

118TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To amend the Clayton Act to prevent conflicts of interest and promote competition in the sale and purchase of digital advertising.

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IN THE SENATE OF THE UNITED STATES

Mr. LEE (for himself, Ms. KLOBUCHAR, Mr. CRUZ, Mr. BLUMENTHAL, Mr. RUBIO, Ms. WARREN, Mr. SCHMITT, Mr. HAWLEY, Mr. KENNEDY, Mr. GRAHAM, and Mr. VANCE) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend the Clayton Act to prevent conflicts of interest and promote competition in the sale and purchase of digital advertising.

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 “Advertising Middlemen  
5 Endangering Rigorous Internet Competition Account-  
6 ability Act” or the “AMERICA Act”.

1 **SEC. 2. DIGITAL ADVERTISING TRADING TRANSPARENCY**  
2 **AND COMPETITION.**

3 The Clayton Act (15 U.S.C. 12 et seq.) is amended  
4 by inserting after section 8 (15 U.S.C. 19) the following:

5 **“SEC. 8A. COMPETITION AND TRANSPARENCY IN DIGITAL**  
6 **ADVERTISING.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) BROKERAGE CUSTOMER.—The term ‘bro-  
9 kerage customer’ means a person who has purchased  
10 or sold digital advertisements, or directly related  
11 goods or services, through a buy-side brokerage or a  
12 sell-side brokerage.

13 “(2) BUY-SIDE BROKERAGE.—The term ‘buy-  
14 side brokerage’ means a person in the business of ef-  
15 fecting transactions on digital advertising exchanges,  
16 including by offering software or services that assist  
17 in serving or displaying digital advertisements, for  
18 other buyers.

19 “(3) DIGITAL ADVERTISEMENT.—The term  
20 ‘digital advertisement’ means an advertisement that  
21 is served electronically over a computer network, in-  
22 cluding the internet.

23 “(4) DIGITAL ADVERTISING EXCHANGE.—The  
24 term ‘digital advertising exchange’ means a person  
25 who constitutes, maintains, or provides a market-  
26 place for or facilitates bringing together buyers and

1       1 or more third-party sellers of digital advertise-  
2       ments, or for otherwise performing with respect to  
3       digital advertising the functions commonly per-  
4       formed by a digital advertising marketplace.

5           “(5) DIGITAL ADVERTISING REVENUE.—The  
6       term ‘digital advertising revenue’ means the greater  
7       of—

8           “(A) global revenue derived from or di-  
9       rectly related to the operation of a digital ad-  
10      vertising exchange, a buy-side brokerage, or a  
11      sell-side brokerage;

12          “(B) the sum of the clearing prices of all  
13      digital advertisements bought or sold from or  
14      through a digital advertising exchange;

15          “(C) the total value of the gross adver-  
16      tising spending managed by a buy-side broker-  
17      age; or

18          “(D) the total value of the gross adver-  
19      tising sales managed by a sell-side brokerage.

20          “(6) DIVESTITURE DEADLINE.—The term ‘di-  
21      vestiture deadline’ means the later of—

22          “(A) 30 days after the date on which the  
23      Attorney General approves or denies a required  
24      divestiture; or

1           “(B) 30 days after the expiration of any  
2           applicable waiting period specified in section  
3           7A.

4           “(7) EFFECTIVE DATE.—The term ‘effective  
5           date’ means the date that is 1 year after the date  
6           of enactment of this section.

7           “(8) OWN.—The term ‘own’ means to own, op-  
8           erate, or control, directly or indirectly, in whole or  
9           in part.

10          “(9) PERSON.—The term ‘person’ includes—

11                   “(A) any subsidiary of an entity; and

12                   “(B) any corporate parent of an entity.

13          “(10) REQUIRED DIVESTITURE.—The term ‘re-  
14          quired divestiture’—

15                   “(A) means a divestiture, sale, or other  
16          transaction undertaken to comply with any pro-  
17          vision of this Act; and

18                   “(B) does not include any action required  
19          by a court of the United States.

20          “(11) SELL-SIDE BROKERAGE.—The term ‘sell-  
21          side brokerage’ means a person in the business of ef-  
22          fecting transactions on digital advertising exchanges,  
23          including by offering software or services that assist  
24          in serving or displaying digital advertisements, for  
25          third-party sellers.

1           “(12) THIRD-PARTY.—The term ‘third-party’  
2           means, for each person subject to this Act, an entity  
3           that—

4                   “(A) neither owns nor is owned by the per-  
5                   son; and

6                   “(B) is not affiliated with the person  
7                   through direct or indirect ownership or control.

