

1 Title: To reform the antitrust laws to better protect competition in the American economy, to
2 amend the Clayton Act to modify the standard for an unlawful acquisition, to deter
3 anticompetitive exclusionary conduct that harms competition and consumers, to enhance the
4 ability of the Department of Justice and the Federal Trade Commission to enforce the antitrust
5 laws, and for other purposes.
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8 Be it enacted by the Senate and House of Representatives of the United States of America in
9 Congress assembled,

10 SECTION 1. SHORT TITLE.

11 This Act may be cited as the “Competition and Antitrust Law Enforcement Reform Act of
12 2021”.

13 SEC. 2. FINDINGS AND PURPOSES.

14 (a) Findings.—Congress finds that—

15 (1) competitive markets, in which multiple firms compete to buy and sell products and
16 services, are critical to ensuring economic opportunity for all people in the United States
17 and providing resilience to the economy during unpredictable times;

18 (2) when companies compete, businesses offer the highest quality and choice of goods
19 and services for the lowest possible prices to consumers and other businesses;

20 (3) competition fosters small business growth, reduces economic inequality, and spurs
21 innovation and job creation;

22 (4) in the United States economy today, the presence and exercise of market power is
23 substantial and growing;

24 (5) the presence and exercise of market power makes it more difficult for people in the
25 United States to start their own businesses, depresses wages, and increases economic
26 inequality, with particularly damaging effects on historically-disadvantaged communities;

27 (6) market power and undue market concentration contribute to the consolidation of
28 political power, undermining the health of democracy in the United States;

29 (7) the anticompetitive effects of monopoly power or buyer market power include higher
30 prices, lower quality, lessened choice, reduced innovation, foreclosure of competitors, and
31 increased entry barriers;

32 (8) monopsony power or seller market power allows a firm to force suppliers of goods or
33 services to accept below market prices or to force workers to accept below market wages,
34 resulting in lower quality products and services, reduced opportunities for suppliers and
35 workers, reduced availability of products and services for consumers, reduced innovation,
36 foreclosure of competitors, and increased entry barriers;

37 (9) horizontal consolidation, vertical consolidation, and conglomerate mergers all have
38 potential to increase market power and cause anticompetitive harm;

39 (10) extensive consolidation is reducing competition and threatens to place the American

- 1 dream further out of reach for many consumers in the United States;
- 2 (11) since 2008, firms in the United States have engaged in over \$10,000,000,000,000 in
3 mergers and acquisitions;
- 4 (12) the acquisition of nascent or potential rivals by dominant firms can present
5 significant long-term threats to competition and innovation;
- 6 (13) the acquisition, by one of its competitors, of a maverick firm that plays a disruptive
7 role in the market – by using an innovative business model or technology, offering lower
8 prices or new, different products or services products, or by other means that benefit
9 consumers – can present a threat to competition;
- 10 (14) section 7 of the Clayton Act (15 U.S.C. 18), is the primary line of defense against
11 anticompetitive mergers;
- 12 (15) in recent years, some court decisions and enforcement policies have limited the
13 vitality of the Clayton Act to prevent harmful consolidation by—
- 14 (A) discounting previously accepted presumptions that certain acquisitions are
15 anticompetitive;
- 16 (B) focusing inordinately on the effect of an acquisition on price in the short term, to
17 the exclusion of other potential anticompetitive effects;
- 18 (C) underestimating the dangers that horizontal, vertical, and conglomerate mergers
19 will lower quality, reduce choice, impede innovation, exclude competitors, increase
20 entry barriers, or create buyer power, including monopsony power; and
- 21 (D) requiring the government to prove harmful effects of a proposed merger to a
22 near certainty;
- 23 (16) anticompetitive exclusionary conduct constitutes a particularly harmful exercise of
24 market power and a substantial threat to the United States economy;
- 25 (17) when dominant sellers exercise market power, they harm buyers by overcharging
26 them, reducing product or service quality, limiting their choices, and impairing innovation;
- 27 (18) when dominant buyers exercise market power, they harm suppliers by underpaying
28 them, limiting their business opportunities, and impairing innovation;
- 29 (19) when dominant employers exercise market power, they harm workers by paying
30 them low wages, reducing their benefits, and limiting their future employment
31 opportunities;
- 32 (20) nascent or potential rivals—even those that are unprofitable or inefficient—can be
33 an important source of competitive discipline for dominant firms;
- 34 (21) antitrust enforcement against anticompetitive exclusionary conduct has been
35 impeded when courts have declined to rigorously examine the facts in favor of relying on
36 inaccurate economic assumptions that are inconsistent with contemporary economic
37 learning, such as presuming that market power is not durable and can be expected to self-
38 correct, that monopolies can drive as much or more innovation than a competitive market,
39 that above-cost pricing cannot harm competition, and other flawed assumptions;
- 40 (22) the courts of the United States have improperly implied immunity from the antitrust

1 laws based on Federal regulatory statutes, even limiting the application of statutory antitrust
2 savings clauses passed by Congress;

3 (23) the civil remedies currently available to cure violations of the Sherman Antitrust
4 Act, including injunctions, equitable monetary relief, and private damages, have not proven
5 sufficient, on their own, to deter anticompetitive conduct;

6 (24) in some cases, effective deterrence requires the imposition of civil penalties, alone or
7 in combination with existing remedies, including structural relief, behavioral relief, private
8 damages, and equitable monetary relief, including disgorgement and restitution; and

9 (25) Federal antitrust enforcement budgets have failed to keep pace with the growth of
10 the economy and increasing demands on agency resources, significantly undermining the
11 ability of the Federal antitrust agencies to fulfill their law enforcement missions and
12 contributing to the rise of market power in the American economy.

13 (b) Purposes.—The purposes of this Act are to—

14 (1) enhance competition throughout the American economy by strengthening antitrust
15 enforcement by the Department of Justice, the Federal Trade Commission, the State
16 enforcement agencies, and private parties;

17 (2) revise the legal standard under section 7 of the Clayton Act to better enable enforcers
18 to arrest the likely anticompetitive effects of harmful mergers in their incipiency, as
19 Congress intended, by clarifying that the potential effects that may justify prohibiting a
20 merger under the Clayton Act include lower quality, reduced choice, reduced innovation,
21 the exclusion of competitors, or increased entry barriers, in addition to increased price to
22 buyers or reduced price to sellers;

23 (3) amend the Clayton Act to clarify that an acquisition that tends to create a monopsony
24 violates the Clayton Act;

25 (4) establish simple, cost-effective decision rules that require the parties to certain
26 acquisitions that either significantly increase concentration or are extremely large bear the
27 burden of establishing that the acquisition will not materially harm competition;

28 (6) prohibit and deter exclusionary conduct that harms competition, particularly by
29 dominant firms;

30 (7) enable the Department of Justice and the Federal Trade Commission to seek civil
31 monetary penalties, in addition to existing remedies, for violations of the Sherman Act;

32 (8) give the Department of Justice and the Federal Trade Commission additional financial
33 resources and enforcement tools to craft remedies for individual violations that are effective
34 to deter future unlawful conduct and proportionate to the gravity of the violation;

35 (9) provide further protections for those who provide evidence of anticompetitive conduct
36 to government enforcers and potential financial rewards for whistleblowers who provide
37 information to the government that leads to a criminal fine; and

38 (10) grant successful antitrust plaintiffs the right to obtain prejudgment interest on
39 damages awards to further deter anticompetitive conduct and more fully compensate injured
40 parties.

