

115TH CONGRESS  
1ST SESSION

# H. R. 4686

To establish the National Commission on Economic Concentration to study the effects of economic concentration on competition, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 19, 2017

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

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## A BILL

To establish the National Commission on Economic Concentration to study the effects of economic concentration on competition, and for other purposes.

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 “21st Century Competi-  
5       tion Commission Act of 2017”.

6       **SEC. 2. FINDINGS AND SENSE OF CONGRESS.**

7       (a) FINDINGS.—Congress finds the following:

8               (1) There is substantial evidence showing that  
9       competition has declined across the American polit-

1 ical economy, resulting in concentrated control and  
2 ownership across sectors.

3 (2) This structural lack of competition is con-  
4 tributing to a host of harms, including greater  
5 wealth inequality, less innovation, less entrepreneur-  
6 ship, and less resiliency, with outsized harmful ef-  
7 fects on minority and rural populations.

8 (b) SENSE OF CONGRESS.—It is the sense of Con-  
9 gress that—

10 (1) while it is clear that the monopoly problem  
11 in the United States is threatening the economy and  
12 democracy of the United States, additional informa-  
13 tion will help reveal the full scope of the problem  
14 and help guide industry-specific policy efforts;

15 (2) insufficient and permissive enforcement by  
16 the Department of Justice and the Federal Trade  
17 Commission necessitates that Congress convene this  
18 information-gathering exercise as a form of over-  
19 sight; and

20 (3) gathering and producing information will  
21 aid law enforcement by the Department of Justice,  
22 the Federal Trade Commission, and Attorneys Gen-  
23 eral of the States, and litigation efforts by private  
24 parties.

1 **SEC. 3. COMMISSION ESTABLISHED.**

2 (a) ESTABLISHMENT.—There is established the Na-  
3 tional Commission on Economic Concentration (herein-  
4 after referred to as the “Commission”).

5 (b) DUTIES.—

6 (1) STUDY.—The Commission shall conduct a  
7 study of economic concentration to determine the  
8 following:

9 (A) The extent of concentration in aggre-  
10 gate and in specific markets in specific sectors.

11 (B) The extent of vertical integration in  
12 specific sectors and the effects of increasing  
13 vertical integration on commerce within such  
14 sectors.

15 (C) The extent to which changes in con-  
16 centration and integration correspond to  
17 changes in—

18 (i) profits;

19 (ii) innovation;

20 (iii) productivity;

21 (iv) new business formation;

22 (v) distribution of wealth and income;

23 (vi) wages;

24 (vii) employment;

25 (viii) prices; and

1 (ix) non-price terms and conditions  
2 that adversely affect suppliers or con-  
3 sumers, including reduced—

4 (I) quality of products or serv-  
5 ices;

6 (II) variety of products or serv-  
7 ices;

8 (III) protection of privacy; and

9 (IV) ability of the consumer to  
10 exercise legal rights, including the ex-  
11 ercise of such rights through manda-  
12 tory arbitration agreements.

13 (D) The effects concentration has on racial  
14 minorities and rural communities, with respect  
15 to—

16 (i) credit and banking services;

17 (ii) food;

18 (iii) access to affordable healthcare  
19 and medicine;

20 (iv) fair and affordable housing;

21 (v) affordable access to internet; and

22 (vi) energy and utilities.

23 (E) With respect to entrepreneurs and  
24 independent businesses, the obstacles to busi-  
25 ness formation and expansion, including the ef-

1           fects of rising concentration on the capability to  
2           enter markets and compete.

3           (F) The effects of rising concentration on  
4           workers, including employees and independent  
5           contractors, with respect to—

6                   (i) labor market competition;

7                   (ii) labor mobility;

8                   (iii) wage and benefit levels;

9                   (iv) wage distribution;

10                  (v) wage volatility; and

11                  (vi) other material benefits.

12           (G) The effects of rising concentration on  
13           suppliers, farmers, and other upstream market  
14           participants, with respect to—

15                   (i) competition in markets for their  
16                   products and services;

17                   (ii) income levels;

18                   (iii) income distribution; and

19                   (iv) income volatility.

20           (H) The effects of concentration on the re-  
21           siliency of industrial, financial, and techno-  
22           logical systems.

23           (I) The extent of concentration within  
24           banking and financial sectors and the effects of

1 such concentration on lending and new business  
2 formation.

