

MERGER FILING FEE MODERNIZATION ACT OF 2021

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SEPTEMBER 26, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. NADLER, from the Committee on the Judiciary,  
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3843]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3843) to promote antitrust enforcement and protect competition through adjusting premerger filing fees, and increasing antitrust enforcement resources, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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The amendments are as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Merger Filing Fee Modernization Act of 2022”.

**SEC. 2. PREMERGER NOTIFICATION FILING FEES.**

Section 605 of Public Law 101–162 (15 U.S.C. 18a note) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

- (i) by striking “\$45,000” and inserting “\$30,000”;
- (ii) by striking “\$100,000,000” and inserting “\$161,500,000”;
- (iii) by striking “2004” and inserting “2022”; and
- (iv) by striking “2003” and inserting “2021”;

(B) in paragraph (2)—

- (i) by striking “\$125,000” and inserting “\$100,000”;
- (ii) by striking “\$100,000,000” and inserting “\$161,500,000”;
- (iii) by striking “but less” and inserting “but is less”; and
- (iv) by striking “and” at the end;

(C) in paragraph (3)—

- (i) by striking “\$280,000” and inserting “\$250,000”; and
- (ii) by striking the period at the end and inserting “but is less than \$1,000,000,000 (as so adjusted and published).”; and

(D) by adding at the end the following:

“(4) \$400,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$1,000,000,000 (as so adjusted and published) but is less than \$2,000,000,000 (as so adjusted and published);

“(5) \$800,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$2,000,000,000 (as so adjusted and published) but is less than \$5,000,000,000 (as so adjusted and published); and

“(6) \$2,250,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$5,000,000,000 (as so adjusted and published).”; and

(2) by adding at the end the following:

“(c)(1) For each fiscal year commencing after September 30, 2022, the filing fees in this section shall be increased each year by an amount equal to the percentage increase, if any, in the Consumer Price Index, as determined by the Department of Labor or its successor, for the year then ended over the level so established for the year ending September 30, 2021.

“(2) As soon as practicable, but not later than January 31 of each year, the Federal Trade Commission shall publish the adjusted amounts required by paragraph (1).

“(3) The Federal Trade Commission shall not adjust amounts required by paragraph (1) if the percentage increase described in paragraph (1) is less than 1 percent.

“(4) An amount adjusted under this section shall be rounded to the nearest multiple of \$5,000.

“(5) For each fiscal year commencing after September 30, 2022, through September 30, 2027, the Federal Trade Commission and Department of Justice shall include in its joint annual report pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18(a) et seq.) the following:

“(A) the increase in funds made available to the Federal Trade Commission and the Department of Justice, respectively, through the adjustment in premerger notification filing fees in 15 U.S.C. 18(a) from the funds made available to the Federal Trade Commission and the Department of Justice, respectively, from premerger notification filing fees as the fees were determined in fiscal year 2021;

“(B) the total revenue derived from premerger notification filing fees, by tier, and how such revenue is used by the Federal Trade Commission and the Department of Justice, respectively; and

“(C) the gross cost of operations of the Federal Trade Commission and the Department of Justice, respectively, associated with activities related to the use of revenue derived from premerger notification filing fees.

“(6) The Federal Trade Commission shall report, in addition to the requirements listed in paragraph (5), a listing of all cases where the Federal Trade Commission took or declined to take action on a 3 to 2 vote and what percentage of actions of the Federal Trade Commission were decided on a 3 to 2 vote.

“(7) The Federal Trade Commission and the Department of Justice shall make the joint annual report pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18(a) et seq.) available to the Senate Committee on the Judiciary

and the House Committee on the Judiciary and shall, for fiscal years 2022 through 2027, no later than July 1, present a summary of the joint annual report for the preceding fiscal year, including the information required in paragraph (5) and (6) of this Act, to the Senate Committee on the Judiciary and the House Committee on the Judiciary.

“(8) None of the funds collected by the Federal Trade Commission from premerger notification filing fees under 15 U.S.C. 18(a) and allocated by the Federal Trade Commission shall be available for obligation or expenditure by the Federal Trade Commission and the Department of Justice in excess of the amounts appropriated by Congress for spending authority from offsetting collections, including premerger notification filings under the Hart-Scott Rodino Antitrust Improvements Act of 1976.”

#### SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal year 2022—

- (1) \$252,000,000 for the Antitrust Division of the Department of Justice; and
- (2) \$418,000,000 for the Federal Trade Commission.

Amend the title so as to read: A bill to protect competition and promote antitrust enforcement by adjusting premerger filing fees to increase antitrust enforcement resources.

