

118TH CONGRESS
2D SESSION

S. _____

To require pre-merger notification to identify entities subject to a collective bargaining agreement and affected labor organizations, to require post-merger monitoring for anticompetitive effects and antitrust violations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. BALDWIN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To require pre-merger notification to identify entities subject to a collective bargaining agreement and affected labor organizations, to require post-merger monitoring for anti-competitive effects and antitrust violations, 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 “Stopping Threats to
5 Our Prices from Bad Mergers Act” or the “STOP Bad
6 Mergers Act”.

1 **SEC. 2. MONITORING OF CONSUMMATED MERGERS.**

2 (a) DEFINITIONS.—In this section:

3 (1) ANTITRUST LAWS.—The term “antitrust
4 laws” means the Sherman Act (15 U.S.C. 1 et seq.),
5 the Clayton Act (15 U.S.C. 12 et seq.), including the
6 amendments made by this Act, and the Federal
7 Trade Commission Act (15 U.S.C. 41 et seq.).

8 (2) COVERED MERGER.—The term “covered
9 merger” means a merger—

10 (A) that is subject to premerger notifica-
11 tion and waiting period requirements under sec-
12 tion 7A of the Clayton Act (15 U.S.C. 18a);
13 and

14 (B) with respect to which the Federal
15 Trade Commission or the Assistant Attorney
16 General in charge of the Antitrust Division of
17 the Department of Justice has initiated an in-
18 vestigation.

19 (3) PERSON.—The term “person” has the
20 meaning given that term in section 8 of the Sher-
21 man Act (15 U.S.C. 7).

22 (b) MONITORING.—The Federal Trade Commission
23 and the Assistant Attorney General in charge of the Anti-
24 trust Division of the Department of Justice shall regularly
25 monitor and evaluate each covered merger following the

1 consummation of the covered merger to determine wheth-
2 er—

3 (1) the covered merger has substantially less-
4 ened competition or has tended to create a monopoly
5 or has reduced worker bargaining power; or

6 (2) the acquiring person or merged person has
7 otherwise violated antitrust laws.

8 (c) EVIDENCE.—Evidence of a violation described in
9 subsection (b) may include the use by the acquiring person
10 or merged person of market power that was achieved or
11 acquired as a result of the covered merger or an increased
12 ability of the acquiring person or merged person to coordi-
13 nate among rivals—

14 (1) to charge higher prices for the goods or
15 services of the acquiring person or merged person;

16 (2) to reduce the quality of the products of the
17 acquiring person or merged person; and

18 (3) to degrade working conditions, including
19 by—

20 (A) reducing wages;

21 (B) closing facilities;

22 (C) eliminating jobs of individuals who are
23 covered by a collective bargaining agreement;

1 (D) moving domestic jobs to a foreign
2 country with lower standards for working condi-
3 tions; or

4 (E) engaging in any action that would be
5 an unfair labor practice under section 8(a) of
6 the National Labor Relations Act (29 U.S.C.
7 158(a)).

8 (d) FURTHER EVALUATION.—If the Federal Trade
9 Commission and the Assistant Attorney General in charge
10 of the Antitrust Division of the Department of Justice
11 have reason to believe that a covered merger has substan-
12 tially lessened competition, has tended to create a monop-
13 oly, or that a person has engaged in a violation of antitrust
14 laws under subsection (b), the Federal Trade Commission
15 or the Assistant Attorney General shall require the rel-
16 evant person to submit additional documents and informa-
17 tion, as determined by the Federal Trade Commission and
18 the Assistant Attorney General, to evaluate whether the
19 person violated the antitrust laws.

20 **SEC. 3. AMENDMENTS TO THE PRE-MERGER NOTIFICATION**
21 **AND WAITING PERIOD.**

22 Section 7A of the Clayton Act (15 U.S.C. 18a) is
23 amended—

24 (1) in subsection (d)—

1 (A) in paragraph (1), by striking “; and”
2 and inserting “, including the Sherman Act (15
3 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C.
4 12 et seq.), and the Federal Trade Commission
5 Act (15 U.S.C. 41 et seq.), and include, at a
6 minimum:”; and

7 (B) by inserting after paragraph (1) the
8 following:

9 “(A) The number and percentage of em-
10 ployees of the acquiring person and acquired
11 person that are subject to a collective bar-
12 gaining agreement and, as applicable, the con-
13 tact information for any affected labor organi-
14 zation, as defined in section 2 of the National
15 Labor Relations Act (29 U.S.C. 152).

16 “(B) All agreements to remain neutral
17 during an organizing campaign by the employ-
18 ees of the acquiring person or acquired person
19 for representation by a labor organization.

20 “(C) All studies, surveys, analyses, and re-
21 ports that were prepared by or for any officer
22 or director of the person (or any individual ex-
23 ercising similar functions) for the purpose of
24 evaluating or analyzing the transaction with re-
25 spect to the effects on labor markets or the em-

1 employees of the acquiring person or acquired per-
2 son.

