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.

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

2. That this Act may be cited as the "Antitrust Civil Process Act".

DEFINITIONS

Sec. 2. As used in this Act—

(a) The term "antitrust law" includes:

(1) Each provision of law defined as one of the antitrust laws by section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints
and monopolies, and for other purposes”, approved October 15, 1914 (38 Stat. 730, as amended; 15 U.S.C. 12), commonly known as the Clayton Act;

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

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

(4) Any statute hereafter enacted by the Congress which prohibits, or makes available to the United States in any court or antitrust agency of the United States any civil remedy with respect to (A) any restraint upon or monopolization of interstate or foreign trade or commerce, or (B) any unfair trade practice in or affecting such 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 or the adjudication of proceedings arising under any such 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 investigation" means any inquiry conducted by any antitrust investigator for the purpose of ascertaining whether any person is or has been engaged in any antitrust violation.

(e) The term "antitrust violation" means any act or omission in violation of any antitrust law or any antitrust order.

(f) 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.

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

(h) The term "documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document; and

(i) The term "custodian" means the antitrust document custodian or any deputy custodian designated under section 4(a) of this Act.
SEC. 3. (a) Whenever the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, has reason to believe that any person may be in possession, custody, or control of any documentary material pertinent to any antitrust investigation, he may issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall—

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

(2) describe the class or classes of documentary material to be produced thereunder with such definiteness 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 material so demanded may be assembled and produced;

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

(5) specify a place at which such delivery is to be made.
(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 antitrust violation; or

(2) require the production of any documentary evidence which 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 antitrust violation.

(d) Any such demand may be served by any antitrust investigator, or by 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—

(1) upon an individual by (A) delivering a duly executed copy thereof to such individual personally, or (B) delivering such copy to his office or residence by leaving such copy with any individual of suitable age and discretion in his employment at such office or residing at his residence, or (C) depositing such copy in the United States mails, by registered or certified mail, duly addressed to his office or residence; and
(2) upon a partnership, corporation, association, or other legal entity by delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any other agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity, by any of the means prescribed in paragraph (1).

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

(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity; or

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

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

(f) A verified return by the individual serving any
such demand or petition 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 accom-
panied by the return post office receipt of delivery of such
demand.

ANTITRUST DOCUMENT CUSTODIAN

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

(b) Any person upon whom any demand issued under
section 3 has been duly served shall deliver such material
to the custodian designated therein at the place specified
therein (or at such other place as such custodian thereafter
may prescribe in writing) on the return date specified in
such demand (or on such later date as such custodian may
prescribe in writing). No such demand or custodian may
require delivery of any documentary material to be made—
(1) at any place outside the territorial jurisdiction
of the United States without the consent of the person
upon whom such demand was served; or

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

(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 official use by any individual who is entitled, under regulations which shall be promulgated by the Attorney General, to have access to such material 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 a duly authorized officer, member, or employee of the Department of Justice or any antitrust agency, provided nothing herein shall prevent the Attorney General from making available the material so produced for examination by the Committee on the Judiciary of each House of the Congress. 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 and 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 (other than copies thereof made by the Department of Justice or any antitrust agency pursuant to subsection (e) (c)) which
has not 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 (other than copies thereof made by the Department of Justice or any antitrust agency pursuant to subsection (e)) so produced by such person.

(g) In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material produced under any demand issued under this Act, or the official relief of such custodian from responsibility for the custody and control of such material, the Assistant Attorney General in charge of the Antitrust Division shall promptly, (1) designate another antitrust investigator to serve as custodian thereof, and (2) transmit notice in writing to the person who produced such material as to the identity and address of the successor so
designated. Any successor so designated shall have with
regard to such materials all duties and responsibilities im-
posed by this Act upon his predecessor in office with regard
thereto, except that he shall not be held responsible for any
default or dereliction which occurred before his designation
as custodian.

JUDICIAL PROCEEDINGS

SEC. 5. (a) Whenever any person fails to comply with
any civil investigative demand duly served upon him under
section 3, the Attorney General, through such officers or
attorneys as he may designate, may file, in the district court
of the United States for any judicial district in which such
person resides, is found, or transacts business, and serve upon
such person a petition for an order of such court for the
enforcement of such demand, except that if such person
transacts business in more than one such district such peti-
tion shall be filed in the district in which such person main-
tains his principal place of business, or in such other district
in which such person transacts business as may be agreed
upon by the parties to such petition.

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

(c) At any time during which any custodian is in cus-
9. tody or control of any documentary material delivered by any
10. person in compliance with any such demand, such person
11. may file, in the district court of the United States for the
12. judicial district within which the office of such custodian is
13. situated, and serve upon such custodian a petition for an
14. order of such court requiring the performance by such cus-
15. todi an of any duty imposed upon him by this Act.

(d) Whenever any petition is filed in any district court
17. of the United States under this section, such court shall have
18. jurisdiction to hear and determine the matter so presented,
19. and to enter such order or orders as may be required to carry
20. into effect the provisions of this Act. Any final order so
21. entered shall be subject to appeal pursuant to section 1291
22. of title 28 of the United States Code. Any disobedience of
23. any final order entered under this section by any court shall
24. 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:

"§ 1509. 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, willfully removes from any place, conceals, withholds, destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, 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 inserting at the end thereof the following new item:

"1509. Obstruction of antitrust civil process."

SAVING PROVISION

SEC. 7. Nothing contained in this Act shall impair the authority of the Attorney General, the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, or any antitrust investigator to (a) lay before any grand jury impaneled before any district court of
the United States any evidence concerning any alleged anti-
trust 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 enforce-
ment 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. KEFAUVER

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Read twice and referred to the Committee on the Judiciary
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