1 **SEC. 3. DEFINITION.**

2 In this Act the term “antitrust laws”—

3 (A) has the meaning given the term in the first section of the Clayton Act (15 U.S.C.
4 12); and

5 (B) includes—

6 (i) section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent
7 that such section applies to unfair methods of competition; and

8 (ii) this Act and the amendments made by this Act.

9 **SEC. 4. UNLAWFUL ACQUISITIONS.**

10 (a) Section 1(a) of the Clayton Act (15 U.S.C. 12(a)) is amended by adding at the end the
11 following:

12 “the term “market power” in this Act means the ability of a person, or a group of persons
13 acting in concert, to profitably impose terms or conditions on counterparties, including terms
14 regarding price, quantity, product or service quality, or other terms affecting the value of
15 consideration exchanged in the transaction, that are more favorable to the person or group of
16 persons imposing them than what the person or group of persons could obtain in a competitive
17 market.”.

18 (b) Section 7 of the Clayton Act (15 U.S.C. 18) is amended—

19 (1) in the first and second undesignated paragraphs, by striking “substantially to lessen”
20 each place that term appears and inserting “to create an appreciable risk of materially
21 lessening”;

22 (2) by inserting “or a monopsony” after “monopoly” each place that term appears; and

23 (3) by adding at the end the following:

24 “In a case brought by the United States, the Federal Trade Commission, or a State attorney
25 general, a court shall determine that the effect of an acquisition described in this section may be
26 to create an appreciable risk of materially lessening competition or to tend to create a monopoly
27 or a monopsony, in or affecting commerce, if—

28 “(1) the acquisition would lead to a significant increase in market concentration in any
29 relevant market;

30 “(2) (A) the acquiring person has a market share of greater than 50 percent or otherwise
31 has significant market power, as a seller or a buyer, in any relevant market, and as a result
32 of the acquisition, the acquiring person would obtain control over entities or assets that
33 compete or have a reasonable probability of competing with the acquiring person in the
34 same relevant market; or

35 (B) as a result of the acquisition, the acquiring person would obtain control over entities
36 or assets that have a market share of greater than 50 percent or otherwise have significant
37 market power, as a seller or a buyer, in any relevant market, and the acquiring person
38 competes or has a reasonable probability of competing with the entities or assets over which
39 it would obtain control, as result of the acquisition, in the same relevant market;

1 “(3) the acquisition would lead to the combination of entities or assets that compete or
2 have a reasonable probability of competing in a relevant market, and either the acquiring
3 person or the entities or assets over which it would obtain control prevents, limits, or
4 disrupts coordinated interaction among competitors in a relevant market or has a reasonable
5 probability of doing so;

6 “(4) the acquisition—

7 (A) would likely enable the acquiring person to unilaterally and profitably exercise
8 market power or materially increase its ability to do so; or

9 (B) would materially increase the probability of coordinated interaction among
10 competitors in any relevant market; or

11 “(5)(A) the acquisition is not a transaction that is described in section 7A(c); and

12 “(B)(i) as a result of such acquisition, the acquiring person would hold an aggregate total
13 amount of the voting securities and assets of the acquired person in excess of
14 \$5,000,000,000 (as adjusted and published for each fiscal year beginning after September
15 30, 2022, in the same manner as provided in section 8(a)(5) to reflect the percentage change
16 in the gross national product for such fiscal year compared to the gross national product for
17 the year ending September 30, 2021); or

18 “(ii)(I) the person acquiring or the person being acquired has assets, net annual sales,
19 or a market capitalization greater than \$100,000,000,000 (as so adjusted and
20 published); and

21 “(II) as a result of such acquisition, the acquiring person would hold an
22 aggregate total amount of the voting securities and assets of the acquired person
23 in excess of \$50,000,000 (as so adjusted and published),

24 unless the acquiring or acquired person establish, by a preponderance of the evidence, that
25 the effect of the acquisition will not be to create an appreciable risk of materially lessening
26 competition or tend to create a monopoly or a monopsony. In this paragraph, the term
27 ‘materially’ means more than a de minimis amount.”.

28 SEC. 5. POST-SETTLEMENT DATA.

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

30 “(l)(1) Each person who enters into an agreement with the Federal Trade Commission or the
31 United States to resolve a proceeding brought under the antitrust laws or under the Federal Trade
32 Commission Act (15 U.S.C. 41 et seq.) regarding an acquisition with respect to which
33 notification is required under this section shall, on an annual basis during the 5-year period
34 beginning on the date on which the agreement is entered into, submit to the Federal Trade
35 Commission or the Assistant Attorney General, as applicable, information sufficient for the
36 Federal Trade Commission or the United States, as applicable, to assess the competitive impact
37 of the acquisition, including—

38 “(A) the pricing, availability, and quality of any product or service, or inputs thereto, in
39 any market, that was covered by the agreement;

40 “(B) the source, and the resulting magnitude and extent, of any cost-saving efficiencies or

1 any benefits consumers or trading partners that were claimed as a benefit of the acquisition
2 and the extent to which any cost savings were passed on to consumers or trading partners;
3 and

4 “(C) the effectiveness of any divestitures or any conditions placed on the acquisition in
5 fully restoring competition.

6 “(2) The requirement to provide the information described in paragraph (1) shall be included
7 in an agreement described in that paragraph.

8 “(3) The Federal Trade Commission, with the concurrence of the Assistant Attorney General,
9 by rule in accordance with section 553 of title 5, United States Code, and consistent with the
10 purposes of this section—

11 “(A) shall require that the information described in paragraph (1) be in such form and
12 contain such documentary material and information relevant to an acquisition as is
13 necessary and appropriate to enable the Federal Trade Commission and the Assistant
14 Attorney General to assess the competitive impact of the acquisition under paragraph (1);
15 and

16 “(B) may—

17 “(i) define the terms used in this subsection;

18 “(ii) exempt, from the requirements of this section, information not relevant in
19 assessing the competitive impact of the acquisition under paragraph (1); and

20 “(iii) prescribe such other rules as may be necessary and appropriate to carry out the
21 purposes of this section.”.