### Purpose and Summary

H.R. 3843, the “Merger Filing Fee Modernization Act of 2021,” was introduced on June 11, 2022, by Representatives Joe Neguse (D-CO), Victoria Spartz (R-IN), David Cicilline (D-RI), Ken Buck (R-CO), Jerrold Nadler (D-NY), and Chip Roy (R-TX). H.R. 3843 updates the premerger notification filing fees for the first time since 2001. The bill updates the premerger notification filing fee structure by lowering the fees for mergers valued under \$500,000 and increasing fees for transactions valued at \$1 billion and more. The updated fee structure would provide the U.S. Department of Justice (DOJ) and the Federal Trade Commission (FTC) with additional resources to review mergers and enforce the antitrust laws. The updated filing fee structure would also better reflect that reviews of larger mergers generally consume more agency resources. The premerger notification filing fee structure would increase annually, tied to the Consumer Price Index. The bill also authorizes funding for the DOJ’s Antitrust Division and the FTC (enforcement agencies or agencies) for Fiscal Year 2022. Finally, H.R. 3843 includes additional reporting requirements for the FTC and the DOJ under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

### Background and Need for the Legislation

The DOJ’s Antitrust Division and the FTC are charged with enforcing the federal antitrust laws. In recent decades, both agencies have suffered inadequate funding that has hamstrung their ability to effectively enforce the antitrust laws. Prior to the 116th Congress, appropriations for both agencies reached historic lows.<sup>1</sup>

Under section 7A of the Clayton Act, added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, a company pays a premerger notification filing fee on any transaction that requires a

<sup>1</sup> STAFF OF THE SUBCOMM. ON ANTITRUST, COM., & ADMIN. L. OF THE H. COMM. ON THE JUDICIARY, 116TH & 117TH CONGS., INVESTIGATION OF COMPETITION IN DIGITAL MARKETS: MAJORITY STAFF REPORT AND RECOMMENDATIONS 340 (Comm. Print 2022), <https://www.govinfo.gov/content/pkg/CPRT-117HPRT47832/pdf/CPRT-117HPRT47832.pdf> (citing MICHAEL KADES, WASH. CTR. FOR EQUITABLE GROWTH, THE STATE OF U.S. FEDERAL ANTITRUST ENFORCEMENT (2019), <https://equitablegrowth.org/wp-content/uploads/2019/09/091719-antitrust-enforcement-report.pdf>).

filing with the federal antitrust agencies.<sup>2</sup> Congress created a three-tier fee structure in 2000, based on the size of the transaction. These fees have not increased since 2001, when they went into effect.

A common feature of antitrust enforcement is that it is often complex and extremely resource intensive,<sup>3</sup> and typically requires an extensive investigation by the government before any lawsuit is filed.<sup>4</sup> Following the initiation of a case, litigation often takes years to resolve and is hugely expensive.<sup>5</sup> The size, complexity, and legal resources available to large firms make antitrust enforcement against these companies particularly resource-intensive, requiring costly, specialized attorneys, as well as technical and economic experts.<sup>6</sup> Some courts have, in recent decades, increased evidentiary burdens for enforcement and made a violation of the antitrust laws much harder to prove, raising the cost and complexity of antitrust enforcement.<sup>7</sup> Accordingly, at the same time that economic activity has grown and the cost to prosecute antitrust cases has escalated, the funding for antitrust enforcement in real dollar terms has declined.<sup>8</sup>

Under both Democratic and Republican administrations, leaders of the enforcement agencies have noted in recent years that limited funding has constrained the agencies' ability to enforce the antitrust laws. For example, former FTC Chairman Joe Simons testified to the Subcommittee on Antitrust, Commercial, and Administrative Law (the Subcommittee) that the agency would pursue more antitrust cases if it had the necessary resources, and that the FTC was approaching a point where resource constraints and the high cost of antitrust litigation would compromise its ability to carry out other aspects of its mission.<sup>9</sup> In response to questions

<sup>2</sup>See Pub. L. No. 94-435, § 201, 90 Stat. 1383, 1390-94 (1976) (codified as amended at 15 U.S.C. § 18a).

<sup>3</sup>Letter from George P. Slover, Senior Pol'y Couns., Consumer Reps., & Sumit Sharma, Senior Researcher, Tech. Pol'y, Consumer Reps., to Hon. David N. Cicilline, Chair, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary, & Hon. Ken Buck, Ranking Member, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary, 2 (Mar. 18, 2021), <https://docs.house.gov/meetings/JU/JU05/20210318/111350/HHRG-117-JU05-20210318-SD003.pdf>.

<sup>4</sup>*Reviving Competition, Part 1: Proposals to Address Gatekeeper Power and Lower Barriers to Entry Online: Hearing Before the Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary*, 117th Cong. 60 (2021), <https://www.govinfo.gov/content/pkg/CHRG-117hhrg47295/pdf/CHRG-117hhrg47295.pdf> (statement of John Thorne, Partner, Kellogg, Hansen, Todd, Figel & Frederick P.L.L.C., at 3).

<sup>5</sup>*Id.* at 58 (Thorne statement at 1).

