

1 subsection ~~(b)~~ as ~~(i)~~ and by inserting after subsection
2 ~~(a)~~ 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, other than those which are exempt from
11 disclosure under section ~~552(b)~~ of title 5, United States
12 Code, shall also be filed with the same district court and
13 published in the Federal Register within the aforementioned
14 sixty-day period. Copies of the proposed consent judgment
15 and such other materials and documents which the United
16 States considered determinative in formulating the proposed
17 consent judgment, other than those which are exempt from
18 disclosure under sections ~~552(b)~~ ~~(4)~~ and ~~(5)~~ of title 5,
19 United States Code, shall also be made available to members
20 of the public at the district court before which the proceeding
21 is pending and in such other districts as the court may sub-
22 sequently direct. Simultaneously with the filing of the pro-
23 posed consent judgment, unless otherwise instructed by the
24 court, the United States shall file with the district court,
25 cause to be published in the Federal Register and thereafter

1 furnish to any person upon request a public impact statement
2 which shall recite—

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

4 “(2) a description of the practices or events giving
5 rise to the alleged violation of the antitrust laws;

6 “(3) an explanation of the proposed judgment, relief
7 to be obtained thereby, and the anticipated effects on
8 competition of that relief, including an explanation of
9 any unusual circumstances giving rise to the proposed
10 judgment or any provision contained therein;

11 “(4) the remedies available to potential private
12 plaintiffs damaged by the alleged violation in the event
13 that the proposed judgment is entered;

14 “(5) a description of the procedures available for
15 modification of the proposed judgment;

16 “(6) a description and evaluation of alternatives
17 actually considered to the proposed judgment.

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

1 section (b), (iii) and a list of the materials and documents
2 under subsection (b) which the United States shall make
3 available for purposes of meaningful public comment, and
4 the places where such material is available for public inspec-
5 tion.

6 “(d) during the sixty-day period provided above, and
7 such additional time as the United States may request and
8 the court may grant, the United States shall receive and con-
9 sider any written comments relating to the proposed consent
10 judgment. The Attorney General or his designate shall estab-
11 lish procedures to carry out the provisions of this subsection;
12 but the sixty-day time period set forth herein shall not be
13 shortened except by order of the district court upon a show-
14 ing that extraordinary circumstances require such shortening
15 and that such shortening of the time period is not adverse
16 to the public interest. At the close of the period during which
17 such comments may be received, the United States shall file
18 with the district court and cause to be published in the Fed-
19 eral Register a response to such comments.

20 “(e) Before entering any consent judgment proposed
21 by the United States under this section, the court shall
22 determine that entry of that judgment is in the public
23 interest as defined by law. For the purpose of this deter-
24 mination, the court may consider—

25 “(1) the public impact of the judgment, including

1 termination of alleged violation; provisions for enforce-
2 ment and modification; duration of relief sought; antici-
3 pated effects of alternative remedies actually considered;
4 and any other considerations bearing upon the adequacy
5 of the judgment;

6 “(2) the public impact of entry of the judgment
7 upon the public generally and individuals alleging spe-
8 cific injury from the violations set forth in the complaint.

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

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

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

23 “(3) authorize full or limited participation in pro-
24 ceedings before the court by interested persons or agen-
25 cies; including appearance amicus curiae; intervention;

1 as a party pursuant to rule 24 of the Federal Rules
2 of Civil Procedure, examination of witnesses or docu-
3 mentary materials, or participation in any other manner
4 and extent which serves the public interest as the court
5 may deem appropriate;

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

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

12 “(g) Not later than ten days following the filing of
13 any proposed consent judgment under subsection (b), each
14 defendant shall file with the district court a description of
15 any and all written or oral communications by or on behalf
16 of such defendant, including any officer, director, employee,
17 or agent thereof, or other person with any officer or employee
18 of the United States concerning or relevant to the proposed
19 consent judgment: *Provided*, That communications made
20 by or in the presence of counsel of record with the Attorney
21 General or the employees of the Department of Justice shall
22 be excluded from the requirements of this subsection. Prior
23 to the entry of any consent judgment pursuant to the anti-
24 trust laws, each defendant shall certify to the district court
25 that the requirements of this section have been complied with

