

Subtitle E—Empowering the FTC

PART I—FTC AUTHORITY AND CAPACITY

SEC. 1151. APPROPRIATION OF ONE BILLION DOLLARS FOR THE FTC.

(a) Appropriation.—In addition to any other amounts appropriated or otherwise made available, there is appropriated, out of any money in the Treasury not otherwise appropriated, \$1,000,000,000 for fiscal year 2027, to remain available until September 30, 2029, for necessary expenses of the Federal Trade Commission in carrying out the antitrust and kindred laws.

(b) Use of funds.—Amounts made available under subsection (a) shall be used to carry out the duties and authorities of the Commission under this Act, including, but not limited to, the following:

(1) investigate and enforce prohibitions on unfair, deceptive, or abusive acts or practices;

(2) enforce antitrust laws, including prohibitions on anticompetitive mergers and collusive conduct;

(3) implement, administer, and enforce regulations including those governing algorithmic pricing, surveillance practices, and digital markets;

(4) conduct rulemaking, audits, and market studies authorized under the Federal Trade Commission Act; and

(5) hire and retain technical, economic, and legal staff, including data scientists, engineers, and competition economists.

(c) Rule of construction.—Nothing in this section shall be construed—

(1) to limit Congress from appropriating amounts in excess of subsection (a); or

(2) to include amounts collected by the Commission through civil penalties, fines, fees, restitution, or disgorgement.

SEC. 1152. ESTABLISHMENT OF SUBSTANTIVE RULEMAKING AUTHORITY.

(a) Section 18 of the Federal Trade Commission Act ([15 U.S.C. 57a](#)) is amended—

(1) by striking the section header and inserting "Unfair, deceptive, or abusive acts or practices rulemaking authority."; and

(2) by striking the existing text and inserting the following—

"(a) Substantive rulemaking authority.—The Commission is authorized to promulgate substantive rules for carrying out this Act and, to the extent not otherwise specifically provided by law, any other Act administered by the Commission, including rules that define, interpret, or prohibit unfair methods of competition and unfair, deceptive, or abusive acts or practices.

"(b) Relationship to section 5.—Rules promulgated under this section may define, specify, or prohibit conduct that constitutes a violation of section 5 of this Act, and such rules may be issued without regard to whether such conduct has previously been addressed through adjudication.

"(c) Force and effect of law.—A rule promulgated under this section shall have the force and effect of law, and a violation of such rule shall be treated as a violation of this Act.

"(d) Scope of application.—Rules promulgated under this section may apply to classes of persons, classes of conduct, classes of industries, or classes of markets, and may be economy-wide in scope.

"(e) Procedure and judicial review.—Except as otherwise expressly provided by law, rules promulgated under this section shall be issued in accordance with [section 553 of title 5](#), United States Code, and shall be subject to judicial review under [chapter 7 of title 5](#), United States Code. No procedure in addition to those specified in the preceding sentence shall be required for the promulgation of a rule under this section.

"(f) Rule of construction.—Nothing in this section shall be construed to limit the Commission's authority under any other provision of this Act or other applicable law, or to require the Commission to proceed exclusively by rulemaking or exclusively by adjudication."

(b) Conforming amendment.—Any reference in Federal law to a rule promulgated under section 18 of the Federal Trade Commission Act, or to rulemaking procedures under such section, shall be deemed to refer to a rule promulgated under section 18 of such Act as amended by this section.

SEC. 1153. CONFIRMATION OF AUTHORITY.

Section 5 of the Federal Trade Commission Act ([15 U.S.C. 45](#)), as amended by this Act, is further amended by inserting after subsection (a)(4) the following—

"(5) Clarification of unfair methods of competition.—

"(A) Independent authority.—The authority of the Commission under this section to prevent unfair methods of competition is independent of, and not limited by, the scope, standards, requirements, or judicial interpretations of the Sherman Act, the Clayton Act, or the Robinson-Patman Act.

"(B) Covered conduct.—Unfair methods of competition may include conduct that violates the letter or the spirit of the antitrust laws, including conduct that tends to undermine competitive conditions, facilitate market concentration, entrench dominant positions, exclude rivals, or distort competitive processes, whether or not such conduct independently constitutes a violation of any other antitrust law.

