

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 1973

Mr. TUNNEY (for himself and Mr. GURNEY) introduced the following bill which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the antitrust laws of the United States, and for other purposes.

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 and
4 Penalties Act".

5 **CONSENT DECREE PROCEDURES**

6 **SEC. 2.** Section 5 of the Act entitled "An Act to supple-
7 ment existing laws against unlawful restraints and monop-
8 lies, and for other purposes", approved October 15, 1914
9 (38 Stat. 730; 15 U.S.C. 16), is amended by redesignating
10 subsection (b) as (h) and by inserting after subsection
11 (a) the following:

1 “(b) Any consent judgment proposed by the United
2 States for entry in any civil or criminal proceeding brought
3 by or on behalf of the United States under the antitrust laws
4 shall be filed with the district court before which that pro-
5 ceeding is pending and published in the Federal Register at
6 least sixty days prior to the effective date of such decree.
7 Simultaneously with the filing of the proposed consent judg-
8 ment, unless otherwise instructed by the court, the United
9 States shall file with the district court, cause to be published
10 in the Federal Register and thereafter furnish to any person
11 upon request a public impact statement which shall recite—

12 “(1) the nature and purpose of the proceeding;

13 “(2) a description of the practices or events giving
14 rise to the alleged violation of the antitrust laws;

15 “(3) an explanation of the proposed judgment, relief
16 to be obtained thereby, and the anticipated effects on
17 competition of that relief, including an explanation of any
18 unusual circumstances giving rise to the proposed judg-
19 ment or any provision contained therein;

20 “(4) the remedies available to potential private
21 plaintiffs damaged by the alleged violation in the event
22 that the proposed judgment is entered;

23 “(5) a description of the procedures available for
24 modification of the proposed judgment;

1 “(6) a description and evaluation of alternatives to
2 the proposed judgment and the anticipated effects on
3 competition of such alternatives.

4 “(c) During the sixty-day period provided above, and
5 such additional time as the United States may request and
6 the court may grant, the United States shall receive and con-
7 sider any written comments relating to the proposed consent
8 judgment. The Attorney General or his designate shall estab-
9 lish procedures to carry out the provisions of this subsection,
10 but the sixty-day time period set forth herein shall not be
11 shortened except by order of the district court upon a show-
12 ing that extraordinary circumstances require such shorten-
13 ing and that such shortening of the time period is not ad-
14 verse to the public interest. At the close of the period during
15 which such comments may be received, the United States
16 shall file with the district court and cause to be published
17 in the Federal Register a response to such comments.

18 “(d) Before entering any consent judgment proposed
19 by the United States under this section, the court shall
20 determine that entry of that judgment is in the public
21 interest. For the purpose of this determination, the court
22 shall consider—

23 “(1) the public impact of the judgment, including
24 termination of alleged violation, provisions for enforce-

1 ment and modification, duration of relief sought, antici-
2 pated effects of alternative remedies, and any other con-
3 siderations bearing upon the adequacy of the judgment;
4 “(2) the public impact of entry of the judgment
5 upon the public generally and individuals alleging spe-
6 cific injury from the violations set forth in the complaint,
7 including consideration of the public benefit to be de-
8 rived from a determination of the issues at trial.

9 “(e) In making its determination under subsection (d),
10 the court may—

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

15 “(2) appoint a special master, pursuant to rule
16 53 of the Federal Rules of Civil Procedure, and such
17 outside consultants or expert witnesses as the court
18 may deem appropriate; and request and obtain the
19 views, evaluations, or advice of any individual group
20 or agency of government with respect to any aspect
21 of the proposed judgment of the effect thereof in such
22 manner as the court deems appropriate;

23 “(3) authorize full or limited participation in pro-
24 ceedings before the court by interested persons or agen-
25 cies, including appearance amicus curiae, intervention

1 as a party pursuant to rule 24 of the Federal Rules
2 of Civil Procedure, examination of witnesses or docu-
3 mentary materials, or participation in any other manner
4 and extent which serves the public interest as the court
5 may deem appropriate;

6 “(4) review any comments or objections concern-
7 ing the proposed judgment filed with the United States
8 under subsection (c) and the response of the United
9 States to such comments or objections;

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

12 “(f) Not later than ten days following the filing of
13 any proposed consent judgment under subsection (b), each
14 defendant shall file with the district court a description of
15 any and all written or oral communications by or on behalf
16 of such defendant, including any officer, director, employee,
17 or agent thereof, or other person except counsel of record,
18 with any officer or employee of the United States concern-
19 ing or relevant to the proposed consent judgment. Prior
20 to the entry of any consent judgment pursuant to the anti-
21 trust laws, each defendant shall certify to the district court
22 that the requirements of this section have been complied with
23 and that such filing is a true and complete description of
24 such communications.