1 "Section 4. In any civil action brought in any district
2 court of the United States under the Act entitled 'An Act
3 to protect trade and commerce against unlawful restraints
4 and monopolies', approved July 2, 1890, or any other Acts
5 having like purpose that have been or hereafter may be
6 enacted, wherein the United States is plaintiff and equitable
7 relief is sought, the Attorney General may file with the
8 court, prior to the entry of final judgment, a certificate that,
9 in his opinion, the case is of a general public importance.
10 Upon filing of such certificate, it shall be the duty of the
11 judge designated to hear and determine the case, or the chief
12 judge of the district court if no judge has as yet been desig-
13 nated, to assign the case for hearing at the earliest practicable
14 date and to cause the case to be in every way expedited."

15 SEC. 5. Section 2 of that Act (15 U.S.C. 20; 49 U.S.C.
16 45) is amended to read as follows:

17 "~~(a) Except as otherwise expressly provided by this~~
18 section, in every civil action brought in any district court
19 of the United States under the Act entitled 'An Act to pro-
20 tect trade and commerce against unlawful restraints and
21 monopolies', approved July 2, 1890, or any other Acts hav-
22 ing like purpose that have been or hereafter may be enacted,
23 in which the United States is the complainant and equitable
24 relief is sought, any appeal from a final judgment entered in
25 any such action shall be taken to the court of appeals pur-

1 ~~suant to sections 1201 and 2107 of title 28 of the United~~
2 ~~States Code. Any appeal from an interlocutory order entered~~
3 ~~in any such action shall be taken to the court of appeals pur-~~
4 ~~suant to sections 1202(a)(1) and 2107 of title 28 of the~~
5 ~~United States Code but not otherwise. Any judgment entered~~
6 ~~by the court of appeals in any such action shall be subject~~
7 ~~to review by the Supreme Court upon a writ of certiorari~~
8 ~~as provided in section 1254(1) of title 28 of the United~~
9 ~~States Code.~~

10 “(b) An appeal from a final judgment pursuant to
11 subsection (a) shall lie directly to the Supreme Court if,
12 upon application of a party filed within fifteen days of the
13 filing of a notice of appeal, the district judge who adju-
14 cated the case enters an order stating that immediate con-
15 sideration of the appeal by the Supreme Court is of general
16 public importance in the administration of justice. Such
17 order shall be filed within thirty days after the filing of a
18 notice of appeal. When such an order is filed, the appeal
19 and any cross appeal shall be docketed in the time and
20 manner prescribed by the rules of the Supreme Court. The
21 Supreme Court shall thereupon either (1) dispose of the
22 appeal and any cross appeal in the same manner as any
23 other direct appeal authorized by law, or (2) in its discre-
24 tion, deny the direct appeal and remand the case to the

1 court of appeals, which shall then have jurisdiction to hear
 2 and determine the same as if the appeal and any cross appeal
 3 therein had been docketed in the court of appeals in the
 4 first instance pursuant to subsection (a).”

5 SEC. 6. (a) Section 401(d) of the Communications
 6 Act of 1934 (47 U.S.C. 401(d)) is repealed.

7 (b) The proviso in section 3 of the Act of February
 8 19, 1903, as amended (32 Stat. 848, 849; 49 U.S.C. 43),
 9 is repealed and the colon preceding it is changed to a
 10 period.

