

# Appendix A

## Relevant Statutes

(Excerpts)

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### **Antitrust Modernization Commission Act of 2002, as amended**

*Pub. L. No. 107-273, 116 Stat. 1856 (2002), as amended by the Antitrust Modernization Commission Extension Act of 2007, Pub. L. No. 110-6, 121 Stat. 61 (2007)*

#### **Sec. 11051. Short Title.**

This subtitle may be cited as the “Antitrust Modernization Commission Act of 2002.”

#### **Sec. 11052. Establishment.**

There is established the Antitrust Modernization Commission (in this subtitle referred to as the “Commission”).

#### **Sec. 11053. Duties of the Commission.**

The duties of the Commission are—

- (1) to examine whether the need exists to modernize the antitrust laws and to identify and study related issues;
- (2) to solicit views of all parties concerned with the operation of the antitrust laws;
- (3) to evaluate the advisability of proposals and current arrangements with respect to any issues so identified; and
- (4) to prepare and to submit to Congress and the President a report in accordance with section 11058.

**Sec. 11054. Membership.**

- (a) Number and Appointment.—The Commission shall be composed of 12 members appointed as follows:
- (1) Four members, no more than 2 of whom shall be of the same political party, shall be appointed by the President. The President shall appoint members of the opposing party only on the recommendation of the leaders of Congress from that party.
  - (2) Two members shall be appointed by the majority leader of the Senate.
  - (3) Two members shall be appointed by the minority leader of the Senate.
  - (4) Two members shall be appointed by the Speaker of the House of Representatives.
  - (5) Two members shall be appointed by the minority leader of the House of Representatives.
- (b) Ineligibility for Appointment.—Members of Congress shall be ineligible for appointment to the Commission.
- (c) Term of Appointment.—
- (1) In general.—Subject to paragraph (2), members of the Commission shall be appointed for the life of the Commission.
  - (2) Early termination of appointment.—If a member of the Commission who is appointed to the Commission as—
    - (A) an officer or employee of a government ceases to be an officer or employee of such government; or
    - (B) an individual who is not an officer or employee of a government becomes an officer or employee of a government;then such member shall cease to be a member of the Commission on the expiration of the 90-day period beginning on the date such member ceases to be such officer or employee of such government, or becomes an officer or employee of a government, as the case may be.
- (d) Quorum.—Seven members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.
- (e) Appointment Deadline.—Initial appointments under subsection (a) shall be made not later than 60 days after the date of enactment of this Act [Nov. 2, 2002].
- (f) Meetings.—The Commission shall meet at the call of the chairperson. The first meeting of the Commission shall be held not later than 30 days after the date on which all members of the Commission are first appointed under subsection (a) or funds are appropriated to carry out this subtitle, whichever occurs later.
- (g) Vacancy.—A vacancy on the Commission shall be filled in the same manner as the initial appointment is made.
- (h) Consultation Before Appointment.—Before appointing members of the Commission, the President, the majority and minority leaders of the Senate, the Speaker of the House of Representatives, and the minority leader of the House of Representatives shall consult with each other to ensure fair and equitable representation of various points of view in the Commission.

- (i) Chairperson; Vice Chairperson.—The President shall select the chairperson of the Commission from among its appointed members. The leaders of Congress from the opposing party of the President shall select the vice chairperson of the Commission from among its remaining members.

**Sec. 11055. Compensation of the Commission.**

- (a) Pay.—
  - (1) Nongovernment employees.—Each member of the Commission who is not otherwise employed by a government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5 United States Code, as in effect from time to time, for each day (including travel time) during which such member is engaged in the actual performance of duties of the Commission.
  - (2) Government employees.—A member of the Commission who is an officer or employee of a government shall serve without additional pay (or benefits in the nature of compensation) for service as a member of the Commission.
- (b) Travel Expenses.—Members of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

**Sec. 11056. Staff of Commission; Experts and Consultants.**

- (a) Staff.—
  - (1) Appointment.—The chairperson of the Commission may, without regard to the provisions of chapter 51 of title 5 of the United States Code (relating to appointments in the competitive service), appoint and terminate an executive director and such other staff as are necessary to enable the Commission to perform its duties. The appointment of an executive director shall be subject to approval by the Commission.
  - (2) Compensation.—The chairperson of the Commission may fix the compensation of the executive director and other staff without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code (relating to classification of positions and General Schedule pay rates), except that the rate of pay for the executive director and other staff may not exceed the rate of basic pay payable for level V of the Executive Schedule under section 5315 of title 5 United States Code, as in effect from time to time.
- (b) Experts and Consultants.—The Commission may procure temporary and intermittent services of experts and consultants in accordance with section 3109 (b) of title 5, United States Code.

