

1 subsection (b) as (i) and by inserting after subsection (a)
2 the following:

3 “(b) (1) Any consent judgment proposed by the
4 United States for entry in any civil proceeding brought by or
5 on behalf of the United States under the antitrust laws shall
6 be filed with the district court before which that proceeding
7 is pending and published in the Federal Register at least
8 sixty days prior to the effective date of such decree. Any
9 written comments relating to the proposed consent judgment
10 and any responses thereto, other than those which are ex-
11 empt from disclosure under section 552 (b) of title 5, United
12 States Code, shall also be filed with the same district court
13 and published in the Federal Register within the aforemen-
14 tioned sixty-day period.

15 “(2) Copies of the proposed consent judgment and such
16 other materials and documents which the United States con-
17 sidered determinative in formulating the proposed consent
18 judgment, other than those which are exempt from dis-
19 closure under sections 552 (a) (4) and (5) of title 5,
20 United States Code, shall also be made available to mem-
21 bers of the public at the district court before which the
22 proceeding is pending and in such other districts as the court
23 may subsequently direct. Simultaneously with the filing of
24 the proposed consent judgment, unless otherwise instructed
25 by the court, the United States shall file with the district

1 court, cause to be published in the Federal Register, and
2 thereafter furnish to any person upon request a public¹ im-
3 pact statement which shall recite—

4 “(A) the nature and purpose of the proceeding;

5 “(B) a description of the practices or events giving
6 rise to the alleged violation of the antitrust laws;

7 “(C) an explanation of the proposed judgment, re-
8 lief to be obtained thereby, and the anticipated effects on
9 competition of that relief, including an explanation of
10 any unusual circumstances giving rise to the proposed
11 judgment or any provision contained therein;

12 “(D) the remedies available to potential private
13 plaintiffs damaged by the alleged violation in the event
14 that the proposed judgment is entered;

15 “(E) a description of the procedures available for
16 modification of the proposed judgment;

17 “(F) a description and evaluation of alternatives
18 actually considered to the proposed judgment.

19 “(3) In the case of a consent decree entered after
20 December 31, 1972, and before the date of enactment of this
21 subsection, copies of any consent judgment proposed by the
22 United States, and any other materials and documents and
23 the public impact statement with respect to such consent
24 decree, which would have been required under paragraph
25 (2) of this subsection had such consent decree been entered

1 after the date of enactment of this subsection, shall be filed
2 and made available to the public in the same manner as
3 specified under paragraph (2), to the maximum extent
4 practicable.

5 “(c) The United States shall also cause to be published,
6 commencing at least sixty days prior to the effective date of
7 such decree, for seven days over a period of two weeks in
8 newspapers of general circulation of the district in which the
9 case has been filed, in Washington, District of Columbia, and
10 in such other districts as the court may direct (i) a summary
11 of the terms of the proposed consent judgment, (ii) a sum-
12 mary of the public impact statement to be filed under sub-
13 section (b), (iii) and a list of the materials and documents
14 under subsection (b) which the United States shall make
15 available for purposes of meaningful public comment, and
16 the places where such material is available for public
17 inspection.

18 “(d) During the sixty-day period provided above, and
19 such additional time as the United States may request and
20 the court may grant, the United States shall receive and
21 consider any written comments relating to the proposed
22 consent judgment. The Attorney General or his designate
23 shall establish procedures to carry out the provisions of this
24 subsection, but the sixty-day time period set forth herein
25 shall not be shortened except by order of the district court

1 upon a showing that extraordinary circumstances require
 2 such shortening and that such shortening of the time period
 3 is not adverse to the public interest. At the close of the
 4 period during which such comments may be received, the
 5 United States shall file with the district court and cause to
 6 be published in the Federal Register a response to such
 7 comments.

8 “(e) Before entering any consent judgment proposed
 9 by the United States under this section, the court shall
 10 determine that entry of that judgment is in the public
 11 interest as defined by law. For the purpose of this deter-
 12 mination, the court may consider—

13 “(1) the public impact of the judgment, including
 14 termination of alleged violation, provisions for enforce-
 15 ment and modification, duration of relief sought, antici-
 16 pated effects of alternative remedies actually considered,
 17 and any other considerations bearing upon the adequacy
 18 of the judgment;

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

22 “(f) In making its determination under subsection (e)
 23 the court may—

24 “(1) take testimony of Government officials or ex-
 25 perts or such other expert witnesses, upon motion of

1 any party or participant or upon its own motion, as
2 the court may deem appropriate;

3 “(2) appoint a special master, pursuant to rule
4 53 of the Federal Rules of Civil Procedure, and such
5 outside consultants or expert witnesses as the court
6 may deem appropriate; and request and obtain the
7 views, evaluations, or advice of any individual group
8 or agency of government with respect to any aspect
9 of the proposed judgment of the effect thereof in such
10 manner as the court deems appropriate;