<sup>6</sup>*Reviving Competition, Part 3: Strengthening the Laws to Address Monopoly Power: Hearing Before the Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary*, 117th Cong. 69 (2021), <https://www.govinfo.gov/content/pkg/CHRG-117hhrg47296/pdf/CHRG-117hhrg47296.pdf> (statement of Hon. Douglas J. Peterson, Att'y Gen., Nebraska, at 1). See also Letter from Nat'l Ass'n of State Att'ys Gen. to Hon. Amy Klobuchar, Chair, Subcomm. on Competition Pol'y, Antitrust, & Consumer Rts. of the S. Comm. on the Judiciary; Hon. Mike Lee, Ranking Member, Subcomm. on Competition Pol'y, Antitrust, & Consumer Rts. of the S. Comm. on the Judiciary; Hon. David N. Cicilline, Chair, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary, & Hon. Ken Buck, Ranking Member, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary, 2 (May 10, 2021), <https://lii23g1as25g1r8so11ozniw-wpengine.netdna-ssl.com/wp-content/uploads/2021/05/Support-for-Antitrust-Federal-Funding-Final-NAAG-Letter-2.pdf>.

<sup>7</sup>MICHAEL KADES, WASH. CTR. FOR EQUITABLE GROWTH, THE STATE OF U.S. FEDERAL ANTI-TRUST ENFORCEMENT 16 (2019), <https://equitablegrowth.org/wp-content/uploads/2019/09/091719-antitrust-enforcement-report.pdf>.

<sup>8</sup>*Proposals to Strengthen the Antitrust Laws and Restore Competition Online: Hearing Before the Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary*, 116th Cong. 16-17 (2020) [hereinafter Remedies Hearing], <https://www.govinfo.gov/content/pkg/CHRG-116hhrg42250/pdf/CHRG-116hhrg42250.pdf> (statement of Hon. Bill Baer, Visiting Fellow, Governance Stud., Brookings Inst., at 56).

<sup>9</sup>*Online Platforms and Market Power, Part 4: Perspectives of the Antitrust Agencies: Hearing Before the Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary*, 116th

from members of the Subcommittee, he explained with regard to enforcing the antitrust laws in the technology sector, “[t]he largest obstacle to enforcement remains resources.”<sup>10</sup>

Makan Delrahim, former Assistant Attorney General for the DOJ’s Antitrust Division, testified before the Subcommittee in November 2019 and repeatedly highlighted the limited resources the Antitrust Division has to carry out its mission.<sup>11</sup> In response to questions from members of the Subcommittee, he explained: “The Division’s resources are not just limited, but have in fact declined in real terms by about thirty percent over the last decade.”<sup>12</sup>

In 2020, Bill Baer, former Assistant Attorney General for the DOJ’s Antitrust Division and former Director of the FTC’s Bureau of Competition, testified before the Subcommittee that current funding levels for antitrust enforcement are insufficient, and that the antitrust agencies are unable to adequately enforce the law without additional resources.<sup>13</sup>

Most recently, the FTC’s Commissioners testified before the Committee on Energy and Commerce’s Subcommittee on Consumer Protection and Commerce and explained in a jointly submitted statement that “the Commission is currently facing extremely severe resource constraints. Global mergers and acquisitions have soared to new records, putting heavy stress on our ability to effectively investigate and challenge unlawful transactions.”<sup>14</sup>

H.R. 3843 responds to these circumstances by increasing the antitrust enforcement resources available to the DOJ and FTC. The bill raises merger filing fees for large mergers and authorizes appropriations to the agencies for Fiscal Year 2022, increasing agency capacity to investigate and litigate violations of the antitrust laws.

### Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the following hearings were used to develop H.R. 3843:

The Subcommittee on Antitrust, Commercial, and Administrative Law held a hearing entitled, “Reviving Competition, Part 1: Proposals to Address Gatekeeper Power and Lower Barriers to Entry Online” on February 25, 2021, to consider proposals to strengthen antitrust enforcement in digital markets, including increasing funding for federal antitrust enforcers. The Majority witnesses at the hearing were: Eric Gundersen, Chief Executive Officer, Mapbox; Morgan Harper, Senior Advisor, American Economic Liberties Project; Hal Singer, Managing Director, Econ One; and Charlotte Slaiman, Competition Policy Director, Public Knowledge. The

Cong. 12–13 (2020), <https://www.govinfo.gov/content/pkg/CHRG-116hhrg40787/pdf/CHRG-116hhrg40787.pdf> (statement of Hon. Joe Simons, Chair, Fed. Trade Comm’n, at 4–5).

<sup>10</sup>*Id.* at 96 (response to Questions for the Record of Hon. Joe Simons, Chair, Fed. Trade Comm’n, at 21).

<sup>11</sup>*See id.* at 27–46 (statement of Hon. Makan Delrahim, Assistant Att’y Gen., United States Dep’t of Just., Antitrust Div.).