"(C) Rule of construction.—Nothing in this paragraph shall be construed to require the Commission to establish all elements of a violation under any other antitrust law, or to limit the Commission's authority to identify and prohibit unfair methods of competition through rulemaking or adjudication under this Act."

SEC. 1154. CONSUMER AWARENESS.

(a) Consumer awareness.—The Federal Trade Commission shall establish and maintain a publicly accessible internet website that—

(1) provides information in clear and plain language regarding—

(A) protections, obligations, prohibitions, and remedies under laws enforced by the Federal Trade Commission, including protections, obligations, prohibitions, and remedies established or amended by the POPULIST Act;

(B) the compliance obligations of persons subject to such laws; and

(C) how consumers, workers, small businesses, and other affected persons may submit complaints, reports, or requests for assistance to the Federal Trade Commission; and

(2) includes educational materials for small businesses and other persons subject to laws enforced by the Federal Trade Commission to assist with compliance with those laws.

(b) Updates.—The Federal Trade Commission shall update the website required under subsection (a) as necessary to reflect changes in law, guidance, or enforcement.

SEC. 1155. PERMANENT AUTHORIZATION OF U.S. SAFE WEB ACT.

(a) Repeal of sunset.—Section 13 of the U.S. SAFE WEB Act of 2006 ([Public Law 109–455](#); [15 U.S.C. 44 note](#)) is repealed.

(b) Permanent effect.—Notwithstanding section 13 of Public Law 109–455 (as in effect before the date of enactment of this Act), the U.S. SAFE WEB Act of 2006 ([Public Law 109–455](#)) and the amendments made by that Act shall continue in effect as permanent provisions of law.

(c) Ratification and validation.—For the avoidance of doubt, any action taken, assistance provided, disclosure made, or information obtained, used, or shared by the Federal Trade Commission in reliance on the authorities enacted by the U.S. SAFE WEB Act of 2006 during the period beginning October 1, 2020, and ending October 20, 2020, is hereby ratified, approved, and confirmed as if the authorities had remained continuously in effect during such period.

(d) Rule of construction.—Nothing in this section shall be construed to expand or limit any authority of the Federal Trade Commission beyond making permanent the authorities provided by the U.S. SAFE WEB Act of 2006 and validating actions described in subsection (c).

SEC. 1156. OFFICE OF COMPETITION ADVOCATE.

(a) Definitions.—In this section:

(1) Agency.—The term "agency" has the meaning given the term in [section 551 of title 5](#), United States Code.

(2) Chair.—The term "Chair" means the Chair of the Commission.

(3) Commission.—The term "Commission" means the Federal Trade Commission.

(4) Covered company.—The term "covered company" means any company that has, at any time, been required to make a filing under section 7A of the Clayton Act ([15 U.S.C. 18a](#)).

(5) Office.—The term "Office" means the Office of the Competition Advocate established under subsection (b).

(b) Establishment.—There is established within the Federal Trade Commission the Office of the Competition Advocate.

(c) Competition Advocate.—

(1) In general.—The head of the Office shall be the Competition Advocate, who shall—

(A) report directly to, and be under the supervision of, the Chair, but the Chair shall not prevent or prohibit the Competition Advocate from initiating, carrying out, or completing any of their duties under this section;

(B) be appointed by the Chair with the approval of the Commission, including at least 1 Commissioner who is not a member of the same political party as the Chair, from among individuals having experience in advocating for the promotion of competition; and

(C) serve a term of 7 years and shall not be removable except upon a unanimous vote of the Commission.

(2) Compensation.—The annual rate of pay for the Competition Advocate shall be equal to the highest rate of annual pay for other senior executives who report to the Chair of the Commission.

(3) Limitation on service.—An individual who serves as the Competition Advocate may not be employed by the Commission—

(A) during the 2-year period ending on the date of appointment as Competition Advocate; and

(B) during the 5-year period beginning on the date on which the person ceases to serve as the Competition Advocate.

(d) Staff of Office.—The Commission shall allocate funds from the Commission budget to the Office of the Competition Advocate sufficient for the Competition Advocate to retain or employ such counsel, research staff, and service staff necessary to carry out the functions, powers, and duties of the Office.