**Sec. 11057. Powers of the Commission.**

- (a) Hearings and Meetings.—The Commission, or a member of the Commission if authorized by the Commission, may hold such hearings, sit and act at such time and places, take such testimony, and receive such evidence, as the Commission considers to be appropriate. The Commission or a member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or such member.

- (b) Official Data.—The Commission may obtain directly from any executive agency (as defined in section 105 of title 5 of the United States Code) or court information necessary to enable it to carry out its duties under this subtitle. On the request of the chairperson of the Commission, and consistent with any other law, the head of an executive agency or of a Federal court shall provide such information to the Commission.
- (c) Facilities and Support Services.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. On request of the Commission, the head of an executive agency may make any of the facilities or services of such agency available to the Commission, on a reimbursable or nonreimbursable basis, to assist the Commission in carrying out its duties under this subtitle.
- (d) Expenditures and Contracts.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or such member considers to be appropriate for the purpose of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in advance in appropriation Acts.
- (e) Mails.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.
- (f) Gifts, Bequests, and Devises.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts, bequests, or devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Commission.

**Sec. 11058. Report.**

Not later than 3 years after the first meeting of the Commission, the Commission shall submit to Congress and the President a report containing a detailed statement of the findings and conclusions of the Commission, together with recommendations for legislative or administrative action the Commission considers to be appropriate.

**Sec. 11059. Termination of the Commission.**

The Commission shall cease to exist 60 days after the date on which the report required by section 11058 is submitted.

**Sec. 11060. Authorization of the Commission.**

There is authorized to be appropriated \$4,000,000 to carry out this subtitle.

## **Sherman Act**

### ***15 U.S.C. § 1 (Section 1 of the Sherman Act)***

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

### ***15 U.S.C. § 2 (Section 2 of the Sherman Act)***

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

## Clayton Act

### 15 U.S.C. § 12 (Section 1 of the Clayton Act)

- (a) “Antitrust laws,” as used herein, includes the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety; sections seventy-three to seventy-seven, inclusive, of an Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled “An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’” approved February twelfth, nineteen hundred and thirteen; and also this Act.

“Commerce,” as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: Provided, That nothing in this Act contained shall apply to the Philippine Islands.

The word “person” or “persons” wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

- (b) This Act may be cited as the “Clayton Act.”

### 15 U.S.C. § 13 (Section 2 of the Clayton Act)

[See Robinson-Patman Act, below]

### 15 U.S.C. § 15 (Section 4 of the Clayton Act)

- (a) Except as provided in subsection (b) of this section, any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney’s fee. The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person’s pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—
- (1) whether such person or the opposing party, or either party’s representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay, or otherwise acted in bad faith;

- (2) whether, in the course of the action involved, such person or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and
- (3) whether such person or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

(b)

- (1) Except as provided in paragraph (2), any person who is a foreign state may not recover under subsection (a) of this section an amount in excess of the actual damages sustained by it and the cost of suit, including a reasonable attorney's fee.
- (2) Paragraph (1) shall not apply to a foreign state if—
  - (A) such foreign state would be denied, under section 1605(a)(2) of Title 28, immunity in a case in which the action is based upon a commercial activity, or an act, that is the subject matter of its claim under this section;
  - (B) such foreign state waives all defenses based upon or arising out of its status as a foreign state, to any claims brought against it in the same action;
  - (C) such foreign state engages primarily in commercial activities; and
  - (D) such foreign state does not function, with respect to the commercial activity, or the act, that is the subject matter of its claim under this section as a procurement entity for itself or for another foreign state.

(c) For purposes of this section—

- (1) the term “commercial activity” shall have the meaning given it in section 1603(d) of Title 28, and
- (2) the term “foreign state” shall have the meaning given it in section 1603(a) of Title 28.

