

[INCOMPLETE DISCUSSION DRAFT]

117TH CONGRESS
1ST SESSION

H. R. _____

To promote competition, lower entry barriers, and reduce switching costs
for consumers and businesses online.

IN THE HOUSE OF REPRESENTATIVES

Ms. SCANLON introduced the following bill; which was referred to the
Committee on _____

A BILL

To promote competition, lower entry barriers, and reduce
switching costs for consumers and businesses online.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Augmenting Compat-
5 ibility and Competition by Enabling Service Switching Act
6 of 2021” or the “ACCESS Act of 2021”.

7 **SEC. 2. UNFAIR METHOD OF COMPETITION.**

8 A violation of this Act, or standards issued pursuant
9 to this Act, by a person, partnership, or corporation oper-

1 ating a covered platform, in or affecting commerce, shall
2 be an unfair method of competition in violation of section
3 5(a)(1) of the Federal Trade Commission Act (15 U.S.C.
4 45).

5 **SEC. 3. PORTABILITY.**

6 (a) IN GENERAL.—A covered platform shall maintain
7 a set of transparent, third-party-accessible interfaces (in-
8 cluding application programming interfaces) to initiate the
9 secure transfer of data to a user, or with the affirmative
10 consent of a user, to a competing business or a potential
11 competing business at the direction of a user, in a struc-
12 tured, commonly used, and machine-readable format that
13 complies with the standards issued pursuant to section
14 6(b).

15 (b) DATA SECURITY.—A competing business or a po-
16 tential competing business that receives ported user data
17 from a covered platform shall reasonably secure any user
18 data it acquires, and shall take reasonable steps to avoid
19 introducing security risks to data or the covered plat-
20 form's information systems.

21 **SEC. 4. INTEROPERABILITY.**

22 (a) IN GENERAL.—A covered platform shall maintain
23 a set of transparent, third-party-accessible interfaces (in-
24 cluding application programming interfaces) to facilitate
25 and maintain technically compatible, interoperable com-

1 munications with a competing business or a potential com-
2 peting business that complies with the standards issued
3 pursuant to section 6(b).

4 (b) DATA SECURITY.—A competing business or a po-
5 tential competing business that accesses an interoper-
6 ability interface of a covered platform shall reasonably se-
7 cure any user data it acquires, processes, or transmits,
8 and shall take reasonable steps to avoid introducing secu-
9 rity risks to user data or the covered platform’s informa-
10 tion systems.

11 (c) INTEROPERABILITY OBLIGATIONS.—

12 (1) IN GENERAL.—In order to achieve inter-
13 operability under subsection (a), a covered platform
14 shall fulfill the duties under paragraphs (2) through
15 (7) of this subsection.

16 (2) NON-DISCRIMINATION.—

17 (A) IN GENERAL.—A covered platform
18 shall facilitate and maintain interoperability
19 with a competing business or a potential com-
20 peting business through an interoperability
21 interface on fair and nondiscriminatory terms.

22 (B) REASONABLE THRESHOLDS, ACCESS
23 STANDARDS, AND FEES.—

24 (i) IN GENERAL.—A covered platform
25 may establish reasonable thresholds related

1 to the frequency, nature, and volume of re-
2 quests by a competing business or a poten-
3 tial competing business to access resources
4 maintained by the covered platform, be-
5 yond which the covered platform may as-
6 sess a reasonable fee for such access.

7 (ii) USAGE EXPECTATIONS.—A cov-
8 ered platform may suggest fair, reasonable,
9 and nondiscriminatory usage expectations
10 to govern access by a competing business
11 or a potential competing business, includ-
12 ing fees or penalties for providers that ex-
13 ceed those usage expectations.

14 (iii) LIMITATION ON FEES AND USAGE
15 EXPECTATIONS.—Any fees, penalties, or
16 usage expectations assessed under clauses
17 (i) and (ii) shall be reasonably proportional
18 to the cost, complexity, and risk to the cov-
19 ered platform of providing such access as
20 established by the Commission under sec-
21 tion 6(b) of this Act.

22 (iv) NOTICE.—A covered platform
23 shall provide public notice of any fees, pen-
24 alties, or usage expectations that may be
25 established under clauses (i) and (ii), in-

1 cluding reasonable advance notice of any
2 changes.