(e) Duties and powers.—The Competition Advocate shall—

(1) recommend processes or procedures that will allow the Federal Trade Commission and the Antitrust Division of the Department of Justice to improve the ability of each agency to solicit reports from consumers, small businesses, and workers about possible anticompetitive practices or adverse effects of concentration;

(2) provide recommendations to other agencies about agency actions that may have anticompetitive effects and the potential harm to competition;

(3) provide recommendations to other agencies about agency actions that may have procompetitive effects and the potential benefit to competition;

(4) publish periodic reports on—

(A) the effects of remedies required by the Department of Justice or the Federal Trade Commission in consent decrees;

(B) the effects of law enforcement actions, whether successful or not, including settlements, preliminary injunctions, court-mandated remedies, or any other remedy imposed by a court or agreed to by the Department of Justice or Federal Trade Commission;

(C) the effects of a decision by the Department of Justice or the Federal Trade Commission to allow any merger or transaction to move forward without a consent decree or bringing a law enforcement action;

(D) the effects of decisions and opinions issued by State and Federal courts related to the antitrust laws on competition and the future enforcement of the antitrust laws; and

(E) the effects of other agency actions, including rulemakings, on competition;

(5) provide recommendations to the Federal Trade Commission and Department of Justice about the effectiveness of policy statements, guidelines, or practices to improve the enforcement of the antitrust laws;

(6) report any evidence the Competition Advocate obtains that any person, partnership, or corporation has engaged in transactions or conduct that may constitute a violation of the antitrust laws, or any settlement, agreement, or consent decree related to a potential violation of the antitrust laws, to the Commission, which may institute further investigation, initiate enforcement proceedings, or refer such evidence to the Attorney General;

(7) request such information or assistance as may be necessary for carrying out the duties and powers described in this subsection from any agency or unit thereof, including the Commission. The head of any agency shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the agency from which the information is requested, furnish to the Competition Advocate such information or assistance;

(8) have discretion to decide whether to release the recommendations of the Competition Advocate publicly;

(9) have access to all information and data collected and retained by the Office of Market Analysis and Data; and

(10) submit all recommendations or reports to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(f) Subpoena authority.—

(1) In general.—The Competition Advocate may either accept voluntary submissions of periodic and other reports from any covered company, or compel the production of such a report by subpoena for the purpose of carrying out its duties and powers under subsection (e).

(2) Independent subpoena authority.—Upon a finding that a covered company will not submit, or has not submitted, a sufficient report voluntarily, the Competition Advocate may, under its own independent authority, and notwithstanding any jurisdictional limitations in the Federal Trade Commission Act applicable to the Commission's investigative authority, compel the submission of a periodic or other report from any covered company by issuing a subpoena.

(3) Enforcement.—The Competition Advocate shall have independent authority to bring an action in any appropriate Federal court to enforce any subpoena issued under this subsection.

(4) Written finding.—Before issuing a subpoena to collect the information described in paragraph (1), the Competition Advocate shall make a written finding that—

(A) the data is required to carry out the functions of the Competition Advocate; and

(B) the information is not available from a public source, from the covered company on a voluntary basis, or another agency.

(5) Mitigation of report burden.—Before requiring the submission of a report from any covered company, the Competition Advocate shall—

(A) coordinate with other agencies or authorities; and

(B) whenever possible, rely on information available from such agencies or authorities.

(6) Confidentiality.—Information reported to or otherwise obtained by the Competition Advocate shall be subject to the same confidentiality requirements and protection applicable to information reported to or otherwise obtained by the Commission.

(g) Post-proceeding data.—Section 7A of the Clayton Act ([15 U.S.C. 18a](#)), as amended by section 1123(d) of this Act, is further amended by adding at the end the following:

"(m) Post-proceeding data.—

"(1) In general.—Each person who resolves a proceeding brought under the antitrust laws by the Federal Trade Commission or the United States by entering into an agreement or by final judgment in a Federal or administrative court regarding an acquisition with respect to which notification is required under this section shall, on an annual basis during the 5-year period beginning on the date on which the agreement is entered into or the final judgment is entered, as applicable, file with the Federal Trade Commission or the Assistant Attorney General, as applicable, and the Competition Advocate, information sufficient for the Federal Trade Commission or the United States, as applicable, to assess the competitive impact of the acquisition, including—

"(A) the pricing, availability, and quality of any product or service, or inputs thereto, in any market, that was covered by the agreement or final judgment;

"(B) the source, and the resulting magnitude and extent, of any cost-saving efficiencies or any benefits to consumers or trading partners that were claimed as a benefit of the acquisition, and the extent to which any cost savings were passed on to consumers or trading partners; and

"(C) the effectiveness of any divestitures or any conditions placed on the acquisition in fully restoring competition.

