

"(c) The Commission may, by rule, exempt online marketplace operators of limited scale if the Commission determines that inclusion of such operators would impose a burden disproportionate to the resulting protection of the public."

SEC. 1117. CLICK-TO-CANCEL AND NEGATIVE OPTION RULE CODIFICATION.

(a) Incorporation of specified regulations.—The provisions of the final rule promulgated by the Federal Trade Commission, entitled "Negative Option Rule", as published in the Federal Register on November 15, 2024 ([89 Fed. Reg. 90476](#)), including the amendments revising part 425 of title 16, Code of Federal Regulations, and retitling such part as the "Rule Concerning Recurring Subscriptions and Other Negative Option Programs", are incorporated into this Act and shall be treated as though such provisions are set forth in this section.

(b) Effect of incorporation.—To the extent that any provision of such regulations does not conform with any other statutory provision of law enacted before the date of enactment of this Act, the provisions of this Act shall govern.

(c) Rule of construction.—Nothing in this section shall be construed to prohibit the Federal Trade Commission from promulgating, maintaining, or enforcing requirements that provide equal or greater protection to consumers with respect to recurring subscriptions, automatic renewals, free-trial conversion offers, continuity plans, prenotification negative option plans, or any other negative option feature, except that the Commission may not by rule or guidance weaken, narrow, or create exemptions from the protections incorporated under subsection (a) unless expressly authorized by an Act of Congress enacted after the date of enactment of this Act.

(d) State protections not precluded.—Nothing in this section shall be construed to supersede, alter, affect, or preempt any Federal, State, Tribal, or local law, regulation, order, guidance, or interpretation that affords any consumer greater protection than the protections provided under this section or the regulations incorporated under it.

Subtitle B—Competition Policy Modernization

SEC. 1121. ROBINSON-PATMAN ACT REORGANIZATION.

The Robinson-Patman Act ([15 U.S.C. 13](#)) is amended by striking the existing text and inserting the following—

"(a) Price; selection of customers.—

"(1) Prohibition.—It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price if all of the following conditions are met:

"(A) The discrimination is between different purchasers of—

"(i) commodities of like grade and quality; or

"(ii) functionally equivalent services;

"(B) (i) Either or any of the purchases involved in such discrimination are in commerce; and

"(ii) such commodities or services are sold for use, consumption, or resale within—

"(I) the United States;

"(II) any Territory thereof;

"(III) the District of Columbia; or

"(IV) any insular possession or other place under the jurisdiction of the United States; and

"(C) The effect of such discrimination may be substantially—

"(i) to lessen competition or tend to create a monopoly in any line of commerce; or

"(ii) to injure, destroy, or prevent competition—

"(I) with any person who—

"(aa) grants such discrimination; or

"(bb) knowingly receives the benefit of such discrimination; or

"(II) with customers of a person described in subclause (I).

"(2) Safe harbors.—It shall not be unlawful under this subsection for—

"(A) differentials resulting from differing methods or quantities in the cost of manufacture, sale, or delivery of such commodities or services which are—

"(i) direct;

"(ii) verifiable;

"(iii) transaction-specific; and

"(iv) causally linked

"to such purchasers with respect to such sale or provision;

"(B) persons engaged in selling goods, services, wares, or merchandise in commerce to select their own customers in bona fide transactions and not in restraint of trade; or

"(C) price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods or services concerned, such as but not limited to—

"(i) actual or imminent deterioration of perishable goods;

"(ii) obsolescence of seasonal goods;

"(iii) distress sales under court process; or

"(iv) sales in good faith in discontinuance of business in the goods concerned.

"(3) Quantity limits.—

"(A) Authority.—The Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise such limits as it finds necessary, with respect to particular commodities or classes of commodities.

"(B) Standard.—The Commission may exercise the authority under subparagraph (A) where it finds that purchasers available in greater quantities are so few as to render differentials on account of such quantities unjustly discriminatory or promotive of monopoly in any line of commerce.

"(C) Effect.—Upon the establishment of quantity limits under this paragraph, this subsection shall not be construed to permit differentials based on differences in quantities greater than those so fixed and established.

"(b) Burden of rebutting prima-facie case of discrimination.—

"(1) Burden.—Upon proof being made, at any hearing on a complaint under this section, that a violation of subsection (a)(1) has occurred, the Commission is authorized to issue an order terminating the discrimination unless the person charged shall affirmatively show justification such as provided by subsection (a)(2) or paragraph (2).

"(2) Meeting competition.—A seller may rebut a prima-facie case made in this subsection by showing that their lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

"(c) Payment or acceptance of commission, brokerage, or other compensation.—

"(1) Prohibition.—It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof.

"(2) Exception.—Paragraph (1) shall not apply where—

"(A) the compensation is paid solely for services rendered in connection with the sale or purchase of goods, wares, or merchandise; and

"(B) such services are rendered either—

"(i) to the other party to the transaction; or

"(ii) to an agent, representative, or other intermediary that is acting in fact for or on behalf of, or is subject to the direct or indirect control of, the person by whom such compensation is paid.

