

115TH CONGRESS
1ST SESSION

H. R. 4538

To require the Attorney General and the Federal Trade Commission to conduct regular merger retrospective reviews of the economic effects of mergers to which section 7A of the Clayton Act applies.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 4, 2017

Mr. ELLISON (for himself, Mr. KHANNA, Mr. CICILLINE, Mr. POCAN, Mr. NOLAN, Ms. JAYAPAL, and Mr. GRIJALVA) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To require the Attorney General and the Federal Trade Commission to conduct regular merger retrospective reviews of the economic effects of mergers to which section 7A of the Clayton Act applies.

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 “Merger Retrospective
5 Act of 2017”.

1 **SEC. 2. REQUIRED REVIEWS OF THE ECONOMIC EFFECTS**
2 **OF MERGERS.**

3 (a) REQUIRED REVIEWS.—The Attorney General and
4 the Federal Trade Commission shall each conduct annu-
5 ally no fewer than 5 retrospective reviews of the economic
6 effects of mergers to which section 7A of the Clayton Act
7 (15 U.S.C. 18a) applies and which have been resolved by
8 each agency. The decision of which mergers are evaluated
9 will be made by the each agency in conjunction with the
10 advice and agreement of the Chief Economist of the Gov-
11 ernment Accountability Office. That individual will report
12 on the process and certify that the choices of mergers sat-
13 isfy the criteria of objectivity, importance, and comprehen-
14 siveness.

15 (b) CONTENT OF REVIEWS.—The reviews conducted
16 under subsection (a) shall assess the effects of each merg-
17 er on—

18 (1) the price and quality of products and serv-
19 ices affected by the merger;

20 (2) the effectiveness of any divestitures or
21 merger conditions in preserving competition in the
22 affected markets;

23 (3) any facility closures or other reductions in
24 actual or planned capacity, or in employment;

25 (4) investment in research and development;

1 (5) average salary and employment benefits of
2 the top 1 percent, the median, and the lowest 10
3 percent of individuals employed by each party to the
4 merger before the merger and by the entity resulting
5 from the merger; and

6 (6) contractual terms applicable before and
7 after the merger to officers and employees of each
8 party to the merger with respect to forced arbitra-
9 tion clauses, noncompete agreements, and class-ac-
10 tion lawsuit waivers.

11 (c) TIME PERIOD FOR REVIEWS.—Each merger re-
12 view required by this Act shall be completed not later than
13 3 years after the merger is consummated, or 3 years after
14 the effective date of this Act, whichever is later.

15 (d) PUBLICATION OF REVIEW RESULTS.—The Attor-
16 ney General and the Federal Trade Commission shall pub-
17 lish on their respective websites in a timely manner the
18 results of the reviews conducted under subsection (a) to-
19 gether with as much nonconfidential data and information
20 that allow the public to evaluate the reviews. The chief
21 economist of the General Accountability Office shall attest
22 to the quality and objectivity of the study.

23 **SEC. 3. POSTMERGER DATA.**

24 Section 7A of the Clayton Act (15 U.S.C. 18a) is
25 amended by adding at the end the following:

1 “(l)(1) Each person who enters into an agreement
2 with the Federal Trade Commission or the United States
3 to resolve a proceeding brought under the antitrust laws
4 or under the Federal Trade Commission Act (15 U.S.C.
5 41 et seq.) regarding an acquisition with respect to which
6 notification is required under this section shall, upon re-
7 quest from the Federal Trade Commission or the Assist-
8 ant Attorney General, submit to the Federal Trade Com-
9 mission or the Assistant Attorney General, as applicable,
10 information necessary to aid the requesting agency in its
11 retrospective review of the economic effects of the trans-
12 action as required by the Merger Retrospective Act of
13 2017.

14 “(2) The Federal Trade Commission, with the con-
15 currence of the Assistant Attorney General, by rule issued
16 in accordance with section 553 of title 5, United States
17 Code, and consistent with the purposes of this section shall
18 require that the information described in paragraph (1)
19 be in such form and contain such documentary material
20 and information relevant to a completed acquisition as is
21 necessary and appropriate to enable the Federal Trade
22 Commission and the Assistant Attorney General to assess
23 the competitive impact of the acquisition under paragraph
24 (1).”.

1 **SEC. 4. EFFECTIVE DATE; APPLICATION OF ACT.**

2 (a) **EFFECTIVE DATE.**—This Act shall take effect
3 180 days after the date of the enactment of this Act.

4 (b) **APPLICATION OF ACT.**—This Act shall apply with
5 respect to—

6 (1) mergers that occurred less than 2 years be-
7 fore the date of the enactment of this Act; and

8 (2) mergers that occur on or after the date of
9 the enactment of this Act.

10 (c) **ATTORNEY GENERAL.**—In order to promote
11 transparency in merger enforcement, the Federal Trade
12 Commission and the Attorney General shall publish no less
13 frequently than every 2 years a report on the numbers
14 of their investigations and enforcement actions with re-
15 spect to horizontal mergers in the preceding 2 years. This
16 report should provide summary data on investigations and
17 actions by level of and change in concentration, number
18 of remaining significant competitors, and ease of entry in
19 the relevant markets.

20 (d) **AUTHORIZATION OF APPROPRIATIONS.**—

21 (1) **IN GENERAL.**—To carry out the amend-
22 ments made by this Act, there is authorized to be
23 appropriated \$2,000,000 for each of fiscal years
24 2018 through 2022.

1 (2) AVAILABILITY OF FUNDS.—Funds appro-
2 priated to carry out such amendment shall remain
3 available for a period of 2 fiscal years.

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