IN THE SENATE OF THE UNITED STATES

MAY 10, 2018

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To amend the Clayton Act and the Federal Trade Commission Act to provide that the Federal Trade Commission shall exercise authority with respect to mergers only under the Clayton Act and only in the same procedural manner as the Attorney General exercises such authority.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Standard Merger and
Acquisition Reviews Through Equal Rules Act of 2018”.

SEC. 2. AMENDMENTS TO THE CLAYTON ACT.

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

(1) by striking section 4F and inserting the fol-

lowing:

“SEC. 4F. ACTIONS BY ATTORNEY GENERAL OF THE

UNITED STATES OR THE FEDERAL TRADE

COMMISSION.

“(a) Whenever the Attorney General of the United
States has brought an action under the antitrust laws or
the Federal Trade Commission has brought an action
under section 15, and the Attorney General or Federal
Trade Commission, as applicable, has reason to believe
that any State attorney general would be entitled to bring
an action under this Act based substantially on the same
alleged violation of the antitrust laws or section 7, the At-
torney General or Federal Trade Commission, as applica-
ble, shall promptly give written notification thereof to such
State attorney general.

“(b) To assist a State attorney general in evaluating
the notice described in subsection (a) or in bringing any
action under this Act, the Attorney General of the United States or Federal Trade Commission, as applicable, shall, upon request by such State attorney general, make available to the State attorney general, to the extent permitted by law, any investigative files or other materials which are or may be relevant or material to the actual or potential cause of action under this Act.”;

(2) in section 5—

(A) in subsection (a) by inserting “or a proceeding brought by the Federal Trade Commission under section 15” after “United States under the antitrust laws”; and

(B) in subsection (i) by inserting “or a proceeding instituted by the Federal Trade Commission under section 15” after “antitrust laws”; 

(3) Section 11 of the Clayton Act (15 U.S.C. 21) is amended—

(A) in subsection (b) by striking “Whenever” and inserting “Except as provided in subsection (m), whenever”; and

(B) by adding at the end the following:

“(m) The Federal Trade Commission may not use the procedures for administrative adjudication set forth in subsection (b) of this section to prevent the consummation
of a proposed merger, acquisition, joint venture, or similar transaction that is subject to section 7, unless the complaint is accompanied by a consent agreement between the Commission and a party to the transaction that resolves all the violations alleged in the complaint. The Federal Trade Commission may institute proceedings in a district court under section 15 to prevent the consummation of such a transaction. In any such proceeding the district court shall apply the same standard for granting injunctive relieve as applicable to a proceeding brought by the United States attorneys under section 15. The Federal Trade Commission may issue an administrative complaint under this section if the complaint is accompanied by a consent agreement between the Federal Trade Commission and a party to the transaction settling the alleged violations.”;

(4) in section 13, by inserting “or a suit, action, or proceeding brought by the Federal Trade Commission under section 15” before “subpoenas”; and

(5) in section 15, by inserting “and the duty of the Federal Trade Commission with respect to the consummation of a proposed merger, acquisition, joint venture, or similar transaction that is subject
to section 7 and not yet consummated,” after “General”.

SEC. 3. AMENDMENTS TO THE FEDERAL TRADE COMMISSION ACT.

The Federal Trade Commission Act (15 U.S.C. 41) is amended—

(1) in section 5(b), by inserting “(excluding the consummation of a proposed merger, acquisition, joint venture, or similar transaction that is subject to section 7 of the Clayton Act (15 U.S.C. 18), except in cases where the Commission approves an agreement with the parties to the transaction that contains a consent order)” after “unfair method of competition”;

(2) in section 9, by inserting after the fourth undesignated paragraph the following:

“Upon the application of the commission with respect to any activity related to the consummation of a proposed merger, acquisition, joint venture, or similar transaction that is subject to section 7 of the Clayton Act (15 U.S.C. 18) that may result in any unfair method of competition, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act
or any order of the commission made in pursuance there-

(3) in section 13(b)(1), by inserting "(excluding
section 7 of the Clayton Act (15 U.S.C. 18) and sec-
section 5(a)(1) with respect to the consummation of a
proposed merger, acquisition, joint venture, or simi-
lar transaction that is subject to section 7 of the
Clayton Act (15 U.S.C. 18))" after "Commission";
and

(4) in section 16(a)(2)—

(A) in subparagraph (D) by striking "or"
at the end;

(B) in subparagraph (E) by adding "or" at
the end; and

(C) by adding at the end the following:
"(F) under section 15 of the Clayton Act
(15 U.S.C. 25);".

SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in sub-
section (b), this Act and the amendments made by this
Act shall take effect on the date of the enactment of this
Act.

(b) APPLICATION OF AMENDMENTS.—The amend-
ments made by this Act shall not apply to any of the fol-
Following that occurs before the date of enactment of this Act:


(2) A transaction with respect to which there is compliance with section 7A of the Clayton Act (15 U.S.C. 18a).

(3) A case in which a preliminary injunction has been filed in a district court of the United States.

Passed the House of Representatives May 9, 2018.

Attest: KAREN L. HAAS,

Clerk.