

1 and monopolies, and for other purposes", approved Octo-
2 ber 15, 1914 (38 Stat. 730, as amended; 15 U.S.C.
3 12), commonly known as the Clayton Act;

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

6 (3) Section 3 of the Act entitled "An Act to amend
7 section 2 of the Act entitled 'An Act to supplement
8 existing laws against unlawful restraints and monopolies,
9 and for other purposes', approved October 15, 1914, as
10 amended (U.S.C., title 15, sec. 13), and for other pur-
11 poses", approved June 19, 1936 (49 Stat. 1528; 15
12 U.S.C. 13a), commonly known as the Robinson-Patman
13 Act; and

14 (4) Any statute hereafter enacted by the Congress
15 which prohibits, or makes available to the United States
16 in any court or antitrust agency of the United States
17 any civil remedy with respect to (A) any restraint
18 upon or monopolization of interstate or foreign trade
19 or commerce, or (B) any unfair trade practice in or
20 affecting such commerce;

21 (b) The term "antitrust agency" means any board,
22 commission, or agency of the United States (other than
23 the Department of Justice) charged by law with the admin-
24 istration or enforcement of any antitrust law or the adjudi-
25 cation of proceedings arising under any such law;

1 (c) The term "antitrust order" means any final order
2 of any antitrust agency, or any final order, decree, or judg-
3 ment of any court of the United States, duly entered in any
4 case or proceeding arising under any antitrust law;

5 (d) The term "antitrust investigation" means any in-
6 quiry conducted by any antitrust investigator for the purpose
7 of ascertaining whether any person is or has been engaged
8 in any antitrust violation;

9 (e) The term "antitrust violation" means any act or
10 omission in violation of any antitrust law or any antitrust
11 order;

12 (f) The term "antitrust investigator" means any attor-
13 ney or investigator employed by the Department of Justice
14 who is charged with the duty of enforcing or carrying into
15 effect any antitrust law;

16 (g) The term "person" means any corporation, associa-
17 tion, partnership, or other legal entity not a natural person;

18 (h) The term "documentary material" includes the
19 original or any copy of any book, record, report, memoran-
20 dum, paper, communication, tabulation, chart, or other
21 document; and

22 (i) The term "custodian" means the antitrust document
23 custodian or any deputy custodian designated under section
24 4 (a) of this Act.

1 (c) No such demand shall—

2 (1) contain any requirement which would be held
3 to be unreasonable if contained in a subpoena duces tecum
4 issued by a court of the United States in aid of a grand
5 jury investigation of such alleged antitrust violation; or

6 (2) require the production of any documentary evi-
7 dence which would be privileged from disclosure if
8 demanded by a subpoena duces tecum issued by a court
9 of the United States in aid of a grand jury investigation
10 of such alleged antitrust violation.

11 (d) Any such demand may be served by any antitrust
12 investigator, or by any United States marshal or deputy
13 marshal, at any place within the territorial jurisdiction of any
14 court of the United States.

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

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

24 (2) delivering a duly executed copy thereof to the

1 principal office or place of business of the partnership,
2 corporation, association, or entity to be served; or

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

7 (f) A verified return by the individual serving any
8 such demand or petition setting forth the manner of such
9 service shall be proof of such service. In the case of service
10 by registered or certified mail, such return shall be accom-
11 panied by the return post office receipt of delivery of such
12 demand.

13 ANTITRUST DOCUMENT CUSTODIAN

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

20 (b) Any person upon whom any demand issued under
21 section 3 has been duly served shall deliver such material
22 to the custodian designated therein at the place specified
23 therein (or at such other place as such custodian thereafter
24 may prescribe in writing) on the return date specified in
25 such demand (or on such later date as such custodian may

1 prescribe in writing). No such demand or custodian may
2 require delivery of any documentary material to be made—

3 (1) at any place outside the territorial jurisdiction
4 of the United States without the consent of the person
5 upon whom such demand was served; or

6 (2) at any place other than the place at which such
7 documentary material is situated at the time of service of
8 such demand until the custodian has tendered to such
9 person (A) a sum sufficient to defray the cost of trans-
10 porting such material to the place prescribed for delivery
11 or (B) the transportation thereof to such place at Gov-
12 ernment expense.

13 (c) The custodian to whom any documentary material
14 is so delivered shall take physical possession thereof, and
15 shall be responsible for the use made thereof and for the
16 return thereof pursuant to this Act. The custodian may
17 cause the preparation of such copies of such documentary
18 material as may be required for official use by any individual
19 who is entitled, under regulations which shall be promulgated
20 by the Attorney General, to have access to such material
21 for examination. While in the possession of the custodian,
22 no material so produced shall be available for examination,
23 without the consent of the person who produced such mate-
24 rial, by any individual other than a duly authorized officer,
25 member, or employee of the Department of Justice or any

1 antitrust agency, provided nothing herein shall prevent the
2 Attorney General from making available the material so
3 produced for examination by the Committee on the Judiciary
4 of each House of the Congress. Under such reasonable terms
5 and conditions as the Attorney General shall prescribe, docu-
6 mentary material while in the possession of the custodian
7 shall be available for examination by the person who pro-
8 duced such material or any duly authorized representative
9 of such person.

