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(Original Signature of Member)

119TH CONGRESS
2D SESSION

H. R. _____

To specify the standards governing claims of consciously parallel pricing coordination in civil actions under the Sherman Act, and to clarify the meaning of contract, combination in the form of trust or otherwise, or conspiracy under the Sherman Act.

IN THE HOUSE OF REPRESENTATIVES

Ms. SCANLON introduced the following bill; which was referred to the
Committee on _____

A BILL

To specify the standards governing claims of consciously parallel pricing coordination in civil actions under the Sherman Act, and to clarify the meaning of contract, combination in the form of trust or otherwise, or conspiracy under the Sherman Act.

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 “Competitive Prices
5 Act.”

1 **SEC. 2. PLEADING AN ANTITRUST VIOLATION THROUGH**
2 **PARALLEL CONDUCT AND PLUS FACTORS.**

3 (a) DEFINITIONS.—

4 (1) The term “antitrust laws” means the Sher-
5 man Act (15 U.S.C. 1, et seq), the Clayton Act (15
6 U.S.C. 12, et seq.), and the Federal Trade Commis-
7 sion Act (15 U.S.C. 41, et seq).

8 (2) The term “parallel conduct” means two or
9 more persons acting similarly to raise, lower, main-
10 tain, stabilize, or manipulate price, output, capacity,
11 supply, or other terms of competition for reasonably
12 interchangeable commodities or services. Parallel
13 conduct need not be uniform and can be varied in
14 timing, method, and amount.

15 (3) The term “person” has the meaning given
16 the term in subsection (a) of the 1st section of the
17 Clayton Act (5 U.S.C. 12(a)).

18 (4) The term “plus factors” means allegations
19 other than parallel conduct supporting the inference
20 of a conspiracy, including—

21 (A) a motive to coordinate efforts to raise,
22 lower, maintain, stabilize, or manipulate price,
23 output, capacity, supply, or other terms of com-
24 petition for the purchase or sale of reasonably
25 interchangeable commodities or services;

1 (B) actions that would be contrary to a
2 person's unilateral economic self-interest absent
3 a conspiracy;

4 (C) departure from prior pricing method-
5 ology and practices;

6 (D) exchanges of competitively sensitive in-
7 formation;

8 (E) price or output levels unexplained by
9 cost, supply, or demand;

10 (F) an opportunity to conspire at industry
11 events, conferences, trade association activities,
12 or through any other meetings or venues;

13 (G) past collusive practices;

14 (H) an invitation to participate in a com-
15 mon scheme, including by public signaling of
16 pricing, output, capacity, supply, or other com-
17 petitive strategies, or offering of a method to
18 engage in parallel conduct;

19 (I) market conditions conducive to coordi-
20 nation, including high market concentration,
21 high barriers to entry, high exit barriers, inelas-
22 tic demand, or fungible products.

23 (5) The terms "State attorney general" and
24 "State" have the meaning given in section 4G of the
25 Clayton Act (15 U.S.C. 15g).

1 (b) STANDARDS OF PLEADING AND PROOF.—In a
2 civil action, including an action brought by the United
3 States, the Federal Trade Commission, a State attorney
4 general, or any person seeking damages or injunctive relief
5 for violations of the antitrust laws—

6 (1) when opposing any motion to dismiss a
7 complaint, motion for judgment on the pleadings, or
8 any other motion challenging the sufficiency of the
9 allegations, a claimant—

10 (A) plausibly states a claim by alleging
11 parallel conduct and the presence of two or
12 more plus factors;

13 (B) need not allege direct evidence of a
14 conspiracy;

15 (C) need not allege facts tending to exclude
16 the possibility of independent action;

17 (D) need not allege a theory that is more
18 plausible than one offered by defendants, as the
19 court at the pleading stage must only consider
20 whether the allegations are plausible, not
21 whether an alternative explanation is equally or
22 more plausible; and

23 (2) when opposing any motion for summary
24 judgment, motion for directed verdict, motion for
25 judgment as a matter of law, or any other motion

1 challenging the sufficiency of the evidence and per-
2 mitting a ruling as matter of law, a claimant—

3 (A) demonstrates a genuine issue of mate-
4 rial fact by offering evidence, which may be di-
5 rect evidence, circumstantial evidence, or some
6 combination of the two, that is sufficient to
7 allow a trier of fact to find that the defending
8 party engaged in an unlawful conspiracy;

9 (B) need not offer evidence tending to ex-
10 clude the possibility that the defending party
11 acted independently; and

12 (C) need not demonstrate that the weight
13 of the evidence favors the claimant, as all evi-
14 dence must be construed in the light most fa-
15 vorable to the party opposing summary judg-
16 ment and the weighing of the evidence is an
17 issue for the finder of fact.

18 (c) RULE OF CONSTRUCTION.—Nothing in this Act
19 shall be construed to abridge or narrow the remedies avail-
20 able under the antitrust laws.