To amend the Sherman Act, the Clayton Act, and the Federal Trade Commission Act to promote competition in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. HAWLEY introduced the following bill; which was read twice and referred to the Committee on ____________

A BILL

To amend the Sherman Act, the Clayton Act, and the Federal Trade Commission Act to promote competition in the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Trust-Busting for the Twenty-First Century Act”.

SEC. 2. SHERMAN ACT AMENDMENTS.

The Sherman Act (15 U.S.C. 1 et seq.) is amended—

(1) in section 2 (15 U.S.C. 2)—
(A) by striking “Every” and inserting “(a) Every”; and

(B) by adding at the end the following:

“(b)(1) In any case alleging a violation of this section or section 1 in which a plaintiff establishes by a preponderance of the evidence (including direct evidence) the existence of substantial market power or the anticompetitive or otherwise detrimental effects of particular practices, a plaintiff need neither define the scope of a relevant market nor establish the share of such a market controlled by the defendant.

“(2) In any case alleging a violation of this section or section 1 in which the defendant relies on alleged procompetitive effects to justify the conduct of the defendant, the defendant shall establish by clear and convincing evidence that—

“(A) the procompetitive effects of the conduct clearly outweigh the anticompetitive effects of the conduct; and

“(B) the defendant could not obtain substantially similar procompetitive effects through commercially reasonable alternatives that would involve materially lower competitive risks.”; and

(2) in section 4 (15 U.S.C. 4)—
(A) by striking “The several” and inserting “(a) The several”; and

(B) by adding at the end the following:

“(b) In any action brought by the United States or
the Federal Trade Commission alleging a violation of this
Act, if the United States or the Federal Trade Commis-
sion establishes such a violation, the court shall order
disgorgement of all profits earned by the defendant as a
result of the conduct constituting that violation, except
upon a showing of extraordinary good cause.

“(c) It is the policy of the United States that the
principal standard for evaluating the permissibility of
practices under this Act is the protection of economic com-
petition within the United States.”.

SEC. 3. CLAYTON ACT AMENDMENTS.

The Clayton Act (15 U.S.C. 12 et seq.) is amended—

(1) in the first section (15 U.S.C. 12), by add-
ing at the end the following:

“(c) It is the policy of the United States that the
principal standard for evaluating the permissibility of
practices under this Act is the protection of economic com-
petition within the United States.”;

(2) in section 7 (15 U.S.C. 18), by adding at

the end the following:
“No person with a market capitalization exceeding $100,000,000,000 (as adjusted and published for each fiscal year beginning after September 30, 2022, in the same manner as provided in section 8(a)(5) to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2021) shall acquire, directly or indirectly, the whole or any part of the stock or other share capital or the whole or any part of the assets of 1 or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be to lessen competition in any way.

“Where a preponderance of the evidence (including direct evidence) is adduced to demonstrate that the effect of an acquisition may be substantially to lessen competition or to tend to create a monopoly, a plaintiff need neither establish market shares nor the concentration of any particular market.

“No acquisition shall be presumed not to substantially lessen competition or tend to create a monopoly only because the parties to the acquisition do not compete di-
rectly against one another at the time of the acquisition.”;
and

(3) in section 7a(a) (15 U.S.C. 18a(a)), in the
undesignated matter following paragraph
(2)(B)(ii)(III), by adding at the end the following:
“In the case of any transaction involving a person,
partnership, or corporation designated as a domi-
nant digital firm under section 10A of the Federal
Trade Commission Act, the person, partnership, or
corporation shall file notification as required by this
section.”.

SEC. 4. RESTRICTIONS ON DOMINANT DIGITAL FIRMS.
et seq.) is amended by inserting after section 10 the fol-
lowing:

“SEC. 10A. RESTRICTIONS ON DOMINANT DIGITAL FIRMS.
“(a) DEFINITIONS.—In this section:
“(1) DOMINANT DIGITAL FIRM.—The term
‘dominant digital firm’ means a person, partnership,
or corporation that—
“(A) provides a website or service acces-
sible through the internet; and
“(B) possesses dominant market power in
any market related to that website or service.
“(2) Search functionality.—The term ‘search functionality’ means any feature or aspect of a website or service accessible through the internet that allows a user to input alphanumeric data in order to retrieve and display a ranked list of relevant results.

“(b) Designation as a Dominant Digital Firm.—

“(1) In general.—The Commission shall have power to designate a person, partnership, or corporation as a dominant digital firm.

“(2) Factors to be considered.—In determining whether a person, partnership, or corporation possesses dominant market power under paragraph (1), the Commission shall consider factors including—

“(A) dominance of the firm in other markets and durability of the dominance;

“(B) the extent to which the firm benefits from government contracts or other privileges;

“(C) exclusivity agreements entered into by the firm;

“(D) network effects; and
“(E) any ownership stake of the firm in other entities within the supply chain of the firm.

“(3) INVESTIGATIVE AUTHORITY.—In determining whether to designate a person, partnership, or corporation as a dominant digital firm under paragraph (1), the Commission shall have power to issue investigative demands.

“(c) REQUIREMENTS.—

“(1) IN GENERAL.—Any designation made by the Commission under subsection (b) shall be preceded by a notice and comment period in accordance with section 553 of title 5, United States Code, except that the required publication and service of any designation by the Commission may be made not less than 15 days before the effective date of the designation.

“(2) JUDICIAL REVIEW.—Any designation made by the Commission under subsection (b) shall be subject to judicial review pursuant to section 706 of title 5, United States Code.

“(d) PRESUMPTION AS UNFAIR OR DECEPTIVE ACT OR PRACTICE.—Any acquisition by a person, partnership, or corporation designated as a dominant digital firm under this section, direct or indirect, of the whole or any part
of the stock or other share capital or the whole or any 
part of the assets of 1 or more persons engaged in com-
merce or in any activity affecting commerce, where such 
aquisition exceeds $1,000,000 (as adjusted and published 
for each fiscal year beginning after September 30, 2022, 
in the same manner as provided in section 8(a)(5) of the 
Clayton Act to reflect the percentage change in the gross 
national product for such fiscal year compared to the gross 
national product for the year ending September 30, 2021) 
shall be presumed to be a unfair or deceptive act or prac-
tice.

“(e) Unfair or Deceptive Act or Practice.—It 
shall be an unfair or deceptive act or practice if a person, 
partnership, or corporation designated as a dominant dig-
ital firm under this section—

“(1) provides search functionality;

“(2) promotes or demotes particular search re-
sults, on the basis of whether those results are affili-
ated or not affiliated with the dominant digital firm;

and

“(3) does not disclose such affiliation to users 
of the search functionality.”.