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

20 *That this Act may be cited as the “Antitrust Procedures and*
 21 *Penalties Act”.*

22 *CONSENT DECREE PROCEDURES*

23 SEC. 2. Section 5 of the Act entitled “An Act to sup-
 24 plement existing laws against unlawful restraints and monop-
 25 olies, and for other purposes”, approved October 15, 1914

1 (15 U.S.C. 16), is amended by redesignating subsection (b)
2 as (i) and by inserting immediately after subsection (a) the
3 following:

4 “(b) Any proposal for a consent judgment submitted
5 by the United States for entry in any civil proceeding
6 brought by or on behalf of the United States under the anti-
7 trust laws shall be filed with the district court before which
8 such proceeding is pending and published by the United
9 States in the Federal Register at least 60 days prior to
10 the effective date of such judgment. Any written comments
11 relating to such proposal and any responses by the United
12 States thereto, shall also be filed with such district court and
13 published by the United States in the Federal Register
14 within such sixty-day period. Copies of such proposal and
15 any other materials and documents which the United States
16 considered determinative in formulating such proposal, shall
17 also be made available to the public at the district court and
18 in such other districts as the court may subsequently direct.
19 Simultaneously with the filing of such proposal, unless
20 otherwise instructed by the court, the United States shall
21 file with the district court, publish in the Federal Register,
22 and thereafter furnish to any person upon request, a com-
23 petitive impact statement which shall recite—

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

1 “(2) a description of the practices or events giving
2 rise to the alleged violation of the antitrust laws;

3 “(3) an explanation of the proposal for a consent
4 judgment, including an explanation of any unusual cir-
5 cumstances giving rise to such proposal or any provision
6 contained therein, relief to be obtained thereby, and the
7 anticipated effects on competition of such relief;

8 “(4) the remedies available to potential private
9 plaintiffs damaged by the alleged violation in the event
10 that such proposal for the consent judgment is entered
11 in such proceeding;

12 “(5) a description of the procedures available for
13 modification of such proposal; and

14 “(6) a description and evaluation of alternatives
15 to such proposal actually considered by the United
16 States.

17 “(c) The United States shall also cause to be published,
18 commencing at least 60 days prior to the effective date of
19 the judgment described in subsection (b) of this section,
20 for 7 days over a period of 2 weeks in newspapers of general
21 circulation of the district in which the cases has been filed,
22 in the District of Columbia, and in such other districts as the
23 court may direct—

24 “(i) a summary of the terms of the proposal for
25 the consent judgment,

1 “(ii) a summary of the competitive impact state-
2 ment filed under subsection (b),

3 “(iii) and a list of the materials and documents
4 under subsection (b) which the United States shall
5 make available for purposes of meaningful public com-
6 ment, and the place where such materials and documents
7 are available for public inspection.

8 “(d) During the 60-day period as specified in subsection
9 (b) of this section, and such additional time as the United
10 States may request and the court may grant, the United
11 States shall receive and consider any written comments re-
12 lating to the proposal for the consent judgment submitted
13 under subsection (b). The Attorney General or his designee
14 shall establish procedures to carry out the provisions of this
15 subsection, but such 60-day time period shall not be short-
16 ened except by order of the district court upon a showing
17 that (1) extraordinary circumstances require such shorten-
18 ing and (2) such shortening is not adverse to the public
19 interest. At the close of the period during which such com-
20 ments may be received, the United States shall file with the
21 district court and cause to be published in the Federal
22 Register a response to such comments.

23 “(e) Before entering any consent judgment proposed by
24 the United States under this section, the court shall determine
25 that the entry of such judgment is in the public interest.

1 *For the purpose of such determination, the court may con-*
2 *sider—*

3 “(1) *the competitive impact of such judgment, in-*
4 *cluding termination of alleged violations, provisions for*
5 *enforcement and modification, duration or relief sought,*
6 *anticipated effects of alternative remedies actually con-*
7 *sidered, and any other considerations bearing upon the*
8 *adequacy of such judgment;*

9 “(2) *the impact of entry of such judgment upon the*
10 *public generally and individuals alleging specific injury*
11 *from the violations set forth in the complaint including*
12 *consideration of the public benefit, if any, to be derived*
13 *from a determination of the issues at trial.*

