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.

IN THE SENATE OF THE UNITED STATES

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

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.

Be it enacted by the Senate and House of Representa-
atives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Prohibiting Anti-
competitive Mergers Act of 2022”.
SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the Constitution of the United States prohibits political or economic oligarchies, which are incompatible with a republican form of government;

(2) the antitrust laws, including the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), and the Federal Trade Commission Act (15 U.S.C. 41 et seq.), were enacted to prohibit political and economic oligarchies, to protect fair, open, and competitive markets, and to prevent corporations from abusing their power to stifle competition and improperly influence democratic processes;

(3) Federal courts have misinterpreted the antitrust laws to the detriment of consumers, workers, society, and the United States political economy, including by enhancing the misguided and narrowly defined “consumer welfare standard,” as described by the Supreme of the United States in Reiter v. Sonotone Corp., 442 U.S. 330 (1979), and its progeny;

(4) concentrated economic power creates concentrated political power, allowing giant corporations to invest growing sums of money into influencing government to tilt laws and rules in their favor;
(5) over the last 4 decades, powerful corporations have unconstitutionally amassed too much influence over the United States economy, stifling competition in United States markets and harming workers, consumers, customer choice, sellers, small and minority-owned businesses (including farms and ranches), local, rural, and low-income communities, communities of color, privacy, quality, entrepreneurship, and innovation;

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

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

(8) dominant corporations, which often underinvest in their operations and infrastructure, expose consumers in the United States to the risks of concentrated and brittle supply chains, such as shortages of essential goods and increased prices;

(9) market concentration in essential markets, including those for medical equipment, food, and retail, can pose serious national-security risks during crisis events such as the COVID–19 pandemic;
(10) market concentration is associated with lower wages, and evidence shows that in more concentrated markets, giant corporations are less likely to pass on productivity gains to workers in the form of higher wages and more likely to engage in antiworker labor practices, which disproportionately harm female workers and workers of color;

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

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

(13) State attorneys general may have critical local knowledge or regional concerns about the competitive effects of an acquisition and should play a stronger role in antitrust enforcement;

(14) section 7A of the Clayton Act (15 U.S.C. 18a) (referred to in this section as “section 7A”) was enacted to allow the antitrust agencies to review acquisitions before consummation;
(15) the recent explosion of filings under section 7A has overwhelmed the Federal Trade Commission and the Department of Justice, a phenomenon exacerbated by strict statutory deadlines for the review process and an onerous judicial process to obtain injunctions to block acquisitions likely to lessen competition;

(16) the antitrust agencies should be empowered to reject acquisitions that they review under section 7A, and those decisions should be treated as reviewable agency actions;

(17) the use of structural and behavioral remedies to protect competition and prevent monopolistic behavior has proven ineffective across various industries;

(18) the Federal Trade Commission and the Department of Justice have the authority under existing law to conduct retrospective reviews of any consummated acquisition at any time, regardless of whether the acquisition was nonreportable or the government opposed the acquisition before its consummation;

(19) because some data about the competitive effects of an acquisition will necessarily emerge after consummation, it is critical that the Federal Trade
Commission and the Department of Justice conduct retrospective reviews of acquisitions in order to remedy anticompetitive acquisitions, including through unwinding;

(20) an acquisition may have competitive effects in markets beyond the lines of commerce of the transaction, particularly when a party has an extensive business ecosystem; and

(21) excessive market concentration must be remedied to restore and protect competition in the United States and ensure the United States economy and democracy benefit workers, consumers, customer choice, sellers, small and minority-owned businesses (including farms and ranches), local, rural, and low-income communities, communities of color, privacy, quality, entrepreneurship, and innovation.

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

(1) ban the most anticompetitive acquisitions;

(2) restore and protect the competitive process;

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

(4) reduce the burdens of contemporary merger litigation placed on Federal and State officials;
(5) establish a greater role for Federal agencies and State attorneys general in the merger-review process;

(6) establish procedures for retrospective reviews;

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

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

(9) uphold the mandate in the Constitution of the United States to promote a flourishing democracy by promoting meaningful competition throughout all segments of the United States economy.

SEC. 3. DEFINITIONS.

The first section of the Clayton Act (15 U.S.C. 12) is amended by striking subsections (a) and (b) and inserting the following:

“SECTION 1. DEFINITIONS; SHORT TITLE.