"(d) Payment for services or facilities for processing or sale.—

"(1) Prohibition.—It shall be unlawful for any person engaged in commerce, in the course of such commerce, to

"(A) pay or contract for the payment of anything of value

"(B) to or for the benefit of a customer of such person

"(C) as compensation or in consideration for services or facilities—

"(i) furnished by or through such customer; and

"(ii) in connection with the processing, handling, sale, or offering for sale—

"(I) any products or commodities manufactured, sold, or offered for sale by such person.

"(2) Proportional availability.—Paragraph (1) shall not apply where such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

"(e) Furnishing services or facilities for processing, handling, etc.—

"(1) Prohibition.—It shall be unlawful for any person engaged in commerce to—

"(A) discriminate in favor of one purchaser; and

"(B) against another purchaser or purchasers—

"(i) of a commodity bought for resale;

"(ii) with or without processing;

"(C) by contracting to furnish or furnishing, or by contributing to the furnishing of—

"(i) services or facilities

"(ii) furnished in connection with the processing, handling, sale, or offering for sale—

"(I) such commodity described in subparagraph (B)(i).

"(2) Proportional availability.—Paragraph (1) shall not apply where such services or facilities are made available on proportionally equal terms to all purchasers competing in the distribution of such commodity.

"(f) Knowingly inducing or receiving discriminatory price.—It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section."

SEC. 1122. SHERMAN ACT AMENDMENTS.

(a) Section 2 of the Sherman Act ([15 U.S.C. 2](#)) is amended—

(1) by striking "Every" and inserting "(a) Every"; and

(2) by adding at the end the following:

"(b) (1) In any case alleging a violation of this section or section 1 in which a plaintiff establishes by a preponderance of the evidence (including direct evidence) the existence of substantial market power or the anticompetitive or otherwise detrimental effects of particular practices, a

plaintiff need neither define the scope of a relevant market nor establish the share of such a market controlled by the defendant.

"(2) In any case alleging a violation of this section or section 1 in which the defendant relies on alleged procompetitive effects to justify the conduct of the defendant, the defendant shall establish by clear and convincing evidence that—

"(A) the procompetitive effects of the conduct clearly outweigh the anticompetitive effects of the conduct; and

"(B) the defendant could not obtain substantially similar procompetitive effects through commercially reasonable alternatives that would involve materially lower competitive risks.

"(3) Nothing in this subsection may be construed to prevent a court from considering evidence relating to the definition of a proposed relevant market in evaluating the merits of a claim."

(b) Section 4 of the Sherman Act ([15 U.S.C. 4](#)) is amended—

(1) by striking "The several" and inserting "(a) The several"; and

(2) by adding at the end the following:

"(b) It is the policy of the United States that the principal standard for evaluating the permissibility of practices under this Act is the protection of economic competition within the United States.

"(c) In any action brought by the United States or the Federal Trade Commission alleging a violation of this Act, if the United States or the Federal Trade Commission establishes such a violation, the court shall order disgorgement of all profits earned by the defendant as a result of the conduct constituting that violation, except upon a showing of extraordinary good cause.

"(d) In any action brought by the United States or the Federal Trade Commission in which a violation of section 2 is established, the court shall, in addition to any other remedy or penalty provided by law, order relief that—

"(1) unfetters the affected market or markets from the harm caused by the violation;

"(2) terminates any monopoly unlawfully acquired or maintained through the violation; and

"(3) eliminates any practice likely to result in a future violation of section 2 by the defendant."

(c) Federal Trade Commission authority.—Section 5 of the Federal Trade Commission Act ([15 U.S.C. 45](#)), as amended by this Act, is further amended by adding at the end the following:

"(p) Civil action for Sherman Act violations.—

"(1) In general.—The Commission may commence a civil action in a district court of the United States against any person, partnership, or corporation for a violation of subsection (a)(1) respecting an unfair method of competition that constitutes a violation of section 1 or 2 of the Sherman Act ([15 U.S.C. 1, 2](#)).

"(2) Relief.—In an action under paragraph (1), the Commission may seek, and the court may grant, any relief authorized under this Act, the Sherman Act ([15 U.S.C. 1 et seq.](#)), or the Clayton Act ([15 U.S.C. 12 et seq.](#)), including relief under section 4(c) or (d) of the Sherman Act."

SEC. 1123. CLAYTON ACT AMENDMENTS.

(a) Policy of competition.—Section 1 of the Clayton Act ([15 U.S.C. 12](#)) is amended—

(1) in subsection (a)—

(A) by designating the 3 undesignated paragraphs as paragraphs (1) through (3), respectively; and

(B) by adding at the end the following:

"(4) The term 'market power' in this Act means the ability of a person, or a group of persons acting in concert, to profitably impose terms or conditions on counterparties, including terms regarding price, quantity, product or service quality, or other terms affecting the value of consideration exchanged in the transaction, that are more favorable to the person or group of persons imposing them than what the person or group of persons could obtain in a competitive market."; and

(2) by adding at the end the following:

"(c) It is the policy of the United States that the principal standard for evaluating the permissibility of practices under this Act is the protection of economic competition within the United States."

