

# H. R. 9203

## IN THE HOUSE OF REPRESENTATIVES

JULY 11, 1973

Mr. RODINO introduced the following bill; which was referred to the Committee on the Judiciary

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### A BILL

To reform consent decree procedures, to increase penalties for violation of the Sherman Act, and to revise the expediting Act as it pertains to appellate review.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 *That this Act may be cited as the "Antitrust Procedures and*  
4 *Penalties Act".*

#### 5 CONSENT DECREE PROCEDURES

6 SEC. 2. Section 5 of the Act entitled "An Act to supple-  
7 ment existing laws against unlawful restraints and monop-  
8 lies, and for other purposes", approved October 15, 1914  
9 (38 Stat. 730; 15 U.S.C. 16), is amended by redesignating

1 subsection (b) as (i) and by inserting after subsection (a)  
2 the following:

3       “(b) Any consent judgment proposed by the United  
4 States for entry in any civil proceeding brought by or on  
5 behalf of the United States under the antitrust laws shall be  
6 filed with the district court before which that proceeding is  
7 pending and published in the Federal Register at least sixty  
8 days prior to the effective date of such decree. Any written  
9 comments relating to the proposed consent judgment and any  
10 responses thereto shall also be filed with the same district  
11 court and published in the Federal Register within the afore-  
12 mentioned sixty-day period. Copies of the proposed consent  
13 judgment and such other materials and documents which the  
14 United States considered determinative in formulating the  
15 proposed consent judgment shall also be made available to  
16 members of the public at the district court before which the  
17 proceeding is pending and in such other districts as the court  
18 may subsequently direct. Simultaneously with the filing of  
19 the proposed consent judgment, unless otherwise instructed  
20 by the court, the United States shall file with the district  
21 court, cause to be published in the Federal Register, and  
22 thereafter furnish to any person upon request a public impact  
23 statement which shall recite—

24               “(1) the nature and purpose of the proceeding;

25               “(2) a description of the practices or events giving

1 rise to the alleged violation of the antitrust laws;

2 “(3) an explanation of the proposed judgment, relief  
3 to be obtained thereby, and the anticipated effects on  
4 competition of that relief, including an explanation of any  
5 unusual circumstances giving rise to the proposed judg-  
6 ment or any provision contained therein;

7 “(4) the remedies available to potential private  
8 plaintiffs damaged by the alleged violation in the event  
9 that the proposed judgment is entered;

10 “(5) a description of the procedures available for  
11 modification of the proposed judgment;

12 “(6) a description and evaluation of alternatives  
13 actually considered to the proposed judgment and the  
14 anticipated effects on competition of such alternatives.

15 “(c) The United States shall also cause to be published,  
16 commencing at least sixty days prior to the effective date of  
17 such decree, for seven days over a period of two weeks in  
18 newspapers of general circulation of the district in which the  
19 case has been filed, in Washington, District of Columbia, and  
20 in such other districts as the court may direct (i) a summary  
21 of the terms of the proposed consent judgment, (ii) a sum-  
22 mary of the public impact statement to be filed under subsec-  
23 tion (b), (iii) and a list of the materials and documents  
24 under subsection (b) which the United States shall make  
25 available for purposes of meaningful public comment, and the

1 places where such material is available for public inspection.

2 “(d) During the sixty-day period provided above, and  
3 such additional time as the United States may request and  
4 the court may grant, the United States shall receive and  
5 consider any written comments relating to the proposed con-  
6 sent judgment. The Attorney General or his designate shall  
7 establish procedures to carry out the provisions of this subsec-  
8 tion, but the sixty-day time period set forth herein shall not  
9 be shortened except by order of the district court upon a  
10 showing that extraordinary circumstances require such  
11 shortening and that such shortening of the time period is not  
12 adverse to the public interest. At the close of the period  
13 during which such comments may be received, the United  
14 States shall file with the district court and cause to be pub-  
15 lished in the Federal Register a response to such comments.