3 (v) SECURITY AND PRIVACY STAND-
4 ARDS.—A covered platform shall, con-
5 sistent with best practices as recommended
6 by the Commission under section 6(b) of
7 this Act, set privacy and security stand-
8 ards for access by competing businesses or
9 potential competing businesses to the ex-
10 tent reasonably necessary to address a
11 threat to the covered platform or user
12 data, and shall report any suspected viola-
13 tions of those standards to the Commis-
14 sion.

15 (C) PROHIBITED CHANGES TO INTER-
16 FACES.—A covered platform may make a
17 change that may affect its interoperability
18 interface by petitioning the Commission to ap-
19 prove a proposed change. The Commission shall
20 allow the change if, after consulting with the
21 relevant technical committee the Commission
22 concludes that the change is not being made
23 with the purpose or effect of unreasonably de-
24 nying access, undermining interoperability for

1 competing businesses or potential competing
2 businesses, and is not unduly disruptive.

3 (3) FUNCTIONAL EQUIVALENCE.—A covered
4 platform that maintains interoperability between its
5 own products or services and other products, serv-
6 ices, or affiliated offerings shall offer a functionally
7 equivalent version of that interface to competing
8 businesses or potential competing businesses.

9 (4) INTERFACE INFORMATION.—

10 (A) IN GENERAL.—Not later than **[120]**
11 days after the adoption of a rule by the Com-
12 mission under section 6(b) of this Act, a cov-
13 ered platform shall, upon request, provide to
14 competing businesses or potential competing
15 businesses complete and accurate documenta-
16 tion describing access to the interoperability
17 interface required under this section.

18 (B) CONTENTS.—The documentation re-
19 quired under subparagraph (A) is limited to
20 interface documentation necessary to achieve
21 development and operation of interoperable
22 products and services.

23 (5) NOTICE OF CHANGES.—A covered platform
24 shall provide reasonable advance notice to a com-
25 peting business or a potential competing business,

1 which may be provided through public notice, of any
2 change to an interoperability interface maintained by
3 the covered platform that will affect the interoper-
4 ability of a competing business or a potential com-
5 peting business.

6 (6) NON-COMMERCIALIZATION BY A COVERED
7 PLATFORM.—A covered platform shall not collect,
8 use, or share user data obtained from a competing
9 business or potential competing business through the
10 interoperability interface except for the purposes of
11 safeguarding the privacy and security of such infor-
12 mation or maintaining interoperability of services.

13 (7) NON-COMMERCIALIZATION OF DATA ON A
14 COVERED PLATFORM.—A competing business or po-
15 tential competing business shall not collect, use, or
16 share the data of a user on a covered platform ex-
17 cept for the purposes of safeguarding and security of
18 such data or maintaining interoperability of services.

19 **SEC. 5. DEFINITIONS.**

20 In this Act:

21 (1) PERSON.—The term “person” has the
22 meaning given the term in subsection (a) of section
23 1 of the Clayton Act (15 U.S.C. 12).

24 (2) CLEAR AND CONSPICUOUS DISCLOSURE.—
25 The term “clear and conspicuous disclosure” means

1 that a required disclosure is difficult to miss such
2 that it is easily noticeable and easily understandable
3 by ordinary consumers, including in all of the fol-
4 lowing ways:

5 **[(A) In any communication that is solely**
6 **visual or solely audible, the disclosure must be**
7 **made through the same means through which**
8 **the communication is presented. In any commu-**
9 **nication made through both visual and audible**
10 **means, such as a television advertisement, the**
11 **disclosure must be presented simultaneously in**
12 **both the visual and audible portions of the com-**
13 **munication even if the representation requiring**
14 **the disclosure (“triggering representation”) is**
15 **made through only one means.】**

16 (B) A visual disclosure, by its size, con-
17 trast, location, the length of time it appears,
18 and other characteristics, must stand out from
19 any accompanying text or other visual elements
20 so that it is easily noticed, read, and under-
21 stood.

22 (C) An audible disclosure, including by
23 telephone or streaming video, must be delivered
24 in a volume, speed, and cadence sufficient for

1 ordinary consumers to easily hear and under-
2 stand it.

3 (D) In any communication using an inter-
4 active electronic medium, such as the Internet
5 or software, the disclosure must be unavoidable.

6 (E) The disclosure must use diction and
7 syntax understandable to ordinary consumers
8 and must appear in each language in which the
9 triggering representation appears.

10 (F) The disclosure must comply with these
11 requirements in each medium through which it
12 is received, including all electronic devices and
13 face-to-face communications.

