

116TH CONGRESS
2D SESSION

S. 4013

To prohibit certain transactions during the coronavirus disease 2019
(COVID–19) pandemic.

IN THE SENATE OF THE UNITED STATES

JUNE 18, 2020

Ms. WARREN (for herself and Mr. SANDERS) introduced the following bill;
which was read twice and referred to the Committee on Commerce,
Science, and Transportation

A BILL

To prohibit certain transactions during the coronavirus
disease 2019 (COVID–19) pandemic.

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 “Pandemic Anti-Monop-
5 oly Act”.

6 **SEC. 2. MORATORIUM ON CERTAIN MERGERS AND ACQUISI-**
7 **TIONS.**

8 (a) IN GENERAL.—Except as provided in subsection
9 (b), during the period beginning on the date of enactment
10 of this Act and ending on the date on which the Federal

1 Trade Commission votes unanimously under subsection
2 (c), the following transactions are prohibited:

3 (1) Acquisitions by firms with over
4 \$100,000,000 in revenue.

5 (2) Acquisitions by financial institutions or eq-
6 uity funds with over \$100,000,000 in capitalization.

7 (3) Acquisitions by firms that are registered in-
8 vestment advisers under section 203 of the Invest-
9 ment Advisers Act of 1940 (15 U.S.C. 80b-3) or by
10 firms that are majority-owned by a firm that is a
11 registered investment adviser under that section.

12 (4) Acquisitions involving firms with exclusive
13 patent pertaining to coronavirus disease 2019
14 (COVID-19) pandemic-related production, manufac-
15 turing, distribution, or infrastructure, medical sup-
16 plies, equipment, facilities, or services, and drug re-
17 search, development, production, supply, reserves, or
18 distribution.

19 (5) Any other acquisition required to be re-
20 ported under section 7A of the Clayton Act (15
21 U.S.C. 18a).

22 (6) Does not include an acquisition that is a
23 transaction described in paragraph (1), (2), (3), (4),
24 (5), (9), or (10) of section 7A(c) of the Clayton Act
25 (15 U.S.C. 18a(c)).

1 (b) WAIVER.—

2 (1) IN GENERAL.—Firms participating in any
3 transaction described in subsection (a) may petition
4 the Federal Trade Commission for a waiver by pre-
5 senting clear and convincing evidence that the trans-
6 action will advance critical national security, eco-
7 nomic, or public health interests during the emer-
8 gency.

9 (2) FAILING FIRM.—The acquisition of a failing
10 firm shall be considered to advance critical economic
11 interests and shall be deemed to meet the criteria
12 for a waiver under paragraph (1). A firm shall be
13 deemed failing if the Commission concludes that—

14 (A) the firm would be unable to meet the
15 financial obligations of the firm in the near fu-
16 ture, having established that the resources of
17 the firm are so depleted and the prospect of re-
18 habilitation so remote that the firm faces the
19 grave probability of a business failure;

20 (B) the probability of the firm successfully
21 reorganizing under chapter 11 of title 11,
22 United States Code, is dim or nonexistent; and

23 (C) the firm has demonstrated that the
24 firm made good faith efforts to elicit reasonable
25 alternative offers that would keep assets of the

1 firm in the market and pose a less severe dan-
2 ger to competition than does the proposed ac-
3 quisition.

4 (3) VOTE.—The Federal Trade Commission, by
5 unanimous Commission vote and with the written
6 concurrence of the Attorney General, the Secretary
7 of Defense, the Secretary of Homeland Security, the
8 Secretary of Labor, the Secretary of Health and
9 Human Services, and the Administrator of the Small
10 Business Administration may grant a petition under
11 paragraph (1) if the Commission determines that
12 the transaction will advance critical national secu-
13 rity, economic, or public health interests during the
14 emergency.

15 (4) EXPLANATION.—Upon granting a petition
16 under this subsection, the Federal Trade Commis-
17 sion shall publish in the Federal Register and on the
18 website of the Commission the rationale for granting
19 the petition.

20 (c) TERMINATION OF MORATORIUM.—

21 (1) IN GENERAL.—The prohibition in sub-
22 section (a) shall not apply only if the Federal Trade
23 Commission unanimously determines, with the writ-
24 ten consent of the Attorney General, the Secretary
25 of Labor, and the Administrator of the Small Busi-

1 ness Administration, that the prohibition should no
2 longer apply.

3 (2) INITIAL DETERMINATION.—The Federal
4 Trade Commission may only hold a vote under para-
5 graph (1) after—

6 (A) the national emergency under the Na-
7 tional Emergencies Act (50 U.S.C. 1601 et
8 seq.) with respect to the coronavirus disease
9 2019 (COVID–19) has terminated;

10 (B) each State of the United States, the
11 District of Columbia, any territory of the
12 United States, Puerto Rico, Guam, American
13 Samoa, the Virgin Islands, and the Northern
14 Mariana Islands have reopened their economies;

15 (C) the 100-day period ending on the later
16 of the date on which subparagraph (A) or (B)
17 has been satisfied expires; and

18 (D) the Commission determines that small
19 businesses and workers are no longer under se-
20 vere financial distress.

21 (d) TOLLING.—During the period beginning on the
22 date of enactment of this Act and ending on the date on
23 which the Federal Trade Commission votes under sub-
24 section (c)(1) to remove the prohibition under subsection
25 (a), any waiting period or deadline required under section

1 7A of the Clayton Act (15 U.S.C. 18a) shall be automati-
2 cally tolled.

3 (e) PENALTIES.—Any firm attempting a prohibited
4 transaction under this section shall be subject to an order
5 blocking or reversing the transaction and a penalty of not
6 less than 10 percent of the revenue of the firm for fiscal
7 year 2019.

8 (f) RESILIENCY RULEMAKING.—

9 (1) IN GENERAL.—There shall be a legal pre-
10 sumption against a transaction that may pose a risk
11 to the Government’s ability to respond to a national
12 emergency, including—

13 (A) a transaction that may reduce, restrict,
14 curtail, or otherwise undermine the ability of
15 the Government to invent, develop, improve,
16 produce, procure, stockpile, or otherwise make
17 available goods and services that are life-saving
18 or otherwise essential to the Government’s abil-
19 ity to address the coronavirus disease 2019
20 (COVID–19) pandemic or other potential public
21 health, safety, or other emergencies;

22 (B) a transaction that may reduce, limit,
23 curtail, or otherwise create a disincentive for re-
24 search, development, or production of goods or
25 services described in subparagraph (A); and

1 (C) a transaction by a firm under contract
2 within the last 5 years with the Federal Gov-
3 ernment regarding any goods or services de-
4 scribed in subparagraph (A).

5 (2) BURDEN.—If a firm seeks to complete a
6 transaction described in paragraph (1), that firm
7 shall have the burden of showing by clear and con-
8 vincing evidence that the transaction does not pose
9 a risk to the Government’s ability to respond to a
10 national emergency.

11 (3) RULEMAKING.—Not later than 1 year after
12 the date of enactment of this Act, the Federal Trade
13 Commission shall promulgate regulations to further
14 define—

15 (A) transactions that fall under paragraph
16 (1)(A);

17 (B) transactions that fall under paragraph
18 (1)(B);

19 (C) companies that fall under paragraph
20 (1)(C); and

21 (D) specific goods and services that are
22 life-saving or otherwise essential to the Govern-
23 ment’s ability to address the coronavirus dis-
24 ease 2019 (COVID–19) pandemic or other po-

1 tential public health, safety, or other emer-
2 gencies.

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