

1 ating a covered platform, in or affecting commerce, shall
2 be an unfair method of competition in violation of section
3 5(a)(1) of the Federal Trade Commission Act (15 U.S.C.
4 45).

5 **SEC. 3. PORTABILITY.**

6 (a) **IN GENERAL.**—A covered platform shall maintain
7 a set of transparent, third-party-accessible interfaces (in-
8 cluding application programming interfaces) to enable the
9 secure transfer of data to a user, or with the affirmative
10 consent of a user, to a business user at the direction of
11 a user, in a structured, commonly used, and machine-read-
12 able format that complies with the standards issued pursu-
13 ant to section 6(c).

14 (b) **DATA SECURITY.**—

15 (1) **IN GENERAL.**—A competing business or a
16 potential competing business that receives ported
17 user data from a covered platform shall reasonably
18 secure any user data it acquires, and shall take rea-
19 sonable steps to avoid introducing security risks to
20 data or the covered platform’s information systems.

21 (2) **VIOLATION.**—A failure to comply with this
22 section is a violation of this Act and subject to the
23 enforcement under sections 9 and 10 of this Act.

24 (3) **TERMINATION OF ACCESS.**—The Commis-
25 sion may require the covered platform to cease the

1 transfer of data to a competing or potentially com-
2 peting business that the Commission finds has vio-
3 lated this section or standards adopted by the Com-
4 mission under section 6(c) of this Act.

5 (c) PORTABILITY OBLIGATIONS.—In order to achieve
6 portability under subsection (a), a covered platform shall
7 comply with the standards issued under section 6(c) by
8 the Commission.

9 SEC. 4. INTEROPERABILITY.

10 (a) IN GENERAL.—A covered platform shall maintain
11 a set of transparent, third-party-accessible interfaces (in-
12 cluding application programming interfaces) to facilitate
13 and maintain interoperability with a competing business
14 or a potential competing business that complies with the
15 standards issued pursuant to section 6(c).

16 (b) DATA SECURITY.—

17 (1) IN GENERAL.—A competing business or a
18 potential competing business that accesses an inter-
19 operability interface of a covered platform shall rea-
20 sonably secure any user data it acquires, processes,
21 or transmits, and shall take reasonable steps to
22 avoid introducing security risks to user data or the
23 covered platform's information systems.

1 (2) VIOLATION.—A failure to comply with this
2 section is a violation of this Act and subject to the
3 enforcement under sections 9 and 10 of this Act.

4 (3) TERMINATION OF ACCESS.—The Commis-
5 sion may require the covered platform to cease inter-
6 operating with a competing or potentially competing
7 business that the Commission finds has violated this
8 section or standards adopted by the Commission
9 under section 6(c) of this Act.

10 (c) INTEROPERABILITY OBLIGATIONS.—In order to
11 achieve interoperability under subsection (a), a covered
12 platform shall comply with the standards issued under sec-
13 tion 6(c) by the Commission.

14 (d) SECURITY AND PRIVACY STANDARDS.—Con-
15 sistent with standards issued by the Commission under
16 section 6(c) of this Act, a covered platform shall set pri-
17 vacy and security standards for access by competing busi-
18 nesses or potential competing businesses to the extent rea-
19 sonably necessary to address a threat to the covered plat-
20 form or user data, and shall report any suspected viola-
21 tions of those standards to the Commission.

22 (e) PROHIBITED CHANGES TO INTERFACES.—

23 (1) COMMISSION APPROVAL.—A covered plat-
24 form may make a change that may affect its inter-
25 operability interface by petitioning the Commission

1 to approve a proposed change. The Commission shall
2 allow the change if, after consulting with the rel-
3 evant technical committee the Commission concludes
4 that the change is not being made with the purpose
5 or effect of unreasonably denying access or under-
6 mining interoperability for competing businesses or
7 potential competing businesses.