(b) Prejudgment interest.—Section 4 of the Clayton Act ([15 U.S.C. 15](#)) is amended by striking subsection (a) and inserting the following:

"(a) Except as provided in subsection (b), any person injured in that person's business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover—

"(1) threefold the damages sustained by such person;

"(2) the cost of suit, including a reasonable attorney's fee; and

"(3) simple interest on threefold the damages sustained by that person for the period beginning on the date of service of that person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment."

(c) Section 7 of the Clayton Act ([15 U.S.C. 18](#)) is amended—

(1) in the first 5 undesignated paragraphs—

(A) by inserting "or a monopsony" after "monopoly" each place that term appears;

(B) by striking "substantially to lessen" and "to lessen substantially" each place that such terms appear and inserting "to create an appreciable risk of materially lessening"; and

(C) redesignating such paragraphs as subsections (a) through (e), respectively;

(2) in subsection (c) (as redesignated) by striking "the substantial" and inserting "an appreciable risk of materially";

(3) by amending the 6th undesignated paragraph to read as follows:

"(f) Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Secretary of Transportation, the Federal Energy Regulatory Commission, the Surface Transportation Board, or the Secretary of Agriculture under any statutory provision vesting such power in such agency or Secretary."; and

(4) by adding at the end the following:

"(g) In determining whether an acquisition may create an appreciable risk of materially lessening competition or tend to create a monopoly or monopsony, a court shall consider whether either the acquiring person or the acquired person or assets prevents, limits, or disrupts coordinated interaction among competitors in a relevant market, or has a reasonable probability of doing so absent the acquisition.

"(h) Where a preponderance of the evidence (including direct evidence) is adduced to demonstrate that the effect of an acquisition may be to create an appreciable risk of materially lessening competition or to tend to create a monopoly or a monopsony, a plaintiff need neither establish market shares nor the concentration of any particular market.

"(i) No acquisition shall be presumed not to create an appreciable risk of materially lessening competition or tend to create a monopoly or monopsony only because the parties to the acquisition do not compete directly against one another at the time of the acquisition.

"(j) A statutory reference to a line of commerce shall not be construed to require the definition of a relevant market or the establishment of market shares or market concentration.".

(d) Premerger notification and public comment.—

(1) Section 7A of the Clayton Act ([15 U.S.C. 18a](#)), as amended by section 416 of this Act, is further amended—

(A) in the undesignated matter following subsection (a)(2)(B)(ii)(III), by adding at the end the following: "In the case of any transaction involving a person, partnership, or corporation designated as a dominant digital firm under section 10A of the Federal Trade Commission Act, the person, partnership, or corporation shall file notification as required by this section.";

(B) in subsection (d)(1) to read as follows—

"(1) shall require that the notification required under subsection (a) be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisition may, if consummated, violate the antitrust laws,

and shall include, at a minimum, the categories of information required by the Hart-Scott-Rodino premerger notification rules as published in the Federal Register on November 12, 2024 ([89 Fed. Reg. 89216](#)), including disclosures relating to transaction structure, competitive overlaps, prior acquisitions, and labor market impacts; and";

(C) in subsection (e) by adding at the end the following—

"(3) Large transactions.—In the case of any proposed acquisition described in subsection (j)(1), the Federal Trade Commission or the Assistant Attorney General shall require the submission of additional information or documentary material under this subsection after the close of the public comment period."; and

(D) by inserting after subsection (i) the following—

"(j) Public comment for covered transactions.—

"(1) In general.—For any proposed acquisition subject to this section in which the value of the transaction equals or exceeds \$1,000,000,000, the Federal Trade Commission and the Assistant Attorney General shall open a public comment docket during the waiting period.

"(2) Discretionary authority.—The Federal Trade Commission and the Assistant Attorney General may open a public comment docket for any other proposed acquisition where the agencies determine that the transaction may have substantial impacts on competition, labor markets, consumers, or the public interest.

"(3) Public summaries and funding disclosure.—In connection with any public comment docket under this subsection, the agencies shall publish an agency-prepared public summary of the proposed transaction describing the nature of the transaction and the principal competitive, economic, and labor-related issues raised, without disclosing confidential business information, and any study, analysis, or report submitted for consideration in such docket shall disclose any direct or indirect funding sources or financial sponsorship."

(2) Confidentiality.—Nothing in this section shall be construed to alter the confidentiality protections provided under section 7A(h) of the Clayton Act, except that agency-prepared public summaries and disclosures required under subsection (j)(3) shall not be treated as confidential.