22 SEC. 6. FEDERAL TRADE COMMISSION STUDY.

23 Not later than 2 years after the date of enactment of this Act, the Federal Trade Commission,
24 in consultation with the Securities and Exchange Commission, shall conduct and publish a study,
25 using any compulsory process necessary, relying on public data and information if available and
26 sufficient, and incorporating public comment on—

27 (1) the extent to which an institutional investor or related institutional investors have
28 ownership or control interests in competitors in moderately concentrated or concentrated
29 markets;

30 (2) the economic impacts of such overlapping ownership or control; and

31 (3) the mechanisms by which an institutional investor could affect competition among the
32 companies in which it invests and whether such mechanisms are prevalent.

33 SEC. 7. GAO STUDIES.

34 (a) In General.—Not later than 18 months after the date of enactment of this Act, the
35 Comptroller General of the United States shall—

36 (1) conduct a study to assess the success of merger remedies required by the Department
37 of Justice or the Federal Trade Commission in consent decrees entered into since 6 years
38 prior to the date of enactment of this Act, including the impact on maintaining competition,
39 a comparison of structural and conduct remedies, and the viability of divested assets; and

1 (2) conduct a study on the impact of mergers and acquisitions on wages, employment,
2 innovation, and new business formation.

3 (b) Update.—The Comptroller General of the United States shall—

4 (1) update the study under paragraph (1) 3 years and 6 years after the date of enactment
5 of this Act based on the information provided under section 7A(l) of the Clayton Act, as
6 added by section 5 of this Act; and

7 (2) identify specific remedies or alleged merger benefits that require additional
8 information or research.

9 **SEC. 8. OFFICE OF COMPETITION ADVOCATE.**

10 (a) Definitions.—In this section—

11 (1) the term “agency” has the meaning given the term in section 551 of title 5, United
12 States Code;

13 (2) the term “covered company” means any company that has, at any time, been required
14 to make a filing under section 7A of the Clayton Act (15 U.S.C. 18a);

15 (3) the term “Office” means the Office of the Competition Advocate established under
16 subsection (b);

17 (4) the term “Chairman” means the Chairman of the Commission; and

18 (5) the term “Commission” means the Federal Trade Commission.

19 (b) Establishment.—There is established within the Federal Trade Commission the Office of
20 the Competition Advocate.

21 (c) Competition Advocate.—

22 (1) IN GENERAL.—The head of the Office shall be the Competition Advocate, who
23 shall—

24 (A) report directly to the Chairman; and

25 (B) be appointed by the Chairman, with the concurrence of a majority of the
26 Commission, including at least 1 Commissioner who is not a member of the same
27 political party of the majority members of the Commission, from among individuals
28 having experience in advocating for the promotion of competition.

29 (2) COMPENSATION.—The annual rate of pay for the Competition Advocate shall be equal
30 to the highest rate of annual pay for other senior executives who report to the Chairman of
31 the Commission.

32 (3) LIMITATION ON SERVICE.—An individual who serves as the Competition Advocate
33 may not be employed by the Commission—

34 (A) during the 2-year period ending on the date of appointment as Competition
35 Advocate; or

36 (B) during the 5-year period beginning on the date on which the person ceases to
37 serve as the Competition Advocate.

1 (d) Staff of Office.—The Competition Advocate, after consultation with the Chairman of the
2 Commission, shall retain or employ independent counsel, research staff, and service staff, as the
3 Competition Advocate determines is necessary to carry out the functions, powers, and duties of
4 the Office.

5 (e) Duties and Powers.—The Competition Advocate shall—

6 (1) recommend processes or procedures that will allow the Federal Trade Commission
7 and the Antitrust Division of the Department of Justice to improve the ability of each
8 agency to solicit reports from consumers, small businesses, and employees about possible
9 anticompetitive practices or adverse effects of concentration;

10 (2) publicly provide recommendations to other Federal agencies about administrative
11 actions that may have anticompetitive effects and the potential harm to competition if those
12 actions are carried out;

13 (3) provide recommendations to other Federal agencies about administrative actions that
14 may have procompetitive effects and the potential benefit to competition if those actions are
15 carried out

16 (4) publish periodic reports on—

17 (A) market competition and its impact on the United States, local geographic areas,
18 and different demographic and socioeconomic groups; and

19 (B) the success of remedies required by the Department of Justice or the Federal
20 Trade Commission in consent decrees;

21 (5) collect data regarding concentration levels across industries and the impact and degree
22 of antitrust enforcement; and

23 (6) standardize the types and formats of data reported and collected.

24 (f) Subpoena Authority.—

25 (1) IN GENERAL.—The Competition Advocate may either require the submission of or
26 accept voluntary submissions of periodic and other reports from any covered company for
27 the purpose of assessing competition and its impact on the United States, local geographic
28 areas, and different demographic and socioeconomic groups.

29 (2) WRITTEN FINDING.—Before issuing a subpoena to collect the information described in
30 paragraph (1), the Competition Advocate shall make a written finding that—

31 (A) the data is required to carry out the functions of the Competition Advocate; and

32 (B) the information is not available from a public source or another agency.

33 (3) MITIGATION OF REPORT BURDEN.—Before requiring the submission of a report from
34 any company required to make a filing under section 7A of the Clayton Act (15 U.S.C.
35 18a), the Competition Advocate shall—

36 (A) coordinate with other agencies or authority; and

37 (B) whenever possible, rely on information available from such agencies or
38 authority.