**15 U.S.C. § 15a (Section 4A of the Clayton Act)**

Whenever the United States is hereafter injured in its business or property by reason of anything forbidden in the antitrust laws it may sue therefor in the United States district court for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by it sustained and the cost of suit. The court may award under this section, pursuant to a motion by the United States promptly made, simple interest on actual damages for the period beginning on the date of service of the pleading of the United States setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—

- (1) whether the United States or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;

- (2) whether, in the course of the action involved, the United States or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings;
- (3) whether the United States or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof; and
- (4) whether the award of such interest is necessary to compensate the United States adequately for the injury sustained by the United States.

**15 U.S.C. § 15b (Section 4B of the Clayton Act)**

Any action to enforce any cause of action under sections [4, 4A, or 4C] of this [Act] shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.

**15 U.S.C. § 15c (Section 4C of the Clayton Act)**

- (a) (1) Any attorney general of a State may bring a civil action in the name of such State, as *parens patriae* on behalf of natural persons residing in such State, in any district court of the United States having jurisdiction of the defendant, to secure monetary relief as provided in this section for injury sustained by such natural persons to their property by reason of any violation of [the Sherman Act]. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief
  - (A) which duplicates amounts which have been awarded for the same injury, or
  - (B) which is properly allocable to
    - (i) natural persons who have excluded their claims pursuant to subsection (b)(2) of this section, and
    - (ii) any business entity.
- (2) The court shall award the State as monetary relief threefold the total damage sustained as described in paragraph (1) of this subsection, and the cost of suit, including a reasonable attorney's fee. The court may award under this paragraph, pursuant to a motion by such State promptly made, simple interest on the total damage for the period beginning on the date of service of such State's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this paragraph for any period is just in the circumstances, the court shall consider only—
  - (A) whether such State or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;
  - (B) whether, in the course of the action involved, such State or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(C) whether such State or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

(b)

(1) In any action brought under subsection (a)(1) of this section, the State attorney general shall, at such times, in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case.

(2) Any person on whose behalf an action is brought under subsection (a)(1) of this section may elect to exclude from adjudication the portion of the State claim for monetary relief attributable to him by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1) of this subsection.

(3) The final judgment in an action under subsection (a)(1) of this section shall be res judicata as to any claim under section [4 of this Act] by any person on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to paragraph (1) of this subsection.

(c) An action under subsection (a)(1) of this section shall not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

(d) In any action under subsection (a) of this section—

(1) the amount of the plaintiffs' attorney's fee, if any, shall be determined by the court; and

(2) the court may, in its discretion, award a reasonable attorney's fee to a prevailing defendant upon a finding that the State attorney general has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

**15 U.S.C. § 15d (Section 4D of the Clayton Act)**

In any action under section [4C](a)(1) of this [Act], in which there has been a determination that a defendant agreed to fix prices in violation of [the Sherman Act], damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

**15 U.S.C. § 15e (Section 4E of the Clayton Act)**

Monetary relief recovered in an action under section [4C](a)(1) of this [Act] shall—

(1) be distributed in such manner as the district court in its discretion may authorize; or

(2) be deemed a civil penalty by the court and deposited with the State as general revenues;

subject in either case to the requirement that any distribution procedure adopted afford each person a reasonable opportunity to secure his appropriate portion of the net monetary relief.

**15 U.S.C. § 15f (Section 4F of the Clayton Act)**

- (a) Whenever the Attorney General of the United States has brought an action under the antitrust laws, and he has reason to believe that any State attorney general would be entitled to bring an action under this Act based substantially on the same alleged violation of the antitrust laws, he shall promptly give written notification thereof to such State attorney general.
- (b) To assist a State attorney general in evaluating the notice or in bringing any action under this Act, the Attorney General of the United States shall, upon request by such State attorney general, make available to him, to the extent permitted by law, any investigative files or other materials which are or may be relevant or material to the actual or potential cause of action under this Act.

**15 U.S.C. § 15g (Section 4G of the Clayton Act)**

For the purposes of sections [4C, 4D, 4E, and 4F] of this [Act]:

- (1) The term “State attorney general” means the chief legal officer of a State, or any other person authorized by State law to bring actions under section [4C] of this [Act], and includes the Corporation Counsel of the District of Columbia, except that such term does not include any person employed or retained on—
  - (A) a contingency fee based on a percentage of the monetary relief awarded under this section; or
  - (B) any other contingency fee basis, unless the amount of the award of a reasonable attorney’s fee to a prevailing plaintiff is determined by the court under section [4C](d)(1) of this [Act].
- (2) The term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.
- (3) The term “natural persons” does not include proprietorships or partnerships.

