

[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 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 Competition
5 and Opportunity Act”.

1 **SEC. 2. UNLAWFUL ACQUISITIONS.**

2 (a) VIOLATION.—It shall be [a violation of section
3 7 of the Clayton Act (15 U.S.C. 18)] for a covered plat-
4 form operator to acquire directly or indirectly—

5 (1) the whole or any part of the stock or other
6 share capital of another person engaged in com-
7 merce or in any activity or affecting commerce; or

8 (2) the whole or any part of the assets of an-
9 other person engaged in commerce or in any activity
10 affecting commerce.

11 (b) EXCLUSION.—An acquisition shall not be unlaw-
12 ful under subsection (a) if the acquiring covered platform
13 operator demonstrates by clear and convincing evidence
14 that—

15 (1) the acquisition is a transaction that is de-
16 scribed in section 7A(c) of the Clayton Act; or

17 (2) the acquired assets or the issuer of the ac-
18 quired stock do not—

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

23 (B) pose a potential competitive threat to
24 the covered platform or the covered platform
25 operator for the sale or provision of any prod-

1 uct or service offered on or directly related to
2 the covered platform;

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

8 (D) enhance the covered platform’s or cov-
9 ered platform operator’s ability to maintain its
10 market position with respect to the sale or pro-
11 vision of any product or service offered on or
12 directly related to the covered platform; and

13 (3) neither the covered platform nor the covered
14 platform operator poses a potential competitive
15 threat to the acquired assets or the issuer of the ac-
16 quired stock for the sale or provision of any product
17 or service offered on or directly related to the cov-
18 ered platform.

19 **SEC. 3. DEFINITIONS.**

20 (a) ANTITRUST LAWS.—The term “antitrust laws”
21 has the meaning given the term in subsection (a) of sec-
22 tion 1 of the Clayton Act (15 U.S.C. 12).

23 (b) COMMISSION.—The term “Commission” means
24 the Federal Trade Commission.

1 (c) CONTROL.—The term “control” with respect to
2 a person means—

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

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

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

10 (4) if the person is a corporation, having the
11 power to designate 50 percent or more of the direc-
12 tors of the person; or

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

15 (d) COVERED PLATFORM.—The term “covered plat-
16 form” means an online platform—

17 (1) that has been designated as a “covered plat-
18 form” under section 4(a); or

19 (2) that—

20 (A) has at least **【500,000】** United States-
21 based monthly active users on the online plat-
22 form in any of the 12 months preceding the fil-
23 ing of a complaint for an alleged violation of
24 this Act;

1 (B) is owned or controlled by a person,
2 partnership, or corporation with net annual
3 sales, or a market capitalization greater than
4 \$600,000,000,000 at any time in the 2 years
5 preceding the filing of a complaint for an al-
6 leged violation of this Act; and

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

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

14 (f) CRITICAL TRADING PARTNER.—The term “crit-
15 ical trading partner” means a trading partner that has
16 the ability to restrict or impede—

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

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

22 (g) DEPENDENT BUSINESS.—The term “dependent
23 business” means a person, partnership, or corporation
24 that utilizes the covered platform for the sale or provision
25 of products or services.

1 (h) ONLINE PLATFORM.—The term “online plat-
2 form” means a website, online or mobile application, dig-
3 ital assistant, or online service that—

4 (1) enables a user to generate content that can
5 be viewed by other users on the platform or to inter-
6 act with other content on the platform;

7 (2) facilitates the offering, sale, purchase, pay-
8 ment, or shipping of goods or services, including
9 software applications, between and among con-
10 sumers or businesses not controlled by the platform;
11 or

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

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

17 **SEC. 4. IMPLEMENTATION.**

18 (a) COVERED PLATFORM DESIGNATION.—

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

23 (A) be based on a finding that the criteria
24 set forth in section 3(d)(2)(A)–(C) are met;

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

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

9 (b) REMOVAL OF COVERED PLATFORM DESIGNA-
10 TION.—The Commission or the Department of Justice
11 shall—

12 (1) consider whether its designation of a cov-
13 ered platform pursuant to subsection (a) should be
14 removed prior to the expiration of the 10-year period
15 if the covered platform operator files a request with
16 the Commission or the Department of Justice, which
17 shows that the online platform is no longer a critical
18 trading partner; and

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

22 **SEC. 5. JUDICIAL REVIEW.**

23 (a) IN GENERAL.—Notwithstanding chapter 83 of
24 title 28, United States Code, and section 11(c) of the
25 Clayton Act (15 U.S.C. 21(c)), any party that is subject

1 to a covered platform designation pursuant to section 4(a)
2 of this Act, a final order issued in any district court, or
3 a final order of the Commission issued in an administra-
4 tive adjudicative proceeding may within 30 days of the
5 issuance of such designation or order, petition for review
6 of such designation or order in the United States Court
7 of Appeals for the District of Columbia Circuit.

8 (b) TREATMENT OF FINDINGS.—In a proceeding for
9 judicial review of a covered platform designation pursuant
10 to section 4(a) of this Act or a final order of the Commis-
11 sion, the findings of the Commission or the Assistant At-
12 torney General as to the facts, if supported by evidence,
13 shall be conclusive.

14 **SEC. 6. RULES OF CONSTRUCTION.**

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

21 **SEC. 7. SEVERABILITY.**

22 If any provision of this Act, an amendment made by
23 this Act, or the application of such provision or amend-
24 ment to any person or circumstance is held to be unconsti-
25 tutional, the remainder of this Act and of the amendments

1 made by this Act, and the application of the remaining
2 provisions of this Act and amendments to any person or
3 circumstance shall not be affected.