14 “(f) *In making its determination under subsection (e),*
15 *the court may—*

16 “(1) *take testimony of Government officials or ex-*
17 *perts or such other expert witnesses, upon motion of any*
18 *party or participant or upon its own motion, as the court*
19 *may deem appropriate;*

20 “(2) *appoint a special master and such outside con-*
21 *sultants or expert witnesses as the court may deem appro-*
22 *priate; and request and obtain the views, evaluations, or*
23 *advice of any individual, group or agency of government*
24 *with respect to any aspects of the proposed judgment or*
25 *the effect of such judgment, in such manner as the court*
26 *deems appropriate;*

1 “(3) authorize full or limited participation in pro-
2 ceedings before the court by interested persons or agen-
3 cies, including appearance *amicus curiae*, intervention as
4 a party pursuant to the Federal Rules of Civil Proce-
5 dure, examination of witnesses or documentary mate-
6 rials, or participation in any other manner and extent
7 which serves the public interest as the court may deem
8 appropriate;

9 “(4) review any comments including any objec-
10 tions filed with the United States under subsection (d)
11 concerning the proposed judgment and the responses of
12 the United States to such comments and objections; and

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

15 “(g) Not later than 10 days following the date of
16 the filing of any proposal for a consent judgment under
17 subsection (b), each defendant shall file with the district
18 court a description of any and all written or oral communi-
19 cations by or on behalf of such defendant, including any
20 and all written or oral communications on behalf of such
21 defendant, or other person, with any officer or employee
22 of the United States concerning or relevant to such proposal,
23 except that any such communications made by counsel of
24 record alone with the Attorney General or the employees of
25 the Department of Justice alone shall be excluded from

1 the requirements of this subsection. Prior to the entry of any
2 consent judgment pursuant to the antitrust laws, each de-
3 fendant shall certify to the district court that the requirements
4 of this subsection have been complied with and that such
5 filing is a true and complete description of such communi-
6 cations known to the defendant or which the defendant
7 reasonably should have known.

8 “(h) Proceedings before the district court under sub-
9 sections (e) and (f) of this section, and the competitive
10 impact statement filed under subsection (b) of this section,
11 shall not be admissible against any defendant in any action or
12 proceeding brought by any other party against such defend-
13 ant under the antitrust laws or by the United States under
14 section 4A of this Act nor constitute a basis for the introduc-
15 tion of the consent judgment as prima facie evidence against
16 such defendant in any such action or proceeding.”

17

PENALTIES

18 SEC. 3. Sections 1, 2, and 3 of the Act entitled “An
19 Act to protect trade and commerce against unlawful re-
20 straints and monopolies”, approved July 2, 1890 (15 U.S.C.
21 1, 2, and 3), are each amended by striking out “fifty thou-
22 sand dollars” whenever such phrases appears and inserting
23 in each case the following: “five hundred thousand dollars
24 if a corporation, or, if any other person, one hundred thou-
25 sand dollars”.

EXPEDITING ACT REVISIONS

1
2 *SEC. 4. (a) The first section of the Act of February 11,*
3 *1903 (15 U.S.C. 28; 49 U.S.C. 44), commonly known as*
4 *the "Expediting Act", is amended to reading as follows:*

5 "*SECTION 1. In any civil action brought in any district*
6 *court of the United States under the Act entitled 'An Act*
7 *to protect trade and commerce against unlawful restraints*
8 *and monopolies', approved July 2, 1890, or any other Acts*
9 *having like purpose that have been or hereafter may be*
10 *enacted, wherein the United States is plaintiff and equitable*
11 *relief is sought, the Attorney General may file with such*
12 *court, prior to the entry of final judgment, a certificate that,*
13 *in his opinion, the case is of general public importance.*
14 *Upon filing of such certificate, it shall be the duty of the*
15 *judge designated to hear and determine the case, or the chief*
16 *judge of the district court if no judge has as yet been desig-*
17 *nated, to assign the case for hearing at the earliest practi-*
18 *cable date and to cause the case to be in every way ex-*
19 *pedited.*".

