

Title: To.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the [“Anti-Monopoly and Competition Restoration Act of ____.”.]

SEC. 2. FINDINGS AND PURPOSE.

(a) Findings.—Congress finds that—

(1) fair, open, and competitive markets are necessary for a strong, healthy United States economy;

(2) over the last 3 decades, powerful corporations have amassed too much power over the United States economy, stifling competition in United States markets and harming consumers, workers, small businesses and entrepreneurs, and innovation;

(3) after remaining constant for nearly 3 decades, markups by United States companies increased by an average of 42 percent between 1980 and 2016, resulting in higher prices for consumers and higher profits for the richest corporations;

(4) in 1975, 109 companies pocketed half of all profits generated by firms in the United States whereas in 2015, only the top 30 firms did;

(5) market concentration is associated with lower wages and evidence shows that in more concentrated markets, giant corporations are less likely to pass on productivity gains to workers in the form of higher wages;

(6) market concentration has been accompanied by record drops in the prevalence of young companies, startups, and business investment ;

(7) startup rates fell by more than half over the last 4 decades in industries that saw an increase in concentration;

(8) net business investment has been cut in half since the early 1970s;

(9) corporate consolidation has disproportionately impacted low-income communities and communities of color as the recent Sprint and T-Mobile merger is estimated to increase prices for low-income customers who purchase prepaid plans by almost twice as much as for other customers;

(10) concentrated economic power creates concentrated political power, allowing giant corporations to invest growing sums of money into influencing government to tilt laws and rules in their favor;

(11) antitrust laws, including the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12), and the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were created to protect fair, open, and competitive markets and to prevent corporations from abusing their power to stifle competition;

(12) antitrust laws were not created exclusively to enhance the narrowly defined concept “consumer welfare” as articulated by academics such as Robert Bork, or as described by the Supreme Court of the United States in *Reiter v. Sonotone Corp.*, 442 U.S. 330 (1979), and its progeny;

(13) the Federal Trade Commission and the Department of Justice have failed to adequately enforce antitrust laws and courts have misinterpreted antitrust laws by adopting the misguided consumer welfare standard; and

(14) market concentration must be remedied to restore and protect competition in markets in the United States and ensure the United States economy benefits consumers, workers, small businesses and entrepreneurs, and innovation.

(b) Purpose.—The purpose of the antitrust laws is to protect the competitive process, including the market structures that—

(1) restore and protect competition between rivals;

(2) prevent the acquisition, maintenance, and abuse of market power; and

(3) preserve the benefits a competitive economy provides to all segments of American society, including workers, consumers, entrepreneurs, and citizens, especially increased innovation, a dynamic economy, and a healthy democracy.

SEC. 3. DEFINITIONS.

In this Act:

(1) AGENCY.—The term “Agency” means—

(A) the Commission; or

(B) any other agency enforcing the antitrust laws.

(2) ANTICOMPETITIVE CONDUCT.—The term “anticompetitive conduct” means conduct that violates the antitrust laws (including rules of the Commission interpreting the antitrust laws).

(3) ANTITRUST LAWS.—The term “antitrust laws”—

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

(B) includes—

(i) section 5 of the Federal Trade Commission Act (15 U.S.C. 45); and

(ii) this Act.

(4) COMMISSION.—The term “Commission” means the Federal Trade Commission.

SEC. 4. BANNING MEGA MERGERS, LIMITING LARGE MERGERS, AND REMEDYING PAST MERGERS.

(a) Definitions.—Subsection (a) of the first section of the Clayton Act (15 U.S.C. 12) is amended by adding at the end the following:

1 “‘Anticompetitive conduct’ means conduct that violates the antitrust laws (including any rules
2 of the Federal Trade Commission interpreting the antitrust laws).

3 “‘Antitrust laws’ has the meaning given the term in section 2 of the Anti-Monopoly and
4 Competition Restoration Act of ____.

5 “‘Large merger’—

6 “(1) means an acquisition in which—

7 “(A) the acquiring person or the person whose stocks or assets are being acquired
8 has annual revenue of not less than \$5,000,000,000 and not greater than
9 \$40,000,000,000;

10 “(B) the acquiring person and the person whose stocks or assets are being acquired
11 each have annual revenue of not less than \$1,000,000,000 and not greater than
12 \$15,000,000,000;

13 “(C) as a result of the acquisition, the acquiring person would have a market share of
14 greater than 10 percent of any relevant market as a buyer or seller, not greater than 45
15 percent of any relevant market as a seller, and not greater than 25 percent of any
16 relevant market as a buyer;

17 “(D) as a result of the acquisition, there would be fewer than 5 competitors of the
18 acquiring person with not less than 10 percent market share in any relevant market;

19 “(E) during the previous 7-year period, the acquiring person or the person whose
20 stocks or assets are being acquired has been found to have violated the antitrust laws;
21 and

22 “(2) does not include an acquisition that is a transaction described in paragraph (1), (2),
23 (3), (4), (5), (9), or (10) of section 7A(c).

24 “‘Mega merger’—

25 “(1) means an acquisition in which—

26 “(A) the acquiring person or the person whose stocks or assets are being acquired
27 has annual revenue of not less than \$40,000,000,000;

28 “(B) the acquiring person and the person whose stocks or assets are being acquired
29 each have annual revenue of not less than \$15,000,000,000;

30 “(C) as a result of the acquisition, the acquiring person would have a market share of
31 greater than 45 percent of any relevant market as a seller, or greater than 25 percent of
32 any relevant market as a buyer; or

33 “(D) as a result of the acquisition, there would be fewer than 4 competitors of the
34 acquiring person with not less than 10 percent market share in any relevant market; and

35 “(2) does not include an acquisition in which—

36 “(A)(i) the party being acquired is in danger of immediate insolvency;

37 “(ii) the party being acquired would not be able to reorganize successfully in
38 bankruptcy;

1 “(iii) the party being acquired has made unsuccessful good-faith efforts to elicit
2 reasonable alternative offers that would keep its assets in the relevant market and pose
3 a less severe danger to competition than does the proposed merger or acquisition; and

4 “(iv) the acquiring party is the only available purchaser; or

5 “(B) the acquisition is a transaction described in paragraph (1), (2), (3), (4), (5), (9),
6 or (10) of section 7A(c).”.

