

115TH CONGRESS
1ST SESSION

H. R. 4686

To establish the National Commission on Economic Concentration to study the effects of economic concentration on competition, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 19, 2017

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

A BILL

To establish the National Commission on Economic Concentration to study the effects of economic concentration on competition, and for other purposes.

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 “21st Century Competi-
5 tion Commission Act of 2017”.

6 **SEC. 2. FINDINGS AND SENSE OF CONGRESS.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) There is substantial evidence showing that
9 competition has declined across the American polit-

1 ical economy, resulting in concentrated control and
2 ownership across sectors.

3 (2) This structural lack of competition is con-
4 tributing to a host of harms, including greater
5 wealth inequality, less innovation, less entrepreneur-
6 ship, and less resiliency, with outsized harmful ef-
7 fects on minority and rural populations.

8 (b) SENSE OF CONGRESS.—It is the sense of Con-
9 gress that—

10 (1) while it is clear that the monopoly problem
11 in the United States is threatening the economy and
12 democracy of the United States, additional informa-
13 tion will help reveal the full scope of the problem
14 and help guide industry-specific policy efforts;

15 (2) insufficient and permissive enforcement by
16 the Department of Justice and the Federal Trade
17 Commission necessitates that Congress convene this
18 information-gathering exercise as a form of over-
19 sight; and

20 (3) gathering and producing information will
21 aid law enforcement by the Department of Justice,
22 the Federal Trade Commission, and Attorneys Gen-
23 eral of the States, and litigation efforts by private
24 parties.

1 **SEC. 3. COMMISSION ESTABLISHED.**

2 (a) ESTABLISHMENT.—There is established the Na-
3 tional Commission on Economic Concentration (herein-
4 after referred to as the “Commission”).

5 (b) DUTIES.—

6 (1) STUDY.—The Commission shall conduct a
7 study of economic concentration to determine the
8 following:

9 (A) The extent of concentration in aggre-
10 gate and in specific markets in specific sectors.

11 (B) The extent of vertical integration in
12 specific sectors and the effects of increasing
13 vertical integration on commerce within such
14 sectors.

15 (C) The extent to which changes in con-
16 centration and integration correspond to
17 changes in—

18 (i) profits;

19 (ii) innovation;

20 (iii) productivity;

21 (iv) new business formation;

22 (v) distribution of wealth and income;

23 (vi) wages;

24 (vii) employment;

25 (viii) prices; and

1 (ix) non-price terms and conditions
2 that adversely affect suppliers or con-
3 sumers, including reduced—

4 (I) quality of products or serv-
5 ices;

6 (II) variety of products or serv-
7 ices;

8 (III) protection of privacy; and

9 (IV) ability of the consumer to
10 exercise legal rights, including the ex-
11 ercise of such rights through manda-
12 tory arbitration agreements.

13 (D) The effects concentration has on racial
14 minorities and rural communities, with respect
15 to—

16 (i) credit and banking services;

17 (ii) food;

18 (iii) access to affordable healthcare
19 and medicine;

20 (iv) fair and affordable housing;

21 (v) affordable access to internet; and

22 (vi) energy and utilities.

23 (E) With respect to entrepreneurs and
24 independent businesses, the obstacles to busi-
25 ness formation and expansion, including the ef-

1 fects of rising concentration on the capability to
2 enter markets and compete.

3 (F) The effects of rising concentration on
4 workers, including employees and independent
5 contractors, with respect to—

6 (i) labor market competition;

7 (ii) labor mobility;

8 (iii) wage and benefit levels;

9 (iv) wage distribution;

10 (v) wage volatility; and

11 (vi) other material benefits.

12 (G) The effects of rising concentration on
13 suppliers, farmers, and other upstream market
14 participants, with respect to—

15 (i) competition in markets for their
16 products and services;

17 (ii) income levels;

18 (iii) income distribution; and

19 (iv) income volatility.

20 (H) The effects of concentration on the re-
21 siliency of industrial, financial, and techno-
22 logical systems.

23 (I) The extent of concentration within
24 banking and financial sectors and the effects of

1 such concentration on lending and new business
2 formation.