(e) Exclusionary conduct.—

(1) In general.—The Clayton Act ([15 U.S.C. 12 et seq.](#)) is amended by inserting after section 26 ([15 U.S.C. 26a](#)) the following:

"Sec. 26A. Exclusionary conduct.

"(a) Definitions.—In this section:

"(1) Exclusionary conduct.—

"(A) In general.—The term 'exclusionary conduct' means conduct that—

"(i) materially disadvantages 1 or more actual or potential competitors; or

"(ii) tends to foreclose or limit the ability or incentive of 1 or more actual or potential competitors to compete.

"(B) Limitations.—

"(i) Intellectual property.—Applying for or enforcing a patent, trademark, or copyright, unless such applications or enforcement actions are baseless or made in bad faith or in violation of a legal obligation, shall not alone constitute exclusionary conduct, but such actions may be considered as part of a course of conduct that constitutes exclusionary conduct.

"(ii) Conduct required by law.—Conduct that is necessary to comply with Federal or State law shall not alone constitute exclusionary conduct, but such actions may be considered as part of a course of conduct that constitutes exclusionary conduct.

"(2) Market power.—The term 'market power' means the ability of a person, or a group of persons acting in concert, to profitably impose terms or conditions on counterparties, including terms regarding price, quantity, product or service quality, or other terms affecting the value of consideration exchanged in the transaction, that are more favorable to the person or group of persons imposing them than what the person or group of persons could obtain in a competitive market.

"(b) Violation.—

"(1) In general.—It shall be unlawful for a person, acting alone or in concert with other persons, to engage in exclusionary conduct that presents an appreciable risk of harming competition.

"(2) Unfair method of competition.—A violation of paragraph (1) shall also constitute an unfair method of competition under section 5 of the Federal Trade Commission Act ([15 U.S.C. 45](#)).

"(c) Presumption.—

"(1) In general.—Except as provided in paragraph (2), exclusionary conduct shall be presumed to present an appreciable risk of harming competition and shall be a violation of subsection (b)(1) if the exclusionary conduct is undertaken, with respect to a relevant market, by a person or by a group of more than 1 person acting in concert that—

"(A) has a market share of greater than 50 percent as a seller or a buyer in the relevant market; or

"(B) otherwise has significant market power in the relevant market.

"(2) Exception.—Paragraph (1) shall not apply if the defendant establishes, by a preponderance of the evidence, that—

"(A) distinct procompetitive benefits of the exclusionary conduct in the relevant market eliminate the risk of harming competition presented by the exclusionary conduct;

"(B) 1 or more persons, not including any person participating in or facilitating the exclusionary conduct, have entered or expanded their presence in the market with the effect of eliminating the risk of harming competition posed by the exclusionary conduct; or

"(C) the exclusionary conduct does not present an appreciable risk of harming competition.

"(d) Considerations.—If the presumption in subsection (c) does not apply, the determination of whether exclusionary conduct presents an appreciable risk of harming competition shall be based on the totality of the circumstances, which may include consideration of—

"(1) the extent to which any distinct procompetitive benefits of the exclusionary conduct substantially eliminate the risk of harming competition presented by the exclusionary conduct; and

"(2) whether 1 or more persons, not including any person participating in or facilitating the exclusionary conduct, have entered or expanded their presence in the market, substantially eliminating the risk of harming competition presented by the exclusionary conduct.

"(e) Limitations.—Although the following circumstances may constitute evidence of a violation of subsection (b)(1), such violation does not require finding—

"(1) that the unilateral conduct of the defendant altered or terminated a prior course of dealing between the defendant and a person subject to the exclusionary conduct;

"(2) that the defendant treated persons subject to the exclusionary conduct differently than the defendant treated other persons;

"(3) that any price of the defendant for a product or service was below any measure of the costs to the defendant of providing the product or service;

"(4) that a defendant with significant market power in a relevant market has recouped or is likely to recoup the losses it incurred or incurs from below-cost pricing for products or services in the relevant market;

"(5) that the conduct of the defendant makes no economic sense apart from its tendency to harm competition;

"(6) that the risk of harming competition presented by the conduct of the defendant or any resulting actual harm to competition have been quantified or proven with quantitative evidence; or

"(7) that when a defendant operates a multi-sided platform business, the conduct of the defendant presents an appreciable risk of harming competition on more than 1 side of the multi-sided platform.

"(f) Civil penalties.—Any person who violates subsection (b)(1) shall be liable to the United States for a civil penalty, which may be recovered in a civil action brought by the Attorney General of the United States, of not more than the greater of—

"(1) 15 percent of the total United States revenues of the person for the previous calendar year; or

"(2) 30 percent of the United States revenues of the person in any line of commerce affected or targeted by the unlawful conduct during the period of the unlawful conduct.

"Sec. 26B. Civil penalties.

