

117TH CONGRESS
1ST SESSION

H. R. _____

To [____].

IN THE HOUSE OF REPRESENTATIVES

Mr. CICILLINE introduced the following bill; which was referred to the
Committee on _____

A BILL

To [____].

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 “Platform Anti-Monop-
5 oly Act”.

6 **SEC. 2. .**

7 **SEC. 2. UNLAWFUL DISCRIMINATORY CONDUCT.**

8 (a) VIOLATION.—It shall be unlawful for a person,
9 partnership, or corporation operating a covered platform,
10 in or affecting commerce, to engage in any conduct in con-
11 nection with the operation of the covered platform that—

1 (1) advantages the covered platform operator's
2 own products, services, or lines of business over
3 those of a competing business or potential competing
4 business that utilizes the covered platform;

5 (2) excludes or disadvantages the products,
6 services, or lines of business of a competing business
7 or potential competing business that utilizes the cov-
8 ered platform; or

9 (3) **【materially】** discriminates between or
10 among similarly situated persons that utilize the cov-
11 ered platform for the sale or provision of products
12 or services.

13 (b) OTHER DISCRIMINATORY CONDUCT.—It shall be
14 unlawful for a person, partnership, or corporation oper-
15 ating a covered platform, in or affecting commerce, to en-
16 gage in any conduct that—

17 (1) restricts or impedes the capacity of depend-
18 ent businesses that compete with the covered plat-
19 form operator's own products, services, or lines of
20 business to access or interoperate with the same
21 platform, operating system, hardware and software
22 features that are available to the covered platform
23 operator's own products, services, or lines of busi-
24 ness on the platform;

1 (2) conditions access to the covered platform or
2 preferred status on the platform on the purchase or
3 use of other products or services offered by the cov-
4 ered platform operator;

5 (3) uses non-public data obtained from or gen-
6 erated on the platform by the activities of [depend-
7 ent businesses/commercial users], or their cus-
8 tomers, to offer or support the offering of the cov-
9 ered platform operator's own competing or poten-
10 tially competing products or services on the plat-
11 form;

12 (4) restricts or impedes dependent businesses
13 from accessing commercial data generated by the ac-
14 tivities of the dependent business, or its customers,
15 on the covered platform or imposes contractual or
16 technical restrictions that prevent the effective port-
17 ability of such data by the dependent business to
18 systems or applications that are beyond the control
19 of the covered platform operator;

20 (5) restricts or impedes covered platform users
21 from un-installing software applications that have
22 been preinstalled on the covered platform or chang-
23 ing default settings that direct or steer covered plat-
24 form users to products or services offered by the
25 covered platform operator on the platform;

1 (6) restricts or impedes dependent businesses
2 from communicating information or providing links
3 on the covered platform to covered platform users to
4 facilitate business transactions on or off of the cov-
5 ered platform;

6 (7) in connection with any user interfaces, in-
7 cluding search or ranking functionality offered by
8 the covered platform, treats the covered platform op-
9 erator's own products, services, or lines of business
10 more favorably than they would be treated under
11 fair and non-discriminatory search or ranking sys-
12 tems;

13 【(8) interferes or restricts a dependent busi-
14 ness' pricing of its goods or services;】

15 【(9) restricts or impedes a dependent business,
16 or a dependent business's users or customers, from
17 interoperating or connecting to any product or serv-
18 ice that competes with any product, service, or line
19 of business offered by the covered platform oper-
20 ator;】

21 (10) retaliates against any dependent business
22 or platform user that raises concerns with any law
23 enforcement authority about actual or potential vio-
24 lations of 【state or】 federal law.

1 (c) AFFIRMATIVE DEFENSE.—Subsections (a) and
2 (b) shall not apply if the defendant establishes by clear
3 and convincing evidence that the conduct described in sub-
4 sections (a) or (b)—

5 (1) would not result in harm to the competitive
6 process; or

7 (2) was narrowly tailored, could not be achieved
8 through a less discriminatory means, was non-
9 pretextual, and was necessary to—

10 (A) prevent a violation of, or comply with,
11 U.S federal or state law; or

12 (B) protect user privacy or other non-pub-
13 lic data.

