

[COMMITTEE PRINT]

SEPTEMBER 30, 1974

September 30, 1974

93<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

S. 782

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 1973

Referred to the Committee on the Judiciary

[Omit the part in black brackets and insert the part printed in italic]

AN ACT

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  
4 and Penalties Act".

5 CONSENT DECREE PROCEDURES

6 SEC. 2. Section 5 of the Act entitled "An Act to sup-  
7 plement existing laws against unlawful restraints and monop-  
8 olies, and for other purposes", approved October 15, 1914  
9 (15 U.S.C. 16), is amended by redesignating subsection (b)  
10 as (i) and by inserting immediately after subsection (a) the  
11 following:

1       “(b) Any proposal for a consent judgment submitted  
2 by the United States for entry in any civil proceeding  
3 brought by or on behalf of the United States under the anti-  
4 trust laws shall be filed with the district court before which  
5 such proceeding is pending and published by the United  
6 States in the Federal Register at least 60 days prior to  
7 the effective date of such judgment. Any written comments  
8 relating to such proposal and any responses by the United  
9 States thereto, [other than those which are exempt from  
10 disclosure under section 552 (b) of title 5, United States  
11 Code,] shall also be filed with such district court and pub-  
12 lished by the United States in the Federal Register within  
13 such sixty-day period. Copies of such proposal and any  
14 other materials and documents which the United States con-  
15 sidered determinative in formulating such proposal, [other  
16 than those which are exempt from disclosure under sections  
17 552 (b) (4) and (5) of title 5, United States Code,] shall  
18 also be made available to the public at the district court  
19 and in such other districts as the court may subsequently  
20 direct. Simultaneously with the filing of such proposal, un-  
21 less otherwise instructed by the court, the United States  
22 shall file with the district court, publish in the Federal  
23 Register, and thereafter furnish to any person upon request,  
24 a [public] *competitive* impact statement which shall recite—  
25       “(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 *and the anticipated effects on competition of such*  
17 *alternatives.*

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

1           “(i) a summary of the terms of the proposal for  
2           the consent judgment,

3           “(ii) a summary of the [public] *competitive* impact  
4           statement filed under subsection (b),

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

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

25          “(e) Before entering any consent judgment proposed by

1 the United States under this section, the court shall determine  
2 that the entry of such judgment is in the public interest [as  
3 defined by law]. For the purpose of such determination, the  
4 court may consider—

5 “(1) the public impact of such judgment, including  
6 termination of alleged violations, provisions for enforce-  
7 ment and modification, duration of relief sought, antici-  
8 pated effects of alternative remedies actually considered,  
9 and any other considerations bearing upon the adequacy  
10 of such judgment;

11 “(2) the public impact of entry of such judgment  
12 upon the public generally and individuals alleging spe-  
13 cific injury from the violations set forth in the complaint  
14 *including consideration of the public benefit to be derived*  
15 *from a determination of the issues at trial.*

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

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

22 “(2) appoint a special master and such outside con-  
23 sultants or expert witnesses as the court may deem ap-  
24 propriate; and request and obtain the views, evaluations,  
25 or advice of any individual, group or agency of govern-

1       ment with respect to any aspect of the proposed judg-  
2       ment or the effect of such judgment, in such manner as  
3       the court deems appropriate;

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

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

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

18      “(g) Not later than 10 days following the date of  
19      the filing of any proposal for a consent judgment under  
20      subsection (b), each defendant shall file with the district  
21      court a description of any and all written or oral communi-  
22      cations by or on behalf of such defendant, including any  
23      and all written or oral communications on behalf of such  
24      defendant by any officer, director, employee, or agent of  
25      such defendant, or other person, *except with respect to any*  
26      *and all written or oral communications on behalf of such*

1 *defendant by counsel of record alone, with any officer or*  
2 *employee of the United States concerning or relevant to*  
3 *【the proposed consent judgment: *Provided*, That communi-*  
4 *cations made by or in the presence of counsel of record*  
5 *with the Attorney General or the employees of the De-*  
6 *partment of Justice shall be excluded from the requirements*  
7 *of this subsection】 *such proposal*. Prior to the entry of any*  
8 *consent judgment pursuant to the antitrust laws, each de-*  
9 *fendant shall certify to the district court that the requirements*  
10 *of this subsection have been complied with and that such*  
11 *filing is a true and complete description of such communi-*  
12 *cations known to the defendant or which the defendant*  
13 *reasonably should have known.*

14 “(h) Proceedings before the district court under sub-  
15 sections (e) and (f) of this section, and 【public】 *the com-*  
16 *petitive impact 【statements】 statement* filed under subsec-  
17 tion (b) of this section, shall not be admissible against any  
18 defendant in any action or proceeding brought by any  
19 other party against such defendant under the antitrust laws  
20 or by the United States under section 4A of this Act nor  
21 constitute a basis for the introduction of the consent judgment  
22 as prima facie evidence against such defendant in any such  
23 action or proceeding.”