8 (2) EXCEPTION.—A covered platform may
9 make a change affecting its interoperability inter-
10 faces without receiving approval from the Commis-
11 sion if that change is necessary to address a security
12 vulnerability or other exigent circumstance that cre-
13 ates an imminent risk to user privacy or security if
14 the change is narrowly tailored to the vulnerability
15 and does not have the purpose or effect of unreason-
16 ably denying access or undermining interoperability
17 for competing businesses or potential competing
18 businesses.

19 (3) INTERFACE INFORMATION.—

20 (A) IN GENERAL.—Not later than 120
21 days after the adoption of a rule by the Com-
22 mission under section 6(c) of this Act, a cov-
23 ered platform shall provide to competing busi-
24 nesses or potential competing businesses com-
25 plete and accurate documentation describing ac-

1 cess to the interoperability interface required
2 under this section.

3 (B) CONTENTS.—The documentation re-
4 quired under subparagraph (A) is limited to
5 interface documentation necessary to achieve
6 development and operation of interoperable
7 products and services.

8 (4) NOTICE OF CHANGES.—A covered platform
9 shall provide reasonable advance notice to a com-
10 peting business or a potential competing business,
11 which may be provided through public notice, of any
12 change to an interoperability interface maintained by
13 the covered platform that will affect the interoper-
14 ability of a competing business or a potential com-
15 peting business.

16 (f) DATA MINIMIZATION.—

17 (1) NON-COMMERCIALIZATION BY A COVERED
18 PLATFORM.—A covered platform shall not collect,
19 use, or share user data obtained from a business
20 user through the interoperability interface except for
21 the purposes of safeguarding the privacy and secu-
22 rity of such information or maintaining interoper-
23 ability of services.

24 (2) NON-COMMERCIALIZATION OF DATA ON A
25 COVERED PLATFORM.—A business user shall not col-

1 lect, use, or share the data of a user on a covered
2 platform except for the purposes of safeguarding
3 and security of such data or maintaining interoper-
4 ability of services.

5 **SEC. 5. DEFINITIONS.**

6 In this Act:

7 (1) **PERSON.**—The term “person” has the
8 meaning given the term in subsection (a) of section
9 1 of the Clayton Act (15 U.S.C. 12).

10 (2) **AFFIRMATIVE EXPRESS CONSENT.**—The
11 term “affirmative express consent” means an affirm-
12 ative action of the consumer to make a choice fol-
13 lowing a clear and conspicuous disclosure to the con-
14 sumer, separate and apart from any “privacy pol-
15 icy”, “terms of service”, “terms of service”, “con-
16 sent for research”, or other similar document, of—

17 (A) the types of Personal Information that
18 Respondent will disclose to third parties;

19 (B) the reason for such disclosures;

20 (C) the identity of all such third parties;

21 (D) any opportunities consumers have to
22 decline or rescind consent for such disclosures;
23 and

24 (E) how consumers may exercise any such
25 opportunities.

1 An affirmative action does not include obtaining a
2 consumer's approval for a preselected default option.

3 (3) CLEAR AND CONSPICUOUS DISCLOSURE.—

4 The term “clear and conspicuous disclosure” means
5 that a required disclosure is difficult to miss such
6 that it is easily noticeable and easily understandable
7 by ordinary consumers, including in all of the fol-
8 lowing ways:

9 (A) In any communication that is solely
10 visual or solely audible, the disclosure must be
11 made through the same means through which
12 the communication is presented. In any commu-
13 nication made through both visual and audible
14 means, such as a television advertisement, the
15 disclosure must be presented simultaneously in
16 both the visual and audible portions of the com-
17 munication even if the representation requiring
18 the disclosure (“triggering representation”) is
19 made through only one means.

20 (B) A visual disclosure, by its size, con-
21 trast, location, the length of time it appears,
22 and other characteristics, must stand out from
23 any accompanying text or other visual elements
24 so that it is easily noticed, read, and under-
25 stood.

1 (C) An audible disclosure, including by
2 telephone or streaming video, must be delivered
3 in a volume, speed, and cadence sufficient for
4 ordinary consumers to easily hear and under-
5 stand it.