7 (b) Prohibition on Mega Mergers and Presumption Against Large Mergers.—Section 7 of the
8 Clayton Act (15 U.S.C. 18) is amended—

9 (1) by striking “lessen competition, or to tend to create a monopoly” each place the term
10 appears and inserting “harm the competitive process or lessen competition, or tend to create
11 or help maintain a monopoly or monopsony”; and

12 (2) by adding at the end the following:

13 “Any mega merger shall be unlawful under this section.

14 “Any large merger shall be presumptively unlawful under this section.

15 “In any action brought under this section for a merger or acquisition that is not a mega merger
16 or a large merger, if an initial showing that the merger may substantially harm the competitive
17 process or lessen competition, or tend to create or help maintain a monopoly or monopsony, is
18 made, the acquiring party or the party having its stocks or assets acquired in the proposed
19 transaction must show by clear and convincing evidence the lack of such harm. A court may not
20 balance procompetitive efficiencies with anticompetitive harms upon review.

21 “No acquiring person or person whose voting securities or assets are being acquired may make
22 any payment to an executive, board member, or any of the 20 highest paid employees or
23 consultants, in connection with or as a result of the acquisition, except in the case of a reasonable
24 severance payment if the executive or employee had their employment terminated against their
25 will.”.

26 (c) Process for Large Mergers.—

27 (1) HSR FILINGS.—

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

30 “(1)(1) The Federal Trade Commission shall identify, for large mergers, each State that—

31 “(A) would be impacted by the acquisition; and

32 “(B) would have jurisdiction to bring an action under section 4C.

33 “(2) The Federal Trade Commission shall submit to each attorney general of a State identified
34 under paragraph (1)—

35 “(A) notification of an acquisition under subsection (a) not later than 7 days after the date
36 on which any information or documentary material is filed with the Federal Trade
37 Commission under this section; and

38 “(B) an agreement to share information with the State relating to an acquisition under
39 subsection (a) not later than 7 days after the date on which any information or documentary

material is filed with the Federal Trade Commission under this section.

“(3) The Federal Trade Commission shall—

“(A) identify for a large merger any agency with substantial regulatory authority over a party involved in the merger or acquisition;

“(B) notify any agency with substantial regulatory authority over a party involved in the merger or acquisition of the proposed merger or acquisition; and

“(C) provide a copy of all documents submitted in relation to the merger or acquisition; and

“(D) reject a merger or acquisition unless all agencies with substantial regulatory authority have approved of the merger or acquisition.”.

(B) ENHANCED HSR REQUIREMENTS.—Section 7A(d) of the Clayton Act (15 U.S.C. 18a(d)) is amended—

(i) in paragraph (1), by striking “and” at the end;

(ii) by redesignating paragraph (2) as paragraph (4); and

(iii) by inserting after paragraph (1) the following:

“(2) shall require that for a large merger that the notification required under subsection (a) of this section include, in addition to the information described in paragraph (1)—

“(A) basic information on the acquiring person and the person whose voting securities or assets are being acquired, including—

“(i) names of each executive officer and board member of each person;

“(ii) the annual revenue for the previous 5-year period of each person; and

“(B) the stated justification for the acquisition and proposed plans to benefit workers, consumers, sellers, entrepreneurship, privacy, and innovation, including—

“(i) the use of new expertise, resources, and additional revenues to reduce prices;

“(ii) increase quality;

“(iii) increase privacy;

“(iv) increase worker pay, benefits, and conditions;

“(v) invest in the local community; and

“(vi) invest in research and development;

“(C) the projected impact of the acquisition on competition, workers, consumers, sellers, entrepreneurship, privacy, and innovation.”.

(2) LARGE MERGERS REQUIRE APPROVAL.—Section 7A of the Clayton Act (15 U.S.C. 18a) is amended—

(A) in subsection (a), in the matter preceding paragraph (1), by inserting “, subject to subsection (b)(4),” before “the waiting period”; and

(B) in subsection (b), by adding at the end the following:

“(4)(A) An acquiring person may not acquire stocks or assets as part of a large merger unless the Federal Trade Commission authorizes the acquisition or a court issues an order authorizing the acquisition.

“(B)(i) Subject to clause (ii), not later than 120 days after the Federal Trade Commission receives a notification pursuant to rules under subsection (d)(1) relating to a large merger the Federal Trade Commission shall determine whether to authorize the acquisition of stocks or assets as part of a large merger.

“(ii) If the Federal Trade Commission determines that all information and documentary material has not been supplied, the Federal Trade Commission shall reject the merger.

“(iii) The Federal Trade Commission shall reject a large merger unless the parties prove that the merger will not substantially harm the competitive process or lessen competition, or tend to create or help maintain a monopoly or monopsony.”.

(3) BAN ON CONDITIONAL APPROVAL.—The Commission or attorney general of State—

(A) may only approve or block a large merger; and

(B) may not approve a large merger dependent on any condition, including the sale of assets.

(4) PUBLIC COMMENT.—The Commission shall provide an opportunity for public comment during the 60-period beginning on the date on which the Agency commences review of a merger or acquisition.

(5) PUBLIC DECISION AND APPEAL.—The decision of the Commission or attorney general of a State to allow or block a large merger shall be made publicly available.

(6) RETROACTIVE REVIEW.—

(A) LARGE MERGERS.—

(i) IN GENERAL.—Except as provided in clause (ii), the Commission shall review any approved large mergers, as defined in section 7 of the Clayton Act (15 U.S.C. 18) during the 1-year period beginning on the date that is 2 years after the merger or acquisition was approved.

(ii) EXCEPTION.—The Commission may initiate a review described in clause (i) before or after the 1-year period described in that clause if the Commission determines that the merger did not result in the benefits described in the stated justification submitted under section [X].

(iii) FACTORS.—A review conducted under clause (i) shall analyze the following factors:

(I) The impact of the merger or acquisition on consumers, workers, sellers, entrepreneurship, privacy, innovation, and competition.

(II) Whether the acquiring person has satisfied the stated justification and proposed plans for the use of the expected efficiencies of the merger or acquisition under paragraph (2) of section 7A(d) of the Clayton Act (15 U.S.C. 18a(d)), as added by subsection (b) of this section.

