

117TH CONGRESS  
1ST SESSION

# H. R. 3826

To promote competition and economic opportunity in digital markets by establishing that certain acquisitions by dominant online platforms are unlawful.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 2021

Mr. JEFFRIES (for himself, Mr. BUCK, Mr. CICILLINE, Mr. NADLER, and Mr. GOODEN of Texas) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To promote competition and economic opportunity in digital markets by establishing that certain acquisitions by dominant online platforms are unlawful.

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 “Platform Competition  
5 and Opportunity Act of 2021”.

6 **SEC. 2. UNLAWFUL ACQUISITIONS.**

7 (a) VIOLATION.—It shall be unlawful for a covered  
8 platform operator to acquire directly or indirectly—

1           (1) the whole or any part of the stock or other  
2       share capital of another person engaged in com-  
3       merce or in any activity or affecting commerce; or

4           (2) the whole or any part of the assets of an-  
5       other person engaged in commerce or in any activity  
6       affecting commerce.

7       (b) EXCLUSION.—An acquisition shall not be unlaw-  
8       ful under subsection (a) if the acquiring covered platform  
9       operator demonstrates by clear and convincing evidence  
10      that—

11           (1) the acquisition is a transaction that is de-  
12      scribed in section 7A(c) of the Clayton Act; or

13           (2) the acquired assets or the issuer of the ac-  
14      quired stock do not—

15           (A) compete with the covered platform or  
16      with the covered platform operator for the sale  
17      or provision of any product or service;

18           (B) constitute nascent or potential com-  
19      petition to the covered platform or the covered  
20      platform operator for the sale or provision of  
21      any product or service;

22           (C) enhance or increase the covered plat-  
23      form’s or the covered platform operator’s mar-  
24      ket position with respect to the sale or provision

1 of any product or service offered on or directly  
2 related to the covered platform; or

3 (D) enhance or increase the covered plat-  
4 form’s or covered platform operator’s ability to  
5 maintain its market position with respect to the  
6 sale or provision of any product or service of-  
7 fered on or directly related to the covered plat-  
8 form.

9 (c) USER ATTENTION.—For purposes of this Act,  
10 competition, nascent competition, or potential competition  
11 for “the sale or provision of any product or service” in-  
12 cludes competition for a user’s attention.

13 (d) ROLE OF DATA.—For purposes of this Act, an  
14 acquisition that results in access to additional data may,  
15 without more, enhance, increase, or maintain a covered  
16 platform’s market position.

17 **SEC. 3. DEFINITIONS.**

18 (a) ANTITRUST LAWS.—The term “antitrust laws”  
19 has the meaning given the term in subsection (a) of sec-  
20 tion 1 of the Clayton Act (15 U.S.C. 12).

21 (b) COMMISSION.—The term “Commission” means  
22 the Federal Trade Commission.

23 (c) CONTROL.—The term “control” with respect to  
24 a person means—

1           (1) holding 25 percent or more of the stock of  
2           the person;

3           (2) having the right to 25 percent or more of  
4           the profits of the person;

5           (3) having the right to 25 percent or more of  
6           the assets of the person, in the event of the person's  
7           dissolution;

8           (4) if the person is a corporation, having the  
9           power to designate 25 percent or more of the direc-  
10          tors of the person;

11          (5) if the person is a trust, having the power  
12          to designate 25 percent or more of the trustees; or

13          (6) otherwise exercises substantial control over  
14          the person.

