

Ben Cline

119TH CONGRESS
1ST SESSION

H. R. _____

To transfer antitrust enforcement from the Federal Trade Commission to the Attorney General, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. CLINE introduced the following bill; which was referred to the Committee on _____

A BILL

To transfer antitrust enforcement from the Federal Trade Commission to the Attorney General, 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 "One Agency Act".

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

7 (1) It is the policy of the United States to pro-
8 mote the vigorous, effective, and efficient enforce-
9 ment of the antitrust laws.

1 (2) The overlapping antitrust enforcement ju-
2 risdiction of the Department of Justice and the Fed-
3 eral Trade Commission has wasted taxpayer re-
4 sources, hampered enforcement efforts, and caused
5 uncertainty for businesses and consumers in the
6 United States.

7 (3) It is preferable that primary Federal re-
8 sponsibility for enforcing the antitrust laws of the
9 United States be given to a single entity, and the
10 Department of Justice is best suited to do so.

11 **SEC. 3. DEFINITIONS.**

12 In this Act:

13 (1) ANTITRUST LAWS.—The term “antitrust
14 laws” means—

15 (A) the Sherman Act (15 U.S.C. 1 et seq.);

16 and

17 (B) the Clayton Act (15 U.S.C. 12 et
18 seq.).

19 (2) EFFECTIVE DATE.—The term “effective
20 date” means the date described in section 6.

21 (3) FTC.—The term “FTC” means the Fed-
22 eral Trade Commission.

23 (4) FTC ANTITRUST ACTION.—The term “FTC
24 antitrust action” means any investigation, litigation,

1 administrative proceeding, or other action at the
2 FTC that—

3 (A) is supervised by an FTC antitrust
4 unit; or

5 (B) relates to the antitrust laws or unfair
6 methods of competition under section 5 of the
7 Federal Trade Commission Act (15 U.S.C. 45),
8 as in effect on the day before the effective date.

9 (5) FTC ANTITRUST ASSETS.—The term “FTC
10 antitrust assets”—

11 (A) means all electronic or tangible records
12 and files relating to matters supervised, as well
13 as any physical assets or equipment owned and
14 used or retained, by an FTC antitrust unit; and

15 (B) does not include any office space or
16 leased facilities or equipment.

17 (6) FTC ANTITRUST EMPLOYEE.—The term
18 “FTC antitrust employee” means an individual who
19 on the day before the effective date is employed by
20 the FTC and assigned to an FTC antitrust unit.

21 (7) FTC ANTITRUST FUNDING.—The term
22 “FTC antitrust funding” means all amounts appro-
23 priated before the effective date by an Act of Con-
24 gress to the FTC that are designated, by Congress
25 or the FTC for an FTC antitrust unit.

1 (8) FTC ANTITRUST UNIT.—The term “FTC
2 antitrust unit” means—

3 (A) the Bureau of Competition of the
4 FTC; and

5 (B) each division of the Bureau of Eco-
6 nomics of the FTC that is designated to work
7 on FTC antitrust actions.

8 (9) TRANSITION PERIOD.—The term “transi-
9 tion period” means the period beginning on the ef-
10 fective date and ending on the later of—

11 (A) the date that is 1 year after the effec-
12 tive date; or

13 (B) the date that is 180 days after the
14 date described in subparagraph (A), which may
15 be extended by the Attorney General once for
16 an additional 180 days, if the Attorney General
17 determines that a period longer than the period
18 described in subparagraph (A) is necessary to
19 avoid harm to the interests of the United States
20 or the effective enforcement of the antitrust
21 laws.

22 **SEC. 4. TRANSFER OF ANTITRUST ENFORCEMENT FUNC-**
23 **TIONS FROM THE FTC TO THE ATTORNEY**
24 **GENERAL.**

25 (a) TRANSFER OF ACTIONS.—

1 (1) IN GENERAL.—There shall be transferred to
2 the Attorney General all FTC antitrust actions,
3 FTC antitrust employees, FTC antitrust assets, and
4 FTC antitrust funding on the earlier of—

5 (A) the date determined by the Attorney
6 General under paragraph (2)(B); or

7 (B) the end of the transition period.