8           “(b) PROHIBITIONS.—No person with more than  
9           \$20,000,000,000 (as adjusted each year on January 1 by  
10           an amount equal to the percentage increase, if any, in the  
11           Consumer Price Index, as determined by the Department  
12           of Labor or its successor) in digital advertising revenue  
13           during the previous calendar year may, after the effective  
14           date—

15                   “(1) own a digital advertising exchange if the  
16                   person—

17                           “(A) owns a sell-side brokerage or a buy-  
18                           side brokerage; or

19                           “(B) is a seller of digital advertising space;

20                   “(2) own a sell-side brokerage if the person  
21                   owns a buy-side brokerage; or

22                   “(3) own a buy-side brokerage or a sell-side  
23                   brokerage if the person is a buyer or seller of digital  
24                   advertising space.

1           “(c) REQUIREMENTS.—On and after the effective  
2 date, any person with more than \$5,000,000,000 (as ad-  
3 justed each year on January 1 by an amount equal to the  
4 percentage increase, if any, in the Consumer Price Index,  
5 as determined by the Department of Labor or its suc-  
6 cessor) in digital advertising revenue during the previous  
7 calendar year shall be subject to the following require-  
8 ments:

9           “(1) BEST INTEREST DUTY.—A buy-side bro-  
10 kerage or sell-side brokerage—

11                   “(A) shall, in the course of providing serv-  
12 ices as a brokerage, use reasonable diligence,  
13 care, and skill to act in the best interests of the  
14 brokerage customers; and

15                   “(B) may not put the interests of the bro-  
16 kerage ahead of those of the brokerage cus-  
17 tomers.

18           “(2) BEST EXECUTION DUTY.—A buy-side bro-  
19 kerage or sell-side brokerage shall seek the most fa-  
20 vorable terms reasonably available under the cir-  
21 cumstances for each order transaction of the broker-  
22 age customer.

23           “(3) TRANSPARENCY REQUIREMENTS.—

24                   “(A) IN GENERAL.—Upon written request  
25 from a brokerage customer, a buy-side broker-

1           age or sell-side brokerage shall supply to the  
2           brokerage customer, within a reasonable time,  
3           information sufficient to permit the brokerage  
4           customer to verify compliance of the brokerage  
5           with the obligations under paragraphs (1) and  
6           (2).

7           “(B) CONTENTS.—The information de-  
8           scribed in subparagraph (A) shall include, if re-  
9           quested and to the extent such information is  
10          collected by the brokerage in the ordinary  
11          course of business—

12           “(i) in the case of a sell-side broker-  
13          age providing information to a sell-side  
14          brokerage customer—

15           “(I) a unique and persistent  
16          identifier that identifies each unique  
17          digital advertising space for sale;

18           “(II) for each identifier described  
19          in subclause (I), all bids received, and,  
20          for each bid received, the bid sub-  
21          mitted to the digital advertising ex-  
22          change on behalf of the buy-side bro-  
23          kerage customer, the winning price,  
24          the uniform resource locator or other  
25          property identifier at the lowest level

1 of granularity, the identity of the dig-  
2 ital advertising exchange or other dig-  
3 ital advertising venue returning the  
4 bid, date, time that the bid response  
5 was received in microseconds or a  
6 lower level of granularity, web domain  
7 associated with the advertising cre-  
8 ative, the advertising creative size and  
9 format, and whether the bid won the  
10 impression of the seller;

11 “(III) the nature of any data col-  
12 lected or derived from the brokerage  
13 customer or any user or customer of  
14 the brokerage customer, and the ways  
15 in which the data is used by the sell-  
16 side brokerage;

17 “(IV) the order or bid routing  
18 practices or processes, including any  
19 material exceptions to the standard  
20 practice of the brokerage; and

21 “(V) the source and nature of  
22 any compensation paid or received in  
23 connection with transactions; and



1 “(ii) in the case of a buy-side broker-  
2 age providing information to a buy-side  
3 brokerage customer—

4 “(I) all bids won by the buy-side  
5 brokerage customer, and for each bid  
6 won, the maximum allowed bid of the  
7 advertiser, if any, the uniform re-  
8 source locator or other property iden-  
9 tifier at the lowest level of granu-  
10 larity, date, the digital advertising ex-  
11 change, the web domain associated  
12 with the advertising creative, the ad-  
13 vertising creative size and format, the  
14 winning price, the bid submitted to  
15 the digital advertising exchange on be-  
16 half of the buy-side brokerage cus-  
17 tomer, and, if possible, whether the ad  
18 served and whether the ad rendered;

19 “(II) the order or bid routing  
20 practices or processes; and

21 “(III) the source and nature of  
22 any compensation paid or received in  
23 connection with transactions.