15          (d) COVERED PLATFORM.—The term “covered plat-  
16          form” means an online platform—

17               (1) that has been designated as a “covered plat-  
18               form” under section 4(a); or

19               (2) that—

20                       (A) at the time of the Commission's or the  
21                       Department of Justice's designation under sec-  
22                       tion 2(d), or any of the twelve months pre-  
23                       ceding that time, or in any of the 12 months  
24                       preceding the filing of a complaint for an al-  
25                       leged violation of this Act—

1 (i) has at least 50,000,000 United  
2 States-based monthly active users on the  
3 online platform; or

4 (ii) has at least 100,000 United  
5 States-based monthly active business users  
6 on the platform;

7 (B) is owned or controlled by a person  
8 with net annual sales, or a market capitaliza-  
9 tion greater than \$600,000,000,000, adjusted  
10 for inflation on the basis of the Consumer Price  
11 Index, at the time of the Commission’s or the  
12 Department of Justice’s designation under sec-  
13 tion 4(a) or any of the two years preceding that  
14 time, or at any time in the 2 years preceding  
15 the filing of a complaint for an alleged violation  
16 of this Act; and

17 (C) is a critical trading partner for the sale  
18 or provision of any product or service offered on  
19 or directly related to the online platform.

20 (e) COVERED PLATFORM OPERATOR.—The term  
21 “covered platform operator” means a person that, directly  
22 or indirectly, owns or controls a covered platform.

23 (f) CRITICAL TRADING PARTNER.—The term “crit-  
24 ical trading partner” means an entity that has the ability  
25 to restrict or impede—

1           (1) the access of a business user to its users or  
2 customers; or

3           (2) the access of a business user to a tool or  
4 service that needs to effectively serve its users or  
5 customers.

6       (g) BUSINESS USER.—The term “business user”  
7 means a person that utilizes or plans to utilize the covered  
8 platform for the sale or provision of products or services.

9       (h) ONLINE PLATFORM.—The term “online plat-  
10 form” means a website, online or mobile application oper-  
11 ating system, digital assistant, or online service that—

12           (1) enables a user to generate content that can  
13 be viewed by other users on the platform or to inter-  
14 act with other content on the platform;

15           (2) facilitates the offering, sale, purchase, pay-  
16 ment, or shipping of goods or services, including  
17 software applications, between and among con-  
18 sumers or businesses not controlled by the platform;  
19 or

20           (3) enables user searches or queries that access  
21 or display a large volume of information.

22       (i) PERSON.—The term “person” has the meaning  
23 given the term in subsection (a) of section 1 of the Clayton  
24 Act (15 U.S.C. 12).

1 **SEC. 4. IMPLEMENTATION.**

2 (a) COVERED PLATFORM DESIGNATION.—

3 (1) The Federal Trade Commission or Depart-  
4 ment of Justice shall designate whether an entity is  
5 a covered platform for the purpose of implementing  
6 and enforcing this Act. Such designation shall—

7 (A) be based on a finding that the criteria  
8 set forth in section 3(d)(2)(A)–(C) are met;

9 (B) be issued in writing and published in  
10 the Federal Register; and

11 (C) will apply for 10 years from its  
12 issuance regardless of whether there is a change  
13 in control or ownership over the covered plat-  
14 form unless the Commission or the Department  
15 of Justice removes the designation pursuant to  
16 subsection (b).

17 (b) REMOVAL OF COVERED PLATFORM DESIGNA-  
18 TION.—The Commission and the Department of Justice  
19 shall—

20 (1) consider whether its designation of a cov-  
21 ered platform pursuant to subsection (a) should be  
22 removed prior to the expiration of the 10-year period  
23 if the covered platform operator files a request with  
24 the Commission or the Department of Justice, which  
25 shows that the online platform is no longer a critical  
26 trading partner;

1           (2) determine whether to grant a request sub-  
2           mitted under paragraph 1 not later than 120 days  
3           after the date of the filing of such request; and

4           (3) obtain the concurrence of the Commission  
5           or the Department of Justice, as appropriate, before  
6           granting a request submitted under paragraph (1).

7 **SEC. 5. ENFORCEMENT.**

8           (a) **ENFORCEMENT PROCEEDING.**—The Commission,  
9           Department of Justice, and any attorney general of a  
10          State subject to the requirements in subsection (d) shall  
11          enforce this Act in the same manner, by the same means,  
12          and with the same jurisdiction, powers, and duties as  
13          though all applicable terms and provisions of the Federal  
14          Trade Commission Act (15 U.S.C. 41 et seq.) or the Clay-  
15          ton Act (15 U.S.C. 12 et seq.), as appropriate, were incor-  
16          porated into and made a part of this Act.