"(a) Civil penalty for violation of section 26A.—The Federal Trade Commission may commence a civil action in a district court of the United States against any person, partnership, or corporation that violates section 26A(b)(1) to recover a civil penalty, which shall accrue to the United States, in an amount not more than the greater of—

"(1) 15 percent of the total United States revenues of the person, partnership, or corporation for the previous calendar year; or

"(2) 30 percent of the United States revenues of the person, partnership, or corporation in any line of commerce affected or targeted by the unlawful conduct during the period of the unlawful conduct.

"(b) Commission litigation authority.—Except as otherwise provided in section 16(a)(3) of the Federal Trade Commission Act ([15 U.S.C. 56\(a\)\(3\)](#)), the Federal Trade Commission shall have authority to commence or defend, and supervise the litigation of, any civil action authorized under subsection (a) and any appeal of such action in its own name by any of its attorneys designated by it for such purpose. The Federal Trade Commission shall inform the Attorney General of the exercise of such authority, and such exercise shall not preclude the Attorney General from intervening on behalf of the United States in such action and any appeal of such action as may be otherwise provided by law.

"(c) No duplicate penalty.—A person may not be required to pay more than 1 civil penalty under section 26A(f) and this section for the same violation."

(2) Enforcement guidelines.—

(A) Initial guidelines.—Not later than July 1, 2027, the Attorney General and the Federal Trade Commission shall issue joint guidelines outlining policies, practices, and analytical techniques relating to agency enforcement under section 26A of the Clayton Act, as added by paragraph (1), with the goal of promoting transparency and deterring violations of such section 26A.

(B) Updates.—The Attorney General and the Federal Trade Commission shall update the joint guidelines issued under subparagraph (A), as needed to reflect current agency policies and practices, but not less frequently than once every 5 years.

(C) Public notice and comment.—

(i) Guidelines.—Before issuing guidelines under subparagraph (A) or (B), the Attorney General and the Federal Trade Commission shall publish proposed guidelines in draft form and provide public notice and opportunity for comment for not less than 60 days after the date on which the guidelines are published.

(ii) Inapplicability of rulemaking provisions.—[Section 553 of title 5](#), United States Code, shall not apply to the guidelines issued under this paragraph.

SEC. 1124. PROHIBITION ON ABUSIVE ACTS OR PRACTICES.

(a) Abusive acts or practices.—[Title 15](#), United States Code, is amended—

(1) in sections [45](#), [45a](#), [45b](#), [45c](#), [45d](#), [45f](#), [52](#), [57b](#), [57b-1](#), [57b-2b](#), [69a](#), [69h](#), [70c](#), [70d](#), by striking "unfair or deceptive" each place it appears and inserting "unfair, deceptive, or abusive"; and

(2) in section 45—

(A) by adding at the end of subsection (n) the following:

"This subsection shall apply only to unfair acts or practices and shall not apply to deceptive or abusive acts or practices."; and

(B) by inserting after subsection (n) the following:

"(o) Abusive acts or practices.—For purposes of this section, the Commission shall have authority to declare an act or practice abusive if the act or practice—

"(1) materially interferes with the ability of a person to understand a material term, condition, or reasonably foreseeable consequence of conduct, a transaction, or an arrangement offered in or affecting commerce; or

"(2) takes unreasonable advantage of—

"(A) a lack of understanding on the part of a person of the material risks, costs, conditions, or effects of such conduct, transaction, or arrangement;

"(B) the inability of a person to protect the interests of the person in selecting, accessing, or using a good, service, platform, or market; or

"(C) the reasonable reliance by a person on another person to act in the interests of the person.".

(b) Rule of construction.—Nothing in the addition of the term "abusive" to the Federal Trade Commission Act ([15 U.S.C. 45 et seq.](#)) shall be construed to—

(1) narrow or limit the scope of conduct previously prohibited as unfair or deceptive acts or practices; or

(2) impair the applicability of judicial precedent interpreting unfair or deceptive acts or practices under this section.

(c) Conforming references.—Any reference in Federal law to an "unfair or deceptive act or practice" under section 5 of the Federal Trade Commission Act, or to conduct treated as an unfair or deceptive act or practice under [section 5](#) or [section 18](#) of such Act, shall be deemed to include an abusive act or practice.

SEC. 1125. PROHIBITION ON TYING ARRANGEMENTS BY DOMINANT FIRMS.

(a) In general.—The Clayton Act ([15 U.S.C. 12 et seq.](#)) is amended by inserting after section 3 the following:

"Sec. 3A. Prohibition on tying arrangements by dominant firms.

"(a) Definitions.—In this section:

"(1) Distinct products or services.—The term 'distinct products or services' means products or services for which separate demand exists. Separate demand includes separate offering, separate pricing, separate billing, separate licensing, separate contracting, industry practice, or practical separate acquisition. Products or services shall not be treated as indistinct solely because they are complementary, interoperable, integrated, or bundled together by the same person.

