

Amy Klobuchar

AMENDMENT NO. _____

Calendar No. _____

Purpose: To improve the bill.

IN THE SENATE OF THE UNITED STATES—117th Cong., 2d Sess.

AMENDMENT N^o 6597

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By *Klobuchar* le,
To: *Amdt. No. 6552* re

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Page(s)

GPO: 2008 45-603 (mac)

AMENDMENT intended to be proposed by Ms. KLOBUCHAR (for herself and Mr. LEE) to the amendment (No. 6552) proposed by Mr. LEAHY

Viz:

- 1 Strike division GG and insert the following:
- 2 **DIVISION GG—MERGER FILING**
- 3 **FEE MODERNIZATION**
- 4 **SEC. 101. SHORT TITLE.**
- 5 This division may be cited as the “Merger Filing Fee
- 6 Modernization Act of 2022”.

1 **TITLE I—MODERNIZING MERG-**
2 **ER FILING FEE COLLEC-**
3 **TIONS; ACCOUNTABILITY RE-**
4 **QUIREMENTS; LIMITATION**
5 **ON FUNDING**

6 **SEC. 101. MODIFICATION OF PREMERGER NOTIFICATION**
7 **FILING FEES.**

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

10 (1) in subsection (b)—

11 (A) in paragraph (1)—

12 (i) by striking “\$45,000” and insert-
13 ing “\$30,000”;

14 (ii) by striking “\$100,000,000” and
15 inserting “\$161,500,000”;

16 (iii) by striking “2004” and inserting
17 “2023”; and

18 (iv) by striking “2003” and inserting
19 “2022”;

20 (B) in paragraph (2)—

21 (i) by striking “\$125,000” and insert-
22 ing “\$100,000”;

23 (ii) by striking “\$100,000,000” and
24 inserting “\$161,500,000”;

1 (iii) by striking “but less” and insert-
2 ing “but is less”; and

3 (iv) by striking “and” at the end;
4 (C) in paragraph (3)—

5 (i) by striking “\$280,000” and insert-
6 ing “\$250,000”; and

7 (ii) by striking the period at the end
8 and inserting “but is less than
9 \$1,000,000,000 (as so adjusted and pub-
10 lished);”; and

11 (D) by adding at the end the following:

12 “(4) \$400,000 if the aggregate total amount
13 determined under section 7A(a)(2) of the Clayton
14 Act (15 U.S.C. 18a(a)(2)) is not less than
15 \$1,000,000,000 (as so adjusted and published) but
16 is less than \$2,000,000,000 (as so adjusted and
17 published);

18 “(5) \$800,000 if the aggregate total amount
19 determined under section 7A(a)(2) of the Clayton
20 Act (15 U.S.C. 18a(a)(2)) is not less than
21 \$2,000,000,000 (as so adjusted and published) but
22 is less than \$5,000,000,000 (as so adjusted and
23 published); and

24 “(6) \$2,250,000 if the aggregate total amount
25 determined under section 7A(a)(2) of the Clayton

1 Act (15 U.S.C. 18a(a)(2)) is not less than
2 \$5,000,000,000 (as so adjusted and published).”;
3 and

4 (2) by adding at the end the following:

5 “(c)(1) For each fiscal year commencing after Sep-
6 tember 30, 2023, the filing fees in this section shall be
7 increased by an amount equal to the percentage increase,
8 if any, in the Consumer Price Index, as determined by
9 the Department of Labor or its successor, for the year
10 then ended over the level so established for the year ending
11 September 30, 2022.

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

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

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

20 **SEC. 102. REPORTING REQUIREMENTS FOR MERGER FEE**
21 **COLLECTIONS.**

22 (a) FTC AND DOJ JOINT REPORT.—For each of fis-
23 cal years 2023 through 2027, the Federal Trade Commis-
24 sion and Department of Justice shall jointly and annually
25 report to the Congress on the operation of section 7A of

1 the Clayton Act (15 U.S.C. 18a) and shall include in such
2 report the following:

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

12 (2) The total revenue derived from premerger
13 notification filing fees, by tier, by the Federal Trade
14 Commission and the Department of Justice, respec-
15 tively.

16 (3) The gross cost of operations of the Federal
17 Trade Commission, by Budget Activity, and the
18 Antitrust Division of the Department of Justice, re-
19 spectively.