“(a) DEFINITIONS.—In this Act:

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

“(A) any merger;
“(B) any direct or indirect acquisition of the whole or any part of the assets, stock, or other share capital or the use of such stock by the voting or granting of proxies or otherwise;

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

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

“(A) the Federal Trade Commission; or

“(B) the Antitrust Division of the Department of Justice.

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

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

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

“(C) this Act; and

“(D) any other similar Federal or State law designed or intended to prohibit, restrict, or regulate actions having the purpose or effect of monopolization, restraint of trade, or lessening
competition (including through merger or acquisition).

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

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

“(A) violating an order issued by an antitrust agency;

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

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

“(D) being convicted of any felony by a State court or court of the United States; or
“(E) being found liable for violating any antitrust law by a State court or court of the United States.

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

“(A) has annual revenues exceeding $5,000,000,000 (as adjusted and published for each fiscal year beginning after September 30, 2022, in the same manner as provided in section 8(a)(5) to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2021);

“(B) is a financial institution, an equity fund, or a registered investment adviser under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3), if the party or the ultimate parent entity of such party has greater than $10,000,000,000 (as so adjusted and published) in capitalization, commitments, or assets under management; or

“(C) has greater than 20 percent of any relevant market.
“(7) FAILING-FIRM DEFENSE.—The term ‘failing-firm defense’ means a defense that an acquisition is unlikely to be anticompetitive because—

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

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

“(C) the party being acquired has made unsuccessful good-faith efforts to elicit reasonable alternative offers that would keep the assets of the party in the relevant markets and pose a less severe danger to competition than does the proposed acquisition; and

“(D) the acquiring party is the only available purchaser.

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

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

“(B) the 6-digit Standard Occupational Classification codes for a particular job classification; and
“(C) other definitions as the Federal Trade Commission and the Department of Justice may promulgate by regulation.

“(9) **Nonreportable Acquisition.**—The term ‘nonreportable acquisition’ means any acquisition for which the parties are not required to file notification under section 7A.

“(10) **Party.**—The term ‘party’ means, for a given acquisition, a person required to file notification under section 7A.

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

“(12) **Platform.**—The term ‘platform’ means any person’s website, online or mobile application, operating system, digital assistant, online advertising exchange, or online service that—

“(A) operates or provides the main interface between different users or market participants, such as individuals, advertisers, or providers of content, services, and goods; and

“(B) allows for exchanges of at least some goods, services, or content that the person does not own.
“(13) Platform conflict of interest.— The term ‘platform conflict of interest’ means the conflict of interest that arises when a person owns or controls a platform while simultaneously—

“(A) owning or controlling a line of business that competes against third parties on that platform, if the person has the ability and incentive to, or does, advantage its own business on the platform over third-party competitors on the platform or disadvantage the business of third-party competitors on the platform; or

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

“(14) Prohibited merger.—The term ‘prohibited merger’ means an acquisition—

“(A) in which—

“(i) the Herfindahl-Hirschman Index would be greater than 1,800 in any relevant market; and

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

“(B) in which the acquiring person would have a market share of greater than 33 percent of any relevant market (excluding labor mar-
kets) or greater than 25 percent of any labor market as an employer; or

“(C) that would result in the acquiring person holding an aggregate total amount of the voting securities and assets of the acquired person in excess of $5,000,000,000 (as so adjusted and published).

“(15) RELEVANT AGENCY.—The term ‘relevant agency’ means the Office of Advocacy of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, the National Labor Relations Board, any Federal agency required to review an acquisition under Federal law, or any Federal agency with substantial regulatory authority over a party involved in an acquisition (including persons or financial institutions involved with financing the acquisition) as identified by the parties, the Federal Trade Commission, or the Assistant Attorney General.

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

“(A) means any line of commerce, product market, service market, or labor market implicated by an acquisition;
“(B) includes a geographic area if geography limits the willingness or ability—

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

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

“(iii) of some workers to provide labor.

“(17) State attorney general.—The term ‘State attorney general’ has the meaning given the term in section 4G.

“(18) Ultimate parent entity.—The term ‘ultimate parent entity’ has the meaning given the term in section 801.1 of title 16, Code of Federal Regulations.

“(b) Short title.—This Act may be cited as the ‘Clayton Act’.”.

SEC. 4. BANNING ALL PROHIBITED MERGERS AND STRENGTHENING ANTITRUST AGENCY ENFORCEMENT.