"(2) Inclusion in resolution.—The requirement to provide the information described in paragraph (1) shall be included in an agreement or final judgment described in that paragraph.

"(3) Rulemaking.—The Federal Trade Commission, with the concurrence of the Assistant Attorney General, by rule in accordance with [section 553 of title 5](#), United States Code, and consistent with the purposes of this subsection—

"(A) shall require that the information described in paragraph (1) be in such form and contain such documentary material and information relevant to an acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to assess the competitive impact of the acquisition under paragraph (1); and

"(B) may—

"(i) define the terms used in this subsection;

"(ii) exempt, from the requirements of this subsection, information not relevant in assessing the competitive impact of the acquisition under paragraph (1); and

"(iii) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this subsection.

"(4) Certification.—The chief executive officer, chief financial officer, general counsel, or a corporate officer of similar authority, or, if the person has no such officer, an individual with equivalent responsibility and authority, shall certify, under penalty of perjury, the accuracy of a report under this subsection."

SEC. 1157. OFFICE OF MARKET ANALYSIS AND DATA.

(a) Establishment.—There is established, within the Federal Trade Commission, an Office of Market Analysis and Data.

(b) Duties.—The Office of Market Analysis and Data shall, in consultation with the Bureau of Economics, assist the Federal Trade Commission in—

(1) collecting, validating, and maintaining data obtained from agencies, as defined in [section 551 of title 5](#), United States Code, commercial data providers, publicly available data sources, any company that has, at any time, been required to make a filing under section 7A of the Clayton Act ([15 U.S.C. 18a](#)), and any data obtained by the Commission pursuant to its authority under section 6(b) of the Federal Trade Commission Act ([15 U.S.C. 46\(b\)](#)), for the purpose of carrying out the functions in paragraphs (2) through (6);

(2) preparing and publishing, in a manner that is easily accessible to the public—

(A) a concentration database;

(B) a merger enforcement database; and

(C) any other database that the Commission determines is necessary to carry out the duties of the Office;

(3) collecting and publishing data regarding concentration levels across industries and the impact and degree of antitrust enforcement;

(4) standardizing the types and formats of data reported and collected, including standards for reporting financial transaction and position data;

(5) publishing reports regarding competitive conditions and dynamics affecting markets or industry sectors, in the United States, local geographic markets, different demographic and socioeconomic groups, including the effects that market concentration, mergers and acquisitions, certain types of agreements, and other forms of business conduct have on competition, consumers, workers, innovation, the economic competitiveness of the United States, economic resilience, and national security; and

(6) publishing reports concerning the competitive effects of acquisitions, which shall include recommendations concerning appropriate enforcement action to remedy any anticompetitive effects discovered, and may include assessments of—

(A) the conditions of the relevant markets affected by the acquisition, over the period since the acquisition was consummated, including the potential impact that the acquisition has had on—

(i) the prices of goods or services, including wages in any affected labor markets;

(ii) the output and quality of goods and services;

(iii) the entry or exit of competitors;

(iv) innovation;

(v) consumer choice and product variety;

(vi) the opportunity of suppliers and vendors to sell their products or services;

(vii) coordinated interaction between competitors; and

(viii) subsequent mergers and acquisitions activity;

(B) whether the acquiring person or its successors in interest—

(i) complied with all obligations under any agreement with the Federal Trade Commission, the United States, or State law enforcement authorities to resolve a proceeding brought under the antitrust laws; and

(ii) achieved measurable, transaction-specific efficiencies, which did not arise from anticompetitive reductions of output, as a result of the acquisition; and

(C) whether any agreements with the Federal Trade Commission or the United States, or remedies imposed by a Federal court to resolve a proceeding brought under the antitrust laws regarding the acquisition, were effective in mitigating the anticompetitive effects from the acquisition.