3 (J) With respect to major technology plat-  
4 forms that are dominant in a market sector—

5 (i) the extent of concentration of con-  
6 trol of communication, commerce, and crit-  
7 ical technology;

8 (ii) the extent to which data, critical  
9 technology, and other assets that are avail-  
10 able only to major technology platforms  
11 are being used to undermine competition;

12 (iii) the effects of large-scale data ac-  
13 quisition on market stability;

14 (iv) the effects of such concentration  
15 on new business formation, investment  
16 flows, and distribution of revenue and prof-  
17 its among firms;

18 (v) the extent to which network effects  
19 allow major technology platforms to attain  
20 and maintain market power; and

21 (vi) in the online marketplace, the ex-  
22 tent to which competitors are capable of  
23 usurping the dominance of major tech-  
24 nology platforms.

1           (K) The extent of common ownership by  
2           institutional investors and the effects of such  
3           common ownership.

4           (L) The extent of distribution of patent,  
5           copyright, and trademark ownership across  
6           firms.

7           (M) The causes of concentration and fac-  
8           tors that exacerbate the adverse effects of such  
9           concentration.

10          (N) The relationship among concentration,  
11          vertical integration, firm size, and corporate po-  
12          litical activities, including lobbying activities  
13          and donations to campaigns and political cam-  
14          paign committees.

15          (O) The economic benefits and costs of the  
16          increase of mergers and conglomerates.

17          (P) The extent of abuse of superior bar-  
18          gaining power between buyers and sellers.

19          (2) REPORT.—Not later than 3 years after the  
20          date of the enactment of this Act, the Commission  
21          shall submit to Congress a report describing the re-  
22          sults of such study.

23          (c) MEMBERSHIP.—

1           (1) COMPOSITION OF THE COMMISSION.—The  
2       Commission shall be composed of 15 members ap-  
3       pointed as follows:

4           (A) The Speaker of the House of Rep-  
5       resentatives, the minority leader of the House  
6       of Representatives, the President pro tempore  
7       of the Senate, and the minority leader of the  
8       Senate shall each appoint 1 member from  
9       among the House of Representatives and the  
10      Senate.

11          (B) The Attorney General, the Chair of the  
12      Federal Trade Commission, and the Chair of  
13      the Federal Reserve Board shall each appoint 1  
14      member.

15          (C) The Council of Economic Advisers  
16      shall appoint by majority vote—

17           (i) 1 member with expertise in labor  
18      organization;

19           (ii) 1 member with expertise in labor  
20      policy;

21           (iii) 1 member who is an executive of  
22      a business with fewer than 500 employees;

23           (iv) 1 member who is an executive of  
24      a business with greater than 5,000 employ-  
25      ees;



1 (v) 1 member from a consumer advo-  
2 cacy nongovernmental organization;

3 (vi) 1 member with expertise in indus-  
4 trial organization;

5 (vii) 1 member with expertise in fi-  
6 nance; and

7 (viii) 1 member with expertise in in-  
8 vestment.

9 (2) TERMS OF OFFICE.—A member appointed  
10 under—

11 (A) paragraph (1)(A) may serve so long as  
12 such member remains a Member of the House  
13 of Representatives or the Senate, unless re-  
14 moved by the relevant appointing authority;

15 (B) paragraph (1)(B) may serve for the  
16 life of the Commission, unless removed by the  
17 relevant appointing authority; and

18 (C) paragraph (1)(C) may serve for the life  
19 of the Commission, unless removed by a major-  
20 ity vote of the Council of Economic Advisors.

21 (3) CHAIR AND VICE CHAIR.—The chair and  
22 vice chair of the Commission shall be elected by a  
23 majority vote of the members of the Commission.

24 (4) VACANCY.—A vacancy in the Commission  
25 shall not affect the power of the remaining members

1 to execute the functions of the Commission and shall  
2 be filled in the same manner as the original appoint-  
3 ment is made.

4 (5) COMPENSATION.—

5 (A) NONGOVERNMENT MEMBERS.—Except  
6 as provided in subparagraph (C), members of  
7 the Commission shall be entitled to a sum  
8 equivalent to the compensation paid at level V  
9 of the Executive Schedule under section 5315  
10 of title 5, United States Code.

11 (B) TRAVEL AND PER DIEM.—While away  
12 from their homes or regular places of business  
13 in the performance of services for the Commis-  
14 sion, members of the Commission shall be al-  
15 lowed travel expenses, including per diem in lieu  
16 of subsistence, in the same manner as the ex-  
17 penses authorized by section 5703 of title 5,  
18 United States Code, for persons in the Govern-  
19 ment service employed intermittently.

20 (C) PROHIBITION OF COMPENSATION OF  
21 FEDERAL OFFICERS OR EMPLOYEES.—Members  
22 of the Commission who are full-time officers or  
23 employees of the United States or Members of  
24 Congress may not receive additional pay, allow-

1           ances, or benefits in the nature of compensation  
2           by reason of their service on the Commission.