(iv) UNWINDING.—

(I) IN GENERAL.—The Commission shall unwind a merger or acquisition reviewed under this paragraph, including by requiring that the acquiring person make divestitures, if the Agency determines that—

(aa) the merger or acquisition has materially harmed consumers, workers, sellers, entrepreneurship, privacy, innovation, or competition; or

(bb) the acquiring person has failed to satisfy the stated justification of the merger or acquisition the merger did not result in the benefits described in the stated justification submitted under paragraph (2) of section 7A(d) of the Clayton Act (15 U.S.C. 18a(d)), as added by subsection (b) of this section.

(II) JUDICIAL REVIEW.—An unwinding under this clause shall be subject to judicial review.

(B) IMMEDIATE RETROACTIVE REVIEW OF MEGA MERGERS.—

(i) IN GENERAL.—The Commission shall immediately review every merger or acquisition that is a mega merger, as defined in section 7 of the Clayton Act (15 U.S.C. 18) that has been completed on or after January 1, 2000, and before the Agency has established and implemented a review process after the date of enactment of this Act.

(ii) REMEDY.—The Commission shall take immediate action to remedy a merger or acquisition under clause (i) to restore competition, including by unwinding the merger or acquisition and requiring that the acquiring person make divestitures, if the Commission determines that the merger or acquisition brought material harm—

(I) to competition or the competitive process; or

(II) consumers, workers, sellers, entrepreneurship, privacy, or innovation.

(iii) DEADLINE.—The Commission shall complete its review and make enforcement decisions not later than 2 years after the date on which the Agency establishes and implements a review process after the date of enactment of this Act.

(iv) PUBLIC FINDINGS.—And that all findings and decisions described in clause (iii) shall be made publicly available.

(d) Standards of Review.—

(1) IN GENERAL.—A decision to allow or block a merger under this section shall be subject to judicial review under section 702 of title 5, United States Code.

(2) APPROVAL.—An approval of a large merger shall be considered a question of fact, reviewable for clear error.

(3) REJECTION.—The rejection of a large merger shall be considered matters of discretion and reviewable for abuse of discretion.

SEC. 5. EXPANDING BANS ON ANTICOMPETITIVE BEHAVIOR.

(a) Definitions.—Section 8 of the Sherman Act (15 U.S.C. 7) is amended by striking “That the word ‘person,’ or ‘persons,’ whenever used in this act shall be deemed to include” and inserting the following: “In this Act:

“(1) ANTICOMPETITIVE CONDUCT.—The term ‘anticompetitive conduct’ means conduct that violates the antitrust laws (including any rules of the Federal Trade Commission interpreting the antitrust laws).

“(2) ANTITRUST LAWS.—The term ‘antitrust laws’ has the meaning given the term in section 2 of the Anti-Monopoly and Competition Restoration Act of ____.

“(3) AGENCY.—The term ‘Agency’ means—

“(A) the Federal Trade Commission; or

“(B) any other agency enforcing the antitrust laws.

“(4) COMPETITIVE TERMS.—The term ‘competitive terms’ means the material non-price terms and conditions of competition, including product quality, quantity, privacy, data protection, product variety, service, and innovation.

“(5) PERSON.—The term ‘person’ includes”.

(b) Prohibition on the Worst Anticompetitive Behavior.—

(1) IN GENERAL.—Section 1 of the Sherman Act (15 U.S.C. 1) is amended—

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

(B) by adding at the end the following:

“(b)(1) In this subsection:

“(A) The term ‘bid rigging’—

“(i) means any coordination or agreement that undermines a competitive bidding process, including coordination of an agreement that is written, verbal, or inferred from conduct, among 2 or more potential or actual bidders or the Government soliciting bids; and

“(ii) includes—

“(I) an agreement as to which bidder will win the bid;

“(II) an agreement to alternate acting as low bidder;

“(III) an agreement to sit out a bidding round;

“(IV) an agreement to provide an unacceptable bid; and

“(V) an agreement to subcontract to a losing bidder or forming a joint venture to submit a single bid.

“(B) The terms ‘employee’ and ‘employer’ have the meanings given the terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

1 “(C) The term ‘group boycott’ means any agreement, including an agreement that is
2 written, verbal, or inferred from conduct—

3 “(i) between 2 or more competitors to refuse, including a constructive refusal, to
4 conduct business with a firm; and

5 “(ii) the purpose or effect of which is to lessen competition.

6 “(D) The term ‘horizontal market allocation’ means any agreement, including an
7 agreement that is written, verbal, or inferred from conduct, among 2 or more competitors—

8 “(i) to divide or allocate, or attempt to divide or allocate, territories, markets,
9 product lines, or customers; or

10 “(ii) the purpose or effect of which is to limit the ability of a competitor or reduce
11 the incentive of a competitor to compete for customers in any market or market
12 segment.

13 “(E) The term ‘horizontal price fixing’ means—

14 “(i) any agreement, including an agreement that is written, verbal, or inferred from
15 conduct, among 2 or more competitors for the purpose of raising, lowering, stabilizing,
16 or setting minimum or maximum prices or otherwise tampering with prices or
17 competitive terms; or

18 “(ii) the exchange of prices or competitive terms among competitors—

19 “(I) with the intent to fix prices or competitive terms; or

20 “(II) that adversely impacts prices or competitive terms.

21 “(F) The term ‘noncompete agreement’ means an agreement, entered into between a
22 person and any individual who performs work for the person and who in any workweek is
23 engaged in commerce or in the production of goods for commerce (or is employed in an
24 enterprise engaged in commerce or in the production of goods for commerce), including an
25 agreement entered into before and enforced after the date of enactment of this subparagraph,
26 that restricts the individual from performing, after the relationship for providing work
27 terminates, any of the following:

28 “(i) Any work for another employer for a specified period of time.

29 “(ii) Any work in a specified geographical area.

30 “(iii) Any work for another employer that is similar to the work by the employee for
31 the employer that is a party to the agreement.