16 “(e) Before entering any consent judgment proposed  
17 by the United States under this section, the court shall  
18 determine that entry of that judgment is in the public  
19 interest as defined by law. For the purpose of this determina-  
20 tion, the court may consider—

21 “(1) the public impact of the judgment, including  
22 termination of alleged violation, provisions for enforce-  
23 ment and modification, duration of relief sought, antici-  
24 pated effects of alternative remedies actually considered,  
25 and any other considerations bearing upon the adequacy  
26 of the judgment;

1           “(2) the public impact of entry of the judgment  
2           upon the public generally and individuals alleging spe-  
3           cific injury from the violations set forth in the complaint,  
4           including consideration of the public benefit to be de-  
5           rived from a determination of the issues at trial.

6           “(f) In making its determination under subsection (e),  
7           the court may—

8           “(1) take testimony of Government officials or ex-  
9           perts or such other expert witnesses, upon motion of  
10          any party or participant or upon its own motion, as  
11          the court may deem appropriate;

12          “(2) appoint a special master, pursuant to rule  
13          53 of the Federal Rules of Civil Procedure, and such  
14          outside consultants or expert witnesses as the court  
15          may deem appropriate; and request and obtain the  
16          views, evaluations, or advice of any individual group  
17          or agency of government with respect to any aspect  
18          of the proposed judgment of the effect thereof in such  
19          manner as the court deems appropriate;

20          “(3) authorize full or limited participation in pro-  
21          ceedings before the court by interested persons or agen-  
22          cies, including appearance *amicus curiae*, intervention  
23          as a party pursuant to rule 24 of the Federal Rules  
24          of Civil Procedure, examination of witnesses or docu-  
25          mentary materials, or participation in any other manner

1 and extent which serves the public interest as the court  
2 may deem appropriate;

3 “(4) review any comments or objections concern-  
4 ing the proposed judgment filed with the United States  
5 under subsection (d) and the response of the United  
6 States to such comments or objections;

7 “(5) take such other action in the public interest  
8 as the court may deem appropriate.

9 “(g) Not later than ten days following the filing of any  
10 proposed consent judgment under subsection (b), each de-  
11 fendant shall file with the district court a description of  
12 any and all written or oral communications by or on behalf  
13 of such defendant, including any officer, director, employee,  
14 or agent thereof, or other person except counsel of record,  
15 with any officer or employee of the United States concern-  
16 ing or relevant to the proposed consent judgment. Prior  
17 to the entry of any consent judgment pursuant to the anti-  
18 trust laws, each defendant shall certify to the district court  
19 that the requirements of this section have been complied  
20 with and that such filing is a true and complete description  
21 of such communications known to the defendant or which the  
22 defendant reasonably should have known.

23 “(h) Proceedings before the district court under subsec-  
24 tions (e) and (f), and public impact statements filed under  
25 subsection (b) hereof, shall not be admissible against any

1 defendant in any action or proceeding brought by any other  
2 party against such defendant under the antitrust laws or by  
3 the United States under section 4A of this Act nor constitute  
4 a basis for the introduction of the consent judgment as prima  
5 facie evidence against such defendant in any such action or  
6 proceeding.”

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## PENALTIES

8 SEC. 3. Sections 1, 2, and 3 of the Act entitled “An Act  
9 to protect trade and commerce against unlawful restraints  
10 and monopolies”, approved July 2, 1890 (26 Stat. 209; 15  
11 U.S.C. 1, 2, and 3) are each amended by striking out “fifty  
12 thousand dollars” and inserting “five hundred thousand dol-  
13 lars if a corporation, or, if any other person, one hundred  
14 thousand dollars”.