(a) Banning all prohibited mergers.—Section 7 of the Clayton Act (15 U.S.C. 18) is amended—

(1) in the first and second undesignated paragraphs, by striking “lessen competition, or to tend to create a monopoly” each place the term appears
and inserting “harm the competitive process, or create or help maintain a monopoly, a monopsony, market power, or unfair methods of competition”; and

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

(3) by adding at the end the following:

“Any prohibited merger shall be unlawful under this section.

“Neither quantitative evidence nor a definition of a relevant market or market share shall be required to establish a violation under this section.

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

(b) STRENGTHENING ANTITRUST AGENCY ENFORCEMENT.—

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

(A) in the matter preceding paragraph (1), by inserting “, subject to subsection (b),” before “the waiting”;

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

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

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

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

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

“(ii) is a financial institution, an equity fund, or a registered investment adviser under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3), if the person or the ultimate parent entity of the person has greater than $10,000,000,000 (as so adjusted and pub-
lished) in capitalization, commitments, or assets under management.”.
(2) EMPOWERING THE ANTITRUST AGENCIES TO REJECT ACQUISITIONS.—Section 7A of the Clayton Act (15 U.S.C. 18a) is amended—

(A) in subsection (b)—

(i) in paragraph (1)(B)—

(I) by striking “thirtieth” and inserting “120th”; and

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

(ii) in paragraph (2), by striking “the Assistant” and all that follows through the period at the end and inserting “on demonstration of an emergency may, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, upon a vote of the Federal Trade Commission or approval of the Assistant Attorney General, and promptly shall cause to be published in the Federal Register a notice that details the justification of such decision. The waiting period may not be terminated under this paragraph without the approval of all relevant
agencies and States that have received materials pursuant to subsection (l).”;

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

“(3) No person shall acquire, directly or indirectly, any voting securities or assets of another person under subsection (a) unless—

“(A)(i) the waiting period expires or is terminated; and

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

“(B) an appropriate court issues a final, non-appealable order reversing the decision of the Federal Trade Commission or the Assistant Attorney General to reject the acquisition.

“(4)(A) Not later than 15 days after the date on which the Federal Trade Commission and the Assistant Attorney General receive a notification filed under subsection (a), the Federal Trade Commission and the Assistant Attorney General shall determine whether the Federal Trade Commission or the Assistant Attorney General shall review the acquisition, which shall be publicly announced.
“(B) If no decision is made under subparagraph (A) before the expiration of the 15-day period, the Federal Trade Commission shall review the acquisition, which shall be publicly announced.

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

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

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

“(ii) the public with—

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

“(II) a summary of all documentary material and information described in subsection (d).

“(B) The Federal Trade Commission or the Assistant Attorney General shall consider any public
comments submitted under this paragraph before making a determination under paragraph (5).

“(7)(A) Harms to the competitive process may include, without limitation, harms to workers (including significant layoffs or harms to existing collective bargaining agreements, retirees, worker benefits and compensation, or labor conditions), consumers (including patients, renters, and students), customer choice, sellers, small or minority-owned businesses (including farms and ranches), local, rural, or low-income communities, communities of color, privacy, quality (including health and safety), entrepreneurship, or innovation.

“(B) When evaluating whether an acquisition is likely to harm the competitive process, the Federal Trade Commission or the Assistant Attorney General shall consider—

“(i) effects in any relevant market (including labor markets), cross-market effects or impacts on the lines of commerce of the parties beyond any relevant markets, impacts throughout the supply chains or business ecosystems of the parties, and impacts on small or minority-owned businesses (including farms and
ranches), local, rural, or low-income communities, and communities of color; and

“(ii) the history of—

“(I) express collusion in any relevant market;

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

“(III) any anticompetitive effects that followed previous acquisitions of the parties, including—

“(aa) increased prices for consumers;

“(bb) reduced wages for workers;

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

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

“(ee) bankruptcy or financial distress of acquired companies;

“(ff) significant worker layoffs; and

“(gg) reduced investments in research and development.
“(C) The Federal Trade Commission or the Assistant Attorney General may determine that the acquisition is likely to harm the competitive process if the history described in subparagraph (B)(ii) is significant or extensive.

“(D) When evaluating an acquisition for which any party (or its ultimate parent entity) is a dominant firm, the Federal Trade Commission or the Assistant Attorney General may determine that the acquisition is likely to harm the competitive process if—

“(i) another party offers overlapping, competing, or functionally equivalent services or products;

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

“(iii) another party is a critical trading partner in the supply chains or business ecosystems of the parties; or

“(iv) the acquisition would create a platform conflict of interest.