25 “(g) Proceedings before the district court under sub-

1 sections (d) and (e), and public impact statements filed
 2 under subsection (b) hereof, shall not be admissible against
 3 any defendant in any action or proceeding brought by any
 4 other party against such defendant under the antitrust laws
 5 or by the United States under section 4A of this Act nor
 6 constitute a basis for the introduction of the consent judgment
 7 as prima facie evidence against such defendant in any such
 8 action or proceeding.”

9

PENALTIES

10 SEC. 3. Sections 1, 2, and 3 of the Act entitled “An Act
 11 to protect trade and commerce against unlawful restraints
 12 and monopolies”, approved July 2, 1890 (26 Stat. 209;
 13 15 U.S.C. 1, 2, and 3) are each amended by striking out
 14 “fifty thousand dollars” and inserting “five hundred thousand
 15 dollars if a corporation, or, if any other person, one hundred
 16 thousand dollars”.

17

EXPEDITING ACT REVISIONS

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

22 “SECTION 1. In any civil action brought in any district
 23 court of the United States under the Act entitled ‘An Act
 24 to protect trade and commerce against unlawful restraints
 25 and monopolies’, approved July 2, 1890, or any other Acts

1 having like purpose that have been or hereafter may be
2 enacted, wherein the United States is plaintiff and equitable
3 relief is sought, the Attorney General may file with the
4 court, prior to the entry of final judgment, a certificate that,
5 in his opinion, the case is of a general public importance.
6 Upon filing of such certificate, it shall be the duty of the
7 judge designated to hear and determine the case, or the chief
8 judge of the district court if no judge has as yet been desig-
9 nated, to assign the case for hearing at the earliest prac-
10 ticable date and to cause the case to be in every way
11 expedited."

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

14 "(a) Except as otherwise expressly provided by this
15 section, in every civil action brought in any district court
16 of the United States under the Act entitled 'An Act to pro-
17 tect trade and commerce against unlawful restraints and
18 monopolies', approved July 2, 1890, or any other Acts hav-
19 ing like purpose that have been or hereafter may be enacted,
20 in which the United States is the complainant and equitable
21 relief is sought, any appeal from a final judgment entered
22 in any such action shall be taken to the court of appeals
23 pursuant to sections 1291 and 2107 of title 28 of the United
24 States Code. Any appeal from an interlocutory order entered
25 in any such action shall be taken to the court of appeals pur-

1 suant to sections 1292 (a) (1) and 2107 of title 28 of the
2 United States Code but not otherwise. Any judgment entered
3 by the court of appeals in any such action shall be subject
4 to review by the Supreme Court upon a writ of certiorari as
5 provided in section 1254 (1) of title 28 of the United States
6 Code.

7 “(b) An appeal from a final judgment pursuant to
8 subsection (a) shall lie directly to the Supreme Court if—

9 “(1) upon application of a party filed within five
10 days of the filing of a notice of appeal, the district judge
11 who adjudicated the case enters an order stating that
12 immediate consideration of the appeal by the Supreme
13 Court is of general public importance in the Adminis-
14 tration of justice; or

15 “(2) the Attorney General files in the district court
16 a certificate stating that immediate consideration of the
17 appeal by the Supreme Court is of general public im-
18 portance in the administration of justice; or

19 “(3) the district judge who adjudicated the case,
20 sua sponte, enters an order stating that immediate con-
21 sideration of the appeal by the Supreme Court is of
22 general public importance in the administration of justice.

23 A court order pursuant to (1) or (3) or a certificate pur-
24 suant, to (2) must be filed within fifteen days after the filing
25 of a notice of appeal. When such an order or certificate is

1 filed, the appeal and any cross appeal shall be docketed in the
2 time and manner prescribed by the rules of the Supreme
3 Court. That Court shall thereupon either (1) dispose of the
4 appeal and any cross appeal in the same manner as any other
5 direct appeal authorized by law, or (2) in its discretion,
6 deny the direct appeal and remand the case to the court of
7 appeals, which shall then have jurisdiction to hear and de-
8 termine the same as if the appeal and any cross appeal there-
9 in had been docketed in the court of appeals in the first
10 instance pursuant to subsection (a).”

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

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

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

93D CONGRESS
1ST SESSION

S. 782

A BILL

To amend the antitrust laws of the United
States, and for other purposes.

By Mr. TUNNEY and Mr. GURNEY

FEBRUARY 6, 1973

Read twice and referred to the Committee on the
Judiciary