<sup>12</sup>*Id.* at 122 (response to Questions for the Record of Hon. Makan Delrahim, Assistant Att’y Gen., U.S. Dep’t of Just., Antitrust Div., at 3).

<sup>13</sup>Remedies Hearing at 17 (statement of Hon. Bill Baer, Visiting Fellow, Governance Stud., Brookings Inst., at 6).

<sup>14</sup>*Transforming the FTC: Legislation to Modernize Consumer Protection: Hearing Before the Subcomm. on Consumer Prot. & Com. of the H. Comm. on Energy & Com.*, 117th Cong. (2021), <https://energycommerce.house.gov/committee-activity/hearings/hearing-on-transforming-the-ftc-legislation-to-modernize-consumer> (statement on behalf of the Fed. Trade Comm’n, at 3, [https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Witness%20Testimony\\_FTC%20Commissioners\\_CPC\\_2021.07.28.pdf](https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Witness%20Testimony_FTC%20Commissioners_CPC_2021.07.28.pdf)).

Minority witnesses at the hearing were: John Thorne, Partner, Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.; and Tad Lipsky, Director, Competition Advocacy Program, Global Antitrust Institute, George Mason University.

The Subcommittee on Antitrust, Commercial, and Administrative Law held an additional hearing entitled, “Reviving Competition, Part 3: Strengthening the Laws to Address Monopoly Power” on March 18, 2021, to consider proposals to strengthen the antitrust laws, including increasing funding for federal antitrust enforcers. The Majority witnesses at the hearing were: the Honorable Rebecca Kelly Slaughter, Acting Chair, Federal Trade Commission; Mike Walker, Chief Economic Advisor, United Kingdom Competition and Markets Authority; the Honorable Philip Weiser, Attorney General, Colorado; and the Honorable Diane P. Wood, Judge, U.S. Court of Appeals for the Seventh Circuit. The Minority witnesses at the hearing were: the Honorable Doug Peterson, Attorney General, Nebraska, and the Honorable Noah Phillips, Commissioner, Federal Trade Commission.

#### **Committee Consideration**

On June 23, 2021, the Committee met in open session and ordered the bill, H.R. 3843, favorably reported, with an amendment, by a rollcall vote of 29 to 12, a quorum being present.

#### **Committee Votes**

In compliance with clause 3(b) of House rule XIII, the following rollcall votes occurred during the Committee’s consideration of H.R. 3843:

1. An amendment offered by Rep. Roy to prohibit agency funds from being used to promote Critical Race Theory, including through rulemaking or selective enforcement, was defeated by a rollcall vote of 19 to 25. The vote was as follows:

Roll Call No. 1

Date: 6/23/21

## COMMITTEE ON THE JUDICIARY

House of Representatives

117<sup>th</sup> CongressAmendment # 1 ( ) to **ANS HR 3643** offered by Rep. **R04**

PASSED  
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)		✓	
Karen Bass (CA-37)		✓	
Hakeem Jeffries (NY-08)		✓	
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)		✓	
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Veronica Escobar (TX-16)		✓	
Mondaire Jones (NY-17)		✓	
Deborah Ross (NC-02)		✓	
Cori Bush (MO-01)		✓	
	AYES	NOS	PRES.
Jim Jordan (OH-04)	✓		
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Darrell Issa (CA-50)	✓		
Ken Buck (CO-04)	✓		
Matt Gaetz (FL-01)	✓		
Mike Johnson (LA-04)	✓		
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)	✓		
Greg Steube (FL-17)	✓		
Tom Tiffany (WI-07)	✓		
Thomas Massie (KY-04)	✓		
Chip Roy (TX-21)	✓		
Dan Bishop (NC-09)	✓		
Michelle Fischbach (MN-07)	✓		
Victoria Spartz (IN-05)	✓		
Scott Fitzgerald (WI-05)	✓		
Cliff Bentz (OR-02)	✓		
Burgess Owens (UT-04)	✓		
	AYES	NOS	PRES.
TOTAL	19	25	

2. An amendment offered by Rep. Fitzgerald to prohibit the use of certain agency funds from being used for non-enforcement activities was defeated by a rollcall vote of 19 to 24. The vote was as follows:

Roll Call No. 2

Date: 6/23/21

COMMITTEE ON THE JUDICIARY

House of Representatives  
117<sup>th</sup> Congress

Amendment # 2 ( ) to ANS HR 3843 offered by Rep. Fitzgerald

PASSED  
 FAILED

	AYES	NOS	PRES
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)		✓	
Karen Bass (CA-37)		✓	
Hakeem Jeffries (NY-08)		✓	
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)		✓	
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)			
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Veronica Escobar (TX-16)		✓	
Mondaire Jones (NY-17)		✓	
Deborah Ross (NC-02)		✓	
Cori Bush (MO-01)		✓	
	AYES	NOS	PRES
Jim Jordan (OH-04)	✓		
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Darrell Issa (CA-50)	✓		
Ken Buck (CO-04)	✓		
Matt Gaetz (FL-01)	✓		
Mike Johnson (LA-04)	✓		
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)	✓		
Greg Steube (FL-17)	✓		
Tom Tiffany (WI-07)	✓		
Thomas Massie (KY-04)	✓		
Chip Roy (TX-21)	✓		
Dan Bishop (NC-09)	✓		
Michelle Fischbach (MN-07)	✓		
Victoria Spartz (IN-05)	✓		
Scott Fitzgerald (WI-05)	✓		
Cliff Bentz (OR-02)	✓		
Burgess Owens (UT-04)	✓		
	AYES	NOS	PRES
TOTAL	19	24	