"(2) Dominant firm.—The term 'dominant firm' means a person that—

"(A) possesses monopoly power or dominant market power;

"(B) has a market share of greater than 30 percent with respect to a product or service that is the subject of a tying product or service purchase condition;

"(C) (i) controls a platform, marketplace, operating system, payment system, or other intermediary or access point through which business users or consumers obtain, distribute, access, or pay for a product or service subject to such person's tying product or service purchase condition; and

"(ii) at any month during either of the previous 2 calendar years, had at least 50,000,000 United States–based monthly active users or at least 100,000 United States–based monthly active business users;

"(D) during either of the previous 2 calendar years, had annual revenue or market capitalization greater than \$100,000,000,000; or

"(E) is designated as a dominant firm under subsection (d).

"(3) Tying arrangement.—The term 'tying arrangement' means any of the following conduct in commerce, where such conduct materially impairs practical commercial choice or may substantially lessen competition:

"(A) a tying product or service purchase condition that a person purchase, lease, license, use, or distribute another distinct product or service from the person imposing the condition or from an affiliated person;

"(B) a tying product or service purchase condition that a person not purchase, lease, license, use, or distribute a competing product or service from another person;

"(C) offering, pricing, licensing, distributing, or providing 2 or more distinct products or services together under materially more favorable terms than pressure purchase of the combined offering; or

"(D) imposing a material disadvantage on a person, including product or service degradation, withholding of interoperability, discrimination in ranking or placement, discriminatory pricing, or other adverse treatment, as a consequence of such person ceasing to comply with a condition described in subparagraph (A) or (B), or for refusal to agree to such condition.

"(4) Tying product or service purchase condition.—The term 'tying product or service purchase condition' means a condition on the sale, lease, license, distribution, use, access, or terms of a distinct product or service which is used to induce additional activity in or affecting commerce.

"(b) Prohibition.—It shall be unlawful for any dominant firm, directly or indirectly, in or affecting commerce, to engage in a tying arrangement.

"(c) Defenses.—It shall be an affirmative defense, on which the defendant bears the burden of proof by a preponderance of the evidence, that the challenged conduct—

"(1) is reasonably necessary to achieve cybersecurity, privacy, safety, or technical-integrity objectives;

"(2) is narrowly tailored, and no materially less restrictive alternative would reasonably achieve such objective; and

"(3) does not materially impair practical commercial choice or substantially lessen competition to a degree that is disproportionate to such objective.

"(d) Designation.—

"(1) Official designation.—

"(A) In general.—Subject to subparagraph (C), the Commission shall officially designate a person that meets the requirements under subparagraph (B), (C), or (D) of subsection (a)(2) as a dominant firm by publishing the designation in the Federal Register.

"(B) Duration of designation.—The designation of a person as a dominant firm under subparagraph (A) shall apply indefinitely, regardless of whether there is a change in control or ownership of the person, unless the Commission removes the designation under paragraph (2).

"(C) Rules.—The Commission may, as the Commission determines appropriate, promulgate rules to—

"(i) adjust a numeric threshold in subsection (a)(2), provided that the Commission may not adjust any numeric threshold below the value in the applicable subparagraph; or

"(ii) define additional characteristics that a person must have in order to be designated as a dominant firm under subparagraph (A).

"(2) Removal of designation.—

"(A) Request.—If a person designated as a dominant firm under paragraph (1) ceases to meet the qualifications for such designation, the person may submit to the Commission a request for removal of the designation, together with evidence that the person no longer so qualifies.

"(B) Determination.—

"(i) In general.—Not later than 120 days after receiving a request under subparagraph (A), the Commission shall determine whether to grant the request and, if the Commission grants the request, remove the person from the public list under subsection (e)(1).

"(ii) Denied requests.—A denial under clause (i) of a request submitted under subparagraph (A) shall constitute final agency action for purposes of [chapter 7 of title 5](#), United States Code.

"(e) Public list.—

"(1) In general.—The Commission shall maintain and periodically update on its website a public list of persons that the Commission has identified as dominant firms under this section.

"(2) Omission not dispositive.—Omission from the public list under paragraph (1) shall not by itself establish that a person is not a dominant firm.

"(f) Enforcement.—

"(1) Federal Trade Commission.—A violation of this section shall constitute an unfair method of competition under section 5(a)(1) of the Federal Trade Commission Act ([15 U.S.C. 45\(a\)\(1\)](#)). The Commission shall enforce this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms of the Federal Trade Commission Act were incorporated into and made a part of this section.

"(2) Relation to other law.—Nothing in this section shall be construed to limit any other claim or authority otherwise available under the antitrust laws or the Federal Trade Commission Act."

SEC. 1126. WHISTLEBLOWER PROTECTIONS AND INCENTIVES.

(a) Civil whistleblower protections.—The Clayton Act is amended by inserting after section 27 ([15 U.S.C. 26b](#)) the following:

"Sec. 27A. Anti-retaliation protection for civil whistleblowers.

