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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Platform Anti-Monopoly Act”.

4 SEC. 2. .

5 SEC. 2. UNLAWFUL DISCRIMINATORY CONDUCT.

6 (a) VIOLATION.—It shall be unlawful for a person, partnership, or corporation operating a covered platform, in or affecting commerce, to engage in any conduct in connection with the operation of the covered platform that—
(1) advantages 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;

(2) excludes or disadvantages the products, services, or lines of business of a competing business or potential competing business that utilizes the covered platform; or

(3) [materially] discriminates between or among similarly situated persons that utilize the covered platform for the sale or provision of products or services.

(b) OTHER DISCRIMINATORY CONDUCT.—It shall be unlawful for a person, partnership, or corporation operating a covered platform, in or affecting commerce, to engage in any conduct that—

(1) restricts or impedes the capacity of dependent businesses that compete with the covered platform operator’s own products, services, or lines of business to access or interoperate with the same platform, operating system, hardware and software features that are available to the covered platform operator’s own products, services, or lines of business on the platform;
(2) conditions access to the covered platform or preferred status on the platform on the purchase or use of other products or services offered by the covered platform operator;

(3) uses non-public data obtained from or generated on the platform by the activities of [dependent businesses/commercial users], or their customers, to offer or support the offering of the covered platform operator’s own competing or potentially competing products or services on the platform;

(4) restricts or impedes dependent businesses from accessing commercial data generated by the activities of the dependent business, or its customers, on the covered platform or imposes contractual or technical restrictions that prevent the effective portability of such data by the dependent business to systems or applications that are beyond the control of the covered platform operator;

(5) restricts or impedes covered platform users from un-installing software applications that have been preinstalled on the covered platform or changing default settings that direct or steer covered platform users to products or services offered by the covered platform operator on the platform;
(6) restricts or impedes dependent businesses from communicating information or providing links on the covered platform to covered platform users to facilitate business transactions on or off of the covered platform;

(7) in connection with any user interfaces, including search or ranking functionality offered by the covered platform, treats the covered platform operator’s own products, services, or lines of business more favorably than they would be treated under fair and non-discriminatory search or ranking systems;

[(8) interferes or restricts a dependent business’ pricing of its goods or services;]

[(9) restricts or impedes a dependent business, or a dependent business’s users or customers, from interoperating or connecting to any product or service that competes with any product, service, or line of business offered by the covered platform operator;]

(10) retaliates against any dependent business or platform user that raises concerns with any law enforcement authority about actual or potential violations of [state or] federal law.
(c) AFFIRMATIVE DEFENSE.—Subsections (a) and (b) shall not apply if the defendant establishes by clear and convincing evidence that the conduct described in subsections (a) or (b)—

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

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

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

(B) protect user privacy or other non-public data.

(d) AFFIRMATIVE DEFENSE IN ADDITION.—Subsections [(b)(2) and (b)(5)] shall not apply if the defendant establishes by clear and convincing evidence that the conduct described in subsections [(b)(2) or (b)(5)] was narrowly tailored, could not be achieved through a less discriminatory means, was non-pretextual, and was necessary to enable the core functionality of the platform.

(e) COVERED PLATFORM DESIGNATION.—

(1) The Federal Trade Commission or Department of Justice may designate a covered platform for the purpose of implementing and enforcing this Act. Such designation shall—
(A) be based on a finding that the criteria set forth in subsection (h)(2)(B)(i)-(iii) are met;
(B) be issued in writing and published in the Federal Register;
(C) will apply for [ten] years from its issuance regardless of whether there is a change in control or ownership over the covered platform unless the Federal Trade Commission or the Department of Justice removes the designation pursuant to subsection (f).

(f) Removal of Covered Platform Designation.—The Commission or the Department of Justice shall—
(1) consider whether its designation of a covered platform pursuant to subsection (e) should be removed prior to the expiration of the ten-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.
(g) Remedies.—
(1) CIVIL PENALTY.—Any covered platform operator who is found to have violated subsections (a) or (b) shall be liable to the United States or the Commission for a civil penalty, which shall accrue to the United States, in an amount not more than the greater of—

(A) 15 percent of the total United States revenue of the person, partnership, or corporation for the previous calendar year; or

(B) 30 percent of the United States revenue of the person, partnership, or corporation in any line of business affected or targeted by the unlawful conduct during the period of the unlawful conduct.

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

(2) REMEDIES IN ADDITION.—Remedies provided in this subsection are in addition to, and not in lieu of, any other remedy available to the Assistant Attorney General of the Antitrust Division, the Commission, or the attorney general of any State under Federal or State law.

(A) RESTITUTION; CONTRACT RESCISSION AND REFORMATION; REFUNDS; RETURN OF PROPERTY.—the Assistant Attorney General of
the Antitrust Division, the Commission, or the attorney general of any State may seek, and the court may order, with respect to the violation that gives rise to the suit, restitution for losses, rescission or reformation of contracts, refund of money, or return of property.

(B) DISGORGEMENT.—the Assistant Attorney General of the Antitrust Division or the Commission may seek, and the court may order, disgorgement of any unjust enrichment that a covered platform operator obtained as a result of the violation that gives rise to the suit.

