Act (15 U.S.C. 1, 2,
8 and 3) or section 5 of the Federal Trade Com-
9 mission Act (15 U.S.C. 45) to the extent that
10 such section applies to unfair methods of com-
11 petition.

12 “(B) COVERED INDIVIDUAL.—The term
13 ‘covered individual’ means an employee, con-
14 tractor, subcontractor, or agent of an employer.

15 “(C) EMPLOYER.—The term ‘employer’
16 means a person, or any officer, employee, con-
17 tractor, subcontractor, or agent of such person.

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

20 “(i) a Federal regulatory or law en-
21 forcement agency; or

22 “(ii) any Member of Congress or com-
23 mittee of Congress.

1 “(E) PERSON.—The term ‘person’ has the
2 same meaning as in subsection (a) of the first
3 section of the Clayton Act (15 U.S.C. 12(a)).

4 “(b) ENFORCEMENT ACTION.—

5 “(1) IN GENERAL.—A covered individual who
6 alleges discharge or other discrimination by any em-
7 ployer in violation of subsection (a) may seek relief
8 under subsection (c) by—

9 “(A) filing a complaint with the Secretary
10 of Labor; or

11 “(B) if the Secretary of Labor has not
12 issued a final decision within 180 days of the
13 filing of the complaint and there is no showing
14 that such delay is due to the bad faith of the
15 claimant, bringing an action at law or equity
16 for de novo review in the appropriate district
17 court of the United States, which shall have ju-
18 risdiction over such an action without regard to
19 the amount in controversy.

20 “(2) PROCEDURE.—

21 “(A) IN GENERAL.—A complaint filed with
22 the Secretary of Labor under paragraph (1)(A)
23 shall be governed under the rules and proce-
24 dures set forth in section 42121(b) of title 49,
25 United States Code.

1 “(B) EXCEPTION.—Notification made
2 under section 42121(b)(1) of title 49, United
3 States Code, shall be made to any individual
4 named in the complaint and to the employer.

5 “(C) BURDENS OF PROOF.—An action
6 brought under paragraph (1)(B) shall be gov-
7 erned by the legal burdens of proof set forth in
8 section 42121(b) of title 49, United States
9 Code.

10 “(D) STATUTE OF LIMITATIONS.—A com-
11 plaint under paragraph (1)(A) shall be filed
12 with the Secretary of Labor not later than 180
13 days after the date on which the violation of
14 this section occurs.

15 “(E) CIVIL ACTIONS TO ENFORCE.—If a
16 person fails to comply with an order or prelimi-
17 nary order issued by the Secretary of Labor
18 pursuant to the procedures set forth in section
19 42121(b) of title 49, United States Code, the
20 Secretary of Labor or the person on whose be-
21 half the order was issued may bring a civil ac-
22 tion to enforce the order in the district court of
23 the United States for the judicial district in
24 which the violation occurred.

25 “(c) REMEDIES.—

1 “(1) IN GENERAL.—A covered individual pre-
2 vailing in any action under subsection (b)(1) shall be
3 entitled to all relief necessary to make the covered
4 individual whole.

5 “(2) COMPENSATORY DAMAGES.—Relief for any
6 action under paragraph (1) shall include—

7 “(A) reinstatement with the same seniority
8 status that the covered individual would have
9 had, but for the discrimination;

10 “(B) the amount of back pay, with inter-
11 est; and

12 “(C) compensation for any special damages
13 sustained as a result of the discrimination in-
14 cluding litigation costs, expert witness fees, and
15 reasonable attorney’s fees.

16 “(d) RIGHTS RETAINED BY WHISTLEBLOWERS.—
17 Nothing in this section shall be deemed to diminish the
18 rights, privileges, or remedies of any covered individual
19 under any Federal or State law, or under any collective
20 bargaining agreement.”.

21 (b) WHISTLEBLOWER REWARD.—The Antitrust
22 Criminal Penalty Enhancement and Reform Act of 2004
23 (15 U.S.C. 1 note) is amended by inserting after section
24 216 the following:

1 **“SEC. 217. CRIMINAL ANTITRUST WHISTLEBLOWER INCEN-**
2 **TIVES.**

3 “(a) DEFINITIONS.—In this section the following
4 definitions shall apply:

5 “(1) ANTITRUST LAWS.—The term ‘antitrust
6 laws’ means section 1 or 3 of the Sherman Act (15
7 U.S.C. 1 and 3).

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

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

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

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

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

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

7 “(b) AWARDS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 “(d) REPRESENTATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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