

115TH CONGRESS
2^D SESSION

H. R. 5645

IN THE SENATE OF THE UNITED STATES

MAY 10, 2018

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To amend the Clayton Act and the Federal Trade Commission Act to provide that the Federal Trade Commission shall exercise authority with respect to mergers only under the Clayton Act and only in the same procedural manner as the Attorney General exercises such authority.

1 action under this Act, the Attorney General of the United
2 States or Federal Trade Commission, as applicable, shall,
3 upon request by such State attorney general, make avail-
4 able to the State attorney general, to the extent permitted
5 by law, any investigative files or other materials which are
6 or may be relevant or material to the actual or potential
7 cause of action under this Act.”;

8 (2) in section 5—

9 (A) in subsection (a) by inserting “or a
10 proceeding brought by the Federal Trade Com-
11 mission under section 15” after “United States
12 under the antitrust laws”; and

13 (B) in subsection (i) by inserting “or a
14 proceeding instituted by the Federal Trade
15 Commission under section 15” after “antitrust
16 laws”;

17 (3) Section 11 of the Clayton Act (15 U.S.C.
18 21) is amended—

19 (A) in subsection (b) by striking “When-
20 ever” and inserting “Except as provided in sub-
21 section (m), whenever”; and

22 (B) by adding at the end the following:

23 “(m) The Federal Trade Commission may not use the
24 procedures for administrative adjudication set forth in
25 subsection (b) of this section to prevent the consummation

1 of a proposed merger, acquisition, joint venture, or similar
2 transaction that is subject to section 7, unless the com-
3 plaint is accompanied by a consent agreement between the
4 Commission and a party to the transaction that resolves
5 all the violations alleged in the complaint. The Federal
6 Trade Commission may institute proceedings in a district
7 court under section 15 to prevent the consummation of
8 such a transaction. In any such proceeding the district
9 court shall apply the same standard for granting injunc-
10 tive relieve as applicable to a proceeding brought by the
11 United States attorneys under section 15. The Federal
12 Trade Commission may issue an administrative complaint
13 under this section if the complaint is accompanied by a
14 consent agreement between the Federal Trade Commis-
15 sion and a party to the transaction settling the alleged
16 violations.”;

17 (4) in section 13, by inserting “or a suit, ac-
18 tion, or proceeding brought by the Federal Trade
19 Commission under section 15” before “subpoenas”;
20 and

21 (5) in section 15, by inserting “and the duty of
22 the Federal Trade Commission with respect to the
23 consummation of a proposed merger, acquisition,
24 joint venture, or similar transaction that is subject

1 to section 7 and not yet consummated,” after “Gen-
2 eral”.

3 **SEC. 3. AMENDMENTS TO THE FEDERAL TRADE COMMIS-**
4 **SION ACT.**

5 The Federal Trade Commission Act (15 U.S.C. 41)
6 is amended—

7 (1) in section 5(b), by inserting “(excluding the
8 consummation of a proposed merger, acquisition,
9 joint venture, or similar transaction that is subject
10 to section 7 of the Clayton Act (15 U.S.C. 18), ex-
11 cept in cases where the Commission approves an
12 agreement with the parties to the transaction that
13 contains a consent order)” after “unfair method of
14 competition”;

15 (2) in section 9, by inserting after the fourth
16 undesignated paragraph the following:

17 “Upon the application of the commission with respect
18 to any activity related to the consummation of a proposed
19 merger, acquisition, joint venture, or similar transaction
20 that is subject to section 7 of the Clayton Act (15 U.S.C.
21 18) that may result in any unfair method of competition,
22 the district courts of the United States shall have jurisdic-
23 tion to issue writs of mandamus commanding any person
24 or corporation to comply with the provisions of this Act

1 or any order of the commission made in pursuance there-
2 of.”;

3 (3) in section 13(b)(1), by inserting “(excluding
4 section 7 of the Clayton Act (15 U.S.C. 18) and sec-
5 tion 5(a)(1) with respect to the consummation of a
6 proposed merger, acquisition, joint venture, or simi-
7 lar transaction that is subject to section 7 of the
8 Clayton Act (15 U.S.C. 18))” after “Commission”;
9 and

10 (4) in section 16(a)(2)—

11 (A) in subparagraph (D) by striking “or”
12 at the end;

13 (B) in subparagraph (E) by adding “or” at
14 the end; and

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

16 “(F) under section 15 of the Clayton Act
17 (15 U.S.C. 25);”.

18 **SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

19 (a) **EFFECTIVE DATE.**—Except as provided in sub-
20 section (b), this Act and the amendments made by this
21 Act shall take effect on the date of the enactment of this
22 Act.

23 (b) **APPLICATION OF AMENDMENTS.**—The amend-
24 ments made by this Act shall not apply to any of the fol-

1 lowing that occurs before the date of enactment of this
2 Act:

3 (1) A violation of section 7 of the Clayton Act
4 (15 U.S.C. 18).

5 (2) A transaction with respect to which there is
6 compliance with section 7A of the Clayton Act (15
7 U.S.C. 18a).

8 (3) A case in which a preliminary injunction
9 has been filed in a district court of the United
10 States.

Passed the House of Representatives May 9, 2018.

Attest:

KAREN L. HAAS,

Clerk.