6 (D) In any communication using an inter-
7 active electronic medium, such as the Internet
8 or software, the disclosure must be unavoidable.

9 (E) The disclosure must use diction and
10 syntax understandable to ordinary consumers
11 and must appear in each language in which the
12 triggering representation appears.

13 (F) The disclosure must comply with these
14 requirements in each medium through which it
15 is received, including all electronic devices and
16 face-to-face communications.

17 (G) The disclosure must not be contra-
18 dicted or mitigated by, or inconsistent with,
19 anything else in the communication.

20 (H) When the representation or sales prac-
21 tice targets a specific audience, such as chil-
22 dren, the elderly, or the terminally ill, “ordinary
23 consumers” includes reasonable members of
24 that group.

1 (4) COMMISSION.—The term “Commission”
2 means the Federal Trade Commission.

3 (5) CONTROL.—The term “control” with re-
4 spect to a person means—

5 (A) holding 25 percent or more of the
6 stock of the person;

7 (B) having the right to 25 percent or more
8 of the profits of the person;

9 (C) having the right to 25 percent or more
10 of the assets of the person, in the event of the
11 person’s dissolution;

12 (D) if the person is a corporation, having
13 the power to designate 25 percent or more of
14 the directors of the person;

15 (E) if the person is a trust, having the
16 power to designate 25 percent or more of the
17 trustees; or

18 (F) otherwise exercises substantial control
19 over the person.

20 (6) COVERED PLATFORM.—The term “covered
21 platform” means an online platform—

22 (A) that has been designated as a “covered
23 platform” under section 6(a); or

24 (B) that—

1 (i) at the time of the Commission's or
2 the Department of Justice's designation
3 under section 2(d), or any of the twelve
4 months preceding that time, or in any of
5 the 12 months preceding the filing of a
6 complaint for an alleged violation of this
7 Act—

8 (I) has at least 50,000,000
9 United States-based monthly active
10 users on the online platform; or

11 (II) has at least 100,000 United
12 States-based monthly active business
13 users on the platform;

14 (ii) is owned or controlled by a person
15 with net annual sales, or a market capital-
16 ization greater than \$600,000,000,000, ad-
17 justed for inflation on the basis of the
18 Consumer Price Index, at the time of the
19 Commission's or the Department of Jus-
20 tice's designation under section 6(a) or any
21 of the two years preceding that time, or at
22 any time in the 2 years preceding the filing
23 of a complaint for an alleged violation of
24 this Act; and

1 (iii) is a critical trading partner for
2 the sale or provision of any product or
3 service offered on or directly related to the
4 online platform.

5 (7) COVERED PLATFORM OPERATOR.—The
6 term “covered platform operator” means a person
7 that, directly or indirectly, owns or controls a cov-
8 ered platform.

9 (8) CRITICAL TRADING PARTNER.—The term
10 “critical trading partner” means a trading partner
11 that has the ability to restrict or impede—

12 (A) the access of a business user to its
13 users or customers; or

14 (B) the access of a business user to a tool
15 or service that it needs to effectively serve its
16 users or customers.

17 (9) DATA.—

18 (A) IN GENERAL.—Not later than 6
19 months after the date of enactment of this Act,
20 the Commission shall adopt rules in accordance
21 with section 553 of title 5, United States Code,
22 to define the term “data” for the purpose of
23 implementing and enforcing this Act.

24 (B) DATA.—The term “data” shall include
25 information that is collected by or provided to

1 a covered platform or competing business or a
2 potential competing business that is linked, or
3 reasonably linkable, to a specific user, user de-
4 vice, or customer of the covered platform or a
5 competing business or a potential competing
6 business.

7 (C) EXCLUSION.—The term “data” shall
8 not include proprietary data that does not per-
9 tain to the user or a user device of the covered
10 platform. The Commission shall narrowly con-
11 strue the term “proprietary data” for the pur-
12 poses of this Act.