39 (g) Data Center.—

- 1 (1) ESTABLISHMENT.—There is established within the Office the Data Center.
- 2 (2) DUTIES.—The Data Center shall—
- 3 (A) collect, validate, and maintain data obtained from agencies, as defined in section
- 4 551 of title 5, United States Code, commercial data providers, publicly available data
- 5 sources, and any covered company; and
- 6 (B) prepare and publish, in a manner that is easily accessible to the public—
- 7 (i) a concentration database;
- 8 (ii) a merger enforcement database;
- 9 (iii) any other database that the Competition Advocate determines is necessary
- 10 to carry out the duties of the Office; and
- 11 (iv) the format and standards for Office data, including standards for reporting
- 12 financial transaction and position data to the Office.
- 13 (3) REGULATIONS.—The Competition Advocate shall promulgate regulations relating to
- 14 the collection and standardizing of data under paragraph (2).
- 15 (4) CONFIDENTIALITY.—
- 16 (A) IN GENERAL.—The Data Center may not disclose any confidential data collected
- 17 under paragraph (2).
- 18 (B) REQUIREMENTS.—Data obtained from an agency shall be subject to the same
- 19 confidentiality requirements and protection as the agency providing the data.
- 20 (C) INFORMATION SECURITY.—The Competition Advocate shall ensure that data
- 21 collected and maintained by the Data Center are kept secure and protected against
- 22 unauthorized disclosure.
- 23 (h) Division of Market Analysis.—
- 24 (1) ESTABLISHMENT.—There is established within the Office the Division of Market
- 25 Analysis.
- 26 (2) LEADERSHIP.—The head of the Division of Market Analysis shall be the Director of
- 27 Market Analysis, who shall—
- 28 (A) report directly to the Competition Advocate; and
- 29 (B) be appointed by the Competition Advocate, with the concurrence of a majority
- 30 of the Commission, including at least one Commissioner who is not a member of the
- 31 same political party of the majority members of the Commission.
- 32 (3) DIVISION STAFF.—The Division of Market Analysis shall retain or employ
- 33 independent legal, economic, research, and service staff sufficient to carry out the functions,
- 34 powers, and duties of the Division.
- 35 (4) DUTIES AND POWERS.—The Division of Market Analysis—
- 36 (A) shall, at the direction of the Competition Advocate or the Commission, conduct
- 37 investigations of markets or industry sectors to analyze the competitive conditions and
- 38 dynamics affecting such markets or industry sectors, including the effects that market

1 concentration, mergers and acquisitions, certain types of agreements, and other forms
2 of business conduct have on competition, consumers, workers and innovation, and
3 shall publish reports on the results of such investigations;

4 (B) shall, at the direction of the Competition Advocate or the Commission, conduct
5 investigations concerning the competitive effects of acquisitions that have been
6 consummated no less than 2 years prior to the start of the investigation, which shall
7 include recommendations concerning appropriate enforcement action to remedy any
8 anticompetitive effects discovered and may include assessments of—

9 (i) the conditions of the relevant markets affected by the acquisition, over the
10 period since the acquisition was consummated, including, but not limited to, the
11 potential impact that the acquisition has had on—

12 (I) the prices of goods or services, including wages in any affected labor
13 markets;

14 (II) the output and quality of goods and services;

15 (III) the entry or exit of competitors;

16 (IV) innovation;

17 (V) consumer choice and product variety;

18 (VI) the opportunity of suppliers and works to sell their product or
19 services;

20 (VII) coordinated interaction between competitors; and

21 (VIII) subsequent mergers and acquisitions activity;

22 (ii) whether the acquiring person or its successors in interest—

23 (I) complied with all obligations under any agreement with the Federal
24 Trade Commission, the United States, or state law enforcement authorities to
25 resolve a proceeding brought under the antitrust laws; and

26 (II) achieved measurable, transaction-specific efficiencies, which did not
27 arise from anticompetitive reductions of output, as a result of the acquisition;
28 and

29 (iii) whether any agreements with the Federal Trade Commission or the United
30 States to resolve a proceeding brought under the antitrust laws regarding the
31 acquisition was effective in mitigating the anticompetitive effects from the
32 acquisition;

33 (C) shall rely on public data and information, public comment, information from
34 other Federal agencies, information from the Data Center, information obtained
35 pursuant to the Competition Advocate’s subpoena authority under subsection (f) of this
36 section and may use compulsory process under section 6(b) of the Federal Trade
37 Commission Act (15 U.S.C. 46(b)) as necessary to carry out the functions set forth in
38 subsections (h)(3)(A) and (h)(3)(B) of this section; and

39 (D) shall report any evidence it obtains that any person, partnership, or corporation
40 has engaged in transactions or conduct that may constitute of a violation of the antitrust

1 law to the Commission, which may institute further investigation, initiate enforcement
2 proceedings, or refer such evidence to the Attorney General.

3 **SEC. 9. EXCLUSIONARY CONDUCT.**

4 (a) In General.—The Clayton Act (15 U.S.C. 12 et seq.) is amended by inserting after section
5 26 (15 U.S.C. 26a) the following:

6 **“SEC. 26A. EXCLUSIONARY CONDUCT.**

7 “(a) Definitions.—In this section:

8 “(1) EXCLUSIONARY CONDUCT.—

9 “(A) IN GENERAL.—The term ‘exclusionary conduct’ means conduct that—

10 “(i) materially disadvantages 1 or more actual or potential competitors; or

11 “(ii) tends to foreclose or limit the ability or incentive of 1 or more actual or
12 potential competitors to compete.

13 “(B) LIMITATIONS.—

14 “(i) Applying for or enforcing a patent, trademark, or copyright, unless such
15 applications or enforcement actions are baseless or made in bad faith or in
16 violation of a legal obligation, shall not alone constitute exclusionary conduct, but
17 such actions may be considered as part of a course of conduct that constitutes
18 exclusionary conduct.

19 “(ii) Conduct that is necessary to comply with Federal or State law shall not
20 alone constitute exclusionary conduct, but such actions may be considered as part
21 of a course of conduct that constitutes exclusionary conduct.

22 “(2) MARKET POWER.—The term ‘market power’ means the ability of a person, or a
23 group of persons acting in concert, to profitably impose terms or conditions on
24 counterparties, including terms regarding price, quantity, product or service quality, or other
25 terms affecting the value of consideration exchanged in the transaction, that are more
26 favorable to the person or group of persons imposing them than what the person or group of
27 persons could obtain in a competitive market.

28 “(b) Violation.—

29 “(1) IN GENERAL.—It shall be unlawful for a person, acting alone or in concert with other
30 persons, to engage in exclusionary conduct that presents an appreciable risk of harming
31 competition.

32 “(2) UNFAIR METHOD OF COMPETITION.—A violation of paragraph (1) shall also constitute
33 an unfair method of competition under section 5 of the Federal Trade Commission Act (15
34 U.S.C. 45).

35 “(c) Presumption.—

36 “(1) IN GENERAL.—Except as provided in paragraph (2), exclusionary conduct shall be
37 presumed to present an appreciable risk of harming competition and shall be a violation of
38 subsection (b)(1) if the exclusionary conduct is undertaken, with respect to a relevant

1 market, by a person or by a group of more than 1 person acting in concert that—

2 “(A) has a market share of greater than 50 percent as a seller or a buyer in the
3 relevant market; or

4 “(B) otherwise has significant market power in the relevant market.

5 “(2) EXCEPTION.—Paragraph (1) shall not apply if the defendant establishes, by a
6 preponderance of the evidence, that—

7 “(A) distinct procompetitive benefits of the exclusionary conduct in the relevant
8 market eliminate the risk of harming competition presented by the exclusionary
9 conduct;

10 “(B) 1 or more persons, not including any person participating in or facilitating the
11 exclusionary conduct, have entered or expanded their presence in the market with the
12 effect of eliminating the risk of harming competition posed by the exclusionary
13 conduct; or

14 “(C) the exclusionary conduct does not present an appreciable risk of harming
15 competition.