3 “(D) Information sufficient to allow the
4 evaluation of potential labor market effects aris-
5 ing from the transaction, including—

6 “(i) the 5 largest categories of em-
7 ployees, in which both the acquiring person
8 and the acquired person employ workers,
9 as identified by the relevant 6-digit code
10 under the Bureau of Labor Statistics
11 Standard Occupational Classification Sys-
12 tem;

13 “(ii) the total number of employees
14 for each code identified in clause (i);

15 “(iii) the commuting zones, as deter-
16 mined by the Economic Research Service
17 of the Department of Agriculture, from
18 which the employees identified under
19 clause (ii) commute; and

20 “(iv) any penalties or findings that
21 were issued against either the acquiring
22 person or the acquired person by the Ad-
23 ministrator of the Wage and Hour Division
24 of the Department of Labor, the National
25 Labor Relations Board, or the Assistant

1 Secretary of Labor for Occupational Safety
2 and Health during the 5-year period pre-
3 ceding the notification; and”;

4 (2) in subsection (e)—

5 (A) in paragraph (1)—

6 (i) by redesignating subparagraph (B)
7 as subparagraph (C); and

8 (ii) by inserting after subparagraph
9 (A) the following:

10 “(B) The Federal Trade Commission or the As-
11 sistant Attorney General shall, prior to the expira-
12 tion of the 30-day waiting period (or in the case of
13 a cash tender offer, the 15-day waiting period) speci-
14 fied in subsection (b)(1) of this section, require the
15 submission of additional information or documentary
16 material relevant to the proposed acquisition, from a
17 person required to file notification with respect to
18 such acquisition under subsection (a) of this section
19 prior to the expiration of the waiting period specified
20 in subsection (b)(1) of this section, or from any offi-
21 cer, director, partner, agent, or employee of such
22 person if the Federal Trade Commission or Assist-
23 ant Attorney General has reason to believe that the
24 transaction may result in harm to competition in
25 labor markets, including—

1 “(i) any reduction in employment resulting
2 from the merging of overlapping employment
3 classifications;

4 “(ii) any reduction in worker bargaining
5 power, including potential elimination of jobs
6 subject to a collective bargaining agreement;
7 and

8 “(iii) any offshoring of jobs currently lo-
9 cated in the United States.”; and

10 (B) by adding at the end the following:

11 “(3) The Federal Trade Commission or the As-
12 sistant Attorney General shall extend the 30-day
13 waiting period (or in the case of a cash tender offer,
14 the 15-day waiting period) specified in subsection
15 (b)(1) of this section for an additional period of 60
16 days if an affected labor organization submits docu-
17 ments or information under subsection (l) that could
18 reasonably raise questions as to whether the trans-
19 action may—

20 “(A) materially harm the interests of the
21 employees represented by the labor organiza-
22 tion; or

23 “(B) violate the antitrust laws, including
24 the Sherman Act (15 U.S.C. 1 et seq.), the
25 Clayton Act (15 U.S.C. 12 et seq.), and the

1 Federal Trade Commission Act (15 U.S.C. 41
2 et seq.).”.

3 **SEC. 4. NOTICE AND RIGHTS OF AFFECTED LABOR ORGANI-**
4 **ZATIONS.**

5 Section 7A of the Clayton Act (15 U.S.C. 18a) is
6 amended, by adding at the end the following:

7 “(1) TRANSACTIONS INVOLVING AN ENTITY SUBJECT
8 TO A COLLECTIVE BARGAINING AGREEMENT.—

9 “(1) IN GENERAL.—If a person required to file
10 a premerger notification under subsection (a) is sub-
11 ject to a collective bargaining agreement, the af-
12 fected labor organization, as defined in section 2 of
13 the National Labor Relations Act (29 U.S.C. 152),
14 shall have the right to submit to the Federal Trade
15 Commission and the Assistant Attorney General any
16 documents and information relevant to an evaluation
17 of the proposed transaction.

18 “(2) NOTICE REQUIRED.—Upon the receipt of
19 a premerger notification under subsection (a) with
20 information provided pursuant to subsection (d)(1),
21 the Federal Trade Commission and the Assistant
22 Attorney General shall notify—

23 “(A) the affected labor organization named
24 under subsection (d) of the right under para-
25 graph (1) of this subsection; and

1 “(B) the State attorney general of any
2 State that the Federal Trade Commission or
3 the Assistant Attorney General has reason to
4 believe would be affected by the transaction.

5 “(3) SUBMISSION OF DOCUMENTS AND INFOR-
6 MATION.—If a labor organization elects to submit
7 documents and information under paragraph (1) to
8 the Federal Trade Commission and the Assistant
9 Attorney General, the labor organization must sub-
10 mit the documents and information not later than
11 20 days after the date of receipt of a notice under
12 paragraph (2).

13 “(4) RECEIPT OF DOCUMENTS AND INFORMA-
14 TION.—

15 “(A) REQUEST FOR ADDITIONAL INFORMA-
16 TION.—After receiving, with respect to a trans-
17 action, a submission of documents and informa-
18 tion from an affected labor organization under
19 paragraph (1), the Federal Trade Commission
20 and the Assistant Attorney General may re-
21 quest from any person required to file a notifi-
22 cation with respect to the transaction under
23 subsection (a) additional information, pursuant
24 to subsection (e).

25 “(B) WRITTEN RESPONSE.—

1 (3) the effect of consolidation on prices for
2 goods manufactured in the United States;

3 (4) the effect of consolidation on product vari-
4 ety, quality, innovation, consumer welfare, and firm
5 efficiency for goods manufactured in the United
6 States;

7 (5) the extent to which consolidation has led to
8 offshoring of manufacturing jobs previously located
9 in the United States; and

10 (6) the effect of consolidation on the manufac-
11 turing labor force, including on wages and the abil-
12 ity of the labor force to bargain for wages and bene-
13 fits.

14 (b) STUDY ON WORKER BARGAINING POWER IN
15 LABOR MARKETS.—Not later than 2 years after the date
16 of enactment of this Act, the Comptroller General of the
17 United States shall conduct and publish a study incor-
18 porating public comment on the economic and social effect
19 of rising concentration in labor markets, including the im-
20 pact of reduced worker bargaining power on the wages and
21 benefits, mobility, and income equality of workers, includ-
22 ing employees and independent contractors.

23 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
24 authorized to be appropriated \$5,000,000 to carry out the
25 studies under subsections (a) and (b).