

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3825
OFFERED BY MR. NADLER OF NEW YORK**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Ending Platform Mo-
3 nopolies Act”.

4 SEC. 2. UNLAWFUL CONFLICTS OF INTEREST.

5 (a) VIOLATION.—As of the date an online platform
6 is designated as a covered platform under section 6(a),
7 it shall be unlawful for a covered platform operator to own
8 or control in a line of business other than the covered plat-
9 form that—

10 (1) utilizes the covered platform for the sale or
11 provision of products or services;

12 (2) offers a product or service that the covered
13 platform requires a business user to purchase or uti-
14 lize as a condition for access to the covered plat-
15 form, or as a condition for preferred status or place-
16 ment of a business user’s products or services on the
17 covered platform; or

18 (3) gives rise to a conflict of interest.

1 (b) CONFLICT OF INTEREST.—For purposes of this
2 section, the term “conflict of interest” includes the conflict
3 of interest that arises when—

4 (1) a covered platform operator owns or con-
5 trols a line of business, other than the covered plat-
6 form; and

7 (2) the covered platform operator’s ownership
8 or control of that line of business creates the incen-
9 tive and ability for the covered platform operator
10 to—

11 (A) advantage the covered platform opera-
12 tor’s own products, services, or lines of business
13 on the covered platform over those of a com-
14 peting business or a business that constitutes
15 nascent or potential competition to the covered
16 platform operator; or

17 (B) exclude from, or disadvantage, the
18 products, services, or lines of business on the
19 covered platform of a competing business or a
20 business that constitutes nascent or potential
21 competition to the covered platform operator.

22 **SEC. 3. ENFORCEMENT.**

23 (a) IN GENERAL.—Except as otherwise provided in
24 this Act—

1 (1) the Commission shall enforce this Act in the
2 same manner, by the same means, and with the
3 same jurisdiction, powers, and duties as though all
4 applicable terms of the Federal Trade Commission
5 Act (15 U.S.C. 41 et seq.) were incorporated into
6 and made a part of this Act; and

7 (2) the Attorney General shall enforce this Act
8 in the same manner, by the same means, and with
9 the same jurisdiction, powers and duties as though
10 all applicable terms of the Sherman Act (15 U.S.C.
11 1 et seq.), Clayton Act (15 U.S.C. 12 et seq.), and
12 Antitrust Civil Process Act (15 U.S.C. 1311 et seq.)
13 were incorporated into and made a part of this Act.

14 (b) UNFAIR METHODS OF COMPETITION.—A viola-
15 tion of this Act shall also constitute an unfair method of
16 competition under section 5 of the Federal Trade Commis-
17 sion Act (15 U.S.C. 45).

18 (c) CIVIL PENALTIES.—

19 (1) Any person who fails to comply with any
20 provision of this Act within 2 years of the Commis-
21 sion or Department of Justice designating a covered
22 platform under section 6(a), shall be liable to the
23 United States or the Commission for a civil penalty
24 for each day during which such person is in violation
25 of this Act, which shall accrue to the United States

1 Treasury, in an amount not more than 15 percent
2 of the average daily United States revenue of the
3 person for the previous calendar year.

4 (2) Any individual who fails to comply with sec-
5 tion 4 of this Act shall be liable to the United States
6 or the Commission for a civil penalty for each day
7 during which such individual is in violation of sec-
8 tion 4, which shall accrue to the United States
9 Treasury, in an amount not more than 15 percent
10 of the average daily compensation of the person for
11 the previous calendar year.

12 (d) COMMISSION INDEPENDENT LITIGATION AU-
13 THORITY.—If the Commission has reason to believe that
14 a person violated this Act, the Commission may commence
15 a civil action, in its own name by any of its attorneys des-
16 igned by it for such purpose, to recover a civil penalty
17 and seek other appropriate relief in a district court of the
18 United States.

19 **SEC. 4. LIMITATIONS ON BOARD MEMBERSHIP AND OTHER**
20 **SERVICE.**

21 (a) IN GENERAL.—An individual who is an officer,
22 director, or employee, including an agent, representative,
23 or contractor, of a covered platform, or who has control
24 over the covered platform, may not serve at the same time
25 as an officer, director, employee, or other institution-affili-

1 ated party, including as an agent, representative, or con-
2 tractor, of a formerly affiliated person.

3 (b) **TERMINATION OF SERVICE.**—Any individual
4 whose service violates subsection (a) shall terminate such
5 service as soon as is practicable.

6 **SEC. 5. DEFINITIONS.**

7 For purposes of this Act:

8 (1) **ANTITRUST LAWS.**—The term “antitrust
9 laws” has the meaning given the term in subsection
10 (a) of the first section of the Clayton Act (15 U.S.C.
11 12).

12 (2) **COMMISSION.**—The term “Commission”
13 means the Federal Trade Commission.