“(8)(A) The decision of the Federal Trade Commission or the Assistant Attorney General not to reject an acquisition under subsection (a) shall—
“(i) be made publicly available by the date
on which the waiting period expires or is termi-
nated;

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

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

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

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

“(B) During the waiting period (or any exten-
sion thereof), neither the Federal Trade Commiss-
on nor the Assistant Attorney General may enter into
any settlement agreement (including commitments
to structural or behavioral remedies) with the parties
to an acquisition under subsection (a) when deciding whether to reject the acquisition.

“(C) If the Federal Trade Commission or the Assistant Attorney General declines to reject an acquisition under subsection (a) by the end of the waiting period, the Federal Trade Commission or the Assistant Attorney General, respectively, may issue an order requiring the parties to hold their assets separate for a period not to exceed 60 days.

“(9)(A) The Federal Trade Commission or the Assistant Attorney General shall reject an acquisition described in subsection (a) if—

“(i) the acquisition is a prohibited merger;

“(ii) the acquisition is likely to harm the competitive process or create or help maintain a monopoly, a monopsony, market power, or unfair methods of competition, as determined by the Federal Trade Commission or the Assistant Attorney General, respectively;

“(iii) a party to the acquisition (or its ultimate parent entity)—

“(I) is a dominant firm; and

“(II) has consummated 2 or more acquisitions in any relevant market during the preceding 5-year period;
“(iv) a relevant agency objects to the acquisition on the basis of a substantive justification as described in subsection (l);

“(v) during the waiting period or during the 10-year period ending on the date on which notification under subsection (a) is filed, a party to the acquisition engaged in any disqualifying behavior; or

“(vi) the Federal Trade Commission or the Assistant Attorney General, respectively, determines that—

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

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

“(B) The decision of the Federal Trade Commission or the Assistant Attorney General to reject an acquisition under subsection (a) shall—

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

“(ii) identify which of the 5 categories of rejection was or were the basis of the decision and include, as applicable—
“(I) a statement explaining why the acquisition is a prohibited merger;

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

“(aa) an explanation of how the acquisition is likely to harm the competitive process or create or help maintain a monopoly, a monopsony, market power, or unfair methods of competition, including (as applicable or relevant) an analysis of how the acquisition would likely harm workers (including significant layoffs or harms to existing collective bargaining agreements, retirees, worker benefits and compensation, or labor conditions), consumers (including patients, renters, and students), customer choice, sellers, small or minority-owned businesses (including farms and ranches), local, rural, or low-income communities, communities of color, privacy, quality (including health and safety), entrepreneurship, or innovation;
“(bb) an explanation of why, in
light of the factors described in item
(aa), the acquisition was rejected; and
“(cc) a response to public com-
ments that addresses major counter-
arguments to the justification for the
decision to reject;
“(III) a statement explaining which
party is a dominant firm and identifying 2
or more consummated acquisitions by the
party in a relevant market during the pre-
ceding 5-year period;
“(IV) the substantive justification re-
ceived from an objecting relevant agency in
accordance with subsection (I);
“(V) a statement identifying any dis-
qualifying behavior of a party during the
waiting period or during the 10-year period
ending on the date on which notification is
filed under subsection (a); or
“(VI) an explanation of how the infor-
formation and documentary materials sub-
mited by the parties were not adequately
responsive; and
“(iii) have no precedential value for any future decisions regarding whether to reject an acquisition by the same or different persons.

“(10)(A) Any party to an acquisition rejected by the Federal Trade Commission or the Assistant Attorney General under this section may bring an action under this paragraph in the appropriate district court of the United States to challenge the decision of the Federal Trade Commission or the Assistant Attorney General to reject the acquisition, and no other person or entity shall have a cause of action under this paragraph.

“(B) A decision of the Federal Trade Commission or the Assistant Attorney General to reject an acquisition under this section shall be considered a matter of discretion, and the reviewing court shall hold unlawful and set aside the decision only if the decision’s findings and conclusions are found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with this section.

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

“(D) In judicial proceedings challenging a decision to reject an acquisition, a court shall give def-
ference to any definition of a relevant market or mar-
ket share alleged by the Federal Trade Commission
or the Assistant Attorney General and may not off-
set any anticompetitive harms alleged by the Federal
Trade Commission or the Assistant Attorney Gen-
eral with any procompetitive benefits.

