

1 ful restraints and monopolies, and for other pur-
2 poses”, approved October 15, 1914 (38 Stat. 730,
3 as amended; 15 U.S.C. 12), commonly known as
4 the Clayton Act;

5 (2) The Federal Trade Commission Act (15
6 U.S.C. 41 and the following) ;

7 (3) Section 3 of the Act entitled “An Act to
8 amend section 2 of the Act entitled ‘An Act to sup-
9 plement existing laws against unlawful restraints
10 and monopolies, and for other purposes’, approved
11 October 15, 1914, as amended (U.S.C., title 15,
12 sec. 13), and for other purposes”, approved June
13 19, 1936 (49 Stat. 1528; 15 U.S.C. 13a), com-
14 monly known as the Robinson-Patman Act; and

15 (4) Any statute hereafter enacted by the Con-
16 gress which prohibits, or makes available to the
17 United States in any court or antitrust agency of
18 the United States any civil remedy with respect
19 to (A) any restraint upon or monopolization of
20 interstate or foreign trade or commerce, or (B)
21 any unfair trade practice in or affecting such
22 commerce;

23 (b) The term “antitrust agency” means any board,
24 commission, or agency of the United States (other than
25 the Department of Justice) charged by law with the

1 administration or enforcement of any antitrust law or the
2 adjudication of proceedings arising under any such law;

3 (c) The term "antitrust order" means any final
4 order of any antitrust agency, or any final order, decree,
5 or judgment of any court of the United States, duly
6 entered in any case or proceeding arising under any anti-
7 trust law;

8 (d) The term "antitrust investigation" means any
9 inquiry conducted by any antitrust investigator for the
10 purpose of ascertaining whether any person is or has
11 been engaged in any antitrust violation;

12 (e) The term "antitrust violation" means any act
13 or omission in violation of any antitrust law or any anti-
14 trust order;

15 (f) The term "antitrust investigator" means any
16 attorney or investigator employed by the Department of
17 Justice who is charged with the duty of enforcing or
18 carrying into effect any antitrust law;

19 (g) The term "person" means any corporation,
20 association, partnership, or other legal entity not a
21 natural person;

22 (h) The term "documentary material" includes the
23 original or any copy of any book, record, report, memo-
24 randum, paper, communication, tabulation, chart, or
25 other document; and

1 (i) The term “custodian” means the antitrust docu-
2 ment custodian or any deputy custodian designated under
3 section 4 (a) of this Act.

4 CIVIL INVESTIGATIVE DEMAND

5 SEC. 3. (a) Whenever the Attorney General, or the
6 Assistant Attorney General in charge of the Antitrust Divi-
7 sion of the Department of Justice, has reason to believe that
8 any person may be in possession, custody, or control of
9 any documentary material pertinent to any antitrust investi-
10 gation, he may issue in writing, and cause to be served upon
11 such person, a civil investigative demand requiring such
12 person to produce such material for examination.

13 (b) Each such demand shall—

14 (1) state the nature of the conduct constituting the
15 alleged antitrust violation which is under investigation
16 and the provision of law applicable thereto;

17 (2) describe the class or classes of documentary
18 material to be produced thereunder with such definite-
19 ness and certainty as to permit such material to be
20 fairly identified;

21 (3) prescribe a return date which will provide a
22 reasonable period of time within which the material so
23 demanded may be assembled and produced;

24 (4) identify the custodian to whom such evidence
25 is to be delivered; and

1 (5) specify a place at which such delivery is to be
2 made.

3 (c) No such demand shall—

4 (1) contain any requirement which would be held
5 to be unreasonable if contained in a subpoena duces tecum
6 issued by a court of the United States in aid of a grand
7 jury investigation of such alleged antitrust violation;
8 or

9 (2) require the production of any documentary evi-
10 dence which would be privileged from disclosure if de-
11 manded by a subpoena duces tecum issued by a court of
12 the United States in aid of a grand jury investigation of
13 such alleged antitrust violation.

14 (d) Any such demand may be served by any antitrust
15 investigator, or by any United States marshal or deputy
16 marshal, at any place within the territorial jurisdiction of
17 any court of the United States.

18 (e) Service of any such demand or of any petition filed
19 under section 5 of this Act may be made upon a partnership,
20 corporation, association, or other legal entity by—

21 (1) delivering a duly executed copy thereof to any
22 partner, executive officer, managing agent, or general
23 agent thereof, or to any agent thereof authorized by ap-
24 pointment or by law to receive service of process on

1 behalf of such partnership, corporation, association, or
2 entity;

3 (2) delivering a duly executed copy thereof to the
4 principal office or place of business of the partnership,
5 corporation, association, or entity to be served; or

6 (3) depositing such copy in the United States
7 mails, by registered or certified mail duly addressed to
8 such partnership, corporation, association, or entity at
9 its principal office or place of business.