24 “(C) RETENTION OF RECORDS.—

25 Brokerages shall retain the applicable records

1 specified in subparagraph (B) collected in the  
2 ordinary course of business until provided to a  
3 requesting brokerage customer but not longer  
4 than 90 days. Brokerages shall retain billing in-  
5 formation for brokerage customers for not  
6 fewer than 12 months.

7 “(D) USER PRIVACY.—

8 “(i) IN GENERAL.—When providing  
9 information to a brokerage customer in re-  
10 sponse to a request authorized by subpara-  
11 graph (A), the brokerage shall, to the  
12 greatest extent possible consistent with the  
13 purpose of subparagraph (A), anonymize,  
14 hash, or otherwise render the information  
15 incapable of being tied to an individual web  
16 user.

17 “(ii) PROHIBITING TRACKING.—A  
18 brokerage customer may not use data or  
19 information received in response to a re-  
20 quest made under subparagraph (A) for  
21 any purpose other than—

22 “(I) verifying compliance of a  
23 brokerage with the obligations under  
24 paragraphs (1) and (2); or

1                                   “(II) bringing an action under  
2                                   subsection (d)(3).

3                   “(4) FIREWALLS.—

4                                   “(A)     BUY-SIDE     AND     SELL-SIDE  
5                   BROKERAGES.—Buy-side brokerages and sell-  
6                   side brokerages shall establish, maintain, and  
7                   enforce written policies and procedures reason-  
8                   ably designed to ensure compliance with the ob-  
9                   ligations under this subsection.

10                                   “(B) OTHER PERSONS.—Persons not sub-  
11                   ject to prohibitions under subsection (b) shall  
12                   establish, maintain, and enforce written policies  
13                   and procedures reasonably designed to ensure  
14                   that the buy-side brokerage, sell-side brokerage,  
15                   digital advertising exchange, and role as a  
16                   buyer or seller of digital advertising, as applica-  
17                   ble, operate separate and independent from one  
18                   another and transact business at arm’s length.

19                                   “(5) FAIR ACCESS DUTY.—A digital advertising  
20                   exchange shall provide every buyer and seller in the  
21                   exchange fair access, including with respect to oper-  
22                   ations of the exchange, colocation, any technology  
23                   systems or data, information related to transactions,  
24                   service, or products offered, exchange processes, and  
25                   functionality.

1           “(6) TIME SYNCHRONIZATION.—A digital ad-  
2           vertising exchange, buy-side brokerage, or sell-side  
3           brokerage shall—

4                   “(A) synchronize its business clocks at a  
5           minimum to within a 2 milliseconds tolerance of  
6           the time maintained by the atomic clock of the  
7           National Institute of Standards and Tech-  
8           nology; and

9                   “(B) maintain the synchronization de-  
10           scribed in subparagraph (A).

11           “(7) DATA OWNERSHIP.—All records pertaining  
12           to an order solicited or submitted by a brokerage  
13           customer, and the subsequent result of the order,  
14           shall remain the property of the customer, including  
15           any bids solicited from or submitted to any digital  
16           advertising exchange, unless the information is oth-  
17           erwise publicly available.

18           “(8) ROUTING PRACTICES DISCLOSURE.—

19                   “(A) IN GENERAL.—Every sell-side broker-  
20           age and buy-side brokerage shall—

21                           “(i) make publicly available for each  
22           calendar quarter a report on the order  
23           routing practices of the sell-side brokerage  
24           or buy-side brokerage, as applicable, for

1 digital advertisements during the quarter  
2 broken down by calendar month; and

3 “(ii) retain the report described in  
4 clause (i) posted on an internet website  
5 that is free and readily accessible to the  
6 public for the 3-year period beginning on  
7 the date on which the report is posted.