3 (J) With respect to major technology plat-
4 forms that are dominant in a market sector—

5 (i) the extent of concentration of con-
6 trol of communication, commerce, and crit-
7 ical technology;

8 (ii) the extent to which data, critical
9 technology, and other assets that are avail-
10 able only to major technology platforms
11 are being used to undermine competition;

12 (iii) the effects of large-scale data ac-
13 quisition on market stability;

14 (iv) the effects of such concentration
15 on new business formation, investment
16 flows, and distribution of revenue and prof-
17 its among firms;

18 (v) the extent to which network effects
19 allow major technology platforms to attain
20 and maintain market power; and

21 (vi) in the online marketplace, the ex-
22 tent to which competitors are capable of
23 usurping the dominance of major tech-
24 nology platforms.

1 (K) The extent of common ownership by
2 institutional investors and the effects of such
3 common ownership.

4 (L) The extent of distribution of patent,
5 copyright, and trademark ownership across
6 firms.

7 (M) The causes of concentration and fac-
8 tors that exacerbate the adverse effects of such
9 concentration.

10 (N) The relationship among concentration,
11 vertical integration, firm size, and corporate po-
12 litical activities, including lobbying activities
13 and donations to campaigns and political cam-
14 paign committees.

15 (O) The economic benefits and costs of the
16 increase of mergers and conglomerates.

17 (P) The extent of abuse of superior bar-
18 gaining power between buyers and sellers.

19 (2) REPORT.—Not later than 3 years after the
20 date of the enactment of this Act, the Commission
21 shall submit to Congress a report describing the re-
22 sults of such study.

23 (c) MEMBERSHIP.—

1 (1) COMPOSITION OF THE COMMISSION.—The
2 Commission shall be composed of 15 members ap-
3 pointed as follows:

4 (A) The Speaker of the House of Rep-
5 resentatives, the minority leader of the House
6 of Representatives, the President pro tempore
7 of the Senate, and the minority leader of the
8 Senate shall each appoint 1 member from
9 among the House of Representatives and the
10 Senate.

11 (B) The Attorney General, the Chair of the
12 Federal Trade Commission, and the Chair of
13 the Federal Reserve Board shall each appoint 1
14 member.

15 (C) The Council of Economic Advisers
16 shall appoint by majority vote—

17 (i) 1 member with expertise in labor
18 organization;

19 (ii) 1 member with expertise in labor
20 policy;

21 (iii) 1 member who is an executive of
22 a business with fewer than 500 employees;

23 (iv) 1 member who is an executive of
24 a business with greater than 5,000 employ-
25 ees;

1 (v) 1 member from a consumer advo-
2 cacy nongovernmental organization;

3 (vi) 1 member with expertise in indus-
4 trial organization;

5 (vii) 1 member with expertise in fi-
6 nance; and

7 (viii) 1 member with expertise in in-
8 vestment.

9 (2) TERMS OF OFFICE.—A member appointed
10 under—

11 (A) paragraph (1)(A) may serve so long as
12 such member remains a Member of the House
13 of Representatives or the Senate, unless re-
14 moved by the relevant appointing authority;

15 (B) paragraph (1)(B) may serve for the
16 life of the Commission, unless removed by the
17 relevant appointing authority; and

18 (C) paragraph (1)(C) may serve for the life
19 of the Commission, unless removed by a major-
20 ity vote of the Council of Economic Advisors.

21 (3) CHAIR AND VICE CHAIR.—The chair and
22 vice chair of the Commission shall be elected by a
23 majority vote of the members of the Commission.

24 (4) VACANCY.—A vacancy in the Commission
25 shall not affect the power of the remaining members

1 to execute the functions of the Commission and shall
2 be filled in the same manner as the original appoint-
3 ment is made.

4 (5) COMPENSATION.—

5 (A) NONGOVERNMENT MEMBERS.—Except
6 as provided in subparagraph (C), members of
7 the Commission shall be entitled to a sum
8 equivalent to the compensation paid at level V
9 of the Executive Schedule under section 5315
10 of title 5, United States Code.

11 (B) TRAVEL AND PER DIEM.—While away
12 from their homes or regular places of business
13 in the performance of services for the Commis-
14 sion, members of the Commission shall be al-
15 lowed travel expenses, including per diem in lieu
16 of subsistence, in the same manner as the ex-
17 penses authorized by section 5703 of title 5,
18 United States Code, for persons in the Govern-
19 ment service employed intermittently.

20 (C) PROHIBITION OF COMPENSATION OF
21 FEDERAL OFFICERS OR EMPLOYEES.—Members
22 of the Commission who are full-time officers or
23 employees of the United States or Members of
24 Congress may not receive additional pay, allow-

1 ances, or benefits in the nature of compensation
2 by reason of their service on the Commission.

