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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as the “Antitrust Civil Process Act of 1955”.

DEFINITIONS

Sec. 2. As used in this Act—

(a) The term “antitrust laws”, as used herein, is defined in section 1 of “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes”, approved October 15, 1914 (38 Stat. 730, as amended;

In addition, however, that term used herein shall include any statute hereafter enacted which prohibits, or makes available to the United States, any judicial remedy with respect to, any restraint upon or monopolization of interstate or foreign trade or commerce;

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

(c) The term “antitrust order” means any final order of any antitrust agency, or any final order, decree or judgment of any court of the United States, duly entered in any case or proceeding arising under any antitrust law;

(d) The term “antitrust investigator” means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any antitrust law;

(e) The term “person” means any corporation, association, partnership, or other legal entity;

(f) The term “documentary material” includes the original or any copy of any book, record, report, memorandum, paper communication, tabulation, chart, or other document in the possession, custody, or control of any person; and

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

CIVIL INVESTIGATIVE DEMAND

SEC. 3. (a) Whenever the Attorney General or the
Assistant Attorney General in charge of the Antitrust Divi-
sion has reason to believe that any person may be in pos-
session, custody; or control of any documentary material
bearing on any antitrust investigation, he may issue in writ-
ing, and cause to be served upon such person, a civil inves-
tigative demand requiring such person to produce such evi-
dence for examination.

(b) Each such demand shall—

(1) state the statute and, where feasible, the sec-
tion of same alleged violation of which is under inves-
tigation;

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

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

(4) identify the custodian to whom such evidence
is to be delivered.

(c) No such demand shall—
(1) contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged violation; or

(2) require the production of any documentary evidence which the recipient can show would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged violation.

(d) Any such demand may be served by any antitrust investigator or any United States Marshal or Deputy Marshal at any place within the territorial jurisdiction of any court of the United States.

(e) Service of any such demand or of any petition filed under section 5 of this Act may be made by—

(1) delivering a duly executed copy thereof to any executive officer of a corporation, association, or other legal entity to be served or to any member of a partnership to be served;

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

(3) mailing by registered or certified mail a copy thereof addressed to such partnership, corporation, asso-
ciation, or other legal entity at its principal office or
place of business.

A verified return by the individual serving such demand
setting forth the manner of such service shall be proof of
such service. In the case of service by registered or certified
mail, such return shall be accompanied by the return post
office receipt of delivery of such demand.

ANTITRUST DOCUMENT CUSTODIAN

SEC. 4. (a) The Attorney General shall designate one
antitrust investigator to serve as antitrust document cus­
todian, and such additional antitrust investigators as he shall
determine from time to time to be necessary to serve as
deputies to such officer.

(b) All documentary material produced by any person
in compliance with any demand issued under section 3 shall,
as the custodian designated therein, or an antitrust investi­
gator requests, be mailed, at the expense of the United States
Government, to a designated Government office, or be held
for delivery to the custodian or an antitrust investigator at
the principal office or place of business of such person, or
at such other place or places within the territorial jurisdic­
tion of the United States as may be agreed upon by such
person and such custodian or investigator.

(c) the custodian to whom any documentary material
is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this Act. The custodian may cause the preparation of such copies of such documentary material as may be required for use by any individual entitled to have access to such evidence for examination. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than an authorized employee of the Department of Justice or any antitrust agency. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representative of such person.

(d) Whenever any attorney has been designated to appear on behalf of the United States before any court, grand jury, or antitrust agency in any case or proceeding involving any alleged antitrust violation, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any
documentary material so withdrawn which has not passed into the control of such court, grand jury, or antitrust agency through the introduction thereof into the record of such case or proceeding.

(e) Upon the completion of (1) the antitrust investigation for which any documentary material was produced under this Act, and (2) any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material, not including copies thereof made by the Department of Justice or any antitrust agency, which has not so passed into the control of any court, grand jury, or antitrust agency through the introduction thereof into the record of such case or proceeding.

(f) When any documentary material has been produced by any person under this Act for use in any antitrust investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General or upon the Assistant Attorney General in charge of the Antitrust Division to the return of all documentary material so produced by such person.

JUDICIAL PROCEEDINGS

SEC. 5. (a) Whenever any person fails to comply with
any demand served upon him under section 3, the issuing
antitrust investigator may file, in the district court of the
United States for that judicial district, within which the
Antitrust Division maintains an office, nearest to such per-
son's principal office or place of business, or in such other
judicial district as the parties may agree such person trans-
acts business or is found and serve upon such person a
petition for an order of such court for the enforcement of
such demand.

(b) Within twenty days after the demand has been
served, or at any time before the return date specified in the
demand, whichever period is shorter, the person upon whom
the demand is served may file, in the district court of the
United States where the petition under section 5 (a) was
filed, or in such other district as the parties may agree, and
serve upon such investigator a petition for an order of such
court modifying or setting aside such demand. Such peti-
tion shall specify each ground upon which the petitioner
relies in seeking such relief, and may be based upon any
failure of such demand to comply with the provisions of this
Act, or upon any constitutional right or privilege of such
person.

(c) Whenever any documentary material has been de-
ivered by any person to any custodian in compliance with
a demand made under section 3, such person at any time
may file, in the district court of the United States for any judicial district within which such custodian maintains an office and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by the provisions of this Act.

(d) Whenever any petition is filed in any district court of the United States pursuant to the provisions of this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this Act. Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28 of the United States Code. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

CRIMINAL PENALTY

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

"§ 1508. Obstruction of antitrust civil process

"Whoever, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part, by any person with any civil investigative demand made under the Antitrust Civil Process Act of 1955, willfully removes from any place, conceals, withholds, destroys, mutilates, alters, or by any
other means falsifies any documentary material in the pos-
session, custody or control of any person which is the subject
of any such demand duly served upon any person shall be
fined not more than $5,000 or imprisoned not more than five
years, or both.”

(b) The analysis to such chapter is amended by insert-
ing at the end thereof the following new item:
“1508. Obstruction of antitrust civil process.”

SAVING PROVISION

SEC. 7. Nothing contained in this Act shall impair the
authority of the Attorney General or any antitrust investi-
gator to (a) lay before any grand jury impaneled before any
district court of the United States any evidence concerning
any alleged antitrust violation, (b) invoke the power of any
such court to compel the production of any evidence before
any such grand jury, or (c) institute any proceeding for
the enforcement of any order or process issued in execution
of such power, or to punish disobedience of any such order
or process by any person.
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. Celler

JULY 13, 1955
Referred to the Committee on the Judiciary