

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 preceding
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-

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

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

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

1 interest as defined by law. For the purpose of this deter-
2 mination, the court may consider—

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

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

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

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

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

1 of the proposed judgment of the effect thereof in such
2 manner as the court deems appropriate;

3 “(3) authorize full or limited participation in pro-
4 ceedings before the court by interested persons or agen-
5 cies, including appearance amicus curiae, intervention
6 as a party pursuant to rule 24 of the Federal Rules
7 of Civil Procedure, examination of witnesses or docu-
8 mentary materials, or participation in any other manner
9 and extent which serves the public interest as the court
10 may deem appropriate;

11 “(4) review any comments or objections concern-
12 ing the proposed judgment filed with the United States
13 under subsection (d) and the response of the United
14 States to such comments or objections;

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

17 “(g) Not later than ten days following the filing of
18 any proposed consent judgment under subsection (b), each
19 defendant shall file with the district court a description of
20 any and all written or oral communications by or on behalf
21 of such defendant, including any officer, director, employee,
22 or agent thereof, or other person with any officer or employee
23 of the United States concerning or relevant to the proposed
24 consent judgment: *Provided*, That communications made
25 by or in the presence of counsel of record with the Attorney

1 General or the employees of the Department of Justice shall
2 be excluded from the requirements of this subsection. Prior
3 to the entry of any consent judgment pursuant to the anti-
4 trust laws, each defendant shall certify to the district court
5 that the requirements of this section have been complied
6 with and that such filing is a true and complete description
7 of such communications known to the defendant or which the
8 defendant reasonably should have known.

9 “(h) Proceedings before the district court under subsec-
10 tions (e) and (f), and public impact statements filed under
11 subsection (b) hereof, shall not be admissible against any de-
12 fendant in any action or proceeding brought by any other
13 party against such defendant under the antitrust laws or by
14 the United States under section 4A of this Act nor constitute
15 a basis for the introduction of the consent judgment as prima
16 facie evidence against such defendant in any such action or
17 proceeding.”

18 PENALTIES

19 SEC. 3. Sections 1, 2, and 3 of the Act entitled “An Act
20 to protect trade and commerce against unlawful restraints
21 and monopolies”, approved July 2, 1890 (26 Stat. 209;
22 15 U.S.C. 1, 2, and 3) are each amended by striking out
23 “fifty thousand dollars” and inserting “five hundred thousand
24 dollars if a corporation, or, if any other person, one hundred
25 thousand dollars”.

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

15 “(b) An appeal from a final judgment pursuant to
16 subsection (a) shall lie directly to the Supreme Court if,
17 upon application of a party filed within fifteen days of the
18 filing of a notice of appeal, the district judge who adjudi-
19 cated the case enters an order stating that immediate con-
20 sideration of the appeal by the Supreme Court is of general
21 public importance in the administration of justice. Such
22 order shall be filed within thirty days after the filing of a
23 notice of appeal. When such an order is filed, the appeal
24 and any cross appeal shall be docketed in the time and
25 manner prescribed by the rules of the Supreme Court. The

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

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

11 (b) The proviso in section 3 of the Act of February
12 19, 1903, as amended (32 Stat. 848, 849; 49 U.S.C. 43),
13 is repealed and the colon preceding it is changed to a
14 period.

15 **SEC. 7.** The amendment made by section 2 of this Act
16 shall not apply to an action in which a notice of appeal to
17 the Supreme Court has been filed on or before the fifteenth
18 day following the date of enactment of this Act. Appeal in
19 any such action shall be taken pursuant to the provisions
20 of section 2 of the Act of February 11, 1903 (32 Stat. 823),

1 as amended (15 U.S.C. 29; 49 U.S.C. 45) which were in
2 effect on the day preceding the date of enactment of this
3 Act.

Passed the Senate July 18, 1973.

Attest:

FRANCIS R. VALEO,

Secretary.

93^d CONGRESS
1st SESSION

S. 782

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.

JULY 23, 1973

Referred to the Committee on the Judiciary