

[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”.]

1 **SEC. 2. UNLAWFUL CONFLICTS OF INTEREST.**

2 (a) VIOLATION.—It shall be unlawful for a covered
3 platform operator to own or control a line of business,
4 other than the covered platform, when the covered plat-
5 form’s ownership or control of that line of business gives
6 rise to an irreconcilable conflict of interest.

7 (b) IRRECONCILABLE CONFLICT OF INTEREST.—For
8 purposes of this section, the term “irreconcilable conflict
9 of interest” includes the conflict of interest that arises
10 when—

11 (1) a covered platform operator owns or con-
12 trols a line of business, other than the covered plat-
13 form itself; and

14 (2) the covered platform’s ownership or control
15 of that line of business creates a substantial incen-
16 tive for the covered platform to—

17 (A) advantage the covered platform opera-
18 tor’s own products, services, or lines of business
19 over those of a competing business or potential
20 competing business that utilizes the covered
21 platform; or

22 (B) exclude or disadvantage the products,
23 services, or lines of business of a competing
24 business or potential competing business that
25 utilizes the covered platform.

1 **SEC. 3. TERMINATION OF OWNERSHIP OR CONTROL.**

2 (a) IN GENERAL.—Any affiliation that is prohibited
3 under section 2(a) of this Act, as of the date an online
4 platform is designated as a covered platform, shall be ter-
5 minated as soon as is practicable, and in no event later
6 than the end of the 2-year period beginning on the date
7 an online platform is designated as a covered platform.

8 (b) ENFORCEMENT.—

9 (1) The Department of Justice or the Commis-
10 sion may initiate a proceeding seeking, and a court
11 may grant, an order terminating an affiliation pro-
12 hibited by section 2(a) of this Act before the end of
13 the 2-year period described in subsection (a) of this
14 section, if the Department of Justice or the Commis-
15 sion determines that such action is [in the public in-
16 terest].

17 (2) The Commission, at any time after oppor-
18 tunity for hearing, may order termination of an af-
19 filiation prohibited by section 2(a) of this Act before
20 the end of the 2-year period described in subsection
21 (a) of this section, if the agency determines that
22 such action is [in the public interest].

23 (c) EXTENSION.—The Commission, with the concur-
24 rence of the Department of Justice, may extend the 2-
25 year period described in subsection (a) for not more than

1 an additional 6 months at a time, if both agencies deter-
2 mine that such extension is [in the public interest].

3 [(d) REPORTING REQUIREMENT.—Upon initiation
4 and completion of any termination described in subsection
5 (a), the covered platform shall notify the Commission and
6 the Department of Justice of all planned and completed
7 actions taken to carry out the termination.]

8 **SEC. 4. LIMITATIONS ON BOARD MEMBERSHIP AND OTHER**
9 **SERVICE.**

10 (a) IN GENERAL.—An individual who is an officer,
11 director, partner, or employee of a covered platform may
12 not serve at the same time as an officer, director, em-
13 ployee, or other institution-affiliated party of a formerly
14 affiliated person.

15 (b) TERMINATION OF SERVICE.—Any individual
16 whose service violates subsection (a) as of the date an on-
17 line platform is designated as a covered platform, shall
18 terminate such service as soon as is practicable and in no
19 event, later than the end of the 60-day period beginning
20 on the date the online platform is designated as a covered
21 platform.

22 **SEC. 5. .**

23 **SEC. 6. DEFINITIONS.**

24 For purposes of this Act:

1 (1) ANTITRUST LAWS.—The term “antitrust
2 laws” has the meaning given the term in subsection
3 (a) of the first section of the Clayton Act (15 U.S.C.
4 12).

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

7 (3) CONTROL.—The term “control” with re-
8 spect to a person means—

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

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

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

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

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

22 (4) COVERED PLATFORM.—The term “covered
23 platform” means an online platform—

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

1 (B) that—

2 (i) has at least **【500,000】** United
3 States-based monthly active users on the
4 online platform in any of the 12 months
5 preceding the filing of a complaint for an
6 alleged violation of this Act;

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

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

17 (5) COVERED PLATFORM OPERATOR.—The
18 term “covered platform operator” means a person
19 that, directly or indirectly, owns or controls a cov-
20 ered platform.

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

24 (A) the access of a dependent business to
25 its users or customers; or

1 (B) the access of a dependent business to
2 a tool or service that **it** needs to effectively
3 serve its users or customers**】**.

4 (7) DEPENDENT BUSINESS.—The term “de-
5 pendent business” means a person that utilizes the
6 covered platform for the sale or provision of prod-
7 ucts or services.

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

13 (9) ONLINE PLATFORM.—The term “online
14 platform” means a website, online or mobile applica-
15 tion, digital assistant, or online service that—

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

19 (B) facilitates the offering, sale, purchase,
20 payment, or shipping of goods or services, in-
21 cluding software applications, between and
22 among consumers or businesses not controlled
23 by the platform; or

1 (C) enables user searches or queries that
2 access or display a large and diverse volume of
3 information.

4 (10) PERSON.—The term “person” has the
5 meaning given the term in subsection (a) of section
6 1 of the Clayton Act (15 U.S.C. 12).

7 **SEC. 7. IMPLEMENTATION.**

8 (a) COVERED PLATFORM DESIGNATION.—

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

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

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

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

23 (b) REMOVAL OF COVERED PLATFORM DESIGNA-
24 TION.—The Commission or the Department of Justice
25 shall—

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

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

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

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

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

1 **SEC. 9. RULES OF CONSTRUCTION.**

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

8 **SEC. 10. SEVERABILITY.**

9 If any provision of this Act, or the application of such
10 provision to any person or circumstance, is held to be un-
11 constitutional, the remainder of this Act, and the applica-
12 tion of the remaining provisions of this Act to any person
13 or circumstance shall not be affected.