13 (10) BUSINESS USER.—The term “business
14 user” means a person that utilizes or plans to utilize
15 the covered platform for the sale or provision of
16 products or services.

17 (11) INTEROPERABILITY INTERFACE.—The
18 term “interoperability interface” means an electronic
19 interface maintained by a covered platform for pur-
20 poses of achieving interoperability.

21 (12) ONLINE PLATFORM.—The term “online
22 platform” means a website, online or mobile applica-
23 tion, operating system, digital assistant, or online
24 service that—

1 (A) enables a user to generate content that
2 can be viewed by other users on the platform or
3 to interact with other content on the platform;

4 (B) facilitates the offering, sale, purchase,
5 payment, or shipping of goods or services, in-
6 cluding software applications, between and
7 among consumers or businesses not controlled
8 by the platform; or

9 (C) enables user searches or queries that
10 access or display a large volume of information.

11 **SEC. 6. IMPLEMENTATION.**

12 (a) **COVERED PLATFORM DESIGNATION.**—The Fed-
13 eral Trade Commission or Department of Justice may des-
14 ignate a covered platform for the purpose of implementing
15 and enforcing this Act. Such designation shall—

16 (1) be based on a finding that the criteria set
17 forth in paragraph (6) of section 5 are met;

18 (2) be issued in writing and published in the
19 Federal Register; and

20 (3) will apply for 10 years from its issuance re-
21 gardless of whether there is a change in control or
22 ownership over the covered platform unless the Fed-
23 eral Trade Commission or the Department of Jus-
24 tice removes the designation pursuant to subsection
25 (b).

1 (b) REMOVAL OF COVERED PLATFORM DESIGNA-
2 TION.—The Commission or the Department of Justice
3 shall—

4 (1) consider whether its designation of a cov-
5 ered platform pursuant to subsection (a) should be
6 removed prior to the expiration of the 10-year period
7 if the covered platform operator files a request with
8 the Commission or the Department of Justice, which
9 shows that the online platform is no longer a critical
10 trading partner; and

11 (2) determine whether to grant a request sub-
12 mitted under paragraph (1) not later than 120 days
13 after the date of the filing of such request.

14 (c) RULEMAKING AND TECHNICAL STANDARDS.—

15 (1) After designating an online platform as a
16 covered platform, the Commission shall issue stand-
17 ards of interoperability specific to the covered plat-
18 form. These standards shall implement the require-
19 ments of sections 3 and 4 of this Act. In adopting
20 the standards implementing the requirements of sec-
21 tions 3 and 4, the Commission shall seek to encour-
22 age entry by reducing or eliminating the network ef-
23 fects that limit competition with the covered plat-
24 form, ensure that competing businesses or a poten-
25 tial competing business interconnects with the cov-

1 ered platform on fair and nondiscriminatory terms,
2 and protect data security and privacy.

3 (2) The Commission shall—

4 (A) establish a technical committee, as de-
5 scribed in section 7 of this Act, to develop pro-
6 posed standards implementing the requirements
7 of section 3 as they apply to a specific covered
8 platform;

9 (B) issue such standards in accordance
10 with section 553 of title 5, United States Code;
11 and

12 (C) reject standards that have the purpose
13 or effect of unreasonably denying access, under-
14 mine interoperability, or are unduly disruptive
15 to interoperability.

16 (d) COMPLIANCE ASSESSMENT.—The Commission
17 shall regularly assess compliance by covered platforms
18 with the provisions of this Act and may—

19 (1) undertake such investigation as appropriate
20 to render this assessment;

21 (2) issue subpoenas and civil investigative de-
22 mands for relevant information, including any infor-
23 mation that is necessary to effectuate the goals of
24 sections 3 and 4 this Act, and consult with other
25 agencies as appropriate; and

1 (3) prescribe such other rules in accordance
2 with section 553 of title 5, United States Code as
3 may be necessary and appropriate to carry out sec-
4 tions 3 and 4 of this Act.