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

(C) by striking subsection (f).

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

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

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

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

“(2) shall require that the notification required
under subsection (a) include, in addition to the in-
formation described in paragraph (1)—
“(A) basic information on the acquiring person and the person whose voting securities or assets are being acquired, including—

“(i) the names of each executive officer and board member of each person;

“(ii) the annual revenues of each person for each year of the 5-year period ending on the date on which the notification will be filed;

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

“(iv) all data assets of each person;

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

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

“(vii) contact information for the 10 largest customers of each person (as applicable); and

“(viii) contact information for the 10 largest suppliers of each person (as applicable);
“(B) the stated justification for the acquisition, including—

“(i) what, if any, nonpublic information was used to inform a decision to enter the acquisition;

“(ii) what, if any, publicly available information was processed using artificial intelligence, algorithms, or other automated data processing systems to inform a decision to enter the acquisition; and

“(iii) if relevant, how the failing-firm defense applies, including a list of good-faith efforts to elicit reasonable alternative offers and reasons the offers were unsuccessful;

“(C) any proposed plans to benefit workers, consumers, customer choice, sellers, small or minority-owned businesses (including farms and ranches), local, rural, or low-income communities, communities of color, privacy, quality, entrepreneurship, and innovation, including plans to—

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

“(ii) increase quality;
“(iii) increase privacy;

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

“(v) invest in local, rural, or low-income communities or communities of color; and

“(vi) invest in research and development; and

“(D) the projected impact of the acquisition on the competitive process, workers (including significant layoffs or harms to existing collective bargaining agreements, retirees, worker benefits and compensation, or labor conditions), consumers (including patients, renters, and students), customer choice, sellers, small and minority-owned businesses (including farms and ranches), local, rural, and low-income communities, communities of color, privacy, quality (including health and safety), entrepreneurship, and innovation;

“(E) a list of all other significant competitors (including entrants or potential entrants) and competing products;

“(F) estimated market shares in the relevant markets of the acquisition for each person
and any significant competitors identified in paragraph (E) for the current year and each of the previous 2 years;

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

“(H) a list of each person or financial institution that provided or will provide financing for the acquisition (including debt, equity, and all other sources) and the amount provided;

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

“(J) a list of States that would be impacted by the acquisition;

“(K) a list of Federal agencies with substantial regulatory authority over each party (or the persons or financial institutions involved with financing the acquisition); and

“(L) whether any party (or its ultimate parent entity) is a dominant firm;
“(3) shall evaluate the stated justification for the acquisition to determine if the justification comports with the information provided under paragraph (2);

“(4) shall determine if the acquisition or combination of data assets described in paragraph (2) would violate the antitrust laws, including if the acquisition or combination of data assets is likely to harm the competitive process or create or help maintain a monopoly, a monopsony, market power, or unfair methods of competition; and”.

(4) Increased Waiting Period.—Section 7A(e) of the Clayton Act (15 U.S.C. 18a(e)) is amended—

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

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

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

“(l) HSR Sharing.—

“(1) Submission to States.—Not later than 7 days after the date on which information or documentary material relevant to a proposed acquisition
is filed with the Federal Trade Commission and Assistant Attorney General under this section, the Federal Trade Commission and the Assistant Attorney General shall submit to each State attorney general of any State identified by the parties under subsection (d), and to any State attorney general of a State that the Federal Trade Commission or the Assistant Attorney General determines would be impacted by the acquisition—

“(A) notification of the proposed acquisition; and

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

“(2) SHARING WITH AGENCIES.—For each acquisition filed under subsection (a), the Federal Trade Commission or the Assistant Attorney General shall—

“(A) send notice of the proposed acquisition to any Federal agency—

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

“(ii) determined to have substantial regulatory authority over a party involved in the acquisition; or
“(iii) identified by the parties under subsection (d);

“(B) provide to each Federal agency notified under subparagraph (A) a copy of all documents submitted in relation to the acquisition not later than 30 days after the date on which the waiting period described in subsection (b)(1) begins; and

“(C) reject the acquisition if—

“(i) any Federal agency with substantial regulatory authority objects to the acquisition on the basis that the acquisition would harm the competitive process or materially harm the interests of the United States as a customer, trading partner, or stakeholder;

“(ii) the Office of Advocacy of the Small Business Administration objects to the acquisition on the basis that the acquisition would materially harm small businesses (including farms and ranches);

“(iii) the Minority Business Development Agency of the Department of Commerce objects to the acquisition on the basis that the acquisition would materially
harm minority-owned businesses (including farms and ranches); or

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

“(I) the acquisition would help create or maintain a monopsony or unfair labor practice (including the refusal of the parties to preserve, expand, or effectuate collective bargaining agreements covering workers impacted by the acquisition, as applicable); or

“(II) the acquisition would materially harm workers (including significant layoffs or harms to existing collective bargaining agreements, retirees, worker benefits and compensation, or labor conditions).

