

115TH CONGRESS
2D SESSION

H. R. 5642

To amend the Clayton Act with respect to mergers.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2018

Mr. NADLER (for himself, Mr. CICILLINE, Mr. ELLISON, and Mr. CROWLEY) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Clayton Act with respect to mergers.

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 “Restoring and Improv-
5 ing Merger Enforcement Act of 2018”.

6 **SEC. 2. MERGER-SPECIFIC EFFICIENCIES.**

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

9 “In determining whether the effect of such acquisi-
10 tion may be substantially to lessen competition, or to tend
11 to create a monopoly, a court may consider a claimed effi-

1 ciency of such acquisition only if it could not be accom-
2 plished in the absence of such acquisition, it is verifiable,
3 and it would promote competition.

4 “A person against whom an action is brought for a
5 violation of this section shall have the burden to establish,
6 by the preponderance of the evidence, that the claimed ef-
7 ficiency will eliminate the substantial lessening of competi-
8 tion that may occur as a result of such acquisition.”.

9 **SEC. 3. REPORT ON CLAIMED EFFICIENCIES.**

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

12 “(l) INFORMATION REQUIRED.—Each person who en-
13 ters into an agreement with the Federal Trade Commis-
14 sion or the United States to resolve a proceeding brought
15 under the antitrust laws or under the Federal Trade Com-
16 mission Act (15 U.S.C. 41 et seq.) regarding an acquisi-
17 tion with respect to which notification is required under
18 this section shall, on an annual basis during the 5-year
19 period beginning on the date on which the agreement is
20 entered into, submit to the Federal Trade Commission or
21 the Assistant Attorney General, as applicable, information
22 sufficient for the Federal Trade Commission or the United
23 States, as applicable, to assess the source, and the result-
24 ing magnitude and extent, of any cost-saving efficiencies
25 or any consumer benefits that were claimed as a benefit

- 1 of the acquisition and the extent to which any cost savings
- 2 were passed on to consumers.”.

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