16 “(d) Considerations.—If the presumption in subsection (c) does not apply, the determination
17 of whether exclusionary conduct presents an appreciable risk of harming competition shall be
18 based on the totality of the circumstances, which may include consideration of—

19 “(1) the extent to which any distinct procompetitive benefits of the exclusionary conduct
20 substantially eliminate the risk of harming competition presented by the exclusionary
21 conduct; and

22 “(2) whether 1 or more persons, not including any person participating in or facilitating
23 the exclusionary conduct, have entered or expanded their presence in the market,
24 substantially eliminating the risk of harming competition presented by the exclusionary
25 conduct.

26 “(e) Limitations.—Although the following circumstances may constitute evidence of a
27 violation of subsection (b)(1), such violation does not require finding—

28 “(1) that the unilateral conduct of the defendant altered or terminated a prior course of
29 dealing between the defendant and a person subject to the exclusionary conduct;

30 “(2) that the defendant treated persons subject to the exclusionary conduct differently
31 than the defendant treated other persons;

32 “(3) that any price of the defendant for a product or service was below any measure of the
33 costs to the defendant of providing the product or service;

34 “(4) that a defendant with significant market power in a relevant market has recouped or
35 is likely to recoup the losses it incurred or incurs from below-cost pricing for products or
36 services in the relevant market;

37 “(5) that the conduct of the defendant makes no economic sense apart from its tendency
38 to harm competition;

39 “(6) that the risk of harming competition presented by the conduct of the defendant or
40 any resulting actual harm to competition have been quantified or proven with quantitative

1 evidence; or

2 “(7) that when a defendant operates a multi-sided platform business, the conduct of the
3 defendant presents an appreciable risk of harming competition on more than 1 side of the
4 multi-sided platform.

5 “(f) Civil Penalties.—Any person who violates subsection (b)(1) shall be liable to the United
6 States for a civil penalty, which may be recovered in a civil action brought by the Attorney
7 General of the United States, of not more than the greater of—

8 “(1) 15 percent of the total United States revenues of the person for the previous calendar
9 year; or

10 “(2) 30 percent of the United States revenues of the person in any line of commerce
11 affected or targeted by the unlawful conduct during the period of the unlawful conduct.”.

12 (b) Federal Trade Commission Act.—

13 (1) CIVIL PENALTIES.—Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is
14 amended by adding at the end the following:

15 “(p) Civil Penalty for Violation of Section 26a of the Clayton Act.—The Commission may
16 commence a civil action in a district court of the United States against any person, partnership, or
17 corporation who violates subsection (a)(1) respecting an unfair method of competition that
18 constitutes a violation of section 26A of the Clayton Act to recover a civil penalty, which shall
19 accrue to the United States, in an amount not more than the greater of—

20 “(1) 15 percent of the total United States revenues of the person, partnership, or
21 corporation for the previous calendar year; or

22 “(2) 30 percent of the United States revenues of the person, partnership, or corporation in
23 any line of commerce affected or targeted by the unlawful conduct during the period of the
24 unlawful conduct.”.

25 (2) COMMISSION LITIGATION AUTHORITY.—Section 16(a)(2) of the Federal Trade
26 Commission Act (15 U.S.C. 56(a)(2)) is amended—

27 (A) in subparagraph (D), by striking “or” after the semicolon;

28 (B) in subparagraph (E)—

29 (i) by moving the margins 2 ems to the left; and

30 (ii) by inserting “or” after the semicolon; and

31 (C) inserting after subparagraph (E) the following:

32 “(F) to recover civil penalties under section 5(p) of this Act;”.

33 (c) Enforcement Guidelines.—

34 (1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the
35 Attorney General and the Federal Trade Commission shall issue joint guidelines outlining
36 policies, practices, and analytical techniques relating to agency enforcement under section
37 26A of the Clayton Act, as added by section 4 of this Act, with the goal of promoting
38 transparency and deterring violations of section 26A of the Clayton Act.

1 (2) UPDATES.—The Attorney General and the Federal Trade Commission shall update the
2 joint guidelines issued under subsection (a), as needed to reflect current agency policies and
3 practices, but not less frequently than once every 5 years beginning on the date of enactment
4 of this Act.

5 (3) PUBLIC NOTICE AND COMMENT.—

6 (A) GUIDELINES.—Before issuing guidelines under subsections (c)(1) or (c)(2), the
7 Attorney General and the Federal Trade Commission shall publish proposed guidelines
8 in draft form and provide public notice and opportunity for comment for not less than
9 60 days after the date on which the guidelines are published.

10 (B) INAPPLICABILITY OF RULEMAKING PROVISIONS.—The provisions of section 553
11 of title 5, United States Code, shall not apply to the guidelines issued under this
12 section.

13 SEC. 10. CIVIL PENALTIES FOR SHERMAN ACT 14 VIOLATIONS.

15 (a) Civil Penalty Amendments.—

16 (1) SECTION 1 OF THE SHERMAN ACT.—Section 1 of the Sherman Antitrust Act (15 U.S.C.
17 1) is amended—

18 (A) by striking “Every” and inserting “(a) Every”; and

19 (B) by adding at the end the following

20 “(b)(1) Every person who violates this section shall be liable to the United States for a civil
21 penalty of not more than the greater of—

22 “(A) 15 percent of the total United States revenues of the person for the previous calendar
23 year; or

24 “(B) 30 percent of the United States revenues of the person in any part of the trade or
25 commerce related to or targeted by the unlawful conduct under this section during the
26 period of the unlawful conduct.

27 “(2) A civil penalty under this section may be recovered in a civil action brought by the United
28 States.”.

29 (2) SECTION 2 OF THE SHERMAN ACT.—Section 2 of the Sherman Antitrust Act (15 U.S.C.
30 2) is amended—

31 (A) by striking “Every” and inserting “(a) Every”; and

32 (B) by adding at the end the following

33 “(b)(1) Every person who violates this section shall be liable to the United States for a civil
34 penalty of not more than the greater of—

35 “(A) 15 percent of the total United States revenues of the person for the previous calendar
36 year; or

37 “(B) 30 percent of the United States revenues of the person in any part of the trade or
38 commerce related to or targeted by the unlawful conduct under this section during the

1 period of the unlawful conduct.

2 “(2) A civil penalty under this section may be recovered in a civil action brought by the United
3 States.”.

