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(Original Signature of Member)

119TH CONGRESS
2D SESSION

H. R. _____

To amend section 5 of the Clayton Act to include proposed voluntary dismissals in the court's consideration of proposed consent judgments and clarify the public interest, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. RASKIN introduced the following bill; which was referred to the Committee
on _____

A BILL

To amend section 5 of the Clayton Act to include proposed voluntary dismissals in the court's consideration of proposed consent judgments and clarify the public interest, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Antitrust Account-
5 ability and Transparency Act”.

1 **SEC. 2. CLAYTON ACT JUDGMENT AMENDMENTS.**

2 Section 5 of the Clayton Act (15 U.S.C. 16) is
3 amended—

4 (1) in subsection (a), by striking “or under sec-
5 tion 5 of the Federal Trade Commission Act which
6 could give rise to a claim for relief under the anti-
7 trust laws”;

8 (2) in subsection (b)—

9 (A) in the matter preceding paragraph
10 (1)—

11 (i) by inserting “or administrative”
12 after “any civil”;

13 (ii) by inserting “, or in the case of an
14 administrative proceeding, filed in accord-
15 ance with subsection (k) with a district
16 court in which 1 or more defendants is in-
17 corporated or headquartered,” after “the
18 district court before which such proceeding
19 in pending”;

20 (iii) by striking “published by the
21 United States” and inserting “published”
22 each place it appears;

23 (iv) by striking “60 days” and insert-
24 ing “45 days”;

25 (v) by inserting “A district court to
26 which a complaint and proposal for a con-

1 sent judgment is submitted by the United
2 States or Federal Trade Commission under
3 this paragraph shall have jurisdiction
4 under this section.” after “prior to the ef-
5 fective date of such judgment.”;

6 (vi) by striking “sixty-day period” and
7 inserting “45-day period”;

8 (B) in paragraph (3), by inserting “any
9 commitments made by the parties to the United
10 States or Federal Trade Commission not memo-
11 rialized in the proposal related to the pro-
12 ceeding, how the proposal remedies any mate-
13 rial risk that the antitrust laws may be vio-
14 lated,” after “thereby,”; and

15 (C) in paragraph (6), by inserting “or
16 Federal Trade Commission, including any set-
17 tlement offers, divestitures, or other remedies,
18 including the process through which these pro-
19 posals were considered” before the period;

20 (3) in subsection (c) by striking “60 days” and
21 inserting “45 days”;

22 (4) in subsection (d)—

23 (A) by striking “during the 60-day period”
24 and inserting the following: “(1) During the 45-
25 day period”;

1 (B) by striking “his designee” and insert-
2 ing “a designee thereof”;

3 (C) by striking “such 60-day time period”
4 and inserting “such 45-day time period”;

5 (D) by striking “At the close of” and in-
6 serting “Not later than 30 days after the close
7 of”;

8 (E) by inserting “Parties that submitted
9 comments shall be allowed to submit a reply to
10 the responses published by the United States or
11 Federal Trade Commission.” before the last
12 sentence;

13 (F) by adding at the end “Compliance with
14 this section by the Federal Trade Commission
15 shall satisfy any other notice-and-comment re-
16 quirements relating to consent judgments.”;
17 and

18 (G) by adding at the end the following:

19 “(2)(A) In a proceeding brought under section 7, the
20 parties shall continue to hold all assets related to the
21 transaction separate as if they are subject to a waiting
22 period under section 7A until the date that is 15 days
23 after the United States or Federal Trade Commission files
24 with the district court and causes to be published in the
25 Federal Register a response to comments under this sub-

1 section. The court may extend the period during which the
2 parties are required to hold all assets related to the trans-
3 action separate upon a finding that—

4 “(i) there is a reasonable likelihood that the
5 court will determine that the consent judgment does
6 not meet the requirements in subsection (e)(1); and

7 “(ii) the balance of the equities favors extend-
8 ing the order.

9 “(B) In the event that the court extends the period
10 during which the parties are required to hold all assets
11 separate, the court shall make all reasonable efforts to ex-
12 pedite its determination under subsection (e)(1).

13 “(3) A violation of paragraph (2) shall be treated as
14 a violation of section 7A and parties may be liable for civil
15 penalties pursuant to subsection (g) of that section.

16 “(4) Any order to hold assets separate shall expire
17 upon a finding by the court that the consent judgment
18 satisfies the requirements under subsection (e)(1).”.

19 (5) in subsection (e)—

20 (A) in paragraph (1)—

21 (i) in the matter preceding subpara-
22 graph (A), by inserting “there is a reason-
23 able belief, based on evidence and reasoned
24 analysis, that” after “the court shall deter-
25 mine that”;

1 (ii) in subparagraph (A), by inserting
2 “, does not permit any transaction, merg-
3 er, agreement, business practice, or other
4 course of conduct that creates a material
5 risk of violating the antitrust laws, and
6 that the provisions of the consent judg-
7 ment are reasonably tailored to the viola-
8 tions of the antitrust laws alleged in the
9 complaint” after “whether the consent
10 judgment is in the public interest”; and

11 (iii) by inserting after subparagraph
12 (B) the following:

13 “Upon consideration of the factors described in this
14 paragraph, the court shall enter the proposed con-
15 sent judgment or reject the proposed consent judg-
16 ment and, if the case was originally filed with the
17 court, retain jurisdiction over the proceedings, or, if
18 the case was originally an administrative proceeding,
19 remand the matter.”.