3. An amendment offered by Rep. Roy to direct that funds collected under this section be used to enforce antitrust laws as the term is defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12) was defeated by a rollcall vote of 15 to 25. The vote was as follows:

Roll Call No. 3

Date: 6/23/21

COMMITTEE ON THE JUDICIARY

House of Representatives

117<sup>th</sup> Congress

Amendment # 6 ( ) to **ANS HR 3843** offered by Rep. **Roy**

PASSED  
 FAILED

	AYES	NOS	PRES
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)		✓	
Karen Bass (CA-37)		✓	
Hakeem Jeffries (NY-08)		✓	
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)		✓	
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Veronica Escobar (TX-16)		✓	
Mondaire Jones (NY-17)		✓	
Deborah Ross (NC-02)		✓	
Cori Bush (MO-01)		✓	
	AYES	NOS	PRES
Jim Jordan (OH-04)	✓		
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)			
Darrell Issa (CA-50)	✓		
Ken Buck (CO-04)	✓		
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)	✓		
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)	✓		
Greg Steube (FL-17)			
Tom Tiffany (WI-07)			
Thomas Massie (KY-04)	✓		
Chip Roy (TX-21)	✓		
Dan Bishop (NC-09)	✓		
Michelle Fischbach (MN-07)	✓		
Victoria Spartz (IN-05)	✓		
Scott Fitzgerald (WI-05)	✓		
Cliff Bentz (OR-02)	✓		
Burgess Owens (UT-04)	✓		
	AYES	NOS	PRES
TOTAL	15	25	

4. A motion to order H.R. 3843 favorably reported to the House, as amended, passed by a rollcall vote of 29 to 12. The vote was as follows:

Roll Call No. 4

Date: 6/23/21

COMMITTEE ON THE JUDICIARY

House of Representatives

117<sup>th</sup> Congress

Final Passage on: **HR 3843**

- PASSED
- FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)	✓		
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-22)	✓		
Karen Bass (CA-37)	✓		
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)	✓		
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Veronica Escobar (TX-16)	✓		
Mondaire Jones (NY-17)	✓		
Deborah Ross (NC-02)	✓		
Cori Bush (MO-01)	✓		
	AYES	NOS	PRES.
Jim Jordan (OH-04)		✓	
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)		✓	
Darrell Issa (CA-50)		✓	
Ken Buck (CO-04)	✓		
Matt Gaetz (FL-01)	✓		
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)		✓	
Greg Steube (FL-17)		✓	
Tom Tiffany (WI-07)		✓	
Thomas Massie (KY-04)		✓	
Chip Roy (TX-21)	✓		
Dan Bishop (NC-09)		✓	
Michelle Fischbach (MN-07)		✓	
Victoria Spartz (IN-05)	✓		
Scott Fitzgerald (WI-05)		✓	
Cliff Bentz (OR-02)			
Burgess Owens (UT-04)	✓		
	AYES	NOS	PRES.
TOTAL	29	12	

### **Committee Oversight Findings**

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on the oversight activities under clause 2(b)(1) of House rule X, are incorporated in the descriptive portion of this report.

### **Committee Estimate of Budgetary Effects**

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

### **New Budget Authority and Congressional Budget Office Cost Estimate**

Pursuant to clause 3(c)(2) of House rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause (3)(c)(3) of House rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received from the Director of Congressional Budget Office a budgetary analysis and a cost estimate of this bill.

### **Duplication of Federal Programs**

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 3843 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

### **Performance Goals and Objectives**

The Committee states that, pursuant to clause 3(c)(4) of House rule XIII, H.R. 3843 would strengthen antitrust enforcement and promote competition throughout the economy by updating statutory premerger filing fees and increasing the resources available to the federal antitrust enforcement agencies. It is the objective of the Committee that the FTC and DOJ use these additional resources to vigorously enforce the antitrust laws to stop and deter anti-competitive conduct and illegal merger activity—thereby protecting consumers; preventing and unwinding excessive concentrations of economic power; and promoting choice and competition, innovation, and investment throughout the economy.

### **Advisory on Earmarks**

In accordance with clause 9 of House rule XXI, H.R. 3843 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), and 9(f) of House rule XXI.