"(a) Definitions.—In this section:

"(1) Applicable antitrust laws.—The term 'applicable antitrust laws' means section 1, 2, or 3 of the Sherman Act ([15 U.S.C. 1, 2, and 3](#)) or section 5 of the Federal Trade Commission Act ([15 U.S.C. 45](#)) to the extent that such section applies to unfair methods of competition.

"(2) Covered individual.—The term 'covered individual' means an employee, contractor, subcontractor, or agent of an employer.

"(3) Employer.—The term 'employer' means a person, or any officer, employee, contractor, subcontractor, or agent of such person.

"(4) Federal Government.—The term 'Federal Government' means—

"(A) a Federal regulatory or law enforcement agency; or

"(B) any Member of Congress or committee of Congress.

"(5) Person.—The term 'person' has the same meaning as in subsection (a) of the first section of the Clayton Act ([15 U.S.C. 12\(a\)](#)).

"(b) Whistleblower protections for employees, contractors, subcontractors, and agents.—

"(1) In general.—No employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against a covered individual in the terms and conditions of employment of the covered individual because of any lawful act done by the covered individual—

"(A) to provide or cause to be provided to the Federal Government or a person with supervisory authority over the covered individual (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct) information relating to any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the applicable antitrust laws; or

"(B) to cause to be filed, testify in, participate in, or otherwise assist a Federal Government investigation or a Federal Government proceeding filed or about to be filed (with any knowledge of the employer) relating to any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the applicable antitrust laws.

"(2) Limitation on protections.—Paragraph (1) shall not apply to any covered individual if—

"(A) the covered individual planned and initiated a violation or attempted violation of the applicable antitrust laws;

"(B) the covered individual planned and initiated a violation or attempted violation of a criminal law in conjunction with a violation or attempted violation of the applicable antitrust laws; or

"(C) the covered individual planned and initiated an obstruction or attempted obstruction of an investigation by the Federal Government of a violation of the applicable antitrust laws.

"(c) Enforcement action.—

"(1) In general.—A covered individual who alleges discharge or other discrimination by any employer in violation of subsection (b) may seek relief under subsection (d) by—

"(A) filing a complaint with the Secretary of Labor; or

"(B) if the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

"(2) Procedure.—

"(A) In general.—A complaint filed with the Secretary of Labor under paragraph (1)(A) shall be governed under the rules and procedures set forth in [section 42121\(b\) of title 49](#), United States Code.

"(B) Exception.—Notification made under [section 42121\(b\)\(1\) of title 49](#), United States Code, shall be made to any individual named in the complaint and to the employer.

"(C) Burdens of proof.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in [section 42121\(b\) of title 49](#), United States Code.

"(D) Statute of limitations.—A complaint under paragraph (1)(A) shall be filed with the Secretary of Labor not later than 180 days after the date on which the violation of this section occurs.

"(E) Civil actions to enforce.—If a person fails to comply with an order or preliminary order issued by the Secretary of Labor pursuant to the procedures set forth in [section 42121\(b\) of title 49](#), United States Code, the Secretary of Labor or the person on whose behalf the order was issued may bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred.

"(d) Remedies.—

"(1) In general.—A covered individual prevailing in any action under subsection (c)(1) shall be entitled to all relief necessary to make the covered individual whole.

"(2) Compensatory damages.—Relief under paragraph (1) shall include—

"(A) reinstatement with the same seniority status that the covered individual would have had, but for the discrimination;

"(B) the amount of back pay, with interest; and

"(C) compensation for any special damages sustained as a result of the discrimination including litigation costs, expert witness fees, and reasonable attorney's fees.

"(e) Other protections preserved.—Nothing in this section shall be deemed to diminish any protection, privilege, or remedy of any covered individual under any Federal or State law, or under any collective bargaining agreement."

(b) Criminal whistleblower incentives.—The Antitrust Criminal Penalty Enhancement and Reform Act of 2004 ([15 U.S.C. 1](#) note) is amended by inserting after section 216 ([15 U.S.C. 7a–3](#)) the following:

"Sec. 217. Criminal antitrust whistleblower incentives.

"(a) Definitions.—In this section:

"(1) Antitrust laws.—The term 'antitrust laws' means section 1 or 3 of the Sherman Act ([15 U.S.C. 1](#) and [3](#)).

"(2) Collected proceeds.—The term 'collected proceeds' means any sanctions, fines, penalties, or awards obtained in any covered enforcement action, whether by judgment, settlement, or a deferred prosecution agreement.

"(3) Covered enforcement action.—The term 'covered enforcement action' means any criminal action brought by the Attorney General under the antitrust laws that results in collected proceeds exceeding \$1,000,000.

"(4) Original information.—The term 'original information' means information that—

"(A) is derived from the personal knowledge of a whistleblower;

"(B) is not known to the Attorney General or the Department of Justice from any other source, unless the whistleblower is the original source of the information;

"(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information; and

"(D) is not already required to be disclosed to the Department of Justice or another Federal agency.