“(3) Substantive Justifications for Objections.—If a relevant agency objects to an acquisition under paragraph (3), the relevant agency shall submit to the Federal Trade Commission or the Assistant Attorney General, as applicable, a substantive justification for the objection before the
date on which the waiting period expires or is terminated.

“(m) Certification.—

“(1) Individuals.—

“(A) Prohibition.—No individual who certifies a notification filed under subsection (a) on behalf of an entity may, within the notification or during the waiting period, knowingly—

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

“(ii) make any materially false, fictitious, or fraudulent statement or representation; or

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

“(B) Penalty.—Any individual who violates subparagraph (A) shall be fined not more than $10,000,000, imprisoned for not more than 5 years, or both.

“(2) CEO Liability.—A chief executive officer of an entity shall be deemed liable for any violation of paragraph (1) committed by an officer or em-
ployee of the entity if the chief executive officer knew or should have known of the violation.

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

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

(c) RULEMAKING.—Not later than 1 year after the date of enactment of this Act, the Federal Trade Commission and the Department of Justice shall promulgate regulations to further define harms to the competitive process, including harms to workers, consumers, customer choice, sellers, small and minority-owned businesses, local, rural, and low-income communities, communities of color, privacy, quality, entrepreneurship, and innovation.

SEC. 5. ADDITIONAL ENFORCEMENT BY STATE ATTORNEYS

GENERAL.

(a) IN GENERAL.—

(1) CIVIL ACTION.—No later than 60 days after the end of the waiting period, a State attorney gen-
eral of a State that would be impacted by an acquisition filed under section 7A of the Clayton Act (15 U.S.C. 18a) may bring an action under this paragraph in the appropriate district court of the United States to obtain an injunction enjoining the consummation of the acquisition.

(2) INJUNCTION.—The court shall grant the injunction described in paragraph (1) if the State attorney general demonstrates by a preponderance of the evidence that under section 7A of the Clayton Act (15 U.S.C. 18a)—

(A) the acquisition is a prohibited merger;

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

(C) during the waiting period or during the 10-year period ending on the date on which notification under subsection (a) is filed, a party to the acquisition engaged in any disqualifying behavior.

(3) HARMs TO THE COMPETITIVE PROCESS.—

The State attorney general may use any direct or indirect evidence to demonstrate that an acquisition is likely to harm the competitive process, including, but
not limited to, the harms described in section 7A of the Clayton Act (15 U.S.C. 18a).

(4) **Balancing prohibited.**—The court may not offset any anticompetitive harms demonstrated under paragraph (2) or (3) with any procompetitive benefits.

(5) **Dereference.**—The court shall give deference to any definition of a relevant market or market share alleged by the State attorney general.

(6) **Stay of proceedings.**—The court shall stay all judicial proceedings under this section regarding an acquisition filed under section 7A of the Clayton Act (15 U.S.C. 18a) until the end of the waiting period. The stay shall be lifted at the end of the waiting period if the Federal Trade Commission or the Assistant Attorney General declines to reject the acquisition.

(7) **Dismissal.**—The court shall dismiss with prejudice any claims filed under paragraph (1) if the Federal Trade Commission or the Assistant Attorney General rejects the acquisition.

(8) **Temporary injunction.**—The court shall issue an injunction temporarily enjoining the consummation of the acquisition during the judicial proceedings under this section.
(b) Nonreportable Acquisitions.—A State attorney general of a State that would be impacted by a prospective nonreportable acquisition may bring an action (which shall be subject to the procedures described in paragraph (a)) under this paragraph in the appropriate district court of the United States to obtain an injunction enjoining the consummation of the acquisition.

SEC. 6. BREAKING UP PROHIBITED Mergers; Process for Retrospective Reviews.