### **Section-by-Section Analysis**

#### *Sec. 1. Short title*

Section 1 sets forth the short title of the bill as the “Merger Filing Fee Modernization Act of 2022.”

*Sec. 2. Premerger notification filing fees*

Section 2 amends Section 605 of Public Law 101–162 (15 U.S.C. 18a note).

Paragraph (1)(A) changes the filing fees for transactions valued below \$161,500,000 from \$45,000 to \$30,000.

Paragraph (1)(B) changes the filing fees for transactions valued at or above \$161,500,000, but less than \$500,000,000, from \$125,000 to \$100,000.

Paragraph (1)(C) changes the filing fees for transactions valued at or above \$500,000,000, but less than \$1,000,000,000, from \$280,000 to \$250,000.

Paragraph (1)(D) establishes new filing fee schedules for certain transactions:

- Sets a \$400,000 filing fee for transactions valued at or above \$1,000,000,000, but less than \$2,000,000,000.
- Sets a filing fee of \$800,000 for transactions valued at or above \$2,000,000,000, but less than \$5,000,000,000.
- Sets a filing fee of \$2,250,000 for transactions valued at or above \$5,000,000,000.

Paragraph (2) establishes:

- Merger filing fees shall increase each year by an amount equal to any percentage increase in the Consumer Price Index.
- The FTC shall publish the adjusted amounts as soon as practicable, but not later than January 31 of each year. The adjusted amounts shall be rounded to the nearest multiple of \$5,000.
- The FTC shall not adjust the amounts of the filing fees if the percentage increase in the Consumer Price Index is less than 1 percent.
- For each fiscal year commencing September 30, 2022 through September 30, 2027, the FTC and DOJ shall include in its joint annual report pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 the following:
  - The increase in funds made available to each agency through the adjustment in premerger notification filing fees;
  - The total revenue derived from premerger notification filing fees, by tier, and how such revenue is used by each agency; and
  - The gross cost of operations of each agency associated with activities related to the use of revenue derived from premerger notification filing fees.
- The FTC shall include in this report a list of all cases where the Commission took or declined to take action on a 3 to 2 vote and what percentage of actions of the Commission were decided by a 3 to 2 vote.
- The FTC and DOJ shall make the joint annual report pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 available to the Senate Committee on the Judiciary and the House Committee on the Judiciary and, for fiscal years 2022 through 2027, shall, no later than July 1 of each year, present the Committees with a summary of the joint annual report for the preceding fiscal year.
- No funds collected by the FTC from premerger notification filing fees and allocated by the Commission shall be available

for obligation or expenditure by the Commission or the DOJ in excess of the amounts appropriated by Congress for spending authority from offsetting collections, including premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

*Sec. 3. Authorization of appropriations*

Section 3 authorizes appropriations for the 2022 fiscal year of \$252,000,000 for the Antitrust Division of the DOJ and \$418,000,000 for the FTC.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**ACT OF NOVEMBER 21, 1989**

(Public Law 101-162)

AN ACT Making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1990, and for other purposes.

\* \* \* \* \*

**TITLE VI—GENERAL PROVISIONS**

\* \* \* \* \*

SEC. 605. (a) Five working days after enactment of this Act and thereafter, the Federal Trade Commission shall assess and collect filing fees established in subsection (b) which shall be paid by persons acquiring voting securities or assets who are required to file premerger notifications by the section 7A of the Clayton Act (15 U.S.C. 18a) and the regulations promulgated thereunder. For purposes of said Act, no notification shall be considered filed until payment of the fee required by this section. Fees collected pursuant to this section shall be divided evenly between and credited to the appropriations, Federal Trade Commission, “Salaries and Expenses” and Department of Justice, “Salaries and Expenses, Antitrust Division”: *Provided*, That fees in excess of \$40,000,000 in fiscal year 1990 shall be deposited to the credit of the Treasury of the United States: *Provided further*, That fees made available to the Federal Trade Commission and the Antitrust Division herein shall remain available until expended.

(b) The filing fees referred to in subsection (a) are—

- (1) ~~[\$45,000]~~ \$30,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is less than ~~[\$100,000,000]~~ \$161,500,000 (as adjusted and published for each fiscal year beginning after September 30, ~~[2004]~~ 2022, in the same manner as provided in section 8(a)(5) of the Clayton Act (15 U.S.C. 19(a)(5)) to reflect the percentage change in the gross national product for such

fiscal year compared to the gross national product for the year ending September 30, ~~2003~~ 2021);

(2) ~~[\$125,000]~~ \$100,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than ~~[\$100,000,000]~~ \$161,500,000 (as so adjusted and published) ~~[but less]~~ *but is less than* \$500,000,000 (as so adjusted and published); ~~[and]~~

(3) ~~[\$280,000]~~ \$250,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$500,000,000 (as so adjusted and published) ~~[.]~~ *but is less than* \$1,000,000,000 (as so adjusted and published);

(4) \$400,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$1,000,000,000 (as so adjusted and published) but is less than \$2,000,000,000 (as so adjusted and published);

(5) \$800,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$2,000,000,000 (as so adjusted and published) but is less than \$5,000,000,000 (as so adjusted and published); and

(6) \$2,250,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$5,000,000,000 (as so adjusted and published).