8 (2) REQUIREMENT.—The Attorney General,
9 taking care to minimize disruption to ongoing en-
10 forcement matters and in consultation as necessary
11 with the Office of Personnel Management, the Gen-
12 eral Services Administration, and the Chairman of
13 the FTC, shall—

14 (A) take all necessary actions to complete
15 implementation of this Act before the end of the
16 transition period; and

17 (B) determine the dates certain, which
18 may not be earlier than the effective date or
19 later than the end of the transition period, on
20 which the transfers under paragraph (1) shall
21 occur.

22 (3) PERSONNEL.—

23 (A) ASSIGNMENT.—An FTC antitrust em-
24 ployee transferred to the Attorney General

1 under this Act shall be assigned to the Anti-
2 trust Division of the Department of Justice.

3 (B) OFFICE SPACE.—On the request of the
4 Attorney General, and in consultation as nec-
5 essary with the General Services Administra-
6 tion, the FTC shall allow the Attorney General
7 to use any office space or leased facilities pre-
8 viously used by FTC antitrust employees until
9 such time as the Attorney General may provide
10 office space or facilities. After the transfer of
11 FTC antitrust funding to the Attorney General,
12 the Attorney General shall compensate the FTC
13 for the costs of the use of such office space or
14 leased facilities.

15 (C) RESTRUCTURING.—Notwithstanding
16 any other provision of law, the Attorney Gen-
17 eral is authorized to restructure the Antitrust
18 Division of the Department of Justice before
19 the expiration of the transition period, as the
20 Attorney General determines is appropriate, to
21 carry out the purposes of this Act and accom-
22 plish the efficient enforcement of the antitrust
23 laws.

24 (4) ANTITRUST ACTIONS.—

1 (A) IN GENERAL.—As soon as is reason-
2 ably practicable during the transition period, all
3 open investigations, studies, litigations, matters,
4 or other proceedings being supervised by an
5 FTC antitrust unit and relating to the antitrust
6 laws or unfair methods of competition under
7 section 5 of the Federal Trade Commission Act
8 (15 U.S.C. 45), as in effect on the day before
9 the effective date, shall be transferred to and
10 assumed by the Attorney General.

11 (B) HANDLING OF ADMINISTRATIVE AC-
12 TIONS.—FTC antitrust actions that were initi-
13 ated by the FTC and were unresolved as of the
14 first day of the transition period, shall be—

15 (i) continued as the Attorney General
16 determines is appropriate; and

17 (ii) the FTC shall have the power to
18 deputize former FTC antitrust employees,
19 with the consent of the Attorney General,
20 to continue any FTC antitrust actions as
21 described in clause (i).

22 (C) INTERVENTION.—Any FTC antitrust
23 actions before a court of the United States as
24 of the first day of the transition period, that
25 were initiated by the FTC and were unresolved

1 as of the first day of the transition period, shall
2 be—

3 (i) continued as the Attorney General
4 determines is appropriate; and

5 (ii) the FTC shall have the power to
6 deputize former FTC antitrust employees,
7 with the consent of the Attorney General,
8 to continue any FTC antitrust actions as
9 described clause (i).

10 (D) CONSENT DECREES.—

11 (i) IN GENERAL.—At the end of the
12 transition period, the Attorney General
13 shall have sole authority to receive all re-
14 ports as required under, enforce violations
15 of, approve modifications to, or rescind any
16 consent decree entered into by the FTC
17 before the effective date that concerns con-
18 duct alleged to violate the antitrust laws or
19 unfair methods of competition under sec-
20 tion 5 of the Federal Trade Commission
21 Act (15 U.S.C. 45), as in effect on the day
22 before the effective date.

23 (ii) ADMINISTRATIVE ENFORCE-
24 MENT.—If deemed necessary by the FTC
25 and the Attorney General, the FTC shall

1 have the power to deputize former FTC
2 antitrust employees, with the consent of
3 the Attorney General, to enforce and nego-
4 tiate modifications of FTC consent decrees
5 in effect on the day before the effective
6 date in the FTC's administrative process.