17          (b) **UNFAIR METHODS OF COMPETITION.**—A viola-  
18          tion of this Act shall also constitute an unfair method of  
19          competition under section 5 of the Federal Trade Commis-  
20          sion Act (15 U.S.C. 5).

21          (c) **COMMISSION INDEPENDENT LITIGATION AU-**  
22          **THORITY.**—If the Commission has reason to believe that  
23          a covered platform violated this Act, the Commission may  
24          commence a civil action, in its own name by any of its  
25          attorneys designated by it for such purpose, to recover a



1 civil penalty and seek other appropriate relief in a district  
2 court of the United States against the covered platform  
3 operator.

4 (d) PARENS PATRIAE.—Any attorney general of a  
5 State may bring a civil action in the name of such State  
6 for a violation of this Act as parens patriae on behalf of  
7 natural persons residing in such State, in any district  
8 court of the United States having jurisdiction of the de-  
9 fendant, and may secure any form of relief provided for  
10 in this section.

11 **SEC. 6. ENFORCEMENT GUIDELINES.**

12 (a) IN GENERAL.—Not later than 1 year after the  
13 date of enactment of this Act, the Commission and the  
14 Assistant Attorney General of the Antitrust Division shall  
15 jointly issue guidelines outlining policies and practices, re-  
16 lating to agency enforcement of this Act, with the goal  
17 of promoting transparency and deterring violations.

18 (b) UPDATES.—The Commission and the Assistant  
19 Attorney General of the Antitrust Division shall update  
20 the joint guidelines issued under subsection (a), as needed  
21 to reflect current agency policies and practices, but not  
22 less frequently than once every 4 years beginning on the  
23 date of enactment of this Act.

24 (c) OPERATION.—The Joint Guidelines issued under  
25 this section do not confer any rights upon any person,

1 State, or locality, nor shall operate to bind the Commis-  
2 sion, Department of Justice, or any person, State, or local-  
3 ity to the approach recommended in such Guidelines.

4 **SEC. 7. SUITS BY PERSONS INJURED.**

5 (a) IN GENERAL.—Except as provided in subsection  
6 (b), any person who shall be injured in his business or  
7 property by reason of anything forbidden in this Act sue  
8 therefor in any district court of the United States in the  
9 district in which the defendant resides or is found or has  
10 an agent, without respect to the amount in controversy,  
11 and shall recover threefold the damages by him sustained,  
12 and the cost of suit, including a reasonable attorney's fee.  
13 The court may award under this section, pursuant to a  
14 motion by such person promptly made, simple interest on  
15 actual damages for the period beginning on the date of  
16 service of such person's pleading setting forth a claim  
17 under the antitrust laws and ending on the date of judg-  
18 ment, or for any shorter period therein, if the court finds  
19 that the award of such interest for such period is just in  
20 the circumstances. In determining whether an award of  
21 interest under this section for any period is just in the  
22 circumstances, the court shall consider only—  
23 (1) whether such person or the opposing party,  
24 or either party's representative, made motions or as-  
25 serted claims or defenses so lacking in merit as to

1 show that such party or representative acted inten-  
2 tionally for delay, or otherwise acted in bad faith;

3 (2) whether, in the course of the action in-  
4 volved, such person or the opposing party, or either  
5 party's representative, violated any applicable rule,  
6 statute, or court order providing for sanctions for  
7 dilatory behavior or otherwise providing for expedi-  
8 tious proceedings; and

9 (3) whether such person or the opposing party,  
10 or either party's representative, engaged in conduct  
11 primarily for the purpose of delaying the litigation  
12 or increasing the cost thereof.