(c)(1) For each fiscal year commencing after September 30, 2022, the filing fees in this section shall be increased each year by an amount equal to the percentage increase, if any, in the Consumer Price Index, as determined by the Department of Labor or its successor, for the year then ended over the level so established for the year ending September 30, 2021.

(2) As soon as practicable, but not later than January 31 of each year, the Federal Trade Commission shall publish the adjusted amounts required by paragraph (1).

(3) The Federal Trade Commission shall not adjust amounts required by paragraph (1) if the percentage increase described in paragraph (1) is less than 1 percent.

(4) An amount adjusted under this section shall be rounded to the nearest multiple of \$5,000.

(5) For each fiscal year commencing after September 30, 2022, through September 30, 2027, the Federal Trade Commission and Department of Justice shall include in its joint annual report pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18(a) et seq.) the following:

(A) the increase in funds made available to the Federal Trade Commission and the Department of Justice, respectively, through the adjustment in premerger notification filing fees in 15 U.S.C. 18(a) from the funds made available to the Federal Trade Commission and the Department of Justice, respectively, from premerger notification filing fees as the fees were determined in fiscal year 2021;

(B) the total revenue derived from premerger notification filing fees, by tier, and how such revenue is used by the Federal Trade Commission and the Department of Justice, respectively; and

(C) the gross cost of operations of the Federal Trade Commission and the Department of Justice, respectively, associated

*with activities related to the use of revenue derived from premerger notification filing fees.*

*(6) The Federal Trade Commission shall report, in addition to the requirements listed in paragraph (5), a listing of all cases where the Federal Trade Commission took or declined to take action on a 3 to 2 vote and what percentage of actions of the Federal Trade Commission were decided on a 3 to 2 vote.*

*(7) The Federal Trade Commission and the Department of Justice shall make the joint annual report pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18(a) et seq.) available to the Senate Committee on the Judiciary and the House Committee on the Judiciary and shall, for fiscal years 2022 through 2027, no later than July 1, present a summary of the joint annual report for the preceding fiscal year, including the information required in paragraph (5) and (6) of this Act, to the Senate Committee on the Judiciary and the House Committee on the Judiciary.*

*(8) None of the funds collected by the Federal Trade Commission from premerger notification filing fees under 15 U.S.C. 18(a) and allocated by the Federal Trade Commission shall be available for obligation or expenditure by the Federal Trade Commission and the Department of Justice in excess of the amounts appropriated by Congress for spending authority from offsetting collections, including premerger notification filings under the Hart-Scott Rodino Antitrust Improvements Act of 1976.*

FRANK PALLONE, JR., NEW JERSEY  
CHAIRMAN

CATHY McMORRIS RODGERS, WASHINGTON  
RANKING MEMBER

**Committee Correspondence**

ONE HUNDRED SEVENTEENTH CONGRESS

**Congress of the United States  
House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

September 23, 2022

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Nadler:

I write concerning H.R. 3843, the "Merger Filing Fee Modernization Act of 2021," which was additionally referred to the Committee on Energy and Commerce.

In recognition of the desire to expedite consideration of H.R. 3843, the Committee agrees to waive formal consideration of the bill as to provisions that fall within the Rule X jurisdiction of the Committee. The Committee takes this action with the mutual understanding that we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and that the Committee will be appropriately consulted and involved as this bill or similar legislation moves forward so that we may address any remaining issues within our jurisdiction. I also request that you support my request to name members of the Committee to any conference committee to consider such provisions.

Finally, I would appreciate the inclusion of this letter the *Congressional Record* during floor consideration of the bill.

Sincerely,



Frank Pallone, Jr.  
Chairman

cc: The Honorable Cathy McMorris Rodgers, Ranking Member, Committee on Energy and  
Commerce  
The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary  
The Honorable Jason Smith, Parliamentarian

JERROLD NADLER, New York  
CHAIRMAN

JIM JORDAN, Ohio  
RANKING MEMBER

ONE HUNDRED SEVENTEENTH CONGRESS

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

September 23, 2022

The Honorable Frank Pallone, Jr.  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, DC 20515

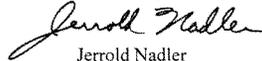
Dear Chairman Pallone:

I am writing to you concerning H.R. 3843, the "Merger Filing Fee Modernization Act of 2021."

I appreciate your willingness to work cooperatively on this legislation. I recognize that the bill contains provisions that fall within the jurisdiction of the Committee on Energy and Commerce. I acknowledge that your Committee will not formally consider H.R. 3843 and agree that the inaction of your Committee with respect to the bill does not waive any future jurisdictional claim over the matters contained in H.R. 3843 which fall within your Committee's Rule X jurisdiction.