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

“(n) Retrospective Review.—

“(1) Retrospective Review of Consummated Acquisitions.—

“(A) Review.—

“(i) In general.—The Federal Trade Commission and the Assistant Attorney General may retrospectively review any consummated acquisition, including nonreportable acquisitions.

“(ii) Coordination.—

“(I) In general.—The Federal Trade Commission and the Assistant Attorney General may coordinate the review of a consummated acquisition
with any State attorney general if the State was impacted by the acquisition or any Federal agency deemed to have substantial regulatory authority over the parties to the acquisition (including persons or financial institutions involved with financing the acquisition).

“(II) **COMPULSORY PROCESS.**—

The Federal Trade Commission, the Assistant Attorney General, and any coordinating State attorney general or Federal agency may use their respective compulsory processes to conduct the reviews.

“(B) **REMEDY.**—Upon reviewing an acquisition described in subparagraph (A), the Federal Trade Commission or the Assistant Attorney General shall order a remedy to restore competition or otherwise address the anti-competitive impacts of the acquisition (which shall include unwinding the acquisition or requiring that the acquiring person make divestitures, which, to the extent practicable, shall be specified, standalone business units or
lines), if the Federal Trade Commission or the
Assistant Attorney General, respectively, acting
in coordination with any State attorney general
or Federal agency (as applicable), determines
that—

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

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

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

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

“(v)(I) the acquisition is a con-
summated nonreportable acquisition; and
“(II)(aa) the acquisition is a prohibited merger; or

“(bb) after the date of enactment of this subparagraph, the acquiring person or the acquired person engaged in disqualifying behavior during the 10-year period ending on the date on which the nonreportable acquisition was consummated.

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

“(A) REVIEW.—

“(i) IN GENERAL.—Except as provided in clause (ii), the Federal Trade Commission and the Assistant Attorney General shall immediately review every prohibited merger consummated on or after January 1, 2000, for which the parties were required to file a notification under this section.

“(ii) APPLICABILITY.—For the purposes of this subparagraph, prohibited mergers shall be defined without adjustment to any dollar amounts.

“(iii) COORDINATION.—
“(I) IN GENERAL.—The Federal Trade Commission and the Assistant Attorney General may coordinate the review of a prohibited merger with any State attorney general if the State was impacted by the prohibited merger or any Federal agency deemed to have substantial regulatory authority over the parties to the prohibited merger (including persons or financial institutions involved with financing the prohibited merger).

“(II) COMPULSORY PROCESS.—The Federal Trade Commission, the Assistant Attorney General, and any coordinating State attorney general or Federal agency may use their respective compulsory processes to conduct the reviews.

“(B) REMEDY.—Upon reviewing a prohibited merger described in subparagraph (A), the Federal Trade Commission or the Assistant Attorney General shall order a remedy to restore competition or otherwise address the anti-competitive impacts of the acquisition (which
shall include unwinding the acquisition or requiring that the acquiring person make divestitures, which, to the extent practicable, shall be specified, standalone business units or lines), if the Federal Trade Commission or the Assistant Attorney General, respectively, acting in coordination with any State attorney general or Federal agency (as applicable), determines that the prohibited merger—

“(i) resulted in a post-acquisition market share of greater than 50 percent of any relevant market (including labor markets);

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

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

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

“(i) not later than 180 days after the 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-
quision 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
of a relevant market or market share alleged by the State attorney general.

“(B) Prohibited mergers.—

“(i) Review.—A State attorney general of a State impacted by a prohibited merger may review the prohibited merger in accordance with paragraph (2), including by using compulsory process.

“(ii) Civil action.—

“(I) In general.—Upon reviewing a prohibited merger 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 restore competition or otherwise address the anticompetitive impacts of the prohibited merger (which shall include unwinding the prohibited merger 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 imposing the remedy would have been proper under paragraph (2)(B), unless the parties to the prohibited merger demonstrate by clear and convincing evidence that imposing the remedy would not have been proper under paragraph (2)(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 of a relevant market or market share alleged by the State attorney general.