5 (e) AGENCY COMPLAINTS.—The Commission shall
6 establish procedures under which a user, covered platform,
7 or a business user may file a complaint alleging a violation
8 of this Act.

9 (f) RECIPROCITY.—A business user shall not be
10 under any obligation to adopt or comply with the require-
11 ments of this Act or the rules adopted by the Commission
12 under this Act unless it chooses to—

13 (1) initiate the secure transfer of data from a
14 covered platform under section 3 of this Act; or

15 (2) access an interoperability interface of a cov-
16 ered platform under section 4 of this Act.

17 **SEC. 7. TECHNICAL COMMITTEE.**

18 (a) ESTABLISHMENT.—

19 (1) Not later than 180 days following the enact-
20 ment of this Act, the Commission shall establish a
21 technical committee to assist the Commission with
22 considerations relating to implementation and tech-
23 nical aspects of the requirements under sections 3
24 and 4 of this Act.

1 (2) The size of the committee and its member-
2 ship is within the sole discretion of the Commission
3 except as specified in subsection 7(b).

4 (b) COMPOSITION.—Each technical committee shall
5 include—

6 (1) representatives of businesses that, in the
7 judgement of the Commission, utilize or compete
8 with the platform;

9 (2) representatives of competition or privacy ad-
10 vocacy organizations, and independent academics
11 that possess technical, legal, economic, financial, or
12 other knowledge that the Commission may deem
13 useful;

14 (3) a representative from the National Institute
15 of Standards and Technology; and

16 (4) representatives of a covered platform,
17 which, if required by Commission, shall provide a
18 nonvoting advisory member to provide consultation
19 and other aid to the technical committee. A failure
20 by the covered platform to participate in good faith
21 in the development of standards by the Technical
22 Committee shall be a violation of this statute.

23 (c) GENERAL RESPONSIBILITIES.—Each technical
24 committee established under this section shall meet regu-
25 larly to provide information, analysis, and recommenda-

1 tions to the Commission on the standards of portability
2 and interoperability and any changes to those standards.

3 These standards should—

4 (1) seek to reduce or eliminate network effects
5 that limit competition with the covered platform;

6 (2) establish data security and privacy protec-
7 tions for data portability and interoperability;

8 (3) prevent fraudulent, malicious, or abusive ac-
9 tivity by a competing business or a potential com-
10 peting business; and

11 (4) establish reasonable thresholds related to
12 the frequency, nature, and volume of requests by a
13 competing business or a potential competing busi-
14 ness to access resources maintained by the covered
15 platform, beyond which the covered platform may
16 assess a reasonable fee for such access that shall be
17 reasonably proportional to the cost, complexity, and
18 risk to the covered platform of providing such ac-
19 cess, and do not limit the ability or deter the incen-
20 tive of a competing business or a potentially com-
21 peting business to interoperate with the covered
22 platform.

23 (d) **ROLE.**—The role of technical committees is advi-
24 sory in nature, and such committees shall have no imple-
25 mentation or enforcement authority. However, the Com-

1 mission shall give strong consideration to the rec-
2 ommendations of such committees in implementing this
3 Act.

4 (e) NONAPPLICABILITY OF THE FEDERAL ADVISORY
5 COMMITTEE ACT.—The Federal Advisory Committee Act
6 (5 U.S.C. App.) shall not apply with respect to the tech-
7 nical committees.

8 **SEC. 8. JUDICIAL REVIEW.**

9 (a) IN GENERAL.—Any party that is subject to a cov-
10 ered platform designation pursuant to section 6(a) of this
11 Act, a final order issued in any district court, or a final
12 order of the Commission issued in an administrative adju-
13 dicative proceeding may within 30 days of the issuance
14 of such order, petition for review of such order in the
15 United States Court of Appeals for the District of Colum-
16 bia Circuit.

17 (b) TREATMENT OF FINDINGS.—In a proceeding for
18 judicial review of a covered platform designation pursuant
19 to section 6(a) of this Act or a final order of the Commis-
20 sion, the findings of the Commission as to the facts, if
21 supported by evidence, shall be conclusive.

