[DISCUSSION DRAFT]

117TH CONGRESS

1ST SESSION

H. R. _______

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

IN THE HOUSE OF REPRESENTATIVES

Ms. JAYAPAL introduced the following bill; which was referred to the Committee on ______

A BILL

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

1  Be it enacted by the Senate and House of Representa-
2  tives of the United States of America in Congress assembled,
3  SECTION 1. SHORT TITLE.
4  This Act may be cited as the [“Ending Platform Mo-
5  nopolies Act”]
SEC. 2. UNLAWFUL CONFLICTS OF INTEREST.

(a) Violation.—It shall be unlawful for a covered platform operator to own or control a line of business, other than the covered platform, when the covered platform's ownership or control of that line of business gives rise to an irreconcilable conflict of interest.

(b) Irreconcilable Conflict of Interest.—For purposes of this section, the term "irreconcilable conflict of interest" includes the conflict of interest that arises when—

(1) a covered platform operator owns or controls a line of business, other than the covered platform itself; and

(2) the covered platform's ownership or control of that line of business creates a substantial incentive for the covered platform to—

(A) advantage the covered platform operator's own products, services, or lines of business over those of a competing business or potential competing business that utilizes the covered platform; or

(B) exclude or disadvantage the products, services, or lines of business of a competing business or potential competing business that utilizes the covered platform.
SEC. 3. TERMINATION OF OWNERSHIP OR CONTROL.

(a) In General.—Any affiliation that is prohibited under section 2(a) of this Act, as of the date an online platform is designated as a covered platform, shall be terminated as soon as is practicable, and in no event later than the end of the 2-year period beginning on the date an online platform is designated as a covered platform.

(b) Enforcement.—

(1) The Department of Justice or the Commission may initiate a proceeding seeking, and a court may grant, an order terminating an affiliation prohibited by section 2(a) of this Act before the end of the 2-year period described in subsection (a) of this section, if the Department of Justice or the Commission determines that such action is [in the public interest].

(2) The Commission, at any time after opportunity for hearing, may order termination of an affiliation prohibited by section 2(a) of this Act before the end of the 2-year period described in subsection (a) of this section, if the agency determines that such action is [in the public interest].

(c) Extension.—The Commission, with the concurrence of the Department of Justice, may extend the 2-year period described in subsection (a) for not more than
an additional 6 months at a time, if both agencies determine that such extension is in the public interest.

[(d) Reporting Requirement.—Upon initiation and completion of any termination described in subsection (a), the covered platform shall notify the Commission and the Department of Justice of all planned and completed actions taken to carry out the termination.]

SEC. 4. LIMITATIONS ON BOARD MEMBERSHIP AND OTHER SERVICE.

(a) In General.—An individual who is an officer, director, partner, or employee of a covered platform may not serve at the same time as an officer, director, employee, or other institution-affiliated party of a formerly affiliated person.

(b) Termination of Service.—Any individual whose service violates subsection (a) as of the date an online platform is designated as a covered platform, shall terminate such service as soon as is practicable and in no event, later than the end of the 60-day period beginning on the date the online platform is designated as a covered platform.

SEC. 5.

SEC. 6. DEFINITIONS.

For purposes of this Act:
(1) Antitrust Laws.—The term “antitrust laws” has the meaning given the term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12).

(2) Commission.—The term “Commission” means the Federal Trade Commission.

(3) Control.—The term “control” with respect to a person means—

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

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

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

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

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

(4) Covered Platform.—The term “covered platform” means an online platform—

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

(i) has at least \[500,000\] United States-based monthly active users on the online platform in any of the 12 months preceding the filing of a complaint for an alleged violation of this Act;

(ii) is owned or controlled by a person with net annual sales, or a market capitalization greater than \$600,000,000,000\ at any time in the 2 years preceding the filing of a complaint for an alleged violation of this Act; and

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

(5) COVERED PLATFORM OPERATOR.—The term “covered platform operator” means a person that, directly or indirectly, owns or controls a covered platform.

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

(A) the access of a dependent business to its users or customers; or
(B) the access of a dependent business to a tool or service that it needs to effectively serve its users or customers.

(7) DEPENDENT BUSINESS.—The term “dependent business” means a person that utilizes the covered platform for the sale or provision of products or services.

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

(9) ONLINE PLATFORM.—The term “online platform” means a website, online or mobile application, digital assistant, or online service that—

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

(B) facilitates the offering, sale, purchase, payment, or shipping of goods or services, including software applications, between and among consumers or businesses not controlled by the platform; or
(C) enables user searches or queries that
access or display a large and diverse volume of
information.

(10) PERSON.—The term “person” has the
meaning given the term in subsection (a) of section

SEC. 7. IMPLEMENTATION.

(a) COVERED PLATFORM DESIGNATION.—

(1) The Commission or Department of Justice
may designate a covered platform for the purpose of
implementing and enforcing this Act. Such designa-
tion shall—

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

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

(C) will apply for 10 years from its
issuance regardless of whether there is a change
in control or ownership over the covered plat-
form unless the Commission or the Department
of Justice removes the designation pursuant to
subsection (b).

(b) REMOVAL OF COVERED PLATFORM DESIGNA-
tION.—The Commission or the Department of Justice
shall—
(1) consider whether its designation of a covered platform pursuant to subsection (a) should be removed prior to the expiration of the 10-year period if the covered platform operator files a request with the Commission or the Department of Justice, which shows that the online platform is no longer a critical trading partner; and

(2) determine whether to grant a request submitted under paragraph (1) not later than 120 days after the date of the filing of such request.

SEC. 8. JUDICIAL REVIEW.

(a) IN GENERAL.—Any party that is subject to a covered platform designation under section 6(a) of this Act, a final order issued in any district court of the United States, or a final order of the Commission issued in an administrative adjudicative proceeding may within 30 days of the issuance of such designation or order, petition for review of such designation or order in the United States Court of Appeals for the District of Columbia Circuit.

(b) TREATMENT OF FINDINGS.—In a proceeding for judicial review of a covered platform designation under section 6(a) of this Act or a final order of the Commission, the findings of the Commission or the Assistant Attorney General as to the facts, if supported by evidence, shall be conclusive.
SEC. 9. RULES OF CONSTRUCTION.

Nothing in this Act shall be construed to limit any authority of the Attorney General or the Federal Trade Commission under the antitrust laws, section 5 of the Federal Trade Commission Act (15 U.S.C. 45), or any other provision of law or to limit the application of any law.

SEC. 10. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, and the application of the remaining provisions of this Act to any person or circumstance shall not be affected.