14 (d) AFFIRMATIVE DEFENSE IN ADDITION.—Sub-
15 sections [(b)(2) and (b)(5)] shall not apply if the defend-
16 ant establishes by clear and convincing evidence that the
17 conduct described in subsections [(b)(2) or (b)(5)] was
18 narrowly tailored, could not be achieved through a less dis-
19 criminatory means, was non-pretextual, and was necessary
20 to enable the core functionality of the platform.

21 (e) COVERED PLATFORM DESIGNATION.—

22 (1) The Federal Trade Commission or Depart-
23 ment of Justice may designate a covered platform
24 for the purpose of implementing and enforcing this
25 Act. Such designation shall—

1 (A) be based on a finding that the criteria
2 set forth in subsection (h)(2)(B)(i)-(iii) are met;

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

5 (C) will apply for **ten** years from its
6 issuance regardless of whether there is a change
7 in control or ownership over the covered plat-
8 form unless the Federal Trade Commission or
9 the Department of Justice removes the designa-
10 tion pursuant to subsection (f).

11 (f) REMOVAL OF COVERED PLATFORM DESIGNA-
12 TION.—The Commission or the Department of Justice
13 shall—

14 (1) consider whether its designation of a cov-
15 ered platform pursuant to subsection (e) should be
16 removed prior to the expiration of the ten-year pe-
17 riod if the covered platform operator files a request
18 with the Commission or the Department of Justice,
19 which shows that the online platform is no longer a
20 critical trading partner; and

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

24 (g) REMEDIES.—

1 (1) CIVIL PENALTY.—Any covered platform op-
2 erator who is found to have violated subsections (a)
3 or (b) shall be liable to the United States or the
4 Commission for a civil penalty, which shall accrue to
5 the United States, in an amount not more than the
6 greater of—

7 (A) 15 percent of the total United States
8 revenue of the person, partnership, or corpora-
9 tion for the previous calendar year; or

10 (B) 30 percent of the United States rev-
11 enue of the person, partnership, or corporation
12 in any line of business affected or targeted by
13 the unlawful conduct during the period of the
14 unlawful conduct.

15 This civil penalty may be recovered in a civil action
16 brought by the United States or the Commission.

17 (2) REMEDIES IN ADDITION.—Remedies pro-
18 vided in this subsection are in addition to, and not
19 in lieu of, any other remedy available to the Assist-
20 ant Attorney General of the Antitrust Division, the
21 Commission, or the attorney general of any State
22 under Federal or State law.

23 (A) RESTITUTION; CONTRACT RESCISSION
24 AND REFORMATION; REFUNDS; RETURN OF
25 PROPERTY.—the Assistant Attorney General of

1 the Antitrust Division, the Commission, or the
2 attorney general of any State may seek, and the
3 court may order, with respect to the violation
4 that gives rise to the suit, restitution for losses,
5 rescission or reformation of contracts, refund of
6 money, or return of property.

7 (B) DISGORGEMENT.—the Assistant Attor-
8 ney General of the Antitrust Division or the
9 Commission may seek, and the court may
10 order, disgorgement of any unjust enrichment
11 that a covered platform operator obtained as a
12 result of the violation that gives rise to the suit.

13 (C) INJUNCTIONS.—the Assistant Attorney
14 General of the Antitrust Division or the Com-
15 mission may seek, and the court may order, re-
16 lief in equity as necessary to prevent, restrain,
17 or prohibit violations of this Act.

18 (D) CONFLICT OF INTEREST.—If the fact
19 finder determines that a violation of this Act
20 arises from an irreconcilable conflict of interest
21 related to the covered platform’s concurrent op-
22 eration of multiple lines of business, the court
23 shall consider requiring divestiture of the line
24 or lines of business that give rise to such con-
25 flict.

