



Report Generated: September 26, 2022 (10:43 a.m. EDT)

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Text of H.R. 3843, Merger Filing Fee Modernization Act of 2022 [Showing the text of H.R. 3843, as ordered reported by the Committee on the Judiciary, with modifications.]

SECTION 1. Short ~~title~~; ***title; table of contents.***

(a) Short title.—This Act may be cited as the “Merger Filing Fee Modernization Act of 2022”.

(b) Table of contents.—*The table of contents of this Act is as follows:*

Sec. Short title; table of contents.

TITLE I—MODERNIZING MERGER FILING FEE COLLECTIONS; ACCOUNTABILITY REQUIREMENTS; LIMITATION ON FUNDING

Sec. 10 Modification of premerger notification filing fees.

Sec. 10 Reporting requirements for merger fee collections.

TITLE II—DISCLOSURE OF SUBSIDIES BY FOREIGN ADVERSARIES

Sec. 20 ~~Hindings and purpose.~~

Sec. 20 ~~Mergers involving foreign government subsidies.~~

TITLE III—VENUE FOR STATE ANTITRUST ENFORCEMENT

Sec. 301.

Venue for State Antitrust Enforcement.

~~[[Section moved]]~~

SEC. 3. Authorization of appropriations.

There is authorized to be appropriated for fiscal year 2022—

- (1) \$252,000,000 for the Antitrust Division of the Department of Justice; and
- (2) \$418,000,000 for the Federal Trade Commission.

Title I—Modernizing Merger Filing Fee Collections; Accountability Requirements; Limitation on Funding

SEC. 2. ~~Premerger~~ 101. Modification of premerger notification filing fees.

Section 605 of Public Law 101–162 (15 U.S.C. 18a note) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

- (i) by striking “\$45,000” and inserting “\$30,000”;
- (ii) by striking “\$100,000,000” and inserting “\$161,500,000”;
- (iii) by striking “2004” and inserting “~~2022~~2023”; and
- (iv) by striking “2003” and inserting “~~2021~~2022”;

(B) in paragraph (2)—

- (i) by striking “\$125,000” and inserting “\$100,000”;
- (ii) by striking “\$100,000,000” and inserting “\$161,500,000”;
- (iii) by striking “but less” and inserting “but is less”; and
- (iv) by striking “and” at the end;

(C) in paragraph (3)—

(i) by striking “\$280,000” and inserting “\$250,000”; and

(ii) by striking the period at the end and inserting “but is less than \$1,000,000,000 (as so adjusted and published);”; and

(D) by adding at the end the following:

“(4) \$400,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$1,000,000,000 (as so adjusted and published) but is less than \$2,000,000,000 (as so adjusted and published);

“(5) \$800,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$2,000,000,000 (as so adjusted and published) but is less than \$5,000,000,000 (as so adjusted and published); and

“(6) \$2,250,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$5,000,000,000 (as so adjusted and published).”

; and

(2) by adding at the end the following:

“(c)

(1) For each fiscal year commencing after September 30, ~~2022, 2023~~, the filing fees in this section shall be increased ~~each year~~ by an amount equal to the percentage increase, if any, in the Consumer Price Index, as determined by the Department of Labor or its successor, for the year then ended over the level so established for the year ending September 30, ~~2021, 2022~~.

“(2) As soon as practicable, but not later than January 31 of each year, the Federal Trade Commission shall publish the adjusted amounts required by paragraph (1).

“(3) The Federal Trade Commission shall not adjust amounts required by paragraph (1) if the percentage increase described in paragraph (1) is less than 1 percent.

“(4) An amount adjusted under this section shall be rounded to the nearest multiple of \$5,000.

“(5) For each fiscal year commencing after September 30, 2022, through September 30, 2027, the Federal Trade Commission and Department of Justice shall include in its joint annual report pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18(a) et seq.) the following:

“(A) the increase in funds made available to the Federal Trade Commission and the Department of Justice, respectively, through the adjustment in premerger notification filing fees in 15 U.S.C. 18(a) from the funds made available to the Federal Trade Commission and the Department of Justice, respectively, from premerger notification filing fees as the fees were determined in fiscal year 2021;

“(B) the total revenue derived from premerger notification filing fees, by tier, and how such revenue is used by the Federal Trade Commission and the Department of Justice, respectively; and

“(C) the gross cost of operations of the Federal Trade Commission and the Department of Justice, respectively, associated with activities related to the use of revenue derived from premerger notification filing fees.

“(6) The Federal Trade Commission shall report, in addition to the requirements listed in paragraph (5), a listing of all cases where the Federal Trade Commission took or declined to take action on a 3 to 2 vote and what

percentage of actions of the Federal Trade Commission were decided on a 3 to 2 vote.

“(7) The Federal Trade Commission and the Department of Justice shall make the joint annual report pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18(a) et seq.) available to the Senate Committee on the Judiciary and the House Committee on the Judiciary and shall, for fiscal years 2022 through 2027, no later than July 1, present a summary of the joint annual report for the preceding fiscal year, including the information required in paragraph (5) and (6) of this Act, to the Senate Committee on the Judiciary and the House Committee on the Judiciary.

“(8) None of the funds collected by the Federal Trade Commission from premerger notification filing fees under 15 U.S.C. 18(a) and allocated by the Federal Trade Commission shall be available for obligation or expenditure by the Federal Trade Commission and the Department of Justice in excess of the amounts appropriated by Congress for spending authority from offsetting collections, including premerger notification filings under the Hart-Scott Rodino Antitrust Improvements Act of 1976.