8 “(B) FORMAT.—Reports made available  
9 pursuant to subparagraph (A) shall—

10 “(i) be rendered in a format that  
11 makes the reports readily informative to  
12 the average brokerage customer; and

13 “(ii) include for the 10 venues to  
14 which the largest number of total bid re-  
15 quests or bid responses were routed for  
16 execution and for any venue to which 5  
17 percent or more of bid requests or bid re-  
18 sponses were routed for execution—

19 “(I) the total number of bids  
20 routed;

21 “(II) the total number of bids ex-  
22 ecuted;

23 “(III) the fill rate of bids;

24 “(IV) the average net execution  
25 fee or rebate per 1,000 impressions;

1                   “(V) the average time in milli-  
2                   seconds between when a bid request is  
3                   sent and when a bid response is re-  
4                   ceived; and

5                   “(VI) the value and form of any  
6                   compensation given in exchange for  
7                   routing or execution.

8                   “(9) CERTIFICATION.—A digital advertising ex-  
9                   change, buy-side brokerage, or sell-side brokerage  
10                  shall certify to the Attorney General on an annual  
11                  basis that the digital advertising exchange has com-  
12                  plied with the requirements under this subsection.

13                  “(d) ENFORCEMENT.—

14                  “(1) ATTORNEY GENERAL AND STATE ATTOR-  
15                  NEYS GENERAL.—

16                  “(A) DEFINITION.—In this paragraph, the  
17                  term ‘Fund’ means the Antitrust Consumer  
18                  Damages Fund established under subparagraph  
19                  (D).

20                  “(B) CIVIL ACTION.—The Attorney Gen-  
21                  eral and State attorneys general may bring an  
22                  action on behalf of persons in the United States  
23                  injured in their business or property by reason  
24                  of any violation of this section in any district  
25                  court of the United States in the district in

1           which the defendant resides or is found or has  
2           an agent, without respect to the amount in con-  
3           troversy, and shall—

4                   “(i) in a case brought by the Attorney  
5                   General or a State attorney general, be en-  
6                   titled to injunctive relief; and

7                   “(ii) in a case brought by the Attor-  
8                   ney General, recover damages sustained by  
9                   such persons.

10           “(C) DAMAGES.—

11                   “(i) IN GENERAL.—The court may  
12                   award under this subsection, pursuant to a  
13                   motion by the Attorney General promptly  
14                   made, simple interest on actual damages in  
15                   accordance with subparagraph (B).

16                   “(ii) NO DUPLICATIVE AWARD.—A  
17                   court may not award any damages under  
18                   this subparagraph that are duplicative of  
19                   damages awarded before the date of the  
20                   award under this subparagraph in a sepa-  
21                   rate civil action pertaining to the same  
22                   conduct and injured party.

23                   “(iii) PAYMENTS.—A court awarding  
24                   damages to a person in a civil action after  
25                   the date of an award of damages under

1 this subsection that would be duplicative of  
2 damages awarded to the Attorney General  
3 on behalf of the person shall direct that  
4 such damages shall first be paid by the At-  
5 torney General from amounts in the Fund  
6 and, to the extent such damages are not  
7 fully paid from amounts in the Fund, shall  
8 be paid by the defendant.

9 “(D) ANTITRUST CONSUMER DAMAGES  
10 FUND.—

11 “(i) IN GENERAL.—There is estab-  
12 lished in the Treasury of the United States  
13 a fund to be known as the ‘Antitrust Con-  
14 sumer Damages Fund’, which shall consist  
15 of amounts deposited under clause (ii).

16 “(ii) DEPOSITS AND AVAILABILITY.—  
17 Notwithstanding section 3302 of title 31,  
18 United States Code, any amounts received  
19 by the Attorney General under an award  
20 under this subsection—

21 “(I) shall be deposited in the  
22 Fund; and

23 “(II) shall be available to the At-  
24 torney General, without further ap-  
25 propriation, for distribution to persons



1 in the United States harmed by the  
2 applicable violation of the Sherman  
3 Act (15 U.S.C. 1 et seq.).

4 “(iii) DEPOSITS INTO GENERAL  
5 FUND.—Effective on the day after the date  
6 that is 10 years after the date on which an  
7 award is received under this paragraph,  
8 the unobligated balances in the Fund of  
9 amounts that were received under the  
10 award are rescinded and shall be deposited  
11 in the general fund of the Treasury.

12 “(2) DIVESTITURE ENFORCEMENT.—The Attor-  
13 ney General may bring an action on behalf of the  
14 United States in any district court of the United  
15 States in the district in which the defendant resides  
16 or is found or has an agent, and may obtain injunc-  
17 tive relief upon showing by a preponderance of the  
18 evidence that the defendant has—

19 “(A) violated a requirement of subsection  
20 (e); or

21 “(B) undertaken a required divestiture  
22 that unnecessarily harms or threatens competi-  
23 tion in any market.