(c) Information security.—The Commission shall ensure that data collected and maintained by the Office of Market Analysis and Data is kept secure and protected against unauthorized disclosure.

(d) Regulations.—The Commission may, under [section 553 of title 5](#), United States Code, promulgate regulations relating to the collection and standardizing of data under subsection (b).

PART II—UNSTACKING COURT RESTRAINTS

SEC. 1161. UNSTACKING NEW YORK V. META PLATFORMS.

(a) Amendment.—Section 4C of the Clayton Act ([15 U.S.C. 15c](#)) is amended by adding at the end the following:

"(e) Timeliness of actions brought by State attorneys general.—

"(1) An action brought by a State attorney general under this section shall not be dismissed or limited on the basis of laches, acquiescence, or any other equitable doctrine premised solely on the passage of time.

"(2) For purposes of equitable defenses relating to timeliness, a State attorney general bringing an action under this section shall be treated in the same manner as the United States.

"(3) Nothing in this subsection shall be construed to alter any applicable statute of limitations expressly provided by law."

(b) Rule of construction.—Nothing in this section shall be construed to expand or contract the substantive antitrust standards applicable to any action.

SEC. 1162. UNSTACKING AMG CAPITAL MANAGEMENT V. FTC.

(a) In general.—Section 13 of the Federal Trade Commission Act ([15 U.S.C. 53](#)) is amended—

(1) In subsections (a) and (b) to read as follows—

"(a) Power of Commission; jurisdiction of courts.—

"(1) Cause of action.—Whenever the Commission has reason to believe—

"(A) that any person, partnership, or corporation is engaged in, or is about to engage in, the dissemination or the causing of the dissemination of any advertisement in violation of section 52 of this title; and

"(B) that the enjoining thereof would be to the interest of the public, the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States or in the United States court of any Territory, to enjoin the dissemination or the causing of the dissemination of such advertisement.

"(2) Preliminary relief.—Upon proper showing a temporary injunction or restraining order shall be granted without bond pending the issuance of a complaint by the Commission under section 45 of this title, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 45 of this title.

"(b) Temporary restraining orders; preliminary injunctions.—

"(1) Cause of action.—Whenever the Commission has reason to believe that any person, partnership, or corporation has violated, is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and that prohibiting or restraining such conduct would be in the interest of the public, the Commission may bring suit in a district court of the United States to enjoin any such act or practice.

"(2) Preliminary relief.—Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction shall be granted without bond, pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final. Relief under this subsection may be sought before, during, or after the initiation of an administrative proceeding under section 45.

"(3) Formal complaint required.—If no complaint is filed within such period (not exceeding 20 days) as may be specified by the court after issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect. The issuance or dissolution of a temporary restraining order or preliminary injunction shall not be construed to limit the authority of the court to grant permanent relief under this subsection.

"(4) Equitable relief.—In any action brought under this subsection, the court may grant, in addition to injunctive relief, any equitable relief necessary to redress violations of law enforced by the Federal Trade Commission, including restitution, disgorgement, refund of money, return of property, rescission or reformation of contracts, and any other relief the court determines appropriate to prevent unjust enrichment and to restore injured parties.

"(5) Limitations period.—

"(A) In general.—A court may not order equitable relief under this subsection with respect to any violation occurring before the period that begins on the date that is 10 years before the date on which the Commission files the suit in which such relief is sought.

"(B) Calculation.—For purposes of calculating the beginning of the period described in subparagraph (A), any time during which an individual against whom the equitable relief is sought is outside of the United States shall not be counted."; and

(2) by inserting at the end the following new subsection—

"(e) Proceedings.—

"(1) Any suit under this section may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under [section 1391 of title 28](#).

"(2) The court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise proper in the district in which the suit is brought.

"(3) In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found."

(b) Applicability.—The amendments made by this section shall apply to any actions or proceedings that are pending on, or commenced on or after the date of enactment of this Act.

SEC. 1163. UNSTACKING BELL ATLANTIC V. TWOMBLY AND ASHCROFT V. IQBAL.

(a) In general.—The Clayton Act ([15 U.S.C. 12 et seq.](#)), as amended by this Act, is further amended by inserting after section 27A the following:

"Sec. 27B. Pleading in antitrust and competition actions.