10 (f) A verified return by the individual serving any such
11 demand or petition setting forth the manner of such service
12 shall be proof of such service. In the case of service by
13 registered or certified mail, such return shall be accompanied
14 by the return post office receipt of delivery of such demand.

15 ANTITRUST DOCUMENT CUSTODIAN

16 SEC. 4. (a) The Assistant Attorney General in charge
17 of the Antitrust Division of the Department of Justice shall
18 designate an antitrust investigator to serve as antitrust docu-
19 ment custodian, and such additional antitrust investigators
20 as he shall determine from time to time to be necessary to
21 serve as deputies to such officer.

22 (b) Any person upon whom any demand issued under
23 section 3 has been duly served shall deliver such material
24 to the custodian designated therein at the place specified
25 therein (or at such other place as such custodian thereafter

1 may prescribe in writing) on the return date specified in
2 such demand (or on such later date as such custodian may
3 prescribe in writing). No such demand or custodian may
4 require delivery of any documentary material to be made—

5 (1) at any place outside the territorial jurisdiction
6 of the United States without the consent of the person
7 upon whom such demand was served; or

8 (2) at any place other than the place at which
9 such documentary material is situated at the time of
10 service of such demand until the custodian has tendered
11 to such person (A) a sum sufficient to defray the cost
12 of transporting such material to the place prescribed for
13 delivery or (B) the transportation thereof to such place
14 at Government expense.

15 (c) The custodian to whom any documentary material
16 is so delivered shall take physical possession thereof, and
17 shall be responsible for the use made thereof and for the return
18 thereof pursuant to this Act. The custodian may cause the
19 preparation of such copies of such documentary material as
20 may be required for official use by any individual who is
21 entitled, under regulations which shall be promulgated by
22 the Attorney General, to have access to such material for
23 examination. While in the possession of the custodian, no
24 material so produced shall be available for examination,
25 without the consent of the person who produced such ma-

1 terial, by any individual other than a duly authorized officer,
2 member, or employee of the Department of Justice or any
3 antitrust agency, provided nothing herein shall prevent the
4 Attorney General from making available the material so
5 produced for examination by the Committee on the Judiciary
6 of each House of the Congress. Under such reasonable terms
7 and conditions as the Attorney General shall prescribe,
8 documentary material while in the possession of the cus-
9 todian shall be available for examination by the person who
10 produced such material or any duly authorized representa-
11 tive of such person.

12 (d) Whenever any attorney has been designated to
13 appear on behalf of the United States before any court,
14 grand jury, or antitrust agency in any case or proceeding
15 involving any alleged antitrust violation, the custodian may
16 deliver to such attorney such documentary material in the
17 possession of the custodian as such attorney determines to
18 be required for use in the presentation of such case or pro-
19 ceeding on behalf of the United States. Upon the conclu-
20 sion of any such case or proceeding, such attorney shall
21 return to the custodian any documentary material so with-
22 drawn which has not passed into the control of such court,
23 grand jury, or antitrust agency through the introduction
24 thereof into the record of such case or proceeding.

25 (e) Upon the completion of (1) the antitrust investi-

1 gation for which any documentary material was produced
2 under this Act, and (2) any case or proceeding arising from
3 such investigation, the custodian shall return to the person
4 who produced such material all such material (other than
5 copies thereof made by the Department of Justice, any
6 antitrust agency or any committee of the Congress, pursuant
7 to subsection (c)) which has not passed into the control of
8 any court, grand jury, or antitrust agency through the in-
9 troduction thereof into the record of such case or proceeding.

10 (f) When any documentary material has been produced
11 by any person under this Act for use in any antitrust investi-
12 gation, and no such case or proceeding arising therefrom has
13 been instituted within a reasonable time after completion of
14 the examination and analysis of all evidence assembled in the
15 course of such investigation, such person shall be entitled,
16 upon written demand made upon the Attorney General or
17 upon the Assistant Attorney General in charge of the Anti-
18 trust Division, to the return of all documentary material
19 (other than copies thereof made by the Department of
20 Justice or any antitrust agency pursuant to subsection (c))
21 so produced by such person.