4 (3) FEDERAL TRADE COMMISSION ACT.—Section 5 of the Federal Trade Commission Act
5 (15 U.S.C. 45) is amended by adding at the end the following:

6 “(o)(1) The Commission may commence a civil action in a district court of the United States
7 against any person, partnership, or corporation for a violation of subsection (a)(1) respecting an
8 unfair method of competition that constitutes a violation of sections 1 or 2 of the Sherman Act
9 (15 U.S.C. 1, 2) and to recover a civil penalty for such violation.

10 “(2) In an action under paragraph (1), any person, partnership, or corporation found to have
11 violated subsection (a)(1) respecting an unfair method of competition that constitutes a violation
12 of section 1 or 2 of the Sherman Act (15 U.S.C. 1, 2) shall be liable for a civil penalty of not
13 more than the greater of—

14 “(A) 15 percent of the total United States revenues of the person, partnership, or
15 corporation for the previous calendar year; or

16 “(B) 30 percent of the United States revenues of the person, partnership, or corporation in
17 any line of commerce related to or targeted by the unlawful conduct described in paragraph
18 (1) during the period of the unlawful conduct.”.

19 (b) Rule of Construction.—

20 (1) CIVIL PENALTIES.—The civil penalties provided in subsection (b) of section 1 of the
21 Sherman Act (15 U.S.C. 1), subsection (b) of section 2 of the Sherman Act (15 U.S.C. 2),
22 and subsection (o) of section 5 of the Federal Trade Commission Act (15 U.S.C. 45), as
23 added by subsection (a) of this section, are in addition to, and not in lieu of, any other
24 remedy provided by Federal law, including under—

25 (A) section 4 or 16 of the Clayton Act (15 U.S.C. 15, 26); or

26 (B) section 13(b) of the Federal Trade Commission Act (15 U.S.C. 53(b)).

27 (2) AUTHORITIES.—Nothing in this paragraph may be construed to affect any authority of
28 the Attorney General or the Federal Trade Commission under any other provision of law.

29 SEC. 11. JOINT CIVIL PENALTY GUIDELINES.

30 (a) In General.—Not later than 1 year after the date of enactment of this Act, the Attorney
31 General and the Federal Trade Commission shall issue joint guidelines reflecting agency policies
32 for determining the appropriate amount of a civil penalty to be sought under sections 1(b) and
33 2(b) of the Sherman Act (15 U.S.C. 1, 2), section 26A(f) of the Clayton Act, and sections 5(o)
34 and 5(p) of the Federal Trade Commission Act (15 U.S.C. 45), as added by of this Act, with the
35 goal of promoting transparency and crafting remedies for individual violations that are effective
36 in deterring future unlawful conduct and proportionate to the gravity of the violation.

37 (b) Considerations.—In establishing the guidelines described in subsection (a), the Attorney
38 General and the Federal Trade Commission shall consider the relevant factors to be used for
39 calculating an appropriate civil penalty for a particular violation, including—

- 1 (1) the volume of commerce affected;
- 2 (2) the duration and severity of the unlawful conduct;
- 3 (3) the intent of the person undertaking the unlawful conduct;
- 4 (4) the extent to which the unlawful conduct was egregious or a clear violation of the law;
- 5 (5) whether the civil penalty is to be applied in combination with other remedies,
- 6 including—
 - 7 (A) structural remedies, behavioral conditions, or equitable disgorgement; or
 - 8 (B) other remedies available under section 4, 4A, 15, or 16 of the Clayton Act (15
 - 9 U.S.C. 15, 15a, 25, 26) or section 13(b) of the Federal Trade Commission Act (15
 - 10 U.S.C. 53(b));
- 11 (6) whether the person has previously engaged in the same or similar anticompetitive
- 12 conduct; and
- 13 (7) whether the person undertook the conduct in violation of a preexisting consent decree
- 14 or court order.

15 (c) Updates.—The Attorney General and the Federal Trade Commission shall update the joint
16 guidelines issued under subsection (a), as needed to reflect current agency policies and practices,
17 but not less frequently than once every 5 years beginning on the date of enactment of this Act.

18 (d) Public Notice and Comment.—

19 (1) GUIDELINES.—Before issuing guidelines under subsection (a) or subsection (c), the
20 Attorney General and the Federal Trade Commission shall publish proposed guidelines in
21 draft form and provide public notice and opportunity for comment for not less than 60 days
22 after the date on which the guidelines are published.

23 (2) INAPPLICABILITY OF RULEMAKING PROVISIONS.—The provisions of section 553 of title
24 5, United States Code, shall not apply to the guidelines issued under this section.

25 SEC. 12. FEDERAL TRADE COMMISSION LITIGATION 26 AUTHORITY.

27 Section 16(a)(2) of the Federal Trade Commission Act (15 U.S.C. 56(a)(2)) is amended—

- 28 (1) in subparagraph (D), by striking “or” at the end;
- 29 (2) in subparagraph (E)—
 - 30 (A) by moving the margins 2 ems to the left; and
 - 31 (B) by striking the semicolon and inserting “; or”; and
- 32 (3) by inserting after subparagraph (E) the following:
33 “(F) to recover civil penalties under section 5(o) of this Act;”.

34 SEC. 13. MARKET DEFINITION.

35 (a) In General.—Establishing liability under the antitrust laws does not require the definition

1 of a relevant market, except when the definition of a relevant market is required, to establish a
2 presumption or to resolve a claim, under a statutory provision that explicitly references the terms
3 “relevant market”, “market concentration”, or “market share”. Statutory references to the term
4 “line of commerce” shall not constitute an exception to the foregoing rule that establishing
5 liability under the antitrust laws does not require the definition of a relevant market.

6 (b) Direct Evidence.—If direct evidence in the record is sufficient to prove actual or likely
7 harm to competition, an appreciable risk to competition sufficient to satisfy the applicable
8 statutory standard, or that the effect of an acquisition subject to section 7 of the Clayton Act (15
9 U.S.C. 18) may be to create an appreciable risk of materially lessening competition or to tend to
10 create a monopoly or a monopsony, neither a court nor the Federal Trade Commission shall
11 require definition of a relevant market in order to evaluate the evidence, to find liability, or to
12 find that a claim has been stated under the antitrust laws.

13 (c) Rule of Construction.—Nothing in this section may be construed to prevent a court or the
14 Federal Trade Commission from considering evidence relating to the definition of proposed
15 relevant markets to evaluate the merits of a claim under the antitrust laws.

16 SEC. 14. LIMITATIONS ON IMPLIED IMMUNITY FROM 17 THE ANTITRUST LAWS.

18 (a) In General.—In any action or proceeding to enforce the antitrust laws with respect to
19 conduct that is regulated under Federal statute, no court or adjudicatory body may find that the
20 Federal statute, or any rule or regulation promulgated in accordance with the Federal statute,
21 implicitly precludes application of the antitrust laws to the conduct unless—

22 (1) a Federal agency or department actively regulates the conduct under the Federal
23 statute;

24 (2) the Federal statute does not include any provision preserving the rights, claims, or
25 remedies under the applicable antitrust laws or under any area of law that includes the
26 antitrust laws; and

27 (3) Federal agency or department rules or regulations, adopted by rulemaking or
28 adjudication, explicitly require or authorize the defendant to undertake the conduct.