14 (G) The disclosure must not be contra-
15 dicted or mitigated by, or inconsistent with,
16 anything else in the communication.

17 (H) When the representation or sales prac-
18 tice targets a specific audience, such as chil-
19 dren, the elderly, or the terminally ill, “ordinary
20 consumers” includes reasonable members of
21 that group.

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

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

1 (A) holding 50 percent or more of the
2 stock of the person;

3 (B) having the right to 50 percent or more
4 of the profits of the person;

5 (C) having the right to 50 percent or more
6 of the assets of the person, in the event of the
7 person's dissolution;

8 (D) if the person is a corporation, having
9 the power to designate 50 percent or more of
10 the directors of the person; or

11 (E) if the person is a trust, having the
12 power to designate 50 percent or more of the
13 trustees.

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

16 (A) that has been designated as a “covered
17 platform” pursuant to subsection 6(a); or

18 (B) that—

19 (i) has at least **【500,000】** United
20 States-based monthly active users on the
21 online platform in any of the 12 months
22 preceding the filing of a complaint for an
23 alleged violation of this Act;

24 (ii) is owned or controlled by a person,
25 partnership, or corporation with net an-

1 nual sales, or a market capitalization
2 greater than \$600,000,000,000 at any
3 time in the 2 years preceding the filing of
4 a complaint for an alleged violation of this
5 Act; and

6 (iii) is considered to be a critical trad-
7 ing partner for the sale or provision of any
8 product or service offered on or directly re-
9 lated to the online platform.

10 (6) COVERED PLATFORM OPERATOR.—The
11 term “covered platform operator” means a person
12 that, directly or indirectly, owns or controls a cov-
13 ered platform.

14 (7) CRITICAL TRADING PARTNER.—The term
15 “critical trading partner” means a trading partner
16 that has the ability to restrict or impede—

17 (A) the access of a dependent business to
18 its users or customers; or

19 (B) the access of a dependent business to
20 a tool or service that **it needs to effectively**
21 **serve its users or customers**].

22 (8) DATA.—

23 (A) IN GENERAL.—Not later than 6
24 months after the date of enactment of this Act,
25 the Commission shall adopt rules in accordance

1 with section 553 of title 5, United States Code,
2 to define the term “data” for the purpose of
3 implementing and enforcing this Act.

4 (B) DATA.—The term “data” shall include
5 information that is collected by or provided to
6 a covered platform or competing business or a
7 potential competing business that is linked, or
8 reasonably linkable, to a specific user, user de-
9 vice, or customer of the covered platform or a
10 competing business or a potential competing
11 business.

12 (C) EXCLUSION.—The term “data” shall
13 not include proprietary data that does not per-
14 tain to the user or a user device of the covered
15 platform. The Commission shall narrowly con-
16 strue the term “proprietary data” for the pur-
17 poses of this Act.

18 (9) DEPENDENT BUSINESS.—The term “de-
19 pendent business” means a person, partnership, or
20 corporation that utilizes the covered platform for the
21 sale or provision of products or services.

22 (10) INTEROPERABILITY INTERFACE.—The
23 term “interoperability interface” means an electronic
24 interface maintained by a covered platform for pur-
25 poses of achieving interoperability.

1 (11) **ONLINE PLATFORM.**—The term “online
2 platform” means a website, online or mobile applica-
3 tion, digital assistant, or online service that—

4 (A) enables a user to generate content that
5 can be viewed by other users on the platform or
6 to interact with other content on the platform;

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

12 (C) enables user searches or queries that
13 access or display a large and diverse volume of
14 information.

15 **SEC. 6. IMPLEMENTATION.**

16 (a) **COVERED PLATFORM DESIGNATION.**—The Fed-
17 eral Trade Commission or Department of Justice may des-
18 ignate a covered platform for the purpose of implementing
19 and enforcing this Act. Such designation shall—

20 (1) be based on a finding that the criteria set
21 forth in section 5(e)(2)(A)–(C) are met;

22 (2) be issued in writing and published in the
23 Federal Register; and

24 (3) will apply for 10 years from its issuance re-
25 gardless of whether there is a change in control or

1 ownership over the covered platform unless the Fed-
2 eral Trade Commission or the Department of Jus-
3 tice removes the designation pursuant to subsection
4 (b).

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

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

15 (2) determine whether to grant a request sub-
16 mitted under paragraph (1) not later than 120 days
17 after the date of the filing of such request.