1 (3) REPEAT OFFENDERS.—If the fact finder
2 determines that a covered platform has shown a pat-
3 tern or practice of violating this Act, the court shall
4 consider requiring that the Chief Executive Officer
5 forfeit to the United States Treasury any compensa-
6 tion received by that person during the 12 months
7 preceding or following the filing of a complaint for
8 an alleged violation of this Act.

9 (h) DEFINITIONS.—In this section:

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

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

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

17 (B) that—

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

23 (ii) is owned or controlled by a person,
24 partnership, or corporation with net an-
25 nual sales or a market capitalization great-

er than \$600,000,000,000 at any time in
the 2 years preceding the filing of a com-
plaint for an alleged violation of this Act;
and

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

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

(4) 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**】**.

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

(6) DATA.—

1 (A) IN GENERAL.—Not later than six
2 months after the date of enactment of this Act,
3 the Commission shall adopt rules in accordance
4 with section 553 of title 5, United States Code,
5 to define the term “data” for the purpose of
6 implementing and enforcing this Act.

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

14 (7) **【DEPENDENT BUSINESS/COMMERCIAL**
15 **USER】**.—The term “dependent business” means a
16 person, partnership, or corporation that utilizes the
17 covered platform for the sale or provision of prod-
18 ucts or services.

19 (8) IRRECONCILABLE CONFLICT OF INTER-
20 EST.—An “irreconcilable conflict of interest” in the
21 operation of a covered platform arises whenever

22 (A) a covered platform operator owns or
23 controls a line of business, other than the cov-
24 ered platform itself; and

1 (B) the covered platform’s ownership or
2 control of that line of business creates or in-
3 creases its incentive to:

4 (i) advantage the covered platform op-
5 erator’s own products, services, or lines of
6 business over those of a competing busi-
7 ness or potential competing business that
8 utilizes the covered platform; or

9 (ii) exclude or disadvantage the prod-
10 ucts, services, or lines of business of a
11 competing business or potential competing
12 business that utilizes the covered platform

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) CONTROL.—The term “control” with re-
5 spect to a person means—

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

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

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

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

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

19 (h) UNFAIR METHODS OF COMPETITION.—A viola-
20 tion of this Act shall also constitute an unfair method of
21 competition under Section 5 of the Federal Trade Com-
22 mission Act (15 U.S.C. 5).

23 (i) FEDERAL AND STATE ENFORCEMENT AUTHOR-
24 ITY.—The right to bring an action under this Act shall
25 rest solely with the United States, the Commission, and

1 any attorney general of a State subject to the require-
2 ments in subsection (i)(2).

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

11 (2) PARENS PATRIAE.—Any attorney general of
12 a State may bring a civil action in the name of such
13 State for a violation of this Act as parens patriae on
14 behalf of natural persons residing in such State, in
15 any district court of the United States having juris-
16 diction of the defendant, and may secure any form
17 of relief provided for in this section.

18 (j) EMERGENCY RELIEF.—

19 (1) The Commission, Assistant Attorney Gen-
20 eral of the Antitrust Division, or any attorney gen-
21 eral of a State may seek a temporary injunction re-
22 quiring the covered platform operator to take or stop
23 taking any action for not more than 120 days and
24 the court shall grant such relief if the Commission,

1 the United States, or the attorney general of a State
2 proves—

3 (A) there is a plausible claim that a cov-
4 ered platform operator took an action that vio-
5 lates this Act; and

6 (B) that action impairs the ability of at
7 least one company to compete with the covered
8 platform.

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

11 (3) The court shall terminate the emergency re-
12 lief at any time that the covered platform operator
13 proves that the Commission, the United States, or
14 the attorney general of the State seeking relief
15 under this section has not taken reasonable steps to
16 investigate whether a violation has occurred.