11 “(3) authorize full or limited participation in pro-
12 ceedings before the court by interested persons or agen-
13 cies, including appearance amicus curiae, intervention
14 as a party pursuant to rule 24 of the Federal Rules
15 of Civil Procedure, examination of witnesses or docu-
16 mentary materials, or participation in any other manner
17 and extent which serves the public interest as the court
18 may deem appropriate;

19 “(4) review any comments or objections concern-
20 ing the proposed judgment filed with the United States
21 under subsection (d) and the response of the United
22 States to such comments or objections;

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

1 “(g) Not later than ten days following the filing of
2 any proposed consent judgment under subsection (b), each
3 defendant shall file with the district court a description of
4 any and all written or oral communications by or on behalf
5 of such defendant, including any officer, director, employee,
6 or agent thereof, or other person with any officer or employee
7 of the United States concerning or relevant to the proposed
8 consent judgment: *Provided*, That communications made
9 by or in the presence of counsel of record with the Attorney
10 General or the employees of the Department of Justice shall
11 be excluded from the requirements of this subsection. Prior
12 to the entry of any consent judgment pursuant to the anti-
13 trust laws, each defendant shall certify to the district court
14 that the requirements of this section have been complied
15 with and that such filing is a true and complete description
16 of such communications known to the defendant or which the
17 defendant reasonably should have known.

18 “(h) Proceedings before the district court under subsec-
19 tions (e) and (f), and public impact statements filed under
20 subsection (b) hereof, shall not be admissible against any de-
21 fendant in any action or proceeding brought by any other
22 party against such defendant under the antitrust laws or by
23 the United States under section 4A of this Act nor constitute
24 a basis for the introduction of the consent judgment as prima

1 facie evidence against such defendant in any such action or
2 proceeding.”

3 **PENALTIES**

4 **SEC. 3.** Sections 1, 2, and 3 of the Act entitled “An Act
5 to protect trade and commerce against unlawful restraints
6 and monopolies”, approved July 2, 1890 (26 Stat. 209;
7 15 U.S.C. 1, 2, and 3) are each amended by striking out
8 “fifty thousand dollars” and inserting “five hundred thousand
9 dollars if a corporation, or, if any other person, one hundred
10 thousand dollars”.

11 **EXPEDITING ACT REVISIONS**

12 **SEC. 4.** Section 1 of the Act of February 11, 1903 (32
13 Stat. 823), as amended (15 U.S.C. 28; 49 U.S.C. 44),
14 commonly known as the Expediting Act, is amended to read
15 as follows:

16 **“SECTION 1.** In any civil action brought in any district
17 court of the United States under the Act entitled ‘An Act
18 to protect trade and commerce against unlawful restraints
19 and monopolies’, approved July 2, 1890, or any other Acts
20 having like purpose that have been or hereafter may be
21 enacted, wherein the United States is plaintiff and equitable
22 relief is sought, the Attorney General may file with the
23 court, prior to the entry of final judgment, a certificate that,
24 in his opinion, the case is of a general public importance.
25 Upon filing of such certificate, it shall be the duty of the

1 judge designated to hear and determine the case, or the chief
2 judge of the district court if no judge has as yet been desig-
3 nated, to assign the case for hearing at the earliest practicable
4 date and to cause the case to be in every way expedited.”.

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

7 “(a) Except as otherwise expressly provided by this
8 section, in every civil action brought in any district court
9 of the United States under the Act entitled ‘An Act to pro-
10 tect trade and commerce against unlawful restraints and
11 monopolies’, approved July 2, 1890, or any other Acts hav-
12 ing like purpose that have been or hereafter may be enacted,
13 in which the United States is the complainant and equitable
14 relief is sought, any appeal from a final judgment entered in
15 any such action shall be taken to the court of appeals pur-
16 suant to sections 1291 and 2107 of title 28 of the United
17 States Code. Any appeal from an interlocutory order entered
18 in any such action shall be taken to the court of appeals pur-
19 suant to sections 1292 (a) (1) and 2107 of title 28 of the
20 United States Code but not otherwise. Any judgment entered
21 by the court of appeals in any such action shall be subject
22 to review by the Supreme Court upon a writ of certiorari
23 as provided in section 1254 (1) of title 28 of the United
24 States Code.

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

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

22 (b) The proviso in section 3 of the Act of February 19,
23 1903, as amended (32 Stat. 848, 849; 49 U.S.C. 43), is
24 repealed and the colon preceding it is changed to a period.

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

93^d CONGRESS
1ST SESSION

H. R. 9947

A BILL

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.

By Mr. JAMES V. STANTON

AUGUST 3, 1973

Referred to the Committee on the Judiciary