7 (5) AUTHORITY TO CONDUCT INVESTIGATIVE
8 STUDIES.—

9 (A) REPORTS OF PERSONS, PARTNER-
10 SHIPS, AND CORPORATIONS.—

11 (i) IN GENERAL.—The Attorney Gen-
12 eral may require, by general or special or-
13 ders, persons, partnerships, and corpora-
14 tions, engaged in or whose business affects
15 commerce to file with the Attorney General
16 in such form as the Attorney General may
17 prescribe annual or special reports or an-
18 swers in writing to specific questions, fur-
19 nishing to the Attorney General such infor-
20 mation as the Attorney General may re-
21 quire as to the organization, business, con-
22 duct, practices, management, and relation
23 to other corporations, partnerships, and in-
24 dividuals of the respective persons, part-

1 nerships, and corporations filing such re-
2 ports or answers in writing.

3 (ii) OATH.—Reports and answers re-
4 quired under clause (i) shall—

5 (I) be made under oath or other-
6 wise as the Attorney General may pre-
7 scribe;

8 (II) pertain solely to competition
9 or the application of the antitrust
10 laws; and

11 (III) be filed with the Attorney
12 General within such reasonable period
13 as the Attorney General may pre-
14 scribe, unless additional time be
15 granted in any case by the Attorney
16 General.

17 (B) PUBLICATION OF INFORMATION OR
18 REPORTS.—

19 (i) IN GENERAL.—Except as provided
20 in clause (ii), the Attorney General—

21 (I) shall make public from time
22 to time such portions of the informa-
23 tion obtained by the Attorney General
24 under this paragraph as are in the
25 public interest;

1 (II) may make annual and spe-
2 cial reports to Congress that include
3 recommendations for additional legis-
4 lation; and

5 (III) shall provide for the publi-
6 cation of reports and decisions of the
7 Attorney General in such form and
8 manner as may be best adapted for
9 public information and use.

10 (ii) PROHIBITION AGAINST PUBLICA-
11 TION OF PRIVILEGED OR CONFIDENTIAL
12 INFORMATION.—

13 (I) IN GENERAL.—Except as pro-
14 vided in subclause (II), the Attorney
15 General shall not make public any
16 trade secret or any commercial or fi-
17 nancial information that is obtained
18 from any person and that is privileged
19 or confidential.

20 (II) EXCEPTION.—The Attorney
21 General may disclose information de-
22 scribed in subclause (I) to—

23 (aa) officers and employees
24 of appropriate Federal law en-
25 forcement agencies or to any offi-

1 cer or employee of any State law
2 enforcement agency on the prior
3 certification of an officer of any
4 such Federal or State law en-
5 forcement agency that such infor-
6 mation will be maintained in con-
7 fidence and will be used only for
8 official law enforcement purposes;
9 or

10 (bb) any officer or employee
11 of any foreign law enforcement
12 agency under the same cir-
13 cumstances that making material
14 available to foreign law enforce-
15 ment agencies is permitted under
16 section 21(b) of the Federal
17 Trade Commission Act (15
18 U.S.C. 57b-2(b)).

19 (6) BENEFIT OF ANTITRUST DIVISION.—All
20 FTC antitrust assets and FTC antitrust funding
21 transferred under this subsection shall be for the ex-
22 clusive use and benefit of the Antitrust Division of
23 the Department of Justice, except to the extent the
24 FTC deputizes former FTC antitrust employees,
25 with the consent of the Attorney General, to con-

1 tinue any FTC antitrust actions that are ongoing
2 and unresolved before the effective date.

3 (b) TRANSITION PERIOD.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), beginning on the effective date, the FTC
6 may not—

7 (A) hire or assign an employee to an FTC
8 antitrust unit;

9 (B) open a new investigation or matter
10 within an FTC antitrust unit or relating to the
11 antitrust laws or unfair methods of competition
12 under section 5 of the Federal Trade Commis-
13 sion Act;

14 (C) without the approval of the Attorney
15 General, enter into a consent decree, enter into
16 a settlement agreement, or otherwise resolve an
17 FTC antitrust action; or

18 (D) initiate a new FTC antitrust action.