29 (b) Existing Federal Regulation.—In any action or proceeding described in subsection (a), the
30 antitrust laws shall be applied fully and without qualification or limitation, and the scope of the
31 antitrust laws shall not be defined more narrowly on account of the existence of Federal rules,
32 regulations, or regulatory agencies or departments, unless application of the antitrust laws is
33 precluded or limited by—

34 (1) an explicit exemption from the antitrust laws under a Federal statute; or

35 (2) an implied immunity that satisfies the requirements under subsection (a).

36 SEC. 15. AUTHORIZATION OF APPROPRIATIONS.

37 There is authorized to be appropriated for fiscal year 2022—

38 (1) \$484,500,000 for the Antitrust Division of the Department of Justice; and

39 (2) \$651,000,000 for the Federal Trade Commission.

1 SEC. 16. WHISTLEBLOWER PROTECTIONS.

2 (a) Protections for Civil Whistleblowers.—The Clayton Act (15 U.S.C. 12 et seq.) is amended
3 by inserting after section 27 (15 U.S.C. 26b) the following:

4 “SEC. 27A. ANTI-RETALIATION PROTECTION FOR CIVIL
5 WHISTLEBLOWERS.

6 “(a) Whistleblower Protections for Employees, Contractors, Subcontractors, and Agents.—

7 “(1) IN GENERAL.—No employer may discharge, demote, suspend, threaten, harass, or in
8 any other manner discriminate against a covered individual in the terms and conditions of
9 employment of the covered individual because of any lawful act done by the covered
10 individual—

11 “(A) to provide or cause to be provided to the Federal Government or a person with
12 supervisory authority over the covered individual (or such other person working for the
13 employer who has the authority to investigate, discover, or terminate misconduct)
14 information relating to any violation of, or any act or omission the covered individual
15 reasonably believes to be a violation of, the applicable antitrust laws; or

16 “(B) to cause to be filed, testify in, participate in, or otherwise assist a Federal
17 Government investigation or a Federal Government proceeding filed or about to be
18 filed (with any knowledge of the employer) relating to any violation of, or any act or
19 omission the covered individual reasonably believes to be a violation of, the applicable
20 antitrust laws.

21 “(2) LIMITATION ON PROTECTIONS.—Paragraph (1) shall not apply to any covered
22 individual if—

23 “(A) the covered individual planned and initiated a violation or attempted violation
24 of the applicable antitrust laws;

25 “(B) the covered individual planned and initiated a violation or attempted violation
26 of a criminal law in conjunction with a violation or attempted violation of the
27 applicable antitrust laws; or

28 “(C) the covered individual planned and initiated an obstruction or attempted
29 obstruction of an investigation by the Federal Government of a violation of the
30 applicable antitrust laws.

31 “(3) DEFINITIONS.—In this section:

32 “(A) APPLICABLE ANTITRUST LAWS.—The term ‘applicable antitrust laws’ means
33 section 1, 2, or 3 of the Sherman Act (15 U.S.C. 1, 2, and 3) or section 5 of the Federal
34 Trade Commission Act (15 U.S.C. 45) to the extent that such section applies to unfair
35 methods of competition.

36 “(B) COVERED INDIVIDUAL.—The term ‘covered individual’ means an employee,
37 contractor, subcontractor, or agent of an employer.

38 “(C) EMPLOYER.—The term ‘employer’ means a person, or any officer, employee,
39 contractor, subcontractor, or agent of such person.

1 “(D) FEDERAL GOVERNMENT.—The term ‘Federal Government’ means—

2 “(i) a Federal regulatory or law enforcement agency; or

3 “(ii) any Member of Congress or committee of Congress.

4 “(E) PERSON.—The term ‘person’ has the same meaning as in subsection (a) of the
5 first section of the Clayton Act (15 U.S.C. 12(a)).

6 “(b) Enforcement Action.—

7 “(1) IN GENERAL.—A covered individual who alleges discharge or other discrimination
8 by any employer in violation of subsection (a) may seek relief under subsection (c) by—

9 “(A) filing a complaint with the Secretary of Labor; or

10 “(B) if the Secretary of Labor has not issued a final decision within 180 days of the
11 filing of the complaint and there is no showing that such delay is due to the bad faith of
12 the claimant, bringing an action at law or equity for de novo review in the appropriate
13 district court of the United States, which shall have jurisdiction over such an action
14 without regard to the amount in controversy.

15 “(2) PROCEDURE.—

16 “(A) IN GENERAL.—A complaint filed with the Secretary of Labor under paragraph
17 (1)(A) shall be governed under the rules and procedures set forth in section 42121(b)
18 of title 49, United States Code.

19 “(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United
20 States Code, shall be made to any individual named in the complaint and to the
21 employer.

22 “(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be
23 governed by the legal burdens of proof set forth in section 42121(b) of title 49, United
24 States Code.

25 “(D) STATUTE OF LIMITATIONS.—A complaint under paragraph (1)(A) shall be filed
26 with the Secretary of Labor not later than 180 days after the date on which the
27 violation of this section occurs.

28 “(E) CIVIL ACTIONS TO ENFORCE.—If a person fails to comply with an order or
29 preliminary order issued by the Secretary of Labor pursuant to the procedures set forth
30 in section 42121(b) of title 49, United States Code, the Secretary of Labor or the
31 person on whose behalf the order was issued may bring a civil action to enforce the
32 order in the district court of the United States for the judicial district in which the
33 violation occurred.

34 “(c) Remedies.—

35 “(1) IN GENERAL.—A covered individual prevailing in any action under subsection (b)(1)
36 shall be entitled to all relief necessary to make the covered individual whole.

37 “(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall
38 include—

39 “(A) reinstatement with the same seniority status that the covered individual would

1 have had, but for the discrimination;

2 “(B) the amount of back pay, with interest; and

3 “(C) compensation for any special damages sustained as a result of the
4 discrimination including litigation costs, expert witness fees, and reasonable attorney’s
5 fees.

6 “(d) Rights Retained by Whistleblowers.—Nothing in this section shall be deemed to diminish
7 the rights, privileges, or remedies of any covered individual under any Federal or State law, or
8 under any collective bargaining agreement.”.