I will ensure that our exchange of letters is included in the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process.

Sincerely,



Jerrold Nadler  
Chairman

cc: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary  
The Honorable Jason Smith, Parliamentarian  
The Honorable Cathy McMorris Rodgers, Ranking Member, Committee on Energy and Commerce

### Minority Views

H.R. 3843 would increase authorized funds for the Federal Trade Commission (FTC) and the Department of Justice (DOJ) and would change certain merger filing fees in a manner that would increase revenues for the Biden Administration's antitrust enforcers. The Committee considered this bill as part of a package of radical legislation put forward by Committee Democrats. Authorizing more funds and giving the out-of-control Biden antitrust enforcers more resources will empower Democrats to continue their efforts to destroy free market principles and radically transform the American economy.

H.R. 3843 authorizes an unjustified increase in funds for both the FTC and DOJ. Under the bill, the FTC is authorized \$418 million, which is an approximately 19 percent increase over the FY 2021 appropriation of \$351 million. DOJ's Antitrust Division is authorized \$252 million, which is about a 37 percent increase over the FY 2021 appropriation of \$184.524 million. These increases are on top of the more than \$37 million bump that the agencies received in FY 2021. The bill's authorizations also exceed the President's budget requests for fiscal year 2022, which were just \$389.8 million for the FTC and \$201.176 million for DOJ—\$80 million *less* than H.R. 3843 authorizes. When Representative Victoria Spartz offered an amendment that would have aligned the authorizations with the President's budget requests, Democrats rejected it.

The bill's excessive authorization of funds—and changes to merger filing fees in ways designed to generate more revenue for antitrust enforcers—will empower the Democrats' radical goals. The Democrat sponsor of the bill described it as part of the Democrats' legislative "package," and called it a "critical first step." The larger package is designed to fuse Big Tech and Big Government and would effectively give the federal government tremendous operational control over the way that certain businesses are run. Even without the larger package, Congress should not provide more resources for agencies that will make life harder for hardworking Americans—which is exactly what the Biden antitrust agencies will do. For example, the Biden FTC wants to toss aside the agency's well-established, consumer-first approach. FTC bureaucrats favor a much broader view of antitrust policy that looks beyond the traditional economic-based, market-focused principles that have guided antitrust policy for decades. This misguided view ultimately stifles innovation, drives down competition, and raises prices. A broader view of antitrust policy, unrestrained by longstanding principles, will also make it easier for the agency to pursue a sprawling partisan agenda. Quite simply, Americans will suffer when these out-of-control antitrust agencies receive more funds to execute far-left Democrat policies.

Furthermore, the bill places no limits on how the antitrust enforcers must use new funds. During the Committee's business meeting, Republicans offered multiple amendments that would have required the FTC and DOJ to use funds on activities that are at least related to their congressional mandates. For example, Representative Chip Roy offered an amendment that would have required the agencies to use the filing fees they collect "to enforce [the] antitrust laws." Representative Scott Fitzgerald offered a re-

lated amendment that would have prevented the agencies from using the fees for “non-enforcement activities.” Representative Fitzgerald explained that he “ha[s] a real problem with just giving a blank check to the bureaucracy who would like to use the antitrust laws to advance other policy goals,” including “environmental,” “labor,” or even “social justice” goals. His amendment would have helped to prevent these antitrust agencies from straying from their core responsibilities. Representative Roy offered another amendment that would have kept the agencies from using authorized funds to promote critical race theory “or any other policy that discriminates based on race.” Democrats uniformly rejected each of these commonsense amendments.

These amendments were necessary because Biden antitrust enforcers support using antitrust law in radical ways that stretch well beyond its legitimate and intended scope. For example, FTC Commissioner Slaughter has said publicly that she wants to prioritize investigations into “systemic racism,” and to explore rule-making to address “racist practices.” Addressing unlawful discrimination is an important, long-standing federal policy goal. But it is not a mission within the FTC’s obligation to enforce federal *antitrust* laws. Unfortunately, because Democrats rejected commonsense Republican amendments, these out-of-control antitrust agencies will feel emboldened to use taxpayer dollars in any manner they choose. This no-strings-attached approach is a mistake given the Biden Administration’s radical views on antitrust.

Rather than push H.R. 3843, Democrats should prioritize real policies that would help Americans and simplify antitrust enforcement—like overhauling the current inefficient dual-agency enforcement. Representative Mike Johnson offered an amendment that would have consolidated antitrust enforcers. Democrats, again, rejected this Republican amendment. Democrats made clear they want unelected and unaccountable bureaucrats to have unlimited discretion when using new taxpayer funds, even if that means using the money on things that have nothing to do with antitrust. This bill is bad policy and will hurt the American economy.

JIM JORDAN,  
*Ranking Member.*