24 P E N A L T I E S

25 SEC. 3. Sections 1, 2, and 3 of the Act entitled “An  
26 Act to protect trade and commerce against unlawful re-

1 restraints and monopolies", approved July 2, 1890 (15 U.S.C.  
2 1, 2, and 3), are each amended by striking out "fifty thou-  
3 sand dollars" whenever such phrase appears and inserting  
4 in each case the following: "five hundred thousand dollars  
5 if a corporation, or, if any other person, one hundred thou-  
6 sand dollars".

7 EXPEDITING ACT REVISIONS

8 SEC. 4. (a) Section 1 of the Act of February 11, 1903  
9 (15 U.S.C. 28; 49 U.S.C. 44), commonly known as the  
10 Expediting Act, is amended to read as follows:

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

25 [SEC. 5. Section 2 of that Act (15 U.S.C. 29; 49  
26 U.S.C. 45) is amended to read as follows:

1        [“(a) Except as otherwise expressly provided by this  
2 section, in every civil action brought in any district court  
3 of the United States under the Act entitled ‘An Act to pro-  
4 tect trade and commerce against unlawful restraints and  
5 monopolies’, approved July 2, 1890, or any other Acts hav-  
6 ing like purpose that have been or hereafter may be enacted,  
7 in which the United States is the complainant and equitable  
8 relief is sought, any appeal from a final judgment entered in  
9 any such action shall be taken to the court of appeals pur-  
10 suant to sections 1291 and 2107 of title 28 of the United  
11 States Code.]

12        *(b) Section 2 of the Act of February 11, 1903 (15*  
13 *U.S.C. 29; 49 U.S.C. 45), commonly known as the Ex-*  
14 *pediting Act, is amended by adding at the end of such section*  
15 *the following: “An appeal from an interlocutory order entered*  
16 *in any such action shall be taken to the court of appeals*  
17 *pursuant to sections 1292 (a) (1) and 2107 of title 28,*  
18 *United States Code, but not otherwise. Any judgment en-*  
19 *tered by the court of appeals in any such action shall be sub-*  
20 *ject to review by the Supreme Court upon a writ of cer-*  
21 *tiorari as provided in section 1254 (1) of title 28, United*  
22 *States Code.”*

23        [“(b) An appeal from a final judgment pursuant to  
24 subsection (a) shall lie directly to the Supreme Court if  
25 upon application of a party filed within fifteen days of the

1 filing of a notice of appeal, the district judge who adjudi-  
2 cated the case enters an order stating that immediate con-  
3 sideration of the appeal by the Supreme Court is of general  
4 public importance in the administration of justice. Such  
5 order shall be filed within thirty days after the filing of a  
6 notice of appeal. When such an order is filed, the appeal  
7 and any cross appeal shall be docketed in the time and  
8 manner prescribed by the rules of the Supreme Court. The  
9 Supreme Court shall thereupon either (1) dispose of the  
10 appeal and any cross appeal in the same manner as any  
11 other direct appeal authorized by law, or (2) in its discre-  
12 tion, deny the direct appeal and remand the case to the  
13 court of appeals, which shall then have jurisdiction to hear  
14 and determine the same as if the appeal and any cross appeal  
15 therein had been docketed in the court of appeals in the  
16 first instance pursuant to subsection (a).”]

17 APPLICATION OF EXPEDITING ACT TO COMMUNICATIONS

18 ACT OF 1934

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

21 (b) Section 3 of the Act entitled “An Act to further  
22 regulate commerce with foreign nations and among the  
23 States”, approved February 19, 1903 (32 Stat. 849; 49  
24 U.S.C. 43), is amended by striking out the following:  
25 “: *Provided*, That the provisions of an Act entitled ‘An Act

1 to expedite the hearing and determination of suits in equity  
2 pending or hereafter brought under the Act of July second,  
3 eighteen hundred and ninety, entitled "An Act to protect  
4 trade and commerce against unlawful restraints and monop-  
5 olies," "An Act to regulate commerce," approved Febru-  
6 ary fourth, eighteen hundred and eighty-seven, or any other  
7 Acts having a like purpose that may be hereafter enacted,  
8 approved February eleventh, nineteen hundred and three,  
9 shall apply to any case prosecuted under the direction of the  
10 Attorney-General in the name of the Interstate Commerce  
11 Commission".

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

Passed the Senate July 18, 1973.

Attest:

FRANCIS R. VALEO,

*Secretary.*