32 “(G) The term ‘no-poach agreement’—

33 “(i) means any agreement that—

34 “(I) is written, verbal, or inferred from conduct;

35 “(II) is between 2 or more employers, including franchisees; and

36 “(III) prohibits or restricts one employer from soliciting or hiring the
37 employees or former employees of another employer; and

38 “(ii) includes—

- 1 “(I) a franchise agreement; and
- 2 “(II) a contractor-subcontractor agreement
- 3 “(H) The term ‘vertical market allocation’—
- 4 “(i) means any agreement, including an agreement that is written, verbal, or inferred
- 5 from conduct, among 2 firms in the same supply chain, including manufacturers,
- 6 wholesalers, distributors, and retailers to divide or allocate, or attempt to divide or
- 7 allocate, territories, markets, product lines, or customers; and
- 8 “(ii) does not include any agreement related to the introduction of a product or
- 9 service that has been on the market for not longer than 1 year.
- 10 “(I) The term ‘wage fixing’ means—
- 11 “(i) any agreement, including an agreement that is written, verbal, or inferred from
- 12 conduct, among 2 or more competitors for the purpose of raising, lowering, stabilizing,
- 13 or setting minimum or maximum wages, salaries, benefits or other forms of
- 14 compensation, or otherwise tampering with any form of compensation or competitive
- 15 employment terms; or
- 16 “(ii) the exchange of wages, salaries, benefits, or other forms of compensation or
- 17 competitive employment terms among competitors—
- 18 “(I) with the intent to fix any form of worker compensation or competitive
- 19 employment terms; or
- 20 “(II) that adversely impacts any form of worker compensation or competitive
- 21 employment terms.
- 22 “(2) It shall be a violation of this section for any person to engage in, or attempt to engage in,
- 23 the following conduct:
- 24 “(A) Horizontal price fixing.
- 25 “(B) Bid rigging.
- 26 “(C) Horizontal market allocation
- 27 “(D) Vertical market allocation.
- 28 “(E) Wage fixing.
- 29 “(F) A group boycott.
- 30 “(G) A noncompete agreement, except in the case of a legitimate sale of a business or
- 31 assets.
- 32 “(H) A no-poach agreement.
- 33 “(3)(A) Any entity who violates this subsection shall—
- 34 “(i) be fined not more than 15 percent of the annual revenue of the entity; and
- 35 “(ii) disgorge any profits gained by the entity as a result of the unlawful conduct.
- 36 “(B) An individual who knowingly violates this subsection—

“(i) shall be fined not more than \$20,000,000, imprisoned for not more than 10 years, or both; and

“(ii) may not participate as a stock holder, officer, employee, board member, or consultant of any entity that violates this section.

“(C) A chief executive officer shall be liable under this paragraph for any violation of this subsection committed by an officer or employee of the company of the chief executive officer if the chief executive officer knew or should have known of the violation.

“(4) The Federal Trade Commission shall promulgate regulations to add additional types of conduct to those listed in paragraph (2).”.

SEC. 6. PROHIBITING THE ABUSE OF MARKET POWER.

(a) Prohibition on Abuse of Market Power.—

(1) IN GENERAL.—Section 2 of the Sherman Act (15 U.S.C. 2) is amended—

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

(B) by adding at the end the following:

“(b)(1) No person may abuse, or attempt to abuse, market power.

“(2) A person shall be deemed guilty of violating this subsection by abusing market power if the person—

“(A) has market power; and

“(B) engages in conduct, or has engaged in a pattern of past conduct, that materially harms competition or the competitive process.

“(3) In an action under this subsection, market power shall be established by showing—

“(A) that the person—

“(i) has not less than 40 percent market share in the relevant market as a seller;

“(ii) has not less than 25 percent market share in the relevant market as a buyer, including as an employer; or

“(iii) has annual revenue of not less than \$40,000,000,000; or

“(B) that—

“(i) the person has—

“(I) directly or indirectly imposed an unfair purchase or selling terms or any other unfair trading condition;

“(II) limited production, markets, or technical development to the prejudice or detriment of consumers or sellers;

“(III) placed parties in trade at a competitive disadvantage by applying dissimilar conditions to substantially equivalent transactions; or

“(IV) made the conclusion or effectiveness of a contract subject to the other party accepting a supplementary obligation that has no connection with the

1 subject of the contract;

2 “(ii) the entry of a new competitor would likely—

3 “(I) reduce prices by at least 5 percent, result in the person losing significant

4 sales, or improve competitive terms for one or more buyers, in the case of a seller;

5 or

6 “(II) increase prices or wages, or improve competitive terms for one or more

7 sellers, in the case of a buyer; or

8 “(iii) the person engaged in any behavior described in a rule promulgated by the

9 Federal Trade Commission under subsection (c)(2) of the [Anti-Monopoly and

10 Competition Restoration Act of _____.]

11 “(4) It shall be a presumptive abuse of market power under this section for a person with

12 market power to engage or attempt to engage in the following conduct:

13 “(A) Vertical price-fixing.

14 “(B) Any refusal to deal.

15 “(C) Exclusive dealing.

16 “(D) Serving as both a platform and a merchant that competes with third-party merchants.

17 “(E) Price gouging.

18 “(F) Predatory pricing.

19 “(G) Denying access to essential facilities.

20 “(H) Tying.

21 “(I) Any nonsolicitation clause.

22 “(J) Any restriction on the freedom to disclose information about wages and benefits.

23 “(K) An agreement among employers to share wage and salary information exclusively

24 across employers.

25 “(L) Misclassification of employees as independent contractors.

26 “(M) Unfair labor practices listed in section 8 of the National Labor Relations Act (29

27 U.S.C. 158).

28 “(N) Any contract clause that restricts post-employment employee mobility.

29 “(O) Any conduct considered a per se violation of section 1.

30 “(P) Any behavior that may reasonably help the person attain or maintain market power if

31 the behavior leads to a criminal conviction or civil liability.

32 “(5)(A) Any entity that violates this subsection shall—

33 “(i) be fined not less than 5 percent of the annual revenue of the entity;

34 “(ii) disgorge any profits gained by the entity as a result of the unlawful conduct; and

35 “(iii) provide restitution to any person injured by the anticompetitive conduct of the

36 entity.

“(B) An individual who knowingly violates this subsection—

“(i) shall be fined not more than \$50,000,000, imprisoned for not more than 15 years, or both;

“(ii) may not participate as a stock holder, officer, board member, employee, or consultant of any entity that violates this section; and

“(iii) shall be banned from participating in the relevant market—

“(I) in the case of an initial violation of this subsection, for a period of 1 year;

“(II) in the case of a second violation of this subsection, for a period of 10 years; and

“(III) in the case of a third or subsequent violation of this subsection, for life.

“(C) A chief executive officer shall be liable under this paragraph for any violation of this subsection committed by an officer or employee of the company of the chief executive officer if the chief executive officer knew or should have known of the violation.

“(6) The Federal Trade Commission—

“(A) shall promulgate regulations to add additional types of conduct to those listed in paragraph (2); and

“(B) may promulgate regulations to decrease the thresholds in paragraph (3)(A).