20 *(b) Section 2 of the Act of February 11, 1903 (15*
21 *U.S.C. 29; 49 U.S.C. 45), commonly known as the Ex-*
22 *pediting Act, is amended to read as follows:*

23 "*SEC. 2. (a) Except as otherwise expressly provided*
24 *by this section, in every civil action brought in any district*
25 *court of the United States under the Act entitled 'An Act*

1 to protect trade and commerce against unlawful restraints
2 and monopolies', approved July 2, 1890, or any other Acts
3 having like purpose that have been or hereafter may be
4 enacted, in which the United States is the complainant and
5 equitable relief is sought, any appeal from a final judgment
6 entered in any such action shall be taken to the court of
7 appeals pursuant to sections 1291 and 2107 of title 28 of
8 the United States Code. An appeal from an interlocutory
9 order entered in any such action shall be taken to the court
10 of appeals pursuant to section 1292(a)(1) and 2107 of
11 title 28, United States Code, but not otherwise. Any judgment
12 entered by the court of appeals in any such action shall be
13 subject to review by the Supreme Court upon a writ of cer-
14 tiorari as provided in section 1254(1) of title 28, United
15 States Code.

16 “(b) An appeal from a final judgment entered in any
17 action specified in subsection (a) shall lie directly to the
18 Supreme Court if the Attorney General files in the district
19 court a certificate stating that immediate consideration of
20 the appeal by the Supreme Court is of general public im-
21 portance in the administration of justice. Such certificate
22 shall be filed within 10 days after the filing of a notice of
23 appeal. When such a certificate is filed, the appeal and any
24 cross appeal shall be docketed in the time and manner pre-
25 scribed by the rules of the Supreme Court. The Supreme

1 Court shall thereupon either (1) dispose of the appeal and
2 any cross appeal in the same manner as any other direct ap-
3 peal authorized by law, or (2) deny the direct appeal and
4 remit the case to the appropriate court of appeals, which
5 shall then have jurisdiction to hear and determine such case
6 as if the appeal and any cross appeal in such case had been
7 docketed in the court of appeals in the first instance pursuant
8 to subsection (a).”

9 APPLICATION OF EXPEDITING ACT REVISIONS

10 SEC. 5. (a) Section 401(d) of the Communications
11 Act of 1934 (47 U.S.C. 401(d)) is repealed.

12 (b) Section 3 of the Act entitled “An Act to further
13 regulate commerce with foreign nations and among the
14 States”, approved February 19, 1903 (32 Stat. 849; 49
15 U.S.C. 43), is amended by striking out the following:
16 “The provisions of an Act entitled ‘An Act to expedite the
17 hearing and determination of suits in equity pending or here-
18 after brought under the Act of July second, eighteen hun-
19 dred and ninety, entitled “An Act to protect trade and com-
20 merce against unlawful restraints and monopolies,” “An
21 Act to regulate commerce,” approved February fourth,
22 eighteen hundred and eighty-seven, or any other Acts having
23 a like purpose that may be hereafter enacted, approved Feb-
24 ruary eleventh, nineteen hundred and three,’ shall apply to

1 *any case prosecuted under the direction of the Attorney-*
2 *General in the name of the Interstate Commerce Commission”.*

3 *EFFECTIVE DATE OF EXPEDITING ACT REVISIONS*

4 *SEC. 6. The amendment made by section 4 of this Act*
5 *shall not apply to an action in which a notice of appeal to*
6 *the Supreme Court has been filed on or before the fifteenth*
7 *day following the date of enactment of this Act. Appeal in*
8 *any such action shall be taken pursuant to the provisions*
9 *of section 2 of the Act of February 11, 1903 (32 Stat. 823),*
10 *as amended (15 U.S.C. 29; 49 U.S.C. 45) which were in*
11 *effect on the day preceding the date of enactment of this*
12 *Act.*

Passed the Senate July 18, 1973.

Attest:

FRANCIS R. VALEO,

Secretary.