14 (3) **CONTROL.**—The term “control” with re-
15 spect to a person means—

16 (A) holding 25 percent or more of the
17 stock of the person;

18 (B) having the right to 25 percent or more
19 of the profits of the person;

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

23 (D) if the person is a corporation, having
24 the power to designate 25 percent or more of
25 the directors of the person;

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

4 (F) otherwise exercises substantial control
5 over the person.

6 (4) COVERED PLATFORM.—The term “covered
7 platform” means an online platform—

8 (A) that has been designated as a “covered
9 platform” under section 6(a); or

10 (B) that—

11 (i) at any point during the 12 months
12 preceding a designation under section 6(a)
13 or at any point during the 12 months pre-
14 ceding the filing of a complaint for an al-
15 leged violation of this Act—

16 (I) has at least 50,000,000
17 United States-based monthly active
18 users on the online platform; or

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

22 (ii) at any point during the 2 years
23 preceding a designation under section 6(a)
24 or at any point during the 2 years pre-
25 ceding the filing of a complaint for an al-

1 leged violation of this Act, is owned or con-
2 trolled by a person with United States net
3 annual sales or a market capitalization
4 greater than \$600,000,000,000, adjusted
5 for inflation on the basis of the Consumer
6 Price Index; and

7 (iii) is a critical trading partner for
8 the sale or provision of any product or
9 service offered on or directly related to the
10 online platform operator.

11 (5) COVERED PLATFORM OPERATOR.—The
12 term “covered platform operator” means a person
13 that owns or controls a covered platform.

14 (6) CRITICAL TRADING PARTNER.—The term
15 “critical trading partner” means an entity that has
16 the ability to restrict or impede the access of—

17 (A) a business user to its users or cus-
18 tomers; or

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

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

1 (8) FORMERLY AFFILIATED PERSON.—The
2 term “formerly affiliated person” means a person
3 that was owned or controlled by a covered platform
4 operator prior to termination of the affiliation pro-
5 hibited under section 2 of this Act.

6 (9) ONLINE PLATFORM.—The term “online
7 platform” means a website, online or mobile applica-
8 tion, mobile operating system, digital assistant, or
9 online service that—

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

13 (B) facilitates the offering, sale, purchase,
14 payment, or shipping of products or services,
15 including software applications, between and
16 among consumers or businesses not controlled
17 by the platform; or

18 (C) enables user searches or queries that
19 access or display a large volume of information.

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

23 **SEC. 6. IMPLEMENTATION.**

24 (a) COVERED PLATFORM DESIGNATION.—

1 (1) The Commission or Department of Justice
2 shall designate whether an entity is a covered plat-
3 form for the purpose of implementing and enforcing
4 this Act. Such designation shall—

5 (A) be based on a finding that the criteria
6 set forth in paragraph (4)(B)(i)–(iii) of section
7 5 are met;

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

10 (C) apply for 10 years from its issuance
11 regardless of whether there is a change in con-
12 trol or ownership over the covered platform un-
13 less the Commission or the Department of Jus-
14 tice removes the designation under subsection
15 (b).

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

19 (1) consider whether its designation of a cov-
20 ered platform under subsection (a) should be re-
21 moved prior to the expiration of the 10-year period
22 if the covered platform operator files a request with
23 the Commission or the Department of Justice, which
24 shows that the online platform no longer meets the

1 criteria set forth in paragraph (4)(B)(i)-(iii) of sec-
2 tion 5;

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

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

9 **SEC. 7. JUDICIAL REVIEW.**

10 (a) IN GENERAL.—Any party that is subject to a cov-
11 ered platform designation under section 6(a) of this Act,
12 a decision in response to a request to remove a covered
13 platform designation under section 6(b) of this Act, a final
14 order issued in any district court under this Act, or a final
15 order of the Commission issued in an administrative adju-
16 dicative proceeding under this Act may within 30 days of
17 the issuance of such designation, decision, or order, peti-
18 tion for review of such designation, decision, or order in
19 the United States Court of Appeals for the District of Co-
20 lumbia Circuit.

21 (b) TREATMENT OF FINDINGS.—In a proceeding for
22 judicial review of a covered platform designation under
23 section 6(a) of this Act, a decision in response to a request
24 to remove a covered platform designation under section
25 6(b) of this Act, or a final order of the Commission issued

1 in an administrative adjudicative proceeding under this
2 Act, the findings of the Commission or the Assistant At-
3 torney General as to the facts, if supported by evidence,
4 shall be conclusive.

5 **SEC. 8. RULES OF CONSTRUCTION.**

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

11 **SEC. 9. SEVERABILITY.**

12 If any provision of this Act, or the application of such
13 provision to any person or circumstance, is held to be un-
14 constitutional, the remainder of this Act, and the applica-
15 tion of the remaining provisions of this Act to any person
16 or circumstance shall not be affected.

Amend the title so as to read: “A bill to promote
competition and economic opportunity in digital markets
by eliminating the conflicts of interest that arise from a
dominant online platform’s concurrent ownership or con-
trol of an online platform and certain other businesses.”.