"(5) Related action.—The term 'related action', when used with respect to any covered enforcement action brought by the Attorney General, means any criminal action brought by another United States entity that is based upon the original information provided by a whistleblower that led to the successful enforcement action by the Attorney General.

"(6) Whistleblower.—The term 'whistleblower' means any individual who provides information relating to a violation of the antitrust laws to the Department of Justice, in a manner established by the Department of Justice.

"(b) Awards.—

"(1) In general.—In a covered enforcement action, or related action, the Attorney General, subject to subsection (c), may pay an award or awards to a whistleblower who voluntarily provided original information to the Department of Justice that led to the successful enforcement of the covered enforcement action, or related action, in an amount not less than 10 percent and not more than 30 percent, in total, of what has been collected of the criminal fine imposed in the covered enforcement action or related action under the antitrust laws.

"(2) Payment.—Any amount paid under paragraph (1) shall be paid from the criminal fine collected in the covered enforcement action.

"(c) Determination of amount of award; denial of award.—

"(1) Determination of amount of award.—

"(A) Discretion.—The determination of the amount of an award made under subsection (b) shall be at the discretion of the Attorney General.

"(B) Criteria.—In determining the amount of an award made under subsection (b), the Attorney General shall take into consideration—

"(i) the significance of the information provided by the whistleblower to the success of the covered enforcement action;

"(ii) the degree of assistance and cooperation provided by the whistleblower in a covered enforcement action;

"(iii) the interest of the Department of Justice in deterring criminal violations of the antitrust laws by making awards to whistleblowers who provide information that leads to successful covered enforcement actions; and

"(iv) such additional relevant factors as the Attorney General may establish.

"(2) Denial of award.—No award under subsection (b) shall be made—

"(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Department of Justice, a member, officer, or employee of—

"(i) any branch, agency, or instrumentality of the Federal Government; or

"(ii) any law enforcement organization;

"(B) to any whistleblower who is convicted of a criminal violation related to the covered enforcement action for which the whistleblower otherwise could receive an award under this section;

"(C) to any whistleblower who was an originator or leader of or who coerced any other party to participate in the activity giving rise to liability under the antitrust laws in the covered enforcement action for which the whistleblower otherwise could receive an award under this section;

"(D) to any whistleblower who fails to provide timely, truthful, continuing, and complete cooperation to the Department of Justice relating to the original information or intentionally withholds information relating to the original information;

"(E) to any whistleblower who commits, participates in, or attempts to commit or participate in any crimes after disclosing the original information to the Department of Justice;

"(F) to any whistleblower who fails to submit information to the Department of Justice in such form as the Department may require, or fails to report relevant information to the Department known to the whistleblower when the whistleblower first reported the information to the Department;

"(G) to any whistleblower who planned and initiated an obstruction or attempted obstruction of an investigation by the Department of Justice of a violation of the antitrust laws; or

"(H) to any whistleblower who engages in conduct that would disqualify the whistleblower if the whistleblower were a leniency applicant under the Leniency Program of the Antitrust Division.

"(d) Representation.—Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

"(e) Appeals.—Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Attorney General. Any such determination, except the determination of the amount of an award if the award was made in accordance with subsection (b), may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Attorney General. The court shall review the determination made by the Attorney General in accordance with [section 706 of title 5](#), United States Code."

Subtitle C—Restricting Algorithmic Pricing

SEC. 1131. FINDINGS AND PURPOSE.

(a) Findings.—Congress finds the following:

(1) Prices for essential goods and services, including groceries, rent, residential housing, utilities, and health care, have increased substantially in recent years, contributing to widespread economic hardship for households across the United States.

(2) Algorithmic pricing systems influence prices in markets where these increases have occurred, including food staples, residential rents, and other essential goods and services.

(3) Practices that artificially raise, align, or stabilize prices among competitors are unlawful when conducted directly through human communication, and the use of an algorithmic intermediary does not alter the unlawful nature of such conduct.

(4) Certain pricing algorithms rely on nonpublic competitor data or function as shared systems across multiple competing firms, thereby replicating or magnifying forms of price coordination that would violate long-standing antitrust prohibitions if engaged in through direct interaction.

(5) Algorithmic pricing systems used in concentrated markets can produce supracompetitive prices even without explicit agreements among competitors, undermining the competitive process that Congress has sought to protect for generations.

(6) Individualized pricing based on surveillance data enables discrimination among consumers, exploits behavioral vulnerabilities, and imposes higher prices on those least able to pay.

(7) Transparency, accountability, and oversight are necessary to ensure that algorithmic pricing systems do not facilitate coordination, manipulation, discrimination, or reductions in output.

(8) It is necessary for Congress to update Federal law to ensure that the principles of fair competition established over the past century remain effective in the digital and algorithmic era.

(b) Purpose.—The purpose of this subtitle is to—

(1) prohibit the use of shared or collusive pricing algorithms that incorporate nonpublic competitor data or perform coordinating functions among competitors;

(2) prohibit surveillance-based individualized pricing and other discriminatory algorithmic pricing practices; and