"(a) Definitions.—In this section:

"(1) Antitrust laws.—The term 'antitrust laws' has the meaning given it in subsection (a) of [section 12](#) of this title, except that such term includes [section 45 of this title](#) to the extent that such [section 45](#) applies to unfair methods of competition.

"(2) Covered action.—The term 'covered action' means any civil action in a United States district court arising under the antitrust laws.

"(b) Sufficiency of pleading.—A complaint in a covered action shall be sufficient if it sets forth a short and plain statement giving the defendant fair notice of the claim and the grounds upon which it rests. A complaint under this section need not plead evidentiary matter.

"(c) Sherman Act section 1 claims.—In a covered action arising under section 1 of the Sherman Act ([15 U.S.C. 1](#)), allegations of parallel conduct, together with factual allegations from which agreement may reasonably be inferred, shall be sufficient to state a claim. A complaint under this subsection need not exclude the possibility of independent action.

"(d) Construction.—In ruling on a motion to dismiss for failure to state a claim in a covered action, the court shall accept the factual allegations of the complaint as true and draw reasonable inferences in favor of the pleader. A complaint may not be dismissed on the ground that an alternative explanation appears more likely.

"(e) Other statutes.—Nothing in this section shall be construed to displace a heightened pleading standard expressly imposed by another Act of Congress."

(b) Applicability.—Section 27B of the Clayton Act shall govern notwithstanding any judicial decision interpreting Rule 8(a)(2) or Rule 9(b) of the Federal Rules of Civil Procedure to impose a contrary pleading standard in a covered action.

SEC. 1164. UNSTACKING VOLVO TRUCKS V. REEDER-SIMCO.

The Robinson-Patman Act ([15 U.S.C. 13](#)), as amended by this Act, is further amended in subsection (a) by inserting at the end the following—

"(4) Competitive injury.—For purposes of paragraph (1)(C)(ii), competition may be shown by direct or circumstantial evidence and need not be shown by proof that a purchaser described in subparagraph (C)(ii)(I)(bb) and another purchaser competed for the same customer, the same bid, or the same transaction."

SEC. 1165. UNSTACKING UNITED STATES V. BREWBAKER.

The Sherman Act ([15 U.S.C. 1 et seq.](#)) is amended by inserting after section 1 the following:

"Sec. 1A. Bid rigging in competitive bidding processes.

"(a) Definitions.—In this section:

"(1) Actual or potential competitor.—The term 'actual or potential competitor' means a person that submitted, could submit, or was reasonably capable of submitting an independent bid in the same competitive bidding process.

"(2) Bid.—The term 'bid' means a bid, proposal, quotation, offer, or other response submitted in a competitive bidding process.

"(3) Competitive bidding process.—The term 'competitive bidding process' means any process, whether conducted by a governmental entity or a private person, through which a contract, project, concession, license, franchise, supply arrangement, or other commercial opportunity is awarded, in whole or in part, on the basis of price or other material terms in response to bids.

"(4) Bid rigging.—The term 'bid rigging' means any agreement, arrangement, or understanding between 2 or more actual or potential competitors with respect to the same competitive bidding process to—

"(A) manipulate any material term of a bid;

"(B) refrain from seriously competing, including by not submitting a bid or submitting an intentionally noncompetitive bid;

"(C) allocate the award, customer, territory, or other commercial opportunity; or

"(D) otherwise manipulate the competitive bidding process in a manner that substantially lessens competition.

"(5) Teaming arrangement.—The term 'teaming arrangement' means an arrangement between 2 or more persons that—

"(A) is disclosed in writing to the soliciting entity prior to or simultaneously with the submission of a bid;

"(B) identifies the participants and the material terms of the arrangement; and

"(C) combines complementary capabilities or capacity in order to pursue the commercial opportunity at issue.

"(b) Unlawful conduct.—It shall be unlawful for any person to knowingly enter into, participate in, or carry out bid rigging.

