

# TEAM ACT

## TOUGHER ENFORCEMENT AGAINST MONOPOLISTS

### ONE AGENCY ACT

- Consolidates antitrust enforcement at the Department of Justice.
- Transfers FTC's competition-related funding, resources, and personnel to DOJ.
- Prohibits FCC from undertaking duplicative competition reviews.

### IMPROVEMENTS TO MERGER ENFORCEMENT

- Increases HSR fees for larger transactions. (S.228)
- Presumption:
  - Rebuttable presumption that transactions resulting in unilateral effects or more than 33% market share (5% in the case of a state-owned entity) will substantially lessen competition.
  - Ban on mergers that result in a market share greater than 66%, except when necessary to prevent serious harm to the national economy.
  - Applies to acquisition of potential competitors.
- Harmonizes the applicability of HSR filing thresholds, and requires premerger notification for *any* acquisition by a state-owned entity or a business with more than \$500 billion in assets.

### COMPETITION POLICY

- Requires OIRA to prepare a Competitive Impact Statement for new regulations to ensure that they have a minimal impact on competition.
- Requires DOJ to prepare written explanations of decisions not to sue after issuing compulsory process. Explanations for public investigations are made public; others are available to Congress and subject to FOIA.
- Requires studies of institutional investors and self-preferencing by digital platforms, and a retrospective on tech mergers.
- Requires DOJ to issue guidance on how it evaluates monopsony cases.

### RESTORING BOARD IMMUNITY ACT

- Requires state occupational licensing boards to follow certain procedures in order to retain antitrust immunity.

### ANTITRUST REFORM

- Repeals *Illinois Brick* and *Hanover Shoe* to allow indirect purchasers to recover damages for antitrust violations.
- Limits the ability of courts to infer antitrust immunity. (S.225 §14)
- Allows antitrust plaintiffs to recover prejudgment interest. (S.225 §17)
- Creates a safe harbor for private entities to collaborate on data portability and interoperability.
- Requires the Administrative Office of the Courts to study the feasibility and potential benefits of a program for antitrust cases analogous to the Patent Pilot Program.
- Codifies and clarifies the Consumer Welfare Standard:
  - Courts may only consider effects of challenged conduct or transaction on consumer welfare, including price, output, quality, innovation, and consumer choice.
  - Courts may only consider benefits and efficiencies to the extent that they: are in-market; can only reasonably be achieved through the challenged conduct or transaction; are quantifiable; will primarily accrue to the consumer; and have a high likelihood of being achieved.
- Allows DOJ to recover trebled damages on behalf of consumers, and to distribute the funds to qualified claimants.
- Provides for civil fines for knowing violations of the antitrust laws, capped at 15% of annual revenues for each year in which the violation occurred.
- Requires courts to find that conduct or a transaction is anticompetitive where there is direct evidence that it was undertaken with the clear intent to harm or prevent competition.
- Prohibits the award of federal contracts to companies that have violated the antitrust laws in the last 5 years.
- Prohibits monopolist distributors that compete in their downstream market from discriminating between their offerings and those of their distribution customers.
- Authorizes \$600 million in appropriations to the Antitrust Division.