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

23 (e) Upon the completion of (1) the antitrust investi-
24 gation for which any documentary material was produced
25 under this Act, and (2) any case or proceeding arising

1 from such investigation, the custodian shall return to the
2 person who produced such material all such material (other
3 than copies thereof made by the Department of Justice or
4 any antitrust agency pursuant to subsection (c)) which
5 has not passed into the control of any court, grand jury, or
6 antitrust agency through the introduction thereof into the
7 record of such case or proceeding.

8 (f) When any documentary material has been produced
9 by any person under this Act for use in any antitrust investi-
10 gation, and no such case or proceeding arising therefrom
11 has been instituted within a reasonable time after completion
12 of the examination and analysis of all evidence assembled
13 in the course of such investigation, such person shall be
14 entitled, upon written demand made upon the Attorney
15 General or upon the Assistant Attorney General in charge
16 of the Antitrust Division, to the return of all documentary
17 material (other than copies thereof made by the Depart-
18 ment of Justice or any antitrust agency pursuant to sub-
19 section (e)) so produced by such person.

20 (g) In the event of the death, disability, or separation
21 from service in the Department of Justice of the custodian
22 of any documentary material produced under any demand
23 issued under this Act, or the official relief of such custodian
24 from responsibility for the custody and control of such
25 material, the Assistant Attorney General in charge of the

1 Antitrust Division shall promptly (1) designate another
2 antitrust investigator to serve as custodian thereof, and (2)
3 transmit notice in writing to the person who produced such
4 material as to the identity and address of the successor so
5 designated. Any successor so designated shall have with
6 regard to such materials all duties and responsibilities im-
7 posed by this Act upon his predecessor in office with regard
8 thereto, except that he shall not be held responsible for any
9 default or dereliction which occurred before his designation
10 as custodian.

11 JUDICIAL PROCEEDINGS

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

25 (b) Within twenty days after the service of any such

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

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

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

1 of title 28 of the United States Code. Any disobedience of
2 any final order entered under this section by any court shall
3 be punished as a contempt thereof.

4 (e) Within twenty days after any person receives notice
5 pursuant to section 4 (c) that material produced by such per-
6 son shall be made available for examination by any antitrust
7 agency or committee of the Congress, such person may file,
8 in the district court of the United States for the judicial dis-
9 trict within which the office of the custodian is situated, and
10 serve upon such custodian, a petition for an order of such
11 court that secret processes, developments, research or any
12 privileged material not be made available for examination,
13 or be made available for examination on such terms and con-
14 ditions as the court finds that justice requires to protect such
15 person.

16 (f) To the extent that such rules may have application
17 and are not inconsistent with the provisions of this Act, the
18 Federal Rules of Civil Procedure shall apply to any petition
19 under this Act, and nothing herein shall be deemed to be
20 inconsistent with 30 (b) of such rules.

21 **CRIMINAL PENALTY**

22 **SEC. 6.** (a) Chapter 73 of title 18 of the United States
23 Code (relating to obstruction of justice) is amended by add-
24 ing at the end thereof the following new section :

1 “§ 1509. Obstruction of antitrust civil process

2 “Whoever, with intent to avoid, evade, prevent, or ob-
3 struct compliance in whole or in part, by any person with
4 any civil investigative demand made under the Antitrust
5 Civil Process Act, willfully removes from any place, con-
6 ceals, withholds, destroys, mutilates, alters, or by any other
7 means falsifies any documentary material in the possession,
8 custody or control of any person which is the subject of any
9 such demand duly served upon any person shall be fined not
10 more than \$5,000 or imprisoned not more than five years,
11 or both.”

12 (b) The analysis to such chapter is amended by insert-
13 ing at the end thereof the following new item:

“1509. Obstruction of antitrust civil process.”

14 **SAVING PROVISION**

15 **SEC. 7.** Nothing contained in this Act shall impair the
16 authority of the Attorney General, the Assistant Attorney
17 General in charge of the Antitrust Division of the Depart-
18 ment of Justice, or any antitrust investigator to (a) lay be-
19 fore any grand jury impaneled before any district court of
20 the United States any evidence concerning any alleged anti-
21 trust violation, (b) invoke the power of any such court to
22 compel the production of any evidence before any such
23 grand jury, or (c) institute any proceeding for the enforce-

1 ment of any order or process issued in execution of such
2 power, or to punish disobedience of any such order or process
3 by any person.

Passed the Senate July 29, 1959.

Attest:

FELTON M. JOHNSTON,

Secretary.

86TH CONGRESS
1ST SESSION

S. 716

AN ACT

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.

JULY 30, 1959

Referred to the Committee on the Judiciary