13 (b) AMOUNT OF DAMAGES PAYABLE TO FOREIGN  
14 STATES AND INSTRUMENTALITIES OF FOREIGN  
15 STATES.—

16 (1) Except as provided in paragraph (2), any  
17 person who is a foreign state may not recover under  
18 subsection (a) an amount in excess of the actual  
19 damages sustained by it and the cost of suit, includ-  
20 ing a reasonable attorney's fee.

21 (2) Paragraph (1) shall not apply to a foreign  
22 state if—

23 (A) such foreign state would be denied,  
24 under section 1605(a)(2) of title 28, United  
25 States Code, immunity in a case in which the

1           action is based upon a commercial activity, or  
2           an act, that is the subject matter of its claim  
3           under this section;

4           (B) such foreign state waives all defenses  
5           based upon or arising out of its status as a for-  
6           eign state, to any claims brought against it in  
7           the same action;

8           (C) such foreign state engages primarily in  
9           commercial activities; and

10          (D) such foreign state does not function,  
11          with respect to the commercial activity, or the  
12          act, that is the subject matter of its claim  
13          under this section as a procurement entity for  
14          itself or for another foreign state.

15 **SEC. 8. JUDICIAL REVIEW.**

16          (a) IN GENERAL.—Any party that is subject to a cov-  
17          ered platform designation pursuant to section 4(a) of this  
18          Act, a decision in response to a request to remove a cov-  
19          ered platform designation pursuant to section 4(b), a final  
20          order issued in any district court, or a final order of the  
21          Commission issued in an administrative adjudicative pro-  
22          ceeding may within 30 days of the issuance of such des-  
23          ignation, decision, or order, petition for review of such des-  
24          ignation or order in the United States Court of Appeals  
25          for the District of Columbia Circuit.

1       (b) TREATMENT OF FINDINGS.—In a proceeding for  
2 judicial review of a covered platform designation pursuant  
3 to section 4(a) of this Act or a final order of the Commis-  
4 sion, the findings of the Commission or the Department  
5 of Justice as to the facts, if supported by evidence, shall  
6 be conclusive.

7       (c) INJUNCTIVE RELIEF.—Any person, firm, corpora-  
8 tion, or association shall be entitled to sue for and have  
9 injunctive relief, in any court of the United States having  
10 jurisdiction over the parties, against threatened loss or  
11 damage by a violation of this Act, when and under the  
12 same conditions and principles as injunctive relief against  
13 threatened conduct that will cause loss or damage is  
14 granted by courts of equity, under the rules governing  
15 such proceedings, and upon the execution of proper bond  
16 against damages for an injunction improvidently granted  
17 and a showing that the danger of irreparable loss or dam-  
18 age is immediate, a preliminary injunction may issue: Pro-  
19 vided, That nothing herein contained shall be construed  
20 to entitle any person, firm, corporation, or association, ex-  
21 cept the United States, to bring suit for injunctive relief  
22 against any common carrier subject to the jurisdiction of  
23 the Surface Transportation Board under subtitle IV of  
24 title 49. In any action under this section in which the  
25 plaintiff substantially prevails, the court shall award the

1 cost of suit, including a reasonable attorney's fee, to such  
2 plaintiff.

3 **SEC. 9. RULES OF CONSTRUCTION.**

4 Nothing in this Act shall be construed to limit any  
5 authority of the Attorney General or the Federal Trade  
6 Commission under the antitrust laws, the Federal Trade  
7 Commission Act (15 U.S.C. 45), or any other provision  
8 of law or to limit the application of any law.

9 **SEC. 10. SEVERABILITY.**

10 If any provision of this Act, an amendment made by  
11 this Act, or the application of such provision or amend-  
12 ment to any person or circumstance is held to be unconsti-  
13 tutional, the remainder of this Act and of the amendments  
14 made by this Act, and the application of the remaining  
15 provisions of this Act and amendments to any person or  
16 circumstance shall not be affected.

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