(C) INJUNCTIONS.—the Assistant Attorney General of the Antitrust Division or the Commission may seek, and the court may order, relief in equity as necessary to prevent, restrain, or prohibit violations of this Act.

(D) CONFLICT OF INTEREST.—If the fact finder determines that a violation of this Act arises from an irreconcilable conflict of interest related to the covered platform’s concurrent operation of multiple lines of business, the court shall consider requiring divestiture of the line or lines of business that give rise to such conflict.
(3) REPEAT OFFENDERS.—If the fact finder determines that a covered platform has shown a pattern or practice of violating this Act, the court shall consider requiring that the Chief Executive Officer forfeit to the United States Treasury any compensation received by that person during the 12 months preceding or following the filing of a complaint for an alleged violation of this Act.

(h) DEFINITIONS.—In this section:

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

(2) COVERED PLATFORM.—The term "covered platform" means an online platform—

(A) that has been designated as a "covered platform" pursuant to subsection (d); 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, partnership, or corporation with net annual 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.—
(A) IN GENERAL.—Not later than six months after the date of enactment of this Act, the Commission shall adopt rules in accordance with section 553 of title 5, United States Code, to define the term “data” for the purpose of implementing and enforcing this Act.

(B) DATA.—The term “data” shall include information that is collected by or provided to a covered platform or competing business or a potential competing business that is linked, or reasonably linkable, to a specific user or customer of the covered platform or a competing business or a potential competing business.

(7) [DEPENDENT BUSINESS/COMMERCIAL USER].—The term “dependent business” means a person, partnership, or corporation that utilizes the covered platform for the sale or provision of products or services.

(8) IRRECONCILABLE CONFLICT OF INTEREST.—An “irreconcilable conflict of interest” in the operation of a covered platform arises whenever

(A) a covered platform operator owns or controls a line of business, other than the covered platform itself; and
(B) the covered platform’s ownership or control of that line of business creates or increases its incentive to:

(i) 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

(ii) exclude or disadvantage the products, services, or lines of business of a competing business or potential competing business that utilizes the covered platform

(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) CONTROL.—The term “control” with re-
spect 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.

(h) UNFAIR METHODS OF COMPETITION.—A viola-
tion of this Act shall also constitute an unfair method of
competition under Section 5 of the Federal Trade Com-

(i) FEDERAL AND STATE ENFORCEMENT AUTHO-
RITY.—The right to bring an action under this Act shall
rest solely with the United States, the Commission, and
any attorney general of a State subject to the requirements in subsection (i)(2).

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

(2) PARENTS PATRIAE.—Any attorney general of a State may bring a civil action in the name of such State for a violation of this Act as parens patriae on behalf of natural persons residing in such State, in any district court of the United States having jurisdiction of the defendant, and may secure any form of relief provided for in this section.

(j) EMERGENCY RELIEF.—

(1) The Commission, Assistant Attorney General of the Antitrust Division, or any attorney general of a State may seek a temporary injunction requiring the covered platform operator to take or stop taking any action for not more than 120 days and the court shall grant such relief if the Commission,
the United States, or the attorney general of a State
proves—

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

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

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

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

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

(k) INVESTIGATIVE AUTHORITY.—For purposes of
enforcement of this Act, the Commission or the Depart-
ment of Justice may undertake such investigation as ap-
propriate including [insert strongest investigative author-
ity and tools possible per agency technical assistance]
(l) **Statute of Limitations.**—A proceeding for a violation of this section may be commenced not later than 6 years after such violation occurs.

(m) **Rules of Construction.**—Nothing in this section shall be construed—

(1) to affect 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; or

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

**Sec. 3. Judicial Review.**

(a) **In General.**—Any party that is subject to a covered platform designation pursuant to section 2(e) of this Act, a final order issued in any district court, or a final order of the Commission issued in an administrative adjudicative proceeding may within 30 days of the issuance of such order, petition for review of such 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 pursuant to section 2(e) of this Act or a final order of the Commission, the findings of the Commission or the Assistant At-
torney General as to the facts, if supported by evidence, shall be conclusive.

SEC. 4. BUREAU OF DIGITAL MARKETS.

(a) Establishment of Bureau.—As soon as practicable, but not later than 180 days after the date of enactment of this Act, the Federal Trade Commission shall establish within the Commission a bureau of digital markets for purposes of enforcement of this Act.

(b) Leadership.—The head of the Bureau of Digital Markets shall be the Director of the Bureau of Digital Markets, who shall—

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

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

(c) Bureau Staff.—The Bureau of Digital Markets shall retain or employ legal, technology, economic, research, and service staff sufficient to carry out the functions, powers, and duties of the Bureau.

SEC. 5. ENFORCEMENT GUIDELINES.

(a) In General.—Not later than 1 year after the date of enactment of this Act, the Commission and the Assistant Attorney General of the Antitrust Division shall jointly issue guidelines outlining policies and practices, re-
lating to agency enforcement of this Act, with the goal of promoting transparency and deterring violations.

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

SEC. 6. RULE 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. 7. SEVERABILITY.

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.