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

IN THE SENATE OF THE UNITED STATES

Ms. KLOBUCHAR (for herself and Mr. COTTON) introduced the following bill; which was read twice and referred to the Committee on

A BILL

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

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Platform Competition

and Opportunity Act of 2021”.

SEC. 2. UNLAWFUL ACQUISITIONS.

(a) VIOLATION.—It shall be unlawful for a covered

platform operator to acquire directly or indirectly—
(1) the whole or any part of the stock or other
share capital of another person engaged in com-
merce or in any activity affecting commerce; or
(2) the whole or any part of the assets of an-
other person engaged in commerce or in any activity
affecting commerce.
(b) EXCLUSION.—An acquisition shall not be unlaw-
ful under subsection (a) if the acquiring covered platform
operator demonstrates by clear and convincing evidence
that—
(1) the acquisition is a transaction that is de-
scribed in section 7A(c) of the Clayton Act;
(2) the acquired stock, other share capital, or
assets are valued at less than $50,000,000; or
(3) the acquired assets or the issuer of the ac-
quired stock do not—
(A) compete with the covered platform or
covered platform operator for the sale or provi-
sion of any product or service;
(B) constitute nascent or potential com-
petition to the covered platform or covered plat-
form operator for the sale or provision of any
product or service;
(C) enhance or increase the covered plat-
form’s or covered platform operator’s market
position with respect to the sale or provision of
any product or service offered on or directly re-
lated to the covered platform; and

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

(c) USER ATTENTION.—For purposes of this Act,
competition, nascent competition, or potential competition
for the sale or provision of any product or service includes
competition for a user’s attention.

(d) ROLE OF DATA.—For purposes of this Act, an
acquisition that results in access to additional data may,
without more—

(1) enhance or increase the market position of
a covered platform or covered platform operator; or

(2) enhance or increase the ability of a covered
platform or covered platform operator to maintain
its market position.

SEC. 3. DEFINITIONS.

(a) ANTITRUST LAWS.—The term “antitrust laws”
has the meaning given the term in subsection (a) of sec-
(b) **COMMISSION.**—The term “Commission” means 
the Federal Trade Commission.

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

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

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

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

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

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

(6) otherwise exercises substantial control over 
the person.

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

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

(2) that—

(A) at any point during the 12 months 
preceding a designation under section 4(a) or at
any point during the 12 months preceding the filing of a complaint for an alleged violation of this Act—

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

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

(B) as of the date of enactment of this Act, was owned or controlled by a person with United States net annual sales of $600,000,000,000 in the prior calendar year or with a market capitalization of greater than $600,000,000,000, as measured by the simple average of the closing price per share of the common stock issued by the person for the trading days in the 180-day period ending on the date of enactment of this Act; and

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

(e) COVERED PLATFORM OPERATOR.—The term “covered platform operator” means a person that owns or controls a covered platform.
Critical Trading Partner.—The term “critical trading partner” means a person that—

(1) owns or controls an online platform; and

(2) has the ability to restrict or impede the access of—

(A) a business user to its users or customers; or

(B) a business user to a tool or service that it needs to effectively serve its users or customers.

Business User.—The term “business user” means a person that utilizes or plans to utilize the covered platform for the sale or provision of products or services.

Online Platform.—The term “online platform” means a website, online or mobile application, mobile operating system, digital assistant, or online service that—

(1) enables a user to generate content that can be viewed by other users on the platform or to interact with other content on the platform;

(2) facilitates the offering, sale, purchase, payment, or shipping of products or services, including software applications, between and among consumers or businesses not controlled by the platform operator; or
(3) enables user searches or queries that access or display a large volume of information.

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

(j) STATE.—The term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

SEC. 4. IMPLEMENTATION.

(a) COVERED PLATFORM DESIGNATION.—

(1) The Federal Trade Commission or Department of Justice shall designate whether an entity is a covered platform for the purpose of implementing and enforcing this Act. Such designation shall—

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

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

(C) apply for 10 years from its issuance regardless of whether there is a change in control or ownership over the covered platform unless the Commission or the Department of Justice removes the designation under subsection (b).
(b) Removal of Covered Platform Designation.—The Commission or the Department of Justice shall—

(1) consider whether its designation of a covered platform under subsection (a) should be removed prior to the expiration of the 10-year period if the covered platform operator files a request with the Commission or the Department of Justice, which shows that the online platform no longer meets the criteria set forth in section 3(d)(2)(A)-(C);

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

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

SEC. 5. ENFORCEMENT.