22 (g) In the event of the death, disability, or separation
23 from service in the Department of Justice of the custodian
24 of any documentary material produced under any demand
25 issued under this Act, or the official relief of such custodian

1 from responsibility for the custody and control of such mate-
2 rial, the Assistant Attorney General in charge of the Anti-
3 trust Division shall promptly (1) designate another antitrust
4 investigator to serve as custodian thereof, and (2) transmit
5 notice in writing to the person who produced such material
6 as to the identity and address of the successor so designated.
7 Any successor so designated shall have with regard to such
8 materials all duties and responsibilities imposed by this Act
9 upon his predecessor in office with regard thereto, except
10 that he shall not be held responsible for any default or
11 dereliction which occurred before his designation as
12 custodian.

13 JUDICIAL PROCEEDINGS

14 SEC. 5. (a) Whenever any person fails to comply with
15 any civil investigative demand duly served upon him under
16 section 3, the Attorney General, through such officers or
17 attorneys as he may designate, may file, in the district court
18 of the United States for any judicial district in which such
19 person resides, is found, or transacts business, and serve upon
20 such person a petition for an order of such court for the en-
21 forcement of such demand, except that if such person trans-
22 acts business in more than one such district such petition
23 shall be filed in the district in which such person maintains
24 his principal place of business, or in such other district in

1 which such person transacts business as may be agreed upon
2 by the parties to such petition.

3 (b) Within twenty days after the service of any such
4 demand upon any person, or at any time before the return
5 date specified in the demand, whichever period is shorter,
6 such person may file, in the district court of the United States
7 for the judicial district within which the office of the cus-
8 todian designated therein is situated, and serve upon such
9 custodian a petition for an order of such court modifying or
10 setting aside such demand. Such petition shall specify each
11 ground upon which the petitioner relies in seeking such
12 relief, and may be based upon any failure of such demand
13 to comply with the provisions of this Act, or upon any
14 constitutional right or privilege of such person.

15 (c) At any time during which any custodian is in
16 custody or control of any documentary material delivered
17 by any person in compliance with any such demand, such
18 person may file, in the district court of the United States
19 for the judicial district within which the office of such cus-
20 todian is situated, and serve upon such custodian a petition
21 for an order of such court requiring the performance by such
22 custodian of any duty imposed upon him by this Act.

23 (d) Whenever any petition is filed in any district court
24 of the United States under this section, such court shall have

1 jurisdiction to hear and determine the matter so presented,
2 and to enter such order or orders as may be required to
3 carry into effect the provisions of this Act. Any final order
4 so entered shall be subject to appeal pursuant to section
5 1291 of title 28 of the United States Code. Any dis-
6 obedience of any final order entered under this section by
7 any court shall be punished as a contempt thereof.

8 CRIMINAL PENALTY

9 SEC. 6. (a) Chapter 73 of title 18 of the United States
10 Code (relating to obstruction of justice) is amended by
11 adding at the end thereof the following new section:

12 **“§ 1509. Obstruction of antitrust civil process**

13 “Whoever, with intent to avoid, evade, prevent, or ob-
14 struct compliance in whole or in part, by any person with any
15 civil investigative demand made under the Antitrust Civil
16 Process Act, willfully removes from any place, conceals,
17 withholds, destroys, mutilates, alters, or by any other means
18 falsifies any documentary material in the possession, custody
19 or control of any person which is the subject of any such
20 demand duly served upon any person shall be fined not more
21 than \$5,000 or imprisoned not more than five years, or
22 both.”

23 (b) The analysis to such chapter is amended by insert-
24 ing at the end thereof the following new item:

“1509. Obstruction of antitrust civil process.”

SAVING PROVISION

1

2 SEC. 7. Nothing contained in this Act shall impair the
3 authority of the Attorney General, the Assistant Attorney
4 General in charge of the Antitrust Division of the Depart-
5 ment of Justice, or any antitrust investigator to (a) lay
6 before any grand jury impaneled before any district court of
7 the United States any evidence concerning any alleged
8 antitrust violation, (b) invoke the power of any such court
9 to compel the production of any evidence before any such
10 grand jury, or (c) institute any proceeding for the enforce-
11 ment of any order or process issued in execution of such
12 power, or to punish disobedience of any such order or process
13 by any person.

87TH CONGRESS
1ST SESSION

S. 167

A BILL

To authorize the Attorney General to compel the production of documentary evidence required in civil investigations for the enforcement of the antitrust laws, and for other purposes.

By Mr. KEFAUVER

JANUARY 5 (legislative day, JANUARY 4), 1961
Read twice and referred to the Committee on the
Judiciary