“(7) In this subsection:

“(A) The term ‘essential facilities’ means the digital or physical infrastructure materially important for reaching customers or trading partners or for enabling competitors to carry on business and difficult to duplicate due to physical, geographical, legal, technological, or economic constraints.

“(B) The term ‘exclusive dealing’ means—

“(i) to lease or make a sale or contract for sale of any commodities or services, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities or services of another person; or

“(ii) to incentivize through excessive rebates or similar benefits in exchange for a commitment from a lessee or purchaser not to use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities or services of another person.

“(C) The term ‘market power’ means—

“(i) with respect to a seller, the ability to increase prices above, diminish quality below, or obtain more favorable competitive terms from a buyer than would exist in a competitive market; and

“(ii) with respect to a buyer, the ability to reduce prices, including wages, below, diminish quality, or obtain more favorable competitive terms from a seller than would exist in a competitive market.

“(D) The term ‘nonsolicitation clause’ means any agreement between an employer and an

1 employee that prohibits, restricts, or in any way limits the employee from soliciting or
2 customers of the employer.

3 “(E) The term ‘platform’ means any technology or group of technologies that—

4 “(i) operate or provide the main interface between different users or market
5 participants, such as individuals, advertisers, or providers of content, services, and
6 goods; and

7 “(ii) allow for exchanges of at least some goods, services, or content that the
8 technology does not own.

9 “(F) The term ‘predatory pricing’ means—

10 “(i) pricing below the average variable cost of a person, regardless of whether there
11 is a dangerous probability of recouping the investment in below-cost prices; or

12 “(ii) pricing above the average variable cost of a person that has the purpose or
13 effect of excluding competition or harming the competitive process.

14 “(G) The term ‘price gouging’ means charging a price above cost more than 15 percent
15 higher than the average price above cost for a product or service in the relevant market
16 during the preceding 12-month period.

17 “(H) The term ‘refusal to deal’ means—

18 “(i) terminating an existing agreement with a person or refusing to enter an
19 agreement with a person to achieve an anticompetitive end; or

20 “(ii) a refusal by a person to provide access to a product, service, resource, or
21 facility—

22 “(I) that is likely to exclude rivals or diminish competition; and

23 “(II)(aa) that prevents the emergence of a new product for which there is
24 potential consumer demand; or

25 “(bb) prevents improving current products in a relevant market.

26 “(I) The term ‘resale price maintenance’ means a contract, combination, or conspiracy
27 that establishes a maximum price above, or a minimum price below, which a retailer,
28 wholesaler, or distributor may not sell a commodity or service.

29 “(J) The term ‘tying’ means any agreement, including an agreement that is written,
30 verbal, or inferred from conduct, by a party to sell 1 product or service if the purpose or
31 effect is to force the buyer into purchasing or obtaining a separate and distinct product or
32 service.

33 “(K) The term ‘vertical price fixing’ means—

34 “(i) any agreement, including an agreement that is written, verbal, or inferred from
35 conduct, among 2 firms in the same supply chain, including manufacturers,
36 wholesalers, distributors, and retailers, for the purpose of raising, lowering, stabilizing,
37 setting minimum prices, or otherwise tampering with prices or competitive terms; or

38 “(ii) the exchange of prices or competitive terms among competitors—

1 “(I) with the intent to fix prices or competitive terms; or

2 “(II) that adversely impacts prices or competitive terms.”.

3 (2) RULEMAKING.—Not later than 2 years after the date of enactment of this Act, the
4 Agency shall promulgate regulations identifying direct evidence of market power, including
5 forms of price and wage discrimination, in addition to the evidence described in subsection
6 (c)(1) of section 2 of the Sherman Act (15 U.S.C. 2), as added by paragraph (1) of this
7 subsection.

8 (b) Jurisdiction.—Section 4 of the Sherman Act (15 U.S.C. 4) is amended—

9 (1) in the first sentence—

10 (A) by inserting “and the Federal Trade Commission” after “Attorney-General,”;
11 and

12 (B) by striking “The several circuit” and inserting “(a) The several district”; and

13 (2) by adding at the end the following:

14 “(b)(1) In an action brought under section 1 of this Act, if an initial showing of harm caused
15 by anticompetitive conduct is made, the parties complained of must show by clear and
16 convincing evidence the lack of such harm.

17 “(2) Economic efficiencies or procompetitive benefits may only be considered to rebut the
18 initial showing of harm caused by anticompetitive conduct if—

19 “(A)(i) the procompetitive benefit or efficiency applies to the same population impacted
20 by the anticompetitive harm; and

21 “(ii) the procompetitive benefit or efficiency eliminates the anticompetitive harm;

22 “(B) the procompetitive benefit or efficiency is verifiable; and

23 “(C) the anticompetitive conduct is reasonably necessary to achieve the procompetitive
24 benefit or efficiency and there is no less restrictive alternative for doing so.

25 “(3) If a showing of the presence of anticompetitive intent is made by clear and convincing
26 evidence, there shall be a presumption of harm such that the burden shall shift to the party
27 engaged in the conduct to demonstrate by clear and convincing evidence the lack of such harm.

28 “(c)(1) In an action brought under section 2, if the an initial showing of an abuse of power is
29 made, the person must show by clear and convincing evidence the lack of such harm.

30 “(2) Economic efficiencies or procompetitive benefits may not be considered to rebut an abuse
31 of power.

32 “(d) A party may rebut a presumption established under section 2(b)(4) through clear and
33 convincing evidence that the conduct does not materially harm competition or the competitive
34 process. A court may not balance procompetitive efficiencies with anticompetitive impacts upon
35 review.”

36 SEC. 7. STRENGTHENING ANTITRUST ENFORCEMENT.

37 (a) Definitions.—Section 4 of the Federal Trade Commission Act (15 U.S.C. 44) is amended
38 by adding at the end the following:

“‘Agency’ has the meaning given the term in section 2 of the Anti-Monopoly and Competition Restoration Act of ____.

“‘Anticompetitive conduct’ means conduct that violates the antitrust laws (including any rules of the Commission interpreting the antitrust laws).

“‘Antitrust laws’ has the meaning given the term in section 2 of the Anti-Monopoly and Competition Restoration Act of ____.

“‘Market power’ has the meaning given the term in section 2 of the Sherman Act (15 U.S.C. 2).”.