(a) In General.—Except as otherwise provided in this Act—

(1) the Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act;
(2) the Attorney General shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers and duties as though all applicable terms of the Sherman Act (15 U.S.C. 1 et seq.), Clayton Act (15 U.S.C. 12 et seq.), and Antitrust Civil Process Act (15 U.S.C. 1311 et seq.) were incorporated into and made a part of this Act; and

(3) any attorney general of a State shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers and duties as though all applicable terms of the Sherman Act (15 U.S.C. 1 et seq.) and the Clayton Act (15 U.S.C. 12 et seq.) were incorporated into and made a part of this Act.

(b) **Unfair Methods of Competition.**—A violation of this Act shall also constitute an unfair method of competition under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(c) **Commission Independent Litigation Authority.**—If the Commission has reason to believe that a person violated this Act, the Commission may commence a civil action, in its own name by any of its attorneys designated by it for such purpose, to recover a civil penalty
and seek other appropriate relief in a district court of the United States.

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

(e) INJUNCTIVE RELIEF.—The Assistant Attorney General of the Antitrust Division, the Commission, or the attorney general of any State may seek, and the court may order, relief in equity as necessary to prevent, restrain, or prohibit violations of this Act.

(f) REMEDIES.—Remedies provided in this subsection are in addition to, and not in lieu of, any other remedy available under Federal or State law.

SEC. 6. ENFORCEMENT GUIDELINES.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Commission and the Assistant Attorney General of the Antitrust Division shall jointly issue guidelines outlining policies and practices, relating to agency enforcement of this Act, with the goal of promoting transparency and deterring violations.
(b) Updates.—The Commission and the Assistant Attorney General of the Antitrust Division shall update the joint guidelines issued under subsection (a), as needed to reflect current agency policies and practices, but not less frequently than once every 4 years beginning on the date of enactment of this Act.

(e) Operation.—The Joint Guidelines issued under this section do not confer any rights upon any person, State, or locality, nor shall they operate to bind the Commission, Department of Justice, or any person, State, or locality to the approach recommended in such Guidelines.

SEC. 7. SUITS BY PERSONS INJURED.

(a) In General.—Except as provided in subsection (b), any person who shall be injured in his business or property by reason of anything forbidden in this Act may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney’s fee. The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person’s pleading setting forth a claim under this Act and ending on the date of judg-
ment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—

(1) whether such person or the opposing party, or either party’s representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay, or otherwise acted in bad faith;

(2) whether, in the course of the action involved, such person or the opposing party, or either party’s representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

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

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

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

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

   (A) such foreign state would be denied,
   under section 1605(a)(2) of title 28, United
   States Code, immunity in a case in which the
   action is based upon a commercial activity, or
   an act, that is the subject matter of its claim
   under this section;

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

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

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

(e) INJUNCTIVE RELIEF.—Any person shall be enti-
   tled to sue for and have injunctive relief, in any court of
   the United States having jurisdiction over the parties,
against threatened loss or damage by a violation of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: Provided, That nothing herein contained shall be construed to entitle any person, except the United States, to bring suit for injunctive relief against any common carrier subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49.

In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

SEC. 8. JUDICIAL REVIEW.

(a) IN GENERAL.—Any party that is subject to a covered platform designation under section 4(a) of this Act, a decision in response to a request to remove a covered platform designation under section 4(b) of this Act, a final order issued in any district court under this Act, or a final order of the Commission issued in an administrative adjudicative proceeding under this Act may within 30 days of the issuance of such designation, decision, or order, peti-
tion for review of such designation, decision, or order in
the United States Court of Appeals for the District of Co-
lumbia Circuit.

(b) TREATMENT OF FINDINGS.—In a proceeding for
judicial review of a covered platform designation under
section 4(a) of this Act, a decision in response to a request
to remove a covered platform designation under section
4(b) of this Act, or a final order of the Commission issued
in an administrative adjudicative proceeding under this
Act, the findings of the Commission or the Assistant At-
torney General as to the facts, if supported by evidence,
shall be conclusive.

SEC. 9. RULES OF CONSTRUCTION.

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

SEC. 10. SEVERABILITY.

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