3       (d) RULES.—

4           (1) MEETINGS.—The Commission shall meet at  
5       the call of the chair or a majority of members of the  
6       Commission.

7           (2) QUORUM.—A majority of members of the  
8       Commission shall constitute a quorum, and actions  
9       by the Commission shall be determined by a major-  
10      ity vote of the members present.

11          (3) PROXY VOTING.—If unable to attend a  
12      meeting of the Commission, a member of the Com-  
13      mission appointed under subsection (c)(1)(C) may  
14      authorize another member to act and vote on behalf  
15      of the absent member.

16          (4) ATTENDANCE.—Members appointed under  
17      subparagraph (A) or (B) of subsection (c)(1) shall  
18      be removed from the Commission and replaced by  
19      the relevant appointing authority if they attend  
20      fewer than two-thirds of the meetings of the Com-  
21      mission.

22      (e) ADMINISTRATIVE PROVISIONS.—

23          (1) HEARINGS.—The Commission may for the  
24      purposes of carrying out this Act hold such hearings,  
25      sit and act at such times and places, take such testi-

1       mony, and receive such evidence as the Commission  
2       deems advisable. The Commission may administer  
3       oaths or affirmations to witnesses appearing before  
4       it.

5           (2) SUBPOENA POWER.—The Commission shall  
6       have power to issue subpoenas requiring the attend-  
7       ance and testimony of witnesses and the production  
8       of evidence that relates to any matter which the  
9       Commission is authorized to study under subsection  
10      (b).

11          (3) ACCESS TO FEDERAL INFORMATION.—The  
12      Commission may secure directly from any executive  
13      department or agency of the United States informa-  
14      tion reasonably necessary to enable it to carry out  
15      this Act. Upon request of the chairman or vice  
16      chairman of the Commission, and consistent with  
17      any other law, the head of an executive department  
18      or agency shall furnish such information to the  
19      Commission.

20          (4) AGENCY.—When so authorized by the Com-  
21      mission, any member, subcommittee, or agent of the  
22      Commission may take any action which the Commis-  
23      sion is authorized to take by this section.

24          (5) STAFF.—

1           (A) APPOINTMENT.—The chair of the  
2           Commission may, without regard to the provi-  
3           sions of chapter 41 of title 5, United States  
4           Code, appoint and terminate such staff as are  
5           necessary to enable the Commission to perform  
6           its duties.

7           (B) COMPENSATION.—The chair of the  
8           Commission may fix the compensation of the  
9           staff without regard to the provisions of chapter  
10          51 and subchapter III of chapter 53 of title 5,  
11          United States Code, except that the rate of pay  
12          for the staff may not exceed the rate of basic  
13          pay payable for level V of the Executive Sched-  
14          ule under section 5315 of title 5, United States  
15          Code.

16          (C) EXPERTS AND CONSULTANTS.—The  
17          Commission may procure temporary and inter-  
18          mittent services of experts and consultants  
19          under section 3109(b) of title 5, United States  
20          Code, but at rates for individuals not to exceed  
21          the maximum rate of basic pay for GS-15 of  
22          the General Schedule.

23          (6) FACILITIES AND SUPPORT SERVICES.—The  
24          Administrator of General Services shall provide to  
25          the Commission on a reimbursable basis such facili-

1       ties and support services as the Commission may re-  
2       quest.

3           (7) EXPENDITURES AND CONTRACTS.—The  
4       Commission or, on authorization of the Commission,  
5       a member of the Commission may make expendi-  
6       tures and enter into contracts for the procurement  
7       of such supplies, services, and property as the Com-  
8       mission or such member considers to be appropriate  
9       for the purpose of carrying out this Act. Such ex-  
10      penditures and contracts may be made only to the  
11      extent provided in advance in appropriation Acts.

12          (8) MAILS.—The Commission may use the  
13      United States mails in the same manner and under  
14      the same conditions as other departments and agen-  
15      cies of the United States.

16          (9) GIFTS, BEQUESTS, AND DEVISES.—The  
17      Commission may accept, use, and dispose of gifts,  
18      bequests, or devises of services or property, both real  
19      and personal, for the purpose of aiding or facili-  
20      tating the work of the Commission. Gifts, bequests,  
21      or devises of money and proceeds from sales of other  
22      property received as gifts, bequests, or devises shall  
23      be deposited in the Treasury and shall be available  
24      for disbursement upon order of the Commission.

1       (f) TERMINATION.—The Commission shall terminate  
2 on the date that is 180 days after the date on which the  
3 Commission submits the report under subsection (a)(2).

4       (g) AUTHORIZATION OF APPROPRIATIONS.—There is  
5 authorized to be appropriated a total amount of  
6 \$50,000,000 for fiscal years 2019 through 2021 to carry  
7 out this Act.

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