"(c) Effect and enforcement.—A violation of subsection (b)—

"(1) shall be conclusively deemed an unreasonable restraint of trade under section 1;

"(2) shall constitute a violation of the antitrust laws;

"(3) shall constitute an unfair method of competition under section 5(a)(1) of the Federal Trade Commission Act ([15 U.S.C. 45\(a\)\(1\)](#)); and

"(4) shall not be defeated by the fact that parties to the bid-rigging agreement also stood in a vertical relationship to each other.

"(d) Safe harbor for qualifying teaming arrangements.—

"(1) In general.—A teaming arrangement shall not violate subsection (b) if—

"(A) the teaming arrangement was reasonably necessary to pursue or perform the commercial opportunity at issue;

"(B) the teaming arrangement was not used as a pretext to suppress, distort, or eliminate competition; and

"(C) the participants could not practicably compete independently in the same competitive bidding process.

"(2) Burden of proof.—The burden of establishing paragraph (1) shall be on the person asserting the applicability of such paragraph."

SEC. 1166. UNSTACKING SPECTRUM SPORTS, INC. V. MCQUILLAN.

Section 2 of the Sherman Act ([15 U.S.C. 2](#)), as amended by this Act, is further amended by adding at the end the following:

"(c) Attempt to monopolize.—For purposes of subsection (a), a person shall be liable for attempt to monopolize if the person engages in predatory or exclusionary conduct with the specific intent to monopolize. Proof that the person had a dangerous probability of achieving monopoly power, proof of market share, or proof of a relevant market shall not be required."

SEC. 1167. UNSTACKING MATSUSHITA ELECTRIC V. ZENITH RADIO.

Section 1 of the Sherman Act ([15 U.S.C. 1](#)) is amended—

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

(2) by adding at the end the following:

"(b) Summary judgment in civil actions.—In any civil action brought under this section in which the plaintiff alleges an agreement, combination, or conspiracy in restraint of trade—

"(1) the plaintiff shall not be required at the summary judgment stage to present evidence that tends to exclude the possibility of independent action; and

"(2) the court may not grant summary judgment merely because independent action is also plausible if the evidence, viewed in the light most favorable to the nonmoving party, permits a reasonable inference of concerted action."

SEC. 1168. UNSTACKING CREDIT SUISSE SECURITIES V. BILLING.

The Clayton Act ([15 U.S.C. 12 et seq.](#)), as amended by this Act, is further amended by inserting after section 27B the following:

"Sec. 27C. Limitations on implied immunity from the antitrust laws.

"(a) Definitions.—In this section, the term 'antitrust laws' has the meaning given such term in section 1(a) of this Act, except that such term includes 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.

"(b) In general.—In any action or proceeding to enforce the antitrust laws with respect to conduct that is regulated under Federal statute, no court or adjudicatory body may find that the Federal statute, or any rule or regulation promulgated in accordance with the Federal statute, implicitly precludes application of the antitrust laws to the conduct unless—

"(1) a Federal agency or department actively regulates the conduct under the Federal statute;

"(2) the Federal statute does not include any provision preserving the claims or remedies under the applicable antitrust laws or under any area of law that includes the antitrust laws; and

"(3) Federal agency or department rules or regulations, adopted by rulemaking or adjudication, explicitly require or authorize the defendant to undertake the conduct.

"(c) Existing Federal regulation.—In any action or proceeding described in subsection (b), the antitrust laws shall be applied fully and without qualification or limitation, and the scope of the antitrust laws shall not be defined more narrowly on account of the existence of Federal rules, regulations, or regulatory agencies or departments, unless application of the antitrust laws is precluded or limited by—

"(1) an explicit exemption from the antitrust laws under a Federal statute; or

"(2) an implied immunity that satisfies the requirements of subsection (b)."

Subtitle F—Recognizing Advertising As a Net Negative in Society

SEC. 1171. FINDINGS AND PURPOSE.

(a) Findings.—Congress finds the following:

(1) Congress has long prohibited deceptive acts or practices and false advertisements in commerce, including under [sections 45, 52, and 55 of title 15](#), United States Code;

(2) Congress has long recognized that certain forms of advertising may be restricted or prohibited when necessary to protect public health and welfare, including cigarette advertising over certain electronic media under [section 1335 of title 15](#), United States Code;

(3) Congress has long recognized that outdoor advertising may be regulated to protect safety, recreational value, and natural beauty, including under [section 131 of title 23](#), United States Code;