(b) Jurisdiction.—

(1) INVESTIGATIONS.—Section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is amended—

(A) in subsection (c), by striking “, and upon the application of the Attorney General”;

(B) in subsection (e), by striking “Upon the application of the Attorney General to” and inserting “To”;

(C) in subsection (j)(1), by striking “, other than Federal antitrust laws,” and all that follows through “6211(5))),”; and

(D) by adding at the end the following:

“(m) Rule of Construction.—Nothing in this section may be construed to limit the jurisdiction of the Board of Governors of the Federal Reserve System, the Department of Agriculture, or the Federal Communications Commission.”.

(2) PERSONS, PARTNERSHIPS, AND CORPORATIONS.—Section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)) is amended by striking “, except banks” and all that follows through “said Act,”.

(3) REFERRALS.—Section 7 of the Federal Trade Commission Act (15 U.S.C. 47) is amended by inserting “or the Commission” after “the Attorney General”.

(c) Rulemaking.—

(1) SECTION 1.—Not later than 1 year after the date of enactment of this Act, the Federal Trade Commission shall promulgate regulations to further define conduct that constitutes a contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade, as prohibited by section 1 of the Sherman Act (15 U.S.C. 1).

(2) SECTION 2.—Not later than 1 year after the date of enactment of this Act, the Federal Trade Commission shall promulgate regulations to further define conduct that creates a presumption of abuse of market power, as prohibited by section 2 of the Sherman Act (15 U.S.C. 2).

(3) CERTIFICATIONS.—Not later than 1 year after the date of enactment of this Act, the Federal Trade Commission shall promulgate regulations setting forth the process under which certifications made under Section 12(a) of this Act shall be submitted.

(4) INTERPRETIVE RULES.—Section 18 of the Federal Trade Commission Act (15 U.S.C.

57a) is amended—

(A) in subsection (a)(1)—

(i) in subparagraph (A), by striking “, and” and inserting a semicolon;

(ii) in subparagraph (B)—

(I) by striking “section 5(a)(1)), except” and inserting “section 5(a)(1)) (except”;

(II) by striking “section. Rules” and inserting “section) and any rules”; and

(III) by striking the period at the end and inserting a “; and”; and

(iii) by adding at the end the following:

“(C) interpretive rules and general statements of policy with respect to the antitrust laws;”.

(B) by striking subsections (b) through (h) and inserting the following:

“(b) The Commission may promulgate rules under subsection (a)(1) in accordance with section 553 of title 5, United States.”;

(C) by redesignating subsections (i) and (j) as subsections (c) and (d), respectively; and

(D) by adding at the end the following:

“(e) If an antitrust law that an agency administers is silent or ambiguous, and an agency has followed the procedures in section 553 and 554 of title 5, United States, as applicable, a reviewing court shall defer to the agency’s reasonable or permissible interpretation of that statute.”.

(d) Litigation Authority.—

(1) IN GENERAL.—Section 16 of the Federal Trade Commission Act (15 U.S.C. 56) is amended to read as follows:

“SEC. 16. INDEPENDENT LITIGATION AUTHORITY.

“(a) In General.—The Commission shall have authority to commence or defend, and supervise the litigation of a civil action and any appeal of such an action in its own name by any of its attorneys designated by it for such purpose under the antitrust laws.

“(b) Foreign Litigation.—

“(1) COMMISSION ATTORNEYS.—The Commission may—

“(A) retain foreign counsel to represent the Commission in foreign courts on particular matters in which the Commission has an interest; and

“(B) designate Commission attorneys to assist in connection with such matters.

“(2) COSTS OF FOREIGN COUNSEL.—The Commission is authorized to expend appropriated funds for the retention of foreign counsel for litigation in foreign courts and for expenses related to litigation in foreign courts in which the Commission has an interest.

1 “(3) LIMITATION ON USE OF FUNDS.—Nothing in this subsection authorizes the payment
2 of claims or judgments from any source other than the permanent and indefinite
3 appropriation authorized by section 1304 of title 31, United States Code.

4 “(4) OTHER AUTHORITY.—The authority provided by this subsection is in addition to any
5 other authority of the Commission.”.

6 (2) MANDAMUS.—Section 9 of the Federal Trade Commission Act (15 U.S.C. 49) is
7 amended in the fourth undesignated paragraph by striking “of the Attorney General” and all
8 that follows through “the district courts” and inserting “of the Commission, the district
9 courts”.

10 (e) Administrative Enforcement.—

11 (1) IN GENERAL.—Section 6 of the Federal Trade Commission Act (15 U.S.C. 46), as
12 amended by subsection (a) of this section, is amended by adding at the end the following:

13 “(n) Other Administrative Enforcement.—The Commission shall have power—

14 “(1) after providing notice and an opportunity for a hearing, in accordance with chapter 5
15 of title 5, United States Code, to—

16 “(A) impose a civil penalty for a violation of the antitrust laws;

17 “(B) order divestiture of specified assets or business units with respect to—

18 “(i) a previously completed merger or acquisition, in accordance with section 7
19 of the Clayton Act (15 U.S.C. 18); or

20 “(ii) a violation of the antitrust laws if divestiture is necessary to address the
21 underlying harm;

22 “(iii) a proposed merger or acquisition that does not meet the thresholds to be
23 considered a large merger or a mega merger, as those terms are defined in section
24 7 of the Clayton Act (15 U.S.C. 18);

25 “(C) issue an order barring the completion of a merger or acquisition that is subject
26 to review under section 7 of the Clayton Act (15 U.S.C. 18);

27 “(D) for any entity against whom an administrative or judicial order is entered
28 determining that the entity engaged in anticompetitive conduct, order the entity be
29 debarred from participating in Federal contracts for a period of not less than 3 and not
30 more than 7 years;

31 “(E) issue an order barring any individual who has violated the Sherman Act (15
32 U.S.C. 1 et seq.) from participating as a stockholder, officer, board member, employee,
33 or consultant of an entity in the same market, as determined by the Commission, in
34 which the individual committed the violation;

35 “(F) issue an order imposing personal liability on an individual who is the chief
36 executive officer (or equivalent) of an entity that has violated section 2 of the Sherman
37 Act (15 U.S.C. 2) for payment of damages and penalties relating to the violation by the
38 entity;

39 “(G) issue an order requiring disgorgement of all ill-gotten gains made by engaging
40 in unlawful actions; and

“(H) issue an order requiring restitution to all parties injured by unlawful actions;
and

“(2) to initiate proceedings before an administrative law judge seeking damages relating
to a violation of the antitrust laws.