18 (c) RULEMAKING AND TECHNICAL STANDARDS.—

19 (1) After designating an online platform as a
20 covered platform, the Commission shall issue stand-
21 ards of interoperability specific to the covered plat-
22 form. These standards shall implement the require-
23 ments of sections 2 and 3 of this Act. In adopting
24 the standards implementing the requirements of sec-
25 tions 2 and 3, the Commission shall seek to encour-

1 age entry by reducing or eliminating the network ef-
2 fects that limit competition with the covered plat-
3 form.

4 (2) The Commission shall—

5 (A) establish a technical committee, as de-
6 scribed in section 7 of this Act, to develop pro-
7 posed standards implementing the requirements
8 of section 3 as they apply to a specific covered
9 platform; and

10 (B) issue such standards in accordance
11 with section 553 of title 5, United States Code.

12 (d) COMPLIANCE ASSESSMENT.—The Commission
13 shall regularly assess compliance by covered platforms
14 with the provisions of this Act and may—

15 (1) undertake such investigation as appropriate
16 to render this assessment;

17 (2) issue subpoenas and civil investigative de-
18 mands for relevant information, including any infor-
19 mation that is necessary to effectuate the goals of
20 this Act, and consult with other agencies as appro-
21 priate; and

22 (3) prescribe such other rules in accordance
23 with section 553 of title 5, United States Code as
24 may be necessary and appropriate to carry out the
25 purposes of this Act.

1 (e) AGENCY COMPLAINTS.—The Commission shall
2 establish procedures under which a user, covered platform,
3 or a competing business or potential competing business
4 may file a complaint alleging a violation of this Act.

5 (f) RECIPROcity.—A competing business or potential
6 competing business shall not be under any obligation to
7 adopt or comply with the requirements of this Act or the
8 rules adopted by the Commission under this Act unless
9 it chooses to—

10 (1) initiate the secure transfer of data from a
11 covered platform under section 3 of this Act; or

12 (2) access an interoperability interface of a cov-
13 ered platform under section 4 of this Act.

14 **SEC. 7. TECHNICAL COMMITTEE.**

15 (a) ESTABLISHMENT.—

16 (1) Not later than **180 days** following the en-
17 actment of this Act, the Commission shall establish
18 a technical committee to assist the Commission with
19 considerations relating to implementation and tech-
20 nical aspects of the interoperability requirements of
21 this Act.

22 (2) The size of the committee and its member-
23 ship is within the sole discretion of the Commission
24 except as specified in subsection 7(b).

1 (b) COMPOSITION.—Each technical committee shall
2 include—

3 (1) representatives of businesses that, in the
4 judgement of the Commission, utilize or compete
5 with the platform;

6 (2) representatives of competition or privacy ad-
7 vocacy organizations, and independent academics
8 that possess technical, legal, economic, financial, or
9 other knowledge that the Commission may deem
10 useful; and

11 (3) a representative from the National Institute
12 of Standards and Technology.

13 (c) GENERAL RESPONSIBILITIES.—Each technical
14 committee established under this section shall meet regu-
15 larly to provide information, analysis, and recommenda-
16 tions to the Commission on the standards of interoper-
17 ability that should apply to the covered platform and any
18 changes to those standards. The committee should propose
19 standards that seek to reduce or eliminate network effects
20 that limit competition with the covered platform, as well
21 as data security and privacy standards for a competing
22 business or potential competing business. The committee
23 should also establish reasonable thresholds, access stand-
24 ards, and fees with consideration of recommendations
25 from covered platforms.

1 (d) **ROLE.**—The role of technical committees is advi-
2 sory in nature, and such committees shall have no imple-
3 mentation or enforcement authority. However, the Com-
4 mission shall give strong consideration to the rec-
5 ommendations of such committees in implementing this
6 Act.

7 (e) **NONAPPLICABILITY OF THE FEDERAL ADVISORY**
8 **COMMITTEE ACT.**—The Federal Advisory Committee Act
9 (5 U.S.C. App.) shall not apply with respect to the tech-
10 nical committees.

11 **SEC. 8. JUDICIAL REVIEW.**

12 (a) **IN GENERAL.**—Any party that is subject to a cov-
13 ered platform designation pursuant to section 6(a) of this
14 Act, a final order issued in any district court, or a final
15 order of the Commission issued in an administrative adju-
16 dicative proceeding may within 30 days of the issuance
17 of such order, petition for review of such order in the
18 United States Court of Appeals for the District of Colum-
19 bia Circuit.