20 (B) in paragraph (2), by striking “or to re-
21 quire the court to permit anyone to intervene”
22 and inserting “, but the court shall take into
23 account any written request for a hearing by
24 any Federal or State agency, including any
25 State attorney general, when determining

1 whether to conduct an evidentiary hearing”;
2 and

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

4 “(3) If the court determines that an evidentiary
5 hearing is appropriate, any Federal or State agency,
6 including any State attorney general that made a
7 written request under paragraph (2), shall be al-
8 lowed to intervene. Nothing shall require the court
9 to permit any other party to intervene.

10 “(4) A consent judgment filed under this sec-
11 tion shall take effect only upon entry by the court.
12 The decision to enter a consent judgment under this
13 section is within the discretion of the court, which
14 need not defer to the United States’s predictions
15 about the efficacy of its remedies.’”;

16 (6) in subsection (f)—

17 (A) by inserting “current or former” be-
18 fore “Government officials”;

19 (B) in paragraph (4), by striking “and” at
20 the end;

21 (C) by redesignating paragraph (5) as
22 paragraph (7); and

23 (D) by inserting after paragraph (4) the
24 following:

1 “(5) order the production of the communica-
2 tions that were disclosed or should have been dis-
3 closed pursuant to subsection (g), including all re-
4 lated documents and testimony relating to the com-
5 munications;

6 “(6) order the production of information or tes-
7 timony regarding the provision of, or offer to pro-
8 vide, a benefit or concession by any party in the pro-
9 ceeding to the Government or an employee or officer
10 thereof, including payments, donations, or alter-
11 ations in policy or business practices that the court
12 finds may have a reasonable connection to the pro-
13 ceeding or decision to enter the proposed judgment;
14 and”;

15 (7) in subsection (g)—

16 (A) by inserting “, including the Executive
17 Office of the President,” after “any officer or
18 employee of the United States”; and

19 (B) by striking “except that any” and in-
20 serting “, and shall include the date of each
21 written or oral communication and each author
22 of, recipient of, and participant to each written
23 or oral communication. Any”;

24 (8) in subsection (h), by inserting “, or by the
25 Federal Trade Commission under section 5 of the

1 Federal Trade Commission Act (15 U.S.C. 45),”
2 after “under section 4A of this Act”; and

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

4 “(j) VOLUNTARY DISMISSALS.—

5 “(1) IN GENERAL.—Any proposal to file a mo-
6 tion to voluntarily dismiss any civil proceeding
7 brought by the United States or Federal Trade
8 Commission under the antitrust laws shall be filed
9 with the district court before which such proceeding
10 is pending, and published in the Federal Register
11 not less than 45 days prior to the effective date of
12 such voluntary dismissal. The case shall be stayed
13 during this 45-day period.

14 “(2) SUBSTITUTION.—During the 45-day pe-
15 riod under paragraph (1), any State attorney gen-
16 eral may file a motion for substitution in the pro-
17 ceeding. A court shall grant the motion for substi-
18 tution unless presented with clear and convincing
19 evidence by the parties that there are no genuine
20 issues of material fact that could support any claim
21 in the proceeding or that the defendant would be en-
22 titled to judgment as a matter of law. If the motion
23 for substitution is granted, the action does not
24 abate, but proceeds in favor of or against the re-
25 maining parties.

1 “(3) TRANSFER.—Upon a grant of a motion for
2 substitution under paragraph (2), the United States
3 or the Federal Trade Commission shall promptly
4 transfer all materials relevant to the litigation that
5 are not subject to the deliberative process privilege
6 to the applicable State attorneys general and the
7 case shall continue on a schedule that will not cause
8 undue delay, as determined appropriate by the court.

9 “(k) FTC CIVIL PROCEEDING.—

10 “(1) STAY AND DISPOSITION.—At the time that
11 the Federal Trade Commission submits a proposal
12 for a consent judgment to resolve an administrative
13 proceeding, the administrative proceeding shall be
14 stayed until such time as the court to which a com-
15 plaint is filed in accordance with subsection (b) de-
16 termines whether to—

17 “(A) enter the proposed consent judgment;

18 or

19 “(B) reject the proposed consent judge-
20 ment and remand the matter.

21 “(2) COMMENCEMENT.—The Federal Trade
22 Commission shall commence a civil proceeding by fil-
23 ing with the district court a complaint setting forth
24 the violations of the antitrust laws alleged in the ad-

1 ministrative proceeding and the proposal for a con-
2 sent judgment.

3 “(l) TRANSFER OF MATERIALS.—In the case that a
4 matter remanded under subsection (k)(1)(B) is dismissed
5 and a State commences a civil proceeding under the anti-
6 trust laws with respect to that matter, the Federal Trade
7 Commission shall transfer materials to the State in ac-
8 cordance with subsection (j)(3).

9 “(m) REFERENCES.—In this section, all references
10 to—

11 “(1) the United States or the Attorney General
12 shall be deemed to include the Federal Trade Com-
13 mission, as applicable; and

14 “(2) the antitrust laws shall be deemed to in-
15 clude an unfair method of competition under section
16 5 of the Federal Trade Commission Act (15 U.S.C.
17 45).”.