[INCOMPLETE DISCUSSION DRAFT]

117th Congress 1st Session  H. R. ______

To promote competition and economic opportunity in digital markets by establishing that certain acquisitions by dominant online platforms are a violation of the Clayton Act.

IN THE HOUSE OF REPRESENTATIVES

Mr. JEFFRIES introduced the following bill; which was referred to the Committee on ______

A BILL

To promote competition and economic opportunity in digital markets by establishing that certain acquisitions by dominant online platforms are a violation of the Clayton Act.

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 Competition and Opportunity Act”.
SEC. 2. UNLAWFUL ACQUISITIONS.

(a) VIOLATION.—It shall be a violation of section 7 of the Clayton Act (15 U.S.C. 18) for a covered platform operator to acquire directly or indirectly—

(1) the whole or any part of the stock or other share capital of another person engaged in commerce or in any activity or affecting commerce; or

(2) the whole or any part of the assets of another person engaged in commerce or in any activity affecting commerce.

(b) EXCLUSION.—An acquisition shall not be unlawful under subsection (a) if the acquiring covered platform operator demonstrates by clear and convincing evidence that—

(1) the acquisition is a transaction that is described in section 7A(e) of the Clayton Act; or

(2) the acquired assets or the issuer of the acquired stock do not—

(A) compete with the covered platform or with the covered platform operator for the sale or provision of any product or service offered on or directly related to the covered platform;

(B) pose a potential competitive threat to the covered platform or the covered platform operator for the sale or provision of any prod-
uct or service offered on or directly related to the covered platform;

(C) enhance the covered platform’s or the covered platform operator’s market position with respect to the sale or provision of any product or service offered on or directly related to the covered platform; or

(D) enhance the covered platform’s or covered platform operator’s ability to maintain its market position with respect to the sale or provision of any product or service offered on or directly related to the covered platform; and

(3) neither the covered platform nor the covered platform operator poses a potential competitive threat to the acquired assets or the issuer of the acquired stock for the sale or provision of any product or service offered on or directly related to the covered platform.

SEC. 3. DEFINITIONS.

(a) 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).

(b) COMMISSION.—The term “Commission” means the Federal Trade Commission.
(c) CONTROL.—The term “control” with respect to a person means—

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

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

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

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

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

(d) COVERED PLATFORM.—The term “covered platform” means an online platform—

(1) that has been designated as a “covered platform” under section 4(a); or

(2) that—

(A) 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;
(B) is owned or controlled by a person, partnership, or corporation 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

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

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

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

(1) the access of a dependent business to its users or customers; or

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

(g) DEPENDENT BUSINESS.—The term “dependent business” means a person, partnership, or corporation that utilizes the covered platform for the sale or provision of products or services.
(h) **ONLINE PLATFORM.**—The term “online platform” means a website, online or mobile application, digital assistant, or online service that—

(1) 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;

(2) 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

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

(i) **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).

**SEC. 4. IMPLEMENTATION.**

(a) **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 section 3(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 platform unless the Commission or the Department of Justice removes the designation pursuant to subsection (b).

(b) 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 (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.

22 SEC. 5. JUDICIAL REVIEW.

(a) In General.—Notwithstanding chapter 83 of title 28, United States Code, and section 11(c) of the Clayton Act (15 U.S.C. 21(e)), any party that is subject
to a covered platform designation pursuant to section 4(a) 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 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 pursuant to section 4(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. 6. 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. 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.