**15 U.S.C. § 15h (Section 4H of the Clayton Act)**

Sections [4C, 4D, 4E, 4F, and 4G] of this [Act] shall apply in any State, unless such State provides by law for its nonapplicability in such State.

**15 U.S.C. § 16 (Section 5 of the Clayton Act)**

- (a) A final judgment or decree heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: Provided, That this section shall not apply to consent judgments or decrees entered before any testimony has been taken. Nothing contained in this section shall be construed to impose any limitation on the application of collateral estoppel, except that, in any action or proceeding brought under the antitrust laws, collateral estoppel effect shall not be given to any finding made by the Federal Trade Commission under the antitrust laws or under section [5 of the Federal Trade Commission Act] which could give rise to a claim for relief under the antitrust laws.

- (b) Any proposal for a consent judgment submitted by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws shall be filed with the district court before which such proceeding is pending and published by the United States in the Federal Register at least 60 days prior to the effective date of such judgment. Any written comments relating to such proposal and any responses by the United States thereto, shall also be filed with such district court and published by the United States in the Federal Register within such sixty-day period. Copies of such proposal and any other materials and documents which the United States considered determinative in formulating such proposal, shall also be made available to the public at the district court and in such other districts as the court may subsequently direct. Simultaneously with the filing of such proposal, unless otherwise instructed by the court, the United States shall file with the district court, publish in the Federal Register, and thereafter furnish to any person upon request, a competitive impact statement which shall recite—
- (1) the nature and purpose of the proceeding;
  - (2) a description of the practices or events giving rise to the alleged violation of the antitrust laws;
  - (3) an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;
  - (4) the remedies available to potential private plaintiffs damaged by the alleged violations in the event that such proposal for the consent judgment is entered in such proceeding;
  - (5) a description of the procedures available for modification of such proposal; and
  - (6) a description and evaluation of alternatives to such proposal actually considered by the United States.
- (c) The United States shall also cause to be published, commencing at least 60 days prior to the effective date of the judgment described in subsection (b) of this section, for 7 days over a period of 2 weeks in newspapers of general circulation of the district in which the case has been filed, in the District of Columbia, and in such other districts as the court may direct—
- (i) a summary of the terms of the proposal for consent judgment,
  - (ii) a summary of the competitive impact statement filed under subsection (b) of this section,
  - (iii) and a list of the materials and documents under subsection (b) of this section which the United States shall make available for purposes of meaningful public comment, and the place where such materials and documents are available for public inspection.
- (d) During the 60-day period as specified in subsection (b) of this section, and such additional time as the United States may request and the court may grant, the United States shall receive and consider any written comments relating to the proposal for the consent judgment submitted under subsection (b) of this section. The Attorney General or his designee shall establish procedures to carry out the provisions of this subsection, but such 60-day time period shall not be shortened except by order of the district court upon a showing that

- (1) extraordinary circumstances require such shortening and
  - (2) such shortening is not adverse to the public interest. At the close of the period during which such comments may be received, the United States shall file with the district court and cause to be published in the Federal Register a response to such comments.
- (e) Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court may consider—
- (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
  - (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.
- (f) In making its determination under subsection (e) of this section, the court may—
- (1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;
  - (2) appoint a special master and such outside consultants or expert witnesses as the court may deem appropriate; and request and obtain the views, evaluations, or advice of any individual, group or agency of government with respect to any aspects of the proposed judgment or the effect of such judgment, in such manner as the court deems appropriate;
  - (3) authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance *amicus curiae*, intervention as a party pursuant to the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;
  - (4) review any comments including any objections filed with the United States under subsection (d) of this section concerning the proposed judgment and the responses of the United States to such comments and objections; and
  - (5) take such other action in the public interest as the court may deem appropriate.
- (g) Not later than 10 days following the date of the filing of any proposal for a consent judgment under subsection (b) of this section, each defendant shall file with the district court a description of any and all written or oral communications by or on behalf of such defendant, including any and all written or oral communications on behalf of such defendant, or other person, with any officer or employee of the United States concerning or relevant to such proposal, except that any such communications made by counsel of record alone with the Attorney General or the employees of the Department of Justice alone shall be excluded from the requirements of this subsection. Prior to the entry of any consent judgment pursuant to the antitrust laws, each defendant shall certify to the district court that the requirements of this subsection have been complied with and that such filing is a true and complete description of such communications known to the defendant or which the defendant reasonably should have known.