20 (b) **TREATMENT OF FINDINGS.**—In a proceeding for
21 judicial review of a covered platform designation pursuant
22 to section 6(a) of this Act or a final order of the Commis-
23 sion, the findings of the Commission as to the facts, if
24 supported by evidence, shall be conclusive.

1 **SEC. 9. ENFORCEMENT.**

2 (a) COMMISSION LITIGATION AUTHORITY.—If the
3 Commission has reason to believe that a covered platform
4 violated this Act, the Commission may commence a civil
5 action, in its own name by any of its attorneys designated
6 by it for such purpose, to recover a civil penalty under
7 this Act and seek other appropriate relief in a district
8 court of the United States against the covered platform
9 operator.

10 (b) EMERGENCY RELIEF.—

11 (1) The Commission may seek a temporary in-
12 junction requiring the covered platform operator to
13 take or stop taking any action for not more than
14 120 days and the court shall grant such relief if the
15 Commission proves—

16 (A) there is a plausible claim that a cov-
17 ered platform operator took an action that
18 could violate this Act; and

19 (B) that action impairs the ability of at
20 least one company to compete with the covered
21 platform.

22 (2) The emergency relief shall not last more
23 than 120 days from the filing of the complaint.

24 (3) The court shall terminate the emergency re-
25 lief at any time that the covered platform operator
26 proves that the Commission has not taken reason-

1 able steps to investigate whether a violation has oc-
2 curred.

3 (4) Nothing in this subsection prevents or limits
4 the Commission from seeking other equitable relief
5 as provided in section 10 of this Act.

6 (c) **STATUTE OF LIMITATIONS.**—A proceeding for a
7 violation of this Act may be commenced not later than
8 6 years after such violation occurs.

9 **SEC. 10. REMEDIES.**

10 (a) **CIVIL PENALTY.**—The Commission may recover
11 a civil penalty for a violation of this Act, which shall ac-
12 cure to the United States, in an amount not more than
13 the greater of—

14 (1) 15 percent of the total United States rev-
15 enue of the person, partnership, or corporation for
16 the previous calendar year; or

17 (2) 30 percent of the United States revenue of
18 the person, partnership, or corporation in any line of
19 business affected or targeted by the unlawful con-
20 duct during the period of the unlawful conduct.

21 (b) **REMEDIES IN ADDITION.**—Remedies provided in
22 this subsection are in addition to, and not in lieu of, any
23 other remedy available to the Commission under Federal
24 law.

1 (1) RESTITUTION; CONTRACT RESCISSION AND
2 REFORMATION; REFUNDS; RETURN OF PROPERTY.—
3 The Commission may seek, and a court may order,
4 with respect to the violation that gives rise to the
5 suit, restitution for losses, rescission or reformation
6 of contracts, refund of money, or return of property.

7 (2) DISGORGEMENT.—The Commission may
8 seek, and a court may order, disgorgement of any
9 unjust enrichment that a covered platform obtained
10 as a result of the violation that gives rise to the suit.

11 (3) INJUNCTION.—The Commission may seek,
12 and the court may order, relief in equity as nec-
13 essary to prevent, restrain, or prohibit violations of
14 this Act

15 (c) REPEAT OFFENDERS.—If the fact finder deter-
16 mines that a covered platform has shown a pattern or
17 practice of violating this Act, the court shall consider re-
18 quiring that the Chief Executive Officer forfeit to the
19 United States Treasury any compensation received by that
20 person during the 12 months preceding or following the
21 filing of a complaint alleging a violation of this Act.

22 **SEC. 11. RULE OF CONSTRUCTION.**

23 Nothing in this Act shall be construed to limit any
24 authority of the Attorney General or the Federal Trade
25 Commission under the antitrust laws, section 5 of the

1 Federal Trade Commission Act (15 U.S.C. 45), or any
2 other provision of law or to limit the application of any
3 law.

4 **SEC. 12. SEVERABILITY.**

5 If any provision of this Act, an amendment made by
6 this Act, or the application of such provision or amend-
7 ment to any person or circumstance is held to be unconsti-
8 tutional, the remainder of this Act and of the amendments
9 made by this Act, and the application of the remaining
10 provisions of this Act and amendments to any person or
11 circumstance shall not be affected.