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## EXPEDITING ACT REVISIONS

16 SEC. 4. Section 1 of the Act of February 11, 1903 (32  
17 Stat. 823), as amended (15 U.S.C. 28; 49 U.S.C. 44),  
18 commonly known as the Expediting Act, is amended to read  
19 as follows:

20 “SECTION 1. In any civil action brought in any district  
21 court of the United States under the Act entitled ‘An Act  
22 to protect trade and commerce against unlawful restraints  
23 and monopolies’, approved July 2, 1890, or any other Acts  
24 having like purpose that have been or hereafter may be  
25 enacted, wherein the United States is plaintiff and equitable

1 relief is sought, the Attorney General may file with the  
2 court, prior to the entry of final judgment, a certificate that,  
3 in his opinion, the case is of a general public importance.  
4 Upon filing of such certificate, it shall be the duty of the  
5 judge designated to hear and determine the case, or the chief  
6 judge of the district court if no judge has as yet been desig-  
7 nated, to assign the case for hearing at the earliest practicable  
8 date and to cause the case to be in every way expedited.”

9 SEC. 5. Section 2 of the Act (15 U.S.C. 29; 49 U.S.C.  
10 45) is amended to read as follows:

11 “(a) Except as otherwise expressly provided by this  
12 section, in every civil action brought in any district court  
13 of the United States under the Act entitled ‘An Act to pro-  
14 tect trade and commerce against unlawful restraints and  
15 monopolies’, approved July 2, 1890, or any other Acts hav-  
16 ing like purpose that have been or hereafter may be enacted,  
17 in which the United States is the complainant and equitable  
18 relief is sought, any appeal from a final judgment entered  
19 in any such action shall be taken to the court of appeals  
20 pursuant to sections 1291 and 2107 of title 28 of the United  
21 States Code. Any appeal from an interlocutory order entered  
22 in any such action shall be taken to the court of appeals pur-  
23 suant to section 1292 (a) (1) and 2107 of title 28 of the  
24 United States Code but not otherwise. Any judgment entered  
25 by the court of appeals in any such action shall be subject

1 to review by the Supreme Court upon a writ of certiorari as  
2 provided in section 1254 (1) of title 28 of the United States  
3 Code.

4 “(b) An appeal from a final judgment pursuant to  
5 subsection (a) shall lie directly to the Supreme Court if—

6 “(1) upon application of a party filed within five  
7 days of the filing of a notice of appeal, the district judge  
8 who adjudicated the case enters an order stating that  
9 immediate consideration of the appeal by the Supreme  
10 Court is of general public importance in the adminis-  
11 tration of justice.

12 A court order pursuant to (1) must be filed within  
13 fifteen days after the filing of a notice of appeal. When such  
14 an order or certificate is filed, the appeal and any cross appeal  
15 shall be docketed in the time and manner prescribed by the  
16 rules of the Supreme Court. That Court shall thereupon  
17 either (1) dispose of the appeal and any cross appeal in  
18 the same manner as any other direct appeal authorized by  
19 law, or (2) in its discretion, deny the direct appeal and  
20 remand the case to the court of appeals, which shall then  
21 have jurisdiction to hear and determine the same as if the  
22 appeal and any cross appeal therein had been docketed in  
23 the court of appeals in the first instance pursuant to sub-  
24 section (a).”

25 SEC. 6. (a) Section 401 (d) of the Communications

1 Act of 1934 (47 U.S.C. 401 (d) ) is repealed.

2 (b) The proviso in section 3 of the Act of February  
3 19, 1903, as amended (32 Stat. 848, 849; 49 U.S.C. 43),  
4 is repealed and the colon preceding it is changed to a  
5 period.

6 SEC. 7. The amendment made by section 2 of this Act  
7 shall not apply to an action in which a notice of appeal to  
8 the Supreme Court has been filed on or before the fifteenth  
9 day following the date of enactment of this Act. Appeal in  
10 any such action shall be taken pursuant to the provisions  
11 of section 2 of the Act of February 11, 1903 (32 Stat. 823),  
12 as amended (15 U.S.C. 29; 49 U.S.C. 45) which were in  
13 effect on the day preceding the date of enactment of this Act.

93D CONGRESS  
1ST SESSION

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