”

SEC. 102. Reporting requirements for merger fee collections.

(a) **FTC AND DOJ JOINT REPORT.**—For each of fiscal years 2023 through 2027, the Federal Trade Commission and Department of Justice shall jointly and annually report to the Congress on the operation of section 7A of the Clayton Act (15 U.S.C. 18a) and shall include in such report the following:

(1) The amount of funds made available to the Federal Trade Commission and the Department of Justice, respectively, from the premerger notification filing fees under this section, as adjusted by the Merger Filing Fee Modernization Act of 2022, as compared to the funds made available to the Federal Trade Commission and the Department of Justice, respectively, from premerger notification filing fees as the fees were determined in fiscal year 2022.

(2) The total revenue derived from premerger notification filing fees, by tier, by the Federal Trade Commission and the Department of Justice, respectively.

(3) The gross cost of operations of the Federal Trade Commission, by Budget Activity, and the Antitrust Division of the Department of Justice, respectively.

(b) **FTC REPORT.**—The Federal Trade Commission shall include in the report required under subsection (a), in addition to the requirements under subsection (a), for the previous fiscal year—

(1) for actions with respect to which the record of the vote of each member of the Federal Trade Commission is on the public record of the Federal Trade Commission, a list of each action with respect to which the Federal Trade Commission took or declined to take action on a 3 to 2 vote; and

(2) for all actions for which the Federal Trade Commission took a vote, the percentage of such actions that were decided on a 3 to 2 vote.

(c) **SUMMARY.**—The Federal Trade Commission and the Department of Justice shall

make the report required under subsection (a) available to the Committees on the Judiciary of the House of Representatives and of the Senate, and shall, for fiscal years 2023 through 2027, no later than July 1, present a summary of the joint annual report for the preceding fiscal year, including the information required in subsections (a) and (b) of this section, to the Committees on the Judiciary of the House of Representatives and of the Senate.

Title II—Disclosure of Subsidies by Foreign Adversaries

SEC. 201. Findings and purpose.

(a) FINDINGS.—Congress finds the following:

(1) Foreign subsidies, which can take the form of direct subsidies, grants, loans (including below-market loans), loan guarantees, tax concessions, preferential government procurement policies, or government ownership or control, can distort the competitive process by enabling the subsidized firm to submit a bid higher than other firms in the market, or otherwise change the incentives of the firm in ways that undermine competition following an acquisition.

(2) Foreign subsidies are particularly problematic when granted by countries or entities that constitute a strategic or economic threat to United States interests.

(3) The Made in China 2025 plan, states that the Chinese Communist Party will “support enterprises to carry out mergers and acquisitions (M&A), equity investment, and venture capital overseas”.

(4) The 2020 report to Congress from the bipartisan U.S.-China Economic and Security Review Commission concluded that the Chinese Government subsidizes companies with a goal of their expanding into the United States and other countries, finding that “[t]his process assists Chinese national champions in surpassing and supplanting global market leaders”. The report warns that the risk is particularly acute when it comes to emerging technologies, where China seeks to “surpass and displace the United States altogether [and that] [f]ailure to appreciate the gravity of this challenge and defend U.S. competitiveness would be dire . . . [and] risks setting back U.S. economic and technological progress for decades”.

(5) In remarks before the Hudson Institute on December 8, 2020, FTC Commissioner Noah Phillips stated, “[O]ne area where antitrust needs to reckon with the strategic interests of other nations is when we scrutinize mergers or conduct involving state-owned entities . . . companies that are controlled, to varying degrees, by the state . . . [and] often are a government tool for implementing industrial policies or to protect national security”.

(b) PURPOSE.—The purpose of this section is to require parties providing pre-merger notifications to include in the notification required under section 7A of the Clayton Act (15 U.S.C. 18a) information concerning subsidies they receive from countries or entities that are strategic or economic threats to the United States.

SEC. 202. Mergers involving foreign government subsidies.

(a) DEFINITION.—In this section, the term “foreign entity of concern” has the meaning

given the term in section 40207 of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)).

(b) ACCOUNTING FOR FOREIGN GOVERNMENT SUBSIDIES.—A person required to file a notification under section 7A of the Clayton Act (15 U.S.C. 18a) that received a subsidy from a foreign entity of concern shall include in such notification content regarding such subsidy.

(c) AUTHORITY OF ANTITRUST REGULATORS.—The Federal Trade Commission, with the concurrence of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, and in consultation with the Chairperson of the Committee on Foreign Investment in the United States, the Secretary of Commerce, the Chair of the United States International Trade Commission, the United States Trade Representative, and the heads of other appropriate agencies, and by rule in accordance with section 553 of title 5, United States Code, shall require that the notification required under subsection (b) be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice to determine whether such acquisition may, if consummated, violate the antitrust laws.

(d) EFFECTIVE DATE.—Subsection (b) shall take effect on the date on which the rule described in subsection (c) takes effect.

Title III—Venue for State Antitrust Enforcement

SEC. 301. Venue for State Antitrust Enforcement.

Section 1407 of title 28, United States Code, is amended—

(1) in subsection (g) by inserting “or a State” after “United States” and striking “; but shall not include section 4A of the Act of October 15, 1914, as added July 7, 1955 (69 Stat. 282; 15 U.S.C. 15a)”; and

(2) by striking subsection (h).

About this report

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•*Version of the system: Posey Ramseyer Report Generator 2020-05-04; AMPL*