- (h) Proceedings before the district court under subsections (e) and (f) of this section, and the competitive impact statement filed under subsection (b) of this section, shall not be admissible against any defendant in any action or proceeding brought by any other party against such defendant under the antitrust laws or by the United States under section [4A] of this [Act] nor constitute a basis for the introduction of the consent judgment as prima facie evidence against such defendant in any such action or proceeding.
- (i) Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, but not including an action under section [4A] of this [Act], the running of the statute of limitations in respect to every private or State right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: Provided, however, That whenever the running of the statute of limitations in respect of a cause of action arising under section [4] or [4C] of this [Act] is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued.

**15 U.S.C. § 18 (Section 7 of the Clayton Act)**

No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

This section shall not apply to persons purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the

main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: Provided, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Secretary of Transportation, Federal Power Commission, Surface Transportation Board, the Securities and Exchange Commission in the exercise of its jurisdiction under section [10 of the Public Utility Holding Company Act of 1955], the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission, Board, or Secretary.

**15 U.S.C. § 18a (Hart-Scott-Rodino Antitrust Improvements Act; Section 7A of the Clayton Act)**

- (a) Except as exempted pursuant to subsection (c) of this section, no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) of this section and the waiting period described in subsection (b)(1) of this section has expired, if—
- (1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce; and
  - (2) as a result of such acquisition, the acquiring person would hold an aggregate amount of the voting securities and assets of the acquired person—
    - (A) in excess of \$200,000,000 (as adjusted and published for each fiscal year beginning after September 30, 2004, in the same manner as provided in section 8(a)(5) [of the Act] to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2003); or
    - (B)
      - (i) in excess of \$50,000,000 (as so adjusted and published) but not in excess of \$200,000,000 (as so adjusted and published); and
      - (ii)
        - (I) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of \$10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 (as so adjusted and published) or more;
        - (II) any voting securities or assets of a person not engaged in manufacturing which has total assets of \$10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 (as so adjusted and published) or more; or

(III) any voting securities or assets of a person with annual net sales or total assets of \$100,000,000 (as so adjusted and published) or more are being acquired by any person with total assets or annual net sales of \$10,000,000 (as so adjusted and published) or more.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d) of this section.

(b)

- (1) The waiting period required under subsection (a) of this section shall—
    - (A) begin on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereinafter referred to in this section as the “Assistant Attorney General”) of—
      - (i) the completed notification required under subsection (a) of this section, or
      - (ii) if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance, from both persons, or, in the case of a tender offer, the acquiring person; and
    - (B) end on the thirtieth day after the date of such receipt (or in the case of a cash tender offer, the fifteenth day), or on such later date as may be set under subsection (e)(2) or (g)(2) of this section.
  - (2) The Federal Trade Commission and the Assistant Attorney General may, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the Federal Register a notice that neither intends to take any action within such period with respect to such acquisition.
  - (3) As used in this section—
    - (A) The term “voting securities” means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.
    - (B) The amount or percentage of voting securities or assets of a person which are acquired or held by another person shall be determined by aggregating the amount or percentage of such voting securities or assets held or acquired by such other person and each affiliate thereof.
- (c) The following classes of transactions are exempt from the requirements of this section—
- (1) acquisitions of goods or realty transferred in the ordinary course of business;
  - (2) acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;
  - (3) acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisition;
  - (4) transfers to or from a Federal agency or a State or political subdivision thereof;
  - (5) transactions specifically exempted from the antitrust laws by Federal statute;
  - (6) transactions specifically exempted from the antitrust laws by Federal statute

if approved by a Federal agency, if copies of all information and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;