17 (4) Nothing in this subsection prevents or limits
18 the Commission, the United States, or any attorney
19 general of any State from seeking other equitable re-
20 lief as provided in subsection (e) of this section.

21 (k) INVESTIGATIVE AUTHORITY.—For purposes of
22 enforcement of this Act, the Commission or the Depart-
23 ment of Justice may undertake such investigation as ap-
24 propriate including [insert strongest investigative author-
25 ity and tools possible per agency technical assistance]

1 (l) STATUTE OF LIMITATIONS.—A proceeding for a
2 violation of this section may be commenced not later than
3 6 years after such violation occurs.

4 (m) RULES OF CONSTRUCTION.—Nothing in this sec-
5 tion shall be construed—

6 (1) to affect any authority of the Attorney Gen-
7 eral or the Federal Trade Commission under the
8 antitrust laws, section 5 of the Federal Trade Com-
9 mission Act (15 U.S.C. 45), or any other provision
10 of law or to limit the application of any law; or

11 (2) to limit the operation of any provision of
12 the antitrust laws or any other State or Federal law.

13 **SEC. 3. JUDICIAL REVIEW.**

14 (a) IN GENERAL.—Any party that is subject to a cov-
15 ered platform designation pursuant to section 2(e) of this
16 Act, a final order issued in any district court, or a final
17 order of the Commission issued in an administrative adju-
18 dicative proceeding may within 30 days of the issuance
19 of such order, petition for review of such order in the
20 United States Court of Appeals for the District of Colum-
21 bia Circuit.

22 (b) TREATMENT OF FINDINGS.—In a proceeding for
23 judicial review of a covered platform designation pursuant
24 to section 2(e) of this Act or a final order of the Commis-
25 sion, the findings of the Commission or the Assistant At-

1 torney General as to the facts, if supported by evidence,
2 shall be conclusive.

3 **SEC. 4. BUREAU OF DIGITAL MARKETS.**

4 (a) ESTABLISHMENT OF BUREAU.—As soon as prac-
5 ticable, but not later than 180 days after the date of en-
6 actment of this Act, the Federal Trade Commission shall
7 establish within the Commission a bureau of digital mar-
8 kets for purposes of enforcement of this Act.

9 (b) LEADERSHIP.—The head of the Bureau of Digital
10 Markets shall be the Director of the Bureau of Digital
11 Markets, who shall—

12 (1) report directly to the Chair of the Federal
13 Trade Commission; and

14 (2) be appointed by the Chair of the Federal
15 Trade Commission.

16 (c) BUREAU STAFF.—The Bureau of Digital Markets
17 shall retain or employ legal, technology, economic, re-
18 search, and service staff sufficient to carry out the func-
19 tions, powers, and duties of the Bureau.

20 **SEC. 5. ENFORCEMENT GUIDELINES.**

21 (a) IN GENERAL.—Not later than 1 year after the
22 date of enactment of this Act, the Commission and the
23 Assistant Attorney General of the Antitrust Division shall
24 jointly issue guidelines outlining policies and practices, re-

1 lating to agency enforcement of this Act, with the goal
2 of promoting transparency and deterring violations.

3 (b) UPDATES.—The Commission and the Assistant
4 Attorney General of the Antitrust Division shall update
5 the joint guidelines issued under subsection (a), as needed
6 to reflect current agency policies and practices, but not
7 less frequently than once every 4 years beginning on the
8 date of enactment of this Act.

9 **SEC. 6. RULE OF CONSTRUCTION.**

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

16 **SEC. 7. SEVERABILITY.**

17 If any provision of this Act, an amendment made by
18 this Act, or the application of such provision or amend-
19 ment to any person or circumstance is held to be unconsti-
20 tutional, the remainder of this Act and of the amendments
21 made by this Act, and the application of the remaining
22 provisions of this Act and amendments to any person or
23 circumstance shall not be affected.