24 “(3) PRIVATE RIGHT OF ACTION.—

1           “(A) IN GENERAL.—A brokerage customer  
2 harmed by a knowing violation of subsection (c)  
3 by a person with more than \$20,000,000,000  
4 (as adjusted each year on January 1 by an  
5 amount equal to the percentage increase, if any,  
6 in the Consumer Price Index, as determined by  
7 the Department of Labor or its successor) in  
8 digital advertising revenue during the previous  
9 calendar year may bring a civil action in an ap-  
10 propriate court to obtain injunctive relief, if ap-  
11 propriate, and recover damages in the amount  
12 of the greater of—

13                   “(i) \$1,000,000 for each month in  
14 which the violation occurred and reason-  
15 able attorney’s fees; or

16                   “(ii) actual damages and reasonable  
17 attorney’s fees.

18           “(B) NO CLASS ACTION WAIVER.—No per-  
19 son covered by this section may require a class  
20 action waiver for claims under this section, in-  
21 cluding for arbitration.

22           “(C) TIMING.—A civil action for a viola-  
23 tion of subsection (b) may be brought at any  
24 time after the later of—

1                   “(i) the expiration of any applicable  
2                   divestiture deadline; or

3                   “(ii) the expiration of the deadline de-  
4                   scribed in subsection (e)(1) if no filing has  
5                   been made.

6                   “(e) DIVESTITURE.—

7                   “(1) FILING.—Any agreement or other docu-  
8                   ment setting out the terms of a required divestiture  
9                   shall be filed with the Attorney General not later  
10                  than the later of—

11                  “(A) the effective date; or

12                  “(B) the earlier of—

13                         “(i) 30 days after the date on which  
14                         an agreement making a required divesti-  
15                         ture under this Act is executed; or

16                         “(ii) 180 days after meeting the cri-  
17                         teria specified in any paragraph of sub-  
18                         section (b).

19                   “(2) ATTORNEY GENERAL REVIEW.—The At-  
20                   torney General shall approve a required divestiture  
21                   upon a showing by the person making the divestiture  
22                   that the terms of the divestiture, including the quali-  
23                   fications of any counterparty to the divestiture, will  
24                   not unnecessarily harm or threaten competition in  
25                   any market.

1 “(3) TIMING.—

2 “(A) IN GENERAL.—The Attorney General  
3 shall grant or deny approval of a required di-  
4 vestiture, unless agreed to by the parties, not  
5 later than the later of—

6 “(i) 60 days after receipt of all infor-  
7 mation obtained pursuant to subparagraph  
8 (5); or

9 “(ii) 60 days after receipt of the filing  
10 made under subparagraph (1).

11 “(B) COMPLETION.—A divestiture shall be  
12 completed not later than the divestiture dead-  
13 line.

14 “(4) GUIDANCE.—The Attorney General shall—

15 “(A) not later than 120 days after the date  
16 of enactment of this section, issue guidance on  
17 the divestiture process under this subsection  
18 and the certification requirement under sub-  
19 section (c)(9); and

20 “(B) update the guidance described in sub-  
21 paragraph (A) as the Attorney General deter-  
22 mines is appropriate.

23 “(5) COMPULSORY PROCESS.—The Attorney  
24 General may request or issue a civil investigative de-  
25 mand under section 3 of the Antitrust Civil Process

1 Act (15 U.S.C. 1312) for documents from any per-  
2 son involved in a required divestiture to determine  
3 the competitive effects of the divestiture.

4 “(f) RULES OF CONSTRUCTION.—Nothing in this  
5 section shall—

6 “(1) prohibit a person from—

7 “(A) selling their own inventory of adver-  
8 tising space if—

9 “(i) the inventory was not acquired  
10 solely for the purposes of resale, except to  
11 monetize the content or intellectual prop-  
12 erty of the person; and

13 “(ii) the person does not also assist a  
14 third-party in the sale or purchase of ad-  
15 vertising space, other than purchasing ad-  
16 vertising space from the person; or

17 “(B) buying inventory to market the prod-  
18 ucts or services of the person;

19 “(2) abridge or supersede any provision of, or  
20 rules issued pursuant to, section 7A;

21 “(3) prohibit a person from, consistent with the  
22 antitrust laws, entering into a joint venture or other  
23 collaboration to prevent harm from spam, fraud, or  
24 other forms of abuse in digital advertising; or

1           “(4) require the disclosure of information if the  
2           disclosure would violate a law of the United States  
3           or a foreign country.”.