- (7) transactions which require agency approval under [§ 301 of the Financial Institutions Reform, Recovery, and Enforcement Act, 12 U.S.C. § 1467a(e), § 18(c) of the Federal Deposit Insurance Act, 12 U.S.C. § 1828(c), or § 3 of the Bank Holding Company Act of 1956, 12 U.S.C. § 1842], except that a portion of such a transaction is not exempt under this paragraph if such portion of the transaction
    - (A) is subject to [§ 103(a) of the Gramm-Leach-Bliley Act, 12 U.S.C. § 1843(k)]; and
    - (B) does not require agency approval under [§ 3 of the Bank Holding Company Act of 1956, 12 U.S.C. § 1842];
  - (8) transactions which require agency approval under [§ 4 of the Bank Holding Company Act of 1956, 12 U.S.C. § 1843, or § 5 of the Home Owners' Loan Act of 1933, 12 U.S.C. § 1464], if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction, except that a portion of such a transaction is not exempt under this paragraph if such portion of the transaction
    - (A) is subject to [§ 103(a) of the Gramm-Leach-Bliley Act, 12 U.S.C. § 1843(k)]; and
    - (B) does not require agency approval under [§ 3 of the Bank Holding Company Act of 1956, 12 U.S.C. § 1842];
  - (9) acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;
  - (10) acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer;
  - (11) acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, of
    - (A) voting securities pursuant to a plan of reorganization or dissolution; or
    - (B) assets in the ordinary course of its business; and
  - (12) such other acquisitions, transfers, or transactions, as may be exempted under subsection (d)(2)(B) of this section.
- (d) The Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of Title 5, consistent with the purposes of this section—
- (1) shall require that the notification required under subsection (a) of this section be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisition may, if consummated, violate the antitrust laws; and
  - (2) may—
    - (A) define the terms used in this section;
    - (B) exempt, from the requirements of this section, classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws; and

- (C) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.
- (e)
- (1)
    - (A) The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section, require the submission of additional information or documentary material relevant to the proposed acquisition, from a person required to file notification with respect to such acquisition under subsection (a) of this section prior to the expiration of the waiting period specified in subsection (b)(1) of this section, or from any officer, director, partner, agent, or employee of such person.
    - (B)
      - (i) The Assistant Attorney General and the Federal Trade Commission shall each designate a senior official who does not have direct responsibility for the review of any enforcement recommendation under this section concerning the transaction at issue, to hear any petition filed by such person to determine—
        - (I) whether the request for additional information or documentary material is unreasonably cumulative, unduly burdensome, or duplicative; or
        - (II) whether the request for additional information or documentary material has been substantially complied with by the petitioning person.
      - (ii) Internal review procedures for petitions filed pursuant to clause (i) shall include reasonable deadlines for expedited review of such petitions, after reasonable negotiations with investigative staff, in order to avoid undue delay of the merger review process.
      - (iii) Not later than 90 days after December 21, 2000, the Assistant Attorney General and the Federal Trade Commission shall conduct an internal review and implement reforms of the merger review process in order to eliminate unnecessary burden, remove costly duplication, and eliminate undue delay, in order to achieve a more effective and more efficient merger review process.
      - (iv) Not later than 120 days after December 21, 2000, the Assistant Attorney General and the Federal Trade Commission shall issue or amend their respective industry guidance, regulations, operating manuals and relevant policy documents, to the extent appropriate, to implement each reform in this subparagraph.
      - (v) Not later than 180 days after December 21, 2000, the Assistant Attorney General and the Federal Trade Commission shall each report to Congress—
        - (I) which reforms each agency has adopted under this subparagraph;
        - (II) which steps each has taken to implement such internal reforms; and
        - (III) the effects of such reforms.