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

24 (1) for actions with respect to which the record
25 of the vote of each member of the Federal Trade

1 Commission is on the public record of the Federal
2 Trade Commission, a list of each action with respect
3 to which the Federal Trade Commission took or de-
4 clined to take action on a 3 to 2 vote; and

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

8 (c) SUMMARY.—The Federal Trade Commission and
9 the Department of Justice shall make the report required
10 under subsection (a) available to the Committees on the
11 Judiciary of the House of Representatives and of the Sen-
12 ate, and shall, for fiscal years 2023 through 2027, no later
13 than July 1, present a summary of the joint annual report
14 for the preceding fiscal year, including the information re-
15 quired in subsections (a) and (b) of this section, to the
16 Committees on the Judiciary of the House of Representa-
17 tives and of the Senate.

18 **TITLE II—DISCLOSURE OF SUB-**
19 **SIDIES BY FOREIGN ADVER-**
20 **SARIES**

21 **SEC. 201. FINDINGS AND PURPOSE.**

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

23 (1) Foreign subsidies, which can take the form
24 of direct subsidies, grants, loans (including below-
25 market loans), loan guarantees, tax concessions,

1 preferential government procurement policies, or
2 government ownership or control, can distort the
3 competitive process by enabling the subsidized firm
4 to submit a bid higher than other firms in the mar-
5 ket, or otherwise change the incentives of the firm
6 in ways that undermine competition following an ac-
7 quisition.

8 (2) Foreign subsidies are particularly problem-
9 atic when granted by countries or entities that con-
10 stitute a strategic or economic threat to United
11 States interests.

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

16 (4) The 2020 report to Congress from the bi-
17 partisan U.S.-China Economic and Security Review
18 Commission concluded that the Chinese Government
19 subsidizes companies with a goal of their expanding
20 into the United States and other countries, finding
21 that “[t]his process assists Chinese national cham-
22 pions in surpassing and supplanting global market
23 leaders”. The report warns that the risk is particu-
24 larly acute when it comes to emerging technologies,
25 where China seeks to “surpass and displace the

1 United States altogether [and that] [f]ailure to ap-
2preciate the gravity of this challenge and defend
3 U.S. competitiveness would be dire . . . [and] risks
4 setting back U.S. economic and technological
5 progress for decades”.

6 (5) In remarks before the Hudson Institute on
7 December 8, 2020, FTC Commissioner Noah Phil-
8 lips stated, “[O]ne area where antitrust needs to
9 reckon with the strategic interests of other nations
10 is when we scrutinize mergers or conduct involving
11 state-owned entities . . . companies that are con-
12 trolled, to varying degrees, by the state . . . [and]
13 often are a government tool for implementing indus-
14 trial policies or to protect national security”.

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

21 **SEC. 202. MERGERS INVOLVING FOREIGN GOVERNMENT**
22 **SUBSIDIES.**

23 (a) DEFINITION.—In this section, the term “foreign
24 entity of concern” has the meaning given the term in sec-

1 tion 40207 of the Infrastructure Investment and Jobs Act
2 (42 U.S.C. 18741(a)).

3 (b) ACCOUNTING FOR FOREIGN GOVERNMENT SUB-
4 SIDIES.—A person required to file a notification under
5 section 7A of the Clayton Act (15 U.S.C. 18a) that re-
6 ceived a subsidy from a foreign entity of concern shall in-
7 clude in such notification content regarding such subsidy.

8 (c) AUTHORITY OF ANTITRUST REGULATORS.—The
9 Federal Trade Commission, with the concurrence of the
10 Assistant Attorney General in charge of the Antitrust Di-
11 vision of the Department of Justice, and in consultation
12 with the Chairperson of the Committee on Foreign Invest-
13 ment in the United States, the Secretary of Commerce,
14 the Chair of the United States International Trade Com-
15 mission, the United States Trade Representative, and the
16 heads of other appropriate agencies, and by rule in accord-
17 ance with section 553 of title 5, United States Code, shall
18 require that the notification required under subsection (b)
19 be in such form and contain such documentary material
20 and information relevant to a proposed acquisition as is
21 necessary and appropriate to enable the Federal Trade
22 Commission and the Assistant Attorney General in charge
23 of the Antitrust Division of the Department of Justice to
24 determine whether such acquisition may, if consummated,
25 violate the antitrust laws.

1 (d) EFFECTIVE DATE.—Subsection (b) shall take ef-
2 fect on the date on which the rule described in subsection
3 (c) takes effect.

4 **TITLE III—VENUE FOR STATE**
5 **ANTITRUST ENFORCEMENT**

6 **SEC. 301. VENUE FOR STATE ANTITRUST ENFORCEMENT.**

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

9 (1) in subsection (g) by inserting “or a State”
10 after “United States” and striking “; but shall not
11 include section 4A of the Act of October 15, 1914,
12 as added July 7, 1955 (69 Stat. 282; 15 U.S.C.
13 15a)”; and

14 (2) by striking subsection (h).