“(o) Effect of Administrative Enforcement.—Any determination in an administrative
enforcement by the Commission relating to the Sherman Act (15 U.S.C. 1 et seq.) shall have the
force and effect of a rulemaking.”.

(2) DEFERENCE.—Any reasonable definition of the relevant market, market share, and
any anticompetitive conduct alleged in an enforcement action by the Agency shall be given
deference by a reviewing court.

SEC. 8. TRANSPARENCY AND PUBLIC PARTICIPATION.

(a) Publicly Available Decisionmaking.—

(1) IN GENERAL.—Any decision by the Agency to take or not to take an enforcement
action under the antitrust laws and the results of any investigation shall—

(A) be made publicly available; and

(B) include a substantive justification for the decision described paragraph (2).

(2) SUBSTANTIVE JUSTIFICATION.—A substantive decision described in this paragraph—

(A) with respect to an acquisition, includes—

(i) an explanation of how the acquisition met or did not harm the competitive
process or lessen competition, or tend to create or help maintain a monopoly or
monopsony, including an analysis of how the merger or acquisition will impact
competition, workers, consumers, sellers, entrepreneurship, privacy, and
innovation; and

(ii) an explanation of why, in light of the factors described in clause (i), the
acquisition was blocked or approved; and

(B) with respect to enforcement of the antitrust laws not relating to acquisitions,
includes—

(i) an explanation of how the conduct was or was not illegal under the antitrust
laws, including an analysis of how the conduct impacted competition, workers,
consumers, sellers, entrepreneurship, privacy, and innovation; and

(ii) an explanation of why, in light of the factors described in clause (i), an
enforcement action was or was not brought.

(b) Review Upon Request of Aggrieved Parties.—

(1) DEFINITION.—In this subsection, the term “aggrieved party”—

(A) with respect to an acquisition, includes a competitor in any relevant market, a
business entity in the supply chain of the acquiring or acquired entity, a consumer of
either party to the acquisition, and an employee of the acquiring or acquired entity; and

(B) with respect to an enforcement action, includes any person that would have

standing to bring a claim under the antitrust laws relating to the alleged conduct.

(2) REQUEST.—An aggrieved party may submit a written request that the Agency—

(A) initiate an investigation or an enforcement action under the antitrust laws; or

(B) seek to block a merger or acquisition or reject a large merger under section 7 of the Clayton Act (15 U.S.C. 18).

(3) AGENCY ACTION.—

(A) IN GENERAL.—Not later than 30 days after receiving a written request under paragraph (2), the Agency shall notify the aggrieved party in writing regarding whether the Agency will conduct an investigation.

(B) CONTENTS.—If the Agency determines not to instigate an investigation in response to a written request under paragraph (2), the notice under subparagraph (A) shall include a substantive justification for the decision of the Agency.

SEC. 9. PROTECTING WORKER COOPERATION.

Section 6 of the Clayton Act (15 U.S.C. 17) is amended to read as follows:

“SEC. 6. LABOR.

“(a) That the labor of a human being is not a commodity or article of commerce.

“(b) Nothing contained in the antitrust laws shall be construed to forbid or restrain—

“(1) the existence and operation of labor, agricultural, service, or horticultural organizations that—

“(A) are instituted for the purposes of mutual help; and

“(B)(i) do not issue capital stock; or

“(ii) are not conducted for profit;

“(2) individual members of an organization described in paragraph (1) from carrying out the objects of the organization;

“(3) cooperation among workers when negotiating their compensation, benefits, fees, or working conditions through joint bargaining or collective action with other parties; or

“(4) cooperation among workers when taking unilateral collective action related to compensation, benefits, fees, or working conditions, including collective withholding or reduction of labor or services, strikes, and boycotts.

“(c) The organizations and workers described in subsection (b) shall not be held of construed to be illegal combinations or conspiracies in restraint of trade under the antitrust laws.

“(d) The applicability of subsections (b) and (c) shall include relationships between a worker and a platform that mediates between the worker and a buyer.

“(e) The term ‘platform’ means any technology or group of technologies that—

“(1) operate or provide the main interface between different users or market participants such as individuals, advertisers, or providers of content, services, and goods; and

1 “(2) allow for exchanges of some goods, services, or content that the technology does not
2 own.”.

3 SEC. 10. PLEADING STANDARD AND CLASS 4 CERTIFICATION.

5 (a) Pleading Standard.—

6 (1) IN GENERAL.—Rule 12 of the Federal Rules of Civil Procedure is amended by adding
7 at the end the following:

8 “(j) Pleading standards. A court shall not dismiss a complaint under Rule 12(b)(6), 12(c),
9 12(e), or 56—

10 “(1) unless it appears beyond doubt that the plaintiff can prove no set of facts in support
11 of the claim which would entitle the plaintiff to relief;

12 “(2) on the basis of a determination by the court that the factual contents of the complaint
13 do not show the plaintiff’s claim to be plausible or are insufficient to warrant a reasonable
14 inference that the defendant is liable for the misconduct alleged; or

15 “(3) on the grounds that the alleged conduct is or would be economically irrational or
16 implausible.”.

17 (2) APPLICABILITY.—Rule 12(j) of the Federal Rules of Civil Procedure, as added by
18 subsection (a), shall apply with respect to the dismissal of complaints except as otherwise
19 expressly provided by an Act of Congress enacted after the date of the enactment of this Act
20 or by amendments made after such date of enactment to the Federal Rules of Civil
21 Procedure pursuant to the procedures prescribed by the Judicial Conference of the United
22 States under chapter 131 of title 28, United States Code.

23 (b) Class Certification.—Any class action may be certified under rule 23 of the Federal Rules 24 of Civil Procedure—

25 (1) regardless of whether the damages resulting from an alleged injury are measurable on
26 a class-wide basis at the time of class certification; and

27 (2) if the alleged injury to some class members other than the class representative is at
28 least de minimis.

29 (c) Antitrust Injury.—In an antitrust case, a showing that harm or anticipated harm to the
30 plaintiff flows from that which makes an act of a person unlawful, as required by article III of the
31 Constitution of the United States, shall be sufficient to establish injury and obtain damages or
32 equitable relief.