- (2) The Federal Trade Commission or the Assistant Attorney General, in its or his discretion, may extend the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section for an additional period of not more than 30 days (or in the case of a cash tender offer, 10 days) after the date on which the Federal Trade Commission or the Assistant Attorney General, as the case may be, receives from any person to whom a request is made under paragraph (1), or in the case of tender offers, the acquiring person,
  - (A) all the information and documentary material required to be submitted pursuant to such a request, or
  - (B) if such request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance. Such additional period may be further extended only by the United States district court, upon an application by the Federal Trade Commission or the Assistant Attorney General pursuant to subsection (g)(2) of this section.
- (f) If a proceeding is instituted or an action is filed by the Federal Trade Commission, alleging that a proposed acquisition violates [§ 7] of this [Act], or [§ 5 of the Federal Trade Commission Act], or an action is filed by the United States, alleging that a proposed acquisition violates such [§ 7] of this [Act], or section 1 or 2 of this [Act], and the Federal Trade Commission or the Assistant Attorney General
  - (1) files a motion for a preliminary injunction against consummation of such acquisition pendente lite, and
  - (2) certifies the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection, then upon the filing of such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in which such district court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes.
- (g)
  - (1) Any person, or any officer, director, or partner thereof, who fails to comply with any provision of this section shall be liable to the United States for a civil penalty of not more than \$10,000 for each day during which such person is in violation of this section. Such penalty may be recovered in a civil action brought by the United States.
  - (2) If any person, or any officer, director, partner, agent, or employee thereof, fails substantially to comply with the notification requirement under subsection (a) of this section or any request for the submission of additional information or documentary material under subsection (e)(1) of this section within the waiting period specified in subsection (b)(1) of this section and as may be extended under subsection (e)(2) of this section, the United States district court—
    - (A) may order compliance;
    - (B) shall extend the waiting period specified in subsection (b)(1) of this section and as may have been extended under subsection (e)(2) of this section until there has been substantial compliance, except that, in the case of a tender offer, the court may not extend such waiting period on the basis of a failure, by the person whose stock is sought to be acquired, to comply substantially with such notification requirement or any such request; and

- (C) may grant such other equitable relief as the court in its discretion determines necessary or appropriate, upon application of the Federal Trade Commission or the Assistant Attorney General.
- (h) Any information or documentary material filed with the Assistant Attorney General or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.
- (i) (1) Any action taken by the Federal Trade Commission or the Assistant Attorney General or any failure of the Federal Trade Commission or the Assistant Attorney General to take any action under this section shall not bar any proceeding or any action with respect to such acquisition at any time under any other section of this Act or any other provision of law.
- (2) Nothing contained in this section shall limit the authority of the Assistant Attorney General or the Federal Trade Commission to secure at any time from any person documentary material, oral testimony, or other information under the Antitrust Civil Process Act [15 U.S.C. §§ 1311 et seq.], the Federal Trade Commission Act [15 U.S.C. §§ 41 et seq.], or any other provision of law.
- (j) Reserved.
- (k) If the end of any period of time provided in this section falls on a Saturday, Sunday, or legal public holiday (as defined in section 6103(a) of title 5), then such period shall be extended to the end of the next day that is not a Saturday, Sunday, or legal public holiday.

**15 U.S.C. § 18a note**

- (a) Five working days after enactment of this Act [Nov. 21, 1989] and thereafter, the Federal Trade Commission shall assess and collect filing fees established in subsection (b) which shall be paid by persons acquiring voting securities or assets who are required to file premerger notifications by the [sic] section 7A of the Clayton Act (15 U.S.C. 18a) and the regulations promulgated thereunder. For purposes of said Act, no notification shall be considered filed until payment of the fee required by this section. Fees collected pursuant to this section shall be divided evenly between and credited to the appropriations, Federal Trade Commission, ‘Salaries and Expenses’ and Department of Justice, ‘Salaries and Expenses, Antitrust Division’: Provided, That fees in excess of \$40,000,000 in fiscal year 1990 shall be deposited to the credit of the Treasury of the United States: Provided further, That fees made available to the Federal Trade Commission and the Antitrust Division herein shall remain available until expended.
- (b) The filing fees referred to in subsection (a) are—
- (1) \$45,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a (a)(2)) is less than \$100,000,000 (as adjusted and published for each fiscal year beginning after September 30, 2004, in the same manner as provided in section 8(a)(5) of the Clayton Act (15 U.S.C. 19 (a)(5)) to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2003);

- (2) \$125,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a (a)(2)) is not less than \$100,000,000 (as so adjusted and published) but less than \$500,000,000 (as so adjusted and published); and
- (3) \$280,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a (a)(2)) is not less than \$500,000,000 (as so adjusted and published).

**15 U.S.C. § 25 (Section 15 of the Clayton Act)**

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

**15 U.S.C. § 26 (Section 16 of the Clayton Act)**

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections [2, 3, 7, and 8] of this [Act], when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: Provided, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit for injunctive relief against any common carrier subject to the jurisdiction of the Surface Transportation Board under subtitle IV of Title 49. In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

## Robinson-Patman Act

### 15 U.S.C. § 13 (Section 1 of the Robinson-Patman Act)

- (a) It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: Provided, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: Provided, however, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: And provided further, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: And provided further, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.
- (b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: Provided, however, That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.
- (c