“(4) DOMINANT FIRMS.—In addition to any other harms to the competitive process that may be determined or established, the Federal Trade Commission, the Assistant Attorney General, or a State
attorney general may also determine or establish that a prohibited merger has brought material harm to the competitive process if—

“(A) any party (or its ultimate parent entity) was a dominant firm; and

“(B)(i) another party was a nascent competitor or maverick;

“(ii) another party was a critical trading partner in the supply chains or business ecosystems of the parties; or

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

“(5) JUDICIAL REVIEW.—

“(A) IN GENERAL.—Any party to an acquisition reviewed by the Federal Trade Commission or the Assistant Attorney General under paragraph (1) or (2) may bring an action under this paragraph in the appropriate district court of the United States to challenge a decision of the Federal Trade Commission or the Assistant Attorney General made under this subsection to order a remedy, and no other person or entity shall have a cause of action under this paragraph.
“(B) Standards of Review.—A decision by the Federal Trade Commission or the Assistant Attorney General to order a remedy under this section shall be considered a matter of discretion, and the reviewing court shall hold unlawful and set aside the decision only if the decision’s findings and conclusions are found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with this section.

“(C) Balancing Limited.—The court may not offset an anticompetitive harm alleged by the Federal Trade Commission or the Assistant Attorney General with a procompetitive benefit unless the benefit applies to the same population impacted by the harm.

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

“(6) Public Findings and Decisions.—All findings and decisions (including decisions to initiate a retrospective review and decisions whether or not to order a remedy) described in this subsection shall be made publicly available. Any decision to order a remedy shall include a substantive justification.
“(7) ADDITIONAL PROCESSES.—Not later than 180 days after the date of enactment of this sub-section, the Federal Trade Commission and the Assistant Attorney General shall—

“(A) establish procedures for the stakeholders of a consummated acquisition to submit complaints regarding any adverse impacts of the acquisition to the Federal Trade Commission, the Assistant Attorney General, and their respective State attorneys general; and

“(B) establish guidelines for when complaints received under subparagraph (i) will trigger a mandatory retrospective review under paragraph (1).”.

SEC. 7. EXCLUSIVE JURISDICTION.

(a) DISTRICT COURTS.—

(1) IN GENERAL.—The United States District Court for the District of Columbia shall have exclusive jurisdiction to determine the validity of any decision made by the Federal Trade Commission or the Assistant Attorney General under the amendments made by sections 4 and 6 of this Act.

(2) ACTIONS BROUGHT BY STATE ATTORNEYS GENERAL.—
(A) Except as provided in subparagraph (B), if a State attorney general brings an action under section 5 or subsection (n) of section 7A of the Clayton Act, as added by section 6 of this Act, the district court of the United States for the judicial district in which the capital of the State is located shall have exclusive jurisdiction.

(B) In the event that multiple State attorneys general bring actions regarding the same acquisition, those actions shall be consolidated in the United States District Court for the District of Columbia or a district court with jurisdiction under this section.

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

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

(d) EXCLUSIVE REMEDIES.—The causes of action authorized by this Act and amendments made by this Act shall be the exclusive remedies available to any person injured or adversely affected by a decision of the Federal
Trade Commission or the Assistant Attorney General of the Antitrust Division of the Department of Justice made under this Act or under the amendments made by this Act.

SEC. 8. FUNDING.

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

1. $1,000,000,000 for the Federal Trade Commission; and

2. $1,000,000,000 for the Antitrust Division of the Department of Justice.

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

(c) ADDITIONAL APPROPRIATIONS.—To the extent there are insufficient funds from fines, penalties, settlements, and fees received by the Federal Trade Commission and the Antitrust Division of the Department of Justice for the costs of their respective programs, projects, and activities, there are appropriated, out of monies in the Treasury not otherwise appropriated, for fiscal year 2023.
and each fiscal year thereafter such sums as are necessary for the costs of such programs, projects, and activities.

SEC. 9. RULES OF CONSTRUCTION.

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

(1) any authority of the Federal Trade Commission, the Assistant Attorney General, any State attorney general, or any Federal agency under the antitrust laws or any other provision of law; or

(2) the application of any law.

SEC. 10. SEVERABILITY.

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

(b) EXCLUSIVE JURISDICTION.—

(1) DISTRICT COURT.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action challenging the constitutionality or lawfulness of any provision of this Act, any amendment made by this Act, or any
regulation promulgated under this Act or an amend-
ment made by this Act.

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

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

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

(d) **Actions by State Attorney Generals.**—Except as provided in this Act, no Federal, State, or Territorial court shall have jurisdiction or power to review actions brought by a State attorney general under this Act, or under an amendment made by this Act, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing such actions brought by a State attorney general under this Act, or to restrain or enjoin the enforcement of any related judicial decisions.