33 SEC. 11. FUNDING.

34 (a) Merger or Acquisition Filing Fees.—Section 605 of the Departments of Commerce,
35 Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990 (15 U.S.C. 18a
36 note) is amended by adding at the end the following:

37 “(c)(1) In addition to the fee paid under subsection (b), for any acquisition of voting securities
38 or assets that is a large merger, as defined in section 7 of the Clayton Act (15 U.S.C. 18), the

parties to the acquisition shall pay a fee in the amount equal to 2 percent of the value of the voting securities or assets of both parties.

“(2) The person acquiring the voting securities or assets shall pay 100 percent of the fee under paragraph (1).

“(3) The Federal Trade Commission, after providing notice and an opportunity for comment, may increase the percentage specified under paragraph (1).”.

(b) Appropriations.—The Federal Trade Commission Act is amended by inserting after section 26 the following:

“SEC. 27. FUNDING. (a)

“To the extent there are insufficient funds from fines and fees received by the Commission for the costs of the programs, projects, and activities of the Commission, there are appropriated, out of monies in the Treasury not otherwise appropriated, for fiscal year 2019 and each fiscal year thereafter such sums as are necessary for the costs of the programs, projects, and activities of the Commission.

“(b) The Commission may use any funds from fines and settlements not returned to consumers for future operations of the Commission.”.

SEC. 12. ACCOUNTABILITY FOR VIOLATIONS OF THE ANTITRUST LAWS.

(a) Penalties.—The Sherman Act (15 U.S.C. 1 et seq.) is amended—

(1) in subsection (a) of section 1 (15 U.S.C. 1), as designated by subsection (b) of this section—

(A) by striking “\$100,000,000” and inserting “15 percent of total revenue of the person”; and

(B) by striking “\$1,000,000” and inserting “\$20,000,000”;

(2) in subsection (a) of section 2 (15 U.S.C. 2), as designated by subsection (c) of this section—

(A) by striking “\$1,000,000” and inserting “\$50,000,000”; and

(B) by striking “10 years” and inserting “15 years”; and

(3) in section 3 (15 U.S.C. 3)—

(A) in subsection (a)—

(i) by striking “\$100,000,000” and inserting “15 percent of total revenue of the person”; and

(ii) by striking “\$1,000,000” and inserting “\$20,000,000”; and

(B) in subsection (b)—

(i) by striking “\$1,000,000” and inserting “\$50,000,000”; and

(ii) by striking “10 years” and inserting “15 years”.

(b) Certification.—

(1) IN GENERAL.—The chief executive officer, chief financial officer, chief operating officer, and chief compliance officer of any company with revenue equal to or greater than \$40,000,000,000 shall submit to the Chairman of the Federal Trade Commission and the Attorney General, subject to section 1001 of title 18, United States Code, an annual certification that the officers have conducted due diligence and found that neither the company nor any individual on behalf of the company has violated Federal antitrust laws in such a manner that has not been disclosed in full to the Department of Justice or the Federal Trade Commission. If a disclosure to the Department of Justice or the Federal Trade Commission has been made, the certification shall explicitly describe all of the details of the conduct that has been disclosed, including the date of disclosure and the person to whom the disclosure was made.

(2) LIABILITY FOR ANTITRUST LAW VIOLATIONS.—Failure to submit a certificate under paragraph (1) shall constitute sufficient knowledge of a violation of the antitrust laws as required for individual liability for chief executive officers under sections 1 and 2 of the Sherman Act (15 U.S.C. 1, 2).

(3) EFFECTIVE DATE.—This subsection shall take effect on the effective date of the regulations promulgated under subsection (b).

(c) Regulations.—Not later than 1 year after the date of enactment of this Act, the Federal Trade Commission shall promulgate regulations on the process under which certifications made under subsection (a) shall be submitted.

(d) Website.—The Federal Trade Commission shall, on the website of the Federal Trade Commission—

(1) not later than 90 calendar days after the date on which regulations are promulgated under subsection (b), and on an annual basis thereafter, publish a list of all companies subject to the upcoming year's annual certification requirement under subsection (a); and

(2) maintain on the homepage a direct link for the public to report alleged misconduct pertaining to any entity listed under paragraph (1).

(e) Enforcement.—

(1) INJUNCTIONS.—

(A) IN GENERAL.—If the Federal Trade Commission believes a person has violated, is violating, or will violate this section or a regulation promulgated under this section, the Commission may bring a civil action in the appropriate district court of the United States to enjoin the violation or to enforce compliance with the section or regulation.

(B) NO BOND.—An injunction or temporary restraining order shall be issued without bond.

(2) CIVIL PENALTIES.—

(A) IN GENERAL.—A chief executive officer, chief financial officer, chief operating officer, or chief compliance officer of a company who willfully violates this section or a regulation promulgated under this section shall be liable to the United States for a civil penalty of not more than \$25,000.

1 (B) NEGLIGENCE.—

2 (i) IN GENERAL.—The Federal Trade Commission may impose a civil money
3 penalty of not more than \$500 on a chief executive officer, chief financial officer,
4 chief operating officer, or chief compliance officer of company who negligently
5 violates this section or a regulation promulgated under this section.

6 (ii) PATTERN OF NEGLIGENT ACTIVITY.—If a chief executive officer, chief
7 financial officer, chief operating officer, or chief compliance officer of a company
8 engages in a pattern of negligent violations of any provision of this section or any
9 regulation promulgated under this section, the Federal Trade Commission may, in
10 addition to any penalty imposed under clause (i) with respect to any such
11 violation, impose a civil money penalty of not more than \$50,000 on the chief
12 executive officer, chief financial officer, chief operating officer, or chief
13 compliance officer of a company.

14 (3) CRIMINAL PENALTIES.—

15 (A) IN GENERAL.—A chief executive officer, chief financial officer, chief operating
16 officer, or chief compliance officer of a company who willfully violates this section or
17 a regulation promulgated under this section shall be fined not more than \$250,000,
18 imprisoned for not more than 5 years, or both.

19 (B) OTHER LAWS.—A chief executive officer, chief financial officer, chief operating
20 officer, and chief compliance officer of a company who willfully violates this section
21 or a regulation promulgated under this section while violating another law of the
22 United States or as part of a pattern of any illegal activity involving more than
23 \$100,000 in a 12-month period, shall be fined not more than \$500,000, imprisoned for
24 not more than 10 years, or both.
25