9 (b) Whistleblower Reward.—The Antitrust Criminal Penalty Enhancement and Reform Act of
10 2004 (15 U.S.C. 1 note) is amended by inserting after section 216 the following:

11 “SEC. 217. CRIMINAL ANTITRUST WHISTLEBLOWER
12 INCENTIVES.

13 “(a) Definitions.—In this section the following definitions shall apply:

14 “(1) ANTITRUST LAWS.—The term ‘antitrust laws’ means section 1 or 3 of the Sherman
15 Act (15 U.S.C. 1 and 3).

16 “(2) COVERED ENFORCEMENT ACTION.—The term ‘covered enforcement action’ means
17 any criminal action brought by the Attorney General under the antitrust laws that results in
18 criminal fines exceeding \$1,000,000.

19 “(3) ORIGINAL INFORMATION.—The term ‘original information’ means information that—

20 “(A) is derived from the independent knowledge or analysis of a whistleblower;

21 “(B) is not known to the Attorney General or the Department of Justice from any
22 other source, unless the whistleblower is the original source of the information; and

23 “(C) is not exclusively derived from an allegation made in a judicial or
24 administrative hearing, in a governmental report, hearing, audit, or investigation, or
25 from the news media, unless the whistleblower is a source of the information.

26 “(4) WHISTLEBLOWER.—The term ‘whistleblower’ means any individual who provides,
27 or 2 or more individuals acting jointly who provide, information relating to a violation of
28 the antitrust laws to the Department of Justice, in a manner established by the Department
29 of Justice.

30 “(b) Awards.—

31 “(1) IN GENERAL.—In a covered enforcement action, the Attorney General, subject
32 to subsection (c), may pay an award or awards to 1 or more whistleblowers who
33 voluntarily provided original information to the Department of Justice that led to the
34 successful enforcement of the covered enforcement action, in an amount equal to not
35 more than 30 percent, in total, of the what has been collected of the criminal fine
36 imposed in the covered enforcement action under the antitrust laws;

37 “(2) PAYMENT.—Any amount paid under paragraph (1) shall be paid from the criminal
38 fine collected in the covered enforcement action.

1 “(3) ORIGINAL INFORMATION.—The term ‘original information’ means information that—

2 “(c) Determination of Amount of Award; Denial of Award.—

3 “(1) DETERMINATION OF AMOUNT OF AWARD.—

4 “(A) DISCRETION.—The determination of the amount of an award made under
5 subsection (b) shall be in the discretion of the Attorney General.

6 “(B) CRITERIA.—In determining the amount of an award made under subsection (b),
7 the Attorney General shall take into consideration—

8 “(i) the significance of the information provided by the whistleblower to the
9 success of the covered enforcement action;

10 “(ii) the degree of assistance and cooperation provided by the whistleblower in
11 a covered enforcement action;

12 “(iii) the interest of the Department of Justice in deterring criminal violations of
13 the antitrust laws by making awards to whistleblowers who provide information
14 that lead to the successful covered enforcement actions; and

15 “(iv) such additional relevant factors as the Attorney General may establish.

16 “(2) DENIAL OF AWARD.—No award under subsection (b) shall be made—

17 “(A) to any whistleblower who is, or was at the time the whistleblower acquired the
18 original information submitted to the Commission, a member, officer, or employee
19 of—

20 “(i) any branch, agency, or instrumentality of the Federal government; or

21 “(ii) any law enforcement organization;

22 “(B) to any whistleblower who is convicted of a criminal violation related to the
23 covered enforcement action for which the whistleblower otherwise could receive an
24 award under this section;

25 “(C) to any whistleblower who was an originator or leader of or who coerced any
26 other party to participate in the activity giving rise to liability under the antitrust laws
27 in the covered enforcement action for which the whistleblower otherwise could receive
28 an award under this section;

29 “(D) to any whistleblower who fails to respond fully and truthfully to all inquiries of
30 the Department of Justice relating to the original information or intentionally withholds
31 information relating to the original information;

32 “(E) to any whistleblower who commits, participates in, or attempts to commit or
33 participate in any crimes after disclosing the original information to the Department of
34 Justice; or

35 “(F) to any whistleblower who fails to submit information to the Department of
36 Justice in such form as the Department may require.

37 “(d) Representation.—

38 “(1) PERMITTED REPRESENTATION.—Any whistleblower who makes a claim for an award

1 under subsection (b) may be represented by counsel.

2 “(2) REQUIRED REPRESENTATION.—Any whistleblower who makes a claim for an award
3 under subsection (b) may be represented by counsel.

4 “(A) IN GENERAL.—Any whistleblower who anonymously makes a claim for an
5 award under subsection (b) shall be represented by counsel if the whistleblower
6 anonymously submits the information upon which the claim is based.

7 “(B) DISCLOSURE OF IDENTITY.—Prior to the payment of an award, a whistleblower
8 shall disclose the identity of the whistleblower and provide such other information as
9 the Attorney General or the Department of Justice may require, directly or through
10 counsel for the whistleblower.

11 “(e) Appeals.—Any determination made under this section, including whether, to whom, or in
12 what amount to make awards, shall be in the discretion of the Attorney General. Any such
13 determination, except the determination of the amount of an award if the award was made in
14 accordance with subsection (b), may be appealed to the appropriate court of appeals of the
15 United States not more than 30 days after the determination is issued by the Attorney General.
16 The court shall review the determination made by the Attorney General in accordance with
17 section 706 of title 5.”.

18 SEC. 17. PREJUDGMENT INTEREST.

19 Section 4 of the Clayton Act (15 U.S.C. 15) is amended by striking subsection (a) and
20 inserting the following:

21 “(a) Except as provided in subsection (b), any person who shall be injured in his business or
22 property by reason of anything forbidden in the antitrust laws may sue therefor in any district
23 court of the United States in the district in which the defendant resides or is found or has an
24 agent, without respect to the amount in controversy, and shall recover threefold the damages by
25 him sustained, the cost of suit, including a reasonable attorney’s fee, and simple interest on
26 threefold the damages by him sustained for the period beginning on the date of service of such
27 person’s pleading setting forth a claim under the antitrust laws and ending on the date of
28 judgment.”.

29 SEC. 18. ADDITIONAL REMEDIES; RULES OF 30 CONSTRUCTION.

31 (a) Additional Remedies.—The rights and remedies provided under this Act are in addition to,
32 not in lieu of, any other rights and remedies provided by Federal law, including under section 4,
33 4A, 15, or 16 of the Clayton Act (15 U.S.C. 15, 15a, 25, 26) or section 13(b) of the Federal Trade
34 Commission Act (15 U.S.C. 53(b)).

35 (b) Rules of Construction.—Nothing in this Act may be construed to—

- 36 (1) impair or limit the applicability of any of the antitrust laws; and
37 (2) prohibit any other remedy provided by Federal law.