22 **SEC. 9. ENFORCEMENT.**

23 (a) COMMISSION LITIGATION AUTHORITY.—If the
24 Commission has reason to believe that a covered platform
25 violated this Act, the Commission may commence a civil

1 action, in its own name by any of its attorneys designated
2 by it for such purpose, to recover a civil penalty under
3 this Act and seek other appropriate relief in a district
4 court of the United States against the covered platform
5 operator.

6 (b) EMERGENCY RELIEF.—

7 (1) The Commission may seek a temporary in-
8 junction requiring the covered platform operator to
9 take or stop taking any action for not more than
10 120 days and the court shall grant such relief if the
11 Commission proves—

12 (A) there is a plausible claim that a cov-
13 ered platform operator took an action that
14 could violate this Act; and

15 (B) that action impairs the ability of at
16 least one company to compete with the covered
17 platform.

18 (2) The emergency relief shall not last more
19 than 120 days from the filing of the complaint.

20 (3) The court shall terminate the emergency re-
21 lief at any time that the covered platform operator
22 proves that the Commission has not taken reason-
23 able steps to investigate whether a violation has oc-
24 curred.

1 (4) Nothing in this subsection prevents or limits
2 the Commission from seeking other equitable relief
3 as provided in section 10 of this Act.

4 (c) STATUTE OF LIMITATIONS.—A proceeding for a
5 violation of this Act may be commenced not later than
6 6 years after such violation occurs.

7 SEC. 10. REMEDIES.

8 (a) CIVIL PENALTY.—The Commission may recover
9 a civil penalty for a violation of this Act, which shall ac-
10 crué to the United States, in an amount not more than
11 the greater of—

12 (1) 15 percent of the total United States rev-
13 enue of the person, partnership, or corporation for
14 the previous calendar year; or

15 (2) 30 percent of the United States revenue of
16 the person, partnership, or corporation in any line of
17 business affected or targeted by the unlawful con-
18 duct during the period of the unlawful conduct.

19 (b) REMEDIES IN ADDITION.—Remedies provided in
20 this subsection are in addition to, and not in lieu of, any
21 other remedy available to the Commission under Federal
22 law.

23 (1) RESTITUTION; CONTRACT RESCISSION AND
24 REFORMATION; REFUNDS; RETURN OF PROPERTY.—
25 The Commission may seek, and a court may order,

1 with respect to the violation that gives rise to the
2 suit, restitution for losses, rescission or reformation
3 of contracts, refund of money, or return of property.

4 (2) DISGORGEMENT.—The Commission may
5 seek, and a court may order, disgorgement of any
6 unjust enrichment that a covered platform obtained
7 as a result of the violation that gives rise to the suit.

8 (3) INJUNCTION.—The Commission may seek,
9 and the court may order, relief in equity as nec-
10 essary to prevent, restrain, or prohibit violations of
11 this Act.

12 (c) REPEAT OFFENDERS.—If the fact finder deter-
13 mines that a covered platform has shown a pattern or
14 practice of violating this Act, the court shall consider re-
15 quiring that the Chief Executive Officer forfeit to the
16 United States Treasury any compensation received by that
17 person during the 12 months preceding or following the
18 filing of a complaint alleging a violation of this Act.

19 **SEC. 11. RULE OF CONSTRUCTION.**

20 Nothing in this Act shall be construed to limit any
21 authority of the Attorney General or the Federal Trade
22 Commission under the antitrust laws, section 5 of the
23 Federal Trade Commission Act (15 U.S.C. 45), or any
24 other provision of law or to limit the application of any
25 law.

1 **SEC. 12. SEVERABILITY.**

2 If any provision of this Act, an amendment made by
3 this Act, or the application of such provision or amend-
4 ment to any person or circumstance is held to be unconsti-
5 tutional, the remainder of this Act and of the amendments
6 made by this Act, and the application of the remaining
7 provisions of this Act and amendments to any person or
8 circumstance shall not be affected.