19 (2) ENFORCEMENT ON BEHALF OF THE ATTOR-
20 NEY GENERAL.—Notwithstanding paragraph (1),
21 during the transition period, the Attorney General
22 may deputize an FTC antitrust employee to inves-
23 tigate or prosecute an alleged violation of the anti-
24 trust laws on behalf of the Attorney General before

1 the completion of the transfer of personnel under
2 subsection (a).

3 (3) SAME RIGHTS AND OBLIGATIONS.—

4 (A) IN GENERAL.—Notwithstanding any
5 other provision of law, during the transition pe-
6 riod all Department of Justice employees under
7 the supervision of the Attorney General shall
8 have the same rights and obligations with re-
9 spect to confidential information submitted to
10 the FTC as FTC antitrust employees on the
11 day before the effective date.

12 (B) RULE OF CONSTRUCTION.—Nothing in
13 this paragraph may be construed as implying
14 any change to the rights and obligations de-
15 scribed in subparagraph (A) as a result of this
16 Act.

17 (c) AGREEMENTS.—The Attorney General, in con-
18 sultation with the Chairman of the FTC, shall—

19 (1) review any agreements between the FTC
20 and any other Federal agency or any foreign law en-
21 forcement agency; and

22 (2) before the end of the transition period, seek
23 to amend, transfer, or rescind such agreements as
24 necessary and appropriate to carry out this Act, en-

1 deavoring to complete such amendment, transfer, or
2 rescindment with all due haste.

3 (d) RULES.—The Attorney General shall, pursuant
4 to section 7A of the Clayton Act (15 U.S.C. 18a) and in
5 accordance with section 553 of title 5, United States Code,
6 prescribe or amend any rules as necessary to carry out
7 the Clayton Act.

8 **SEC. 5. TECHNICAL AND CONFORMING AMENDMENTS.**

9 (a) REQUIREMENTS TO CONSULT WITH OR SEEK
10 THE CONCURRENCE.—For any provision of law requiring
11 an executive branch agency or independent agency to con-
12 sult with or seek the concurrence of the FTC or the Chair-
13 man of the FTC, where such requirement relates to the
14 antitrust laws or unfair methods of competition under sec-
15 tion 5 of the Federal Trade Commission Act (15 U.S.C.
16 45), as in effect on the day before the effective date, that
17 requirement shall be transferred from the FTC or the
18 Chairman of the FTC to the Attorney General.

19 (b) PREMERGER NOTIFICATION FILINGS.—

20 (1) FTC PREMERGER NOTIFICATION FIL-
21 INGS.—For any provision of law requiring notifica-
22 tion to the FTC, where such requirement relates to
23 the antitrust laws or unfair methods of competition
24 under section 5 of the Federal Trade Commission
25 Act (15 U.S.C. 45), as in effect on the day before

1 the effective date, that requirement for notification
2 to the FTC shall be waived.

3 (2) DEPARTMENT OF JUSTICE PREMERGER NO-
4 TIFICATION FILINGS.—Nothing in paragraph (b)
5 may be construed as implying any change to the re-
6 quirement for any required notification to the Attor-
7 ney General.

8 (c) EXISTING LITIGATION OR APPEALS.—Notwith-
9 standing any other provision of law, the Attorney General
10 shall not deny resources to the FTC or otherwise disrupt
11 existing litigation or appeals that are ongoing on the day
12 before the effective date.

13 (d) FUTURE ACTIONS OF ATTORNEY GENERAL.—
14 Notwithstanding any other provision of law, nothing in
15 this Act may be construed to limit the powers of the Attor-
16 ney General to enforce the antitrust laws.

17 (e) FUTURE ACTIONS OF THE FTC.—Notwith-
18 standing any other provision of law, the FTC shall not
19 open new investigations or begin enforcement actions that
20 relates to the antitrust laws or unfair methods of competi-
21 tion under section 5 of the Federal Trade Commission Act
22 (15 U.S.C. 45), except as explicitly allowed in this Act
23 with the approval of the Attorney General and relating
24 to an investigation, litigation, appeal, or consent decree

1 that was ongoing or in place on the day before the effective
2 date.

3 **SEC. 6. EFFECTIVE DATE.**

4 Except as provided otherwise, this Act shall take ef-
5 fect on the start of the first fiscal year that is at least
6 90 days after the date of enactment of this Act.