3 (d) RULES.—

4 (1) MEETINGS.—The Commission shall meet at
5 the call of the chair or a majority of members of the
6 Commission.

7 (2) QUORUM.—A majority of members of the
8 Commission shall constitute a quorum, and actions
9 by the Commission shall be determined by a major-
10 ity vote of the members present.

11 (3) PROXY VOTING.—If unable to attend a
12 meeting of the Commission, a member of the Com-
13 mission appointed under subsection (c)(1)(C) may
14 authorize another member to act and vote on behalf
15 of the absent member.

16 (4) ATTENDANCE.—Members appointed under
17 subparagraph (A) or (B) of subsection (c)(1) shall
18 be removed from the Commission and replaced by
19 the relevant appointing authority if they attend
20 fewer than two-thirds of the meetings of the Com-
21 mission.

22 (e) ADMINISTRATIVE PROVISIONS.—

23 (1) HEARINGS.—The Commission may for the
24 purposes of carrying out this Act hold such hearings,
25 sit and act at such times and places, take such testi-

1 mony, and receive such evidence as the Commission
2 deems advisable. The Commission may administer
3 oaths or affirmations to witnesses appearing before
4 it.

5 (2) SUBPOENA POWER.—The Commission shall
6 have power to issue subpoenas requiring the attend-
7 ance and testimony of witnesses and the production
8 of evidence that relates to any matter which the
9 Commission is authorized to study under subsection
10 (b).

11 (3) ACCESS TO FEDERAL INFORMATION.—The
12 Commission may secure directly from any executive
13 department or agency of the United States informa-
14 tion reasonably necessary to enable it to carry out
15 this Act. Upon request of the chairman or vice
16 chairman of the Commission, and consistent with
17 any other law, the head of an executive department
18 or agency shall furnish such information to the
19 Commission.

20 (4) AGENCY.—When so authorized by the Com-
21 mission, any member, subcommittee, or agent of the
22 Commission may take any action which the Commis-
23 sion is authorized to take by this section.

24 (5) STAFF.—

1 (A) APPOINTMENT.—The chair of the
2 Commission may, without regard to the provi-
3 sions of chapter 41 of title 5, United States
4 Code, appoint and terminate such staff as are
5 necessary to enable the Commission to perform
6 its duties.

7 (B) COMPENSATION.—The chair of the
8 Commission may fix the compensation of the
9 staff without regard to the provisions of chapter
10 51 and subchapter III of chapter 53 of title 5,
11 United States Code, except that the rate of pay
12 for the staff may not exceed the rate of basic
13 pay payable for level V of the Executive Sched-
14 ule under section 5315 of title 5, United States
15 Code.

16 (C) EXPERTS AND CONSULTANTS.—The
17 Commission may procure temporary and inter-
18 mittent services of experts and consultants
19 under section 3109(b) of title 5, United States
20 Code, but at rates for individuals not to exceed
21 the maximum rate of basic pay for GS-15 of
22 the General Schedule.

23 (6) FACILITIES AND SUPPORT SERVICES.—The
24 Administrator of General Services shall provide to
25 the Commission on a reimbursable basis such facili-

1 ties and support services as the Commission may re-
2 quest.

3 (7) EXPENDITURES AND CONTRACTS.—The
4 Commission or, on authorization of the Commission,
5 a member of the Commission may make expendi-
6 tures and enter into contracts for the procurement
7 of such supplies, services, and property as the Com-
8 mission or such member considers to be appropriate
9 for the purpose of carrying out this Act. Such ex-
10 penditures and contracts may be made only to the
11 extent provided in advance in appropriation Acts.

12 (8) MAILS.—The Commission may use the
13 United States mails in the same manner and under
14 the same conditions as other departments and agen-
15 cies of the United States.

16 (9) GIFTS, BEQUESTS, AND DEVISES.—The
17 Commission may accept, use, and dispose of gifts,
18 bequests, or devises of services or property, both real
19 and personal, for the purpose of aiding or facili-
20 tating the work of the Commission. Gifts, bequests,
21 or devises of money and proceeds from sales of other
22 property received as gifts, bequests, or devises shall
23 be deposited in the Treasury and shall be available
24 for disbursement upon order of the Commission.

1 (f) TERMINATION.—The Commission shall terminate
2 on the date that is 180 days after the date on which the
3 Commission submits the report under subsection (a)(2).

4 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
5 authorized to be appropriated a total amount of
6 \$50,000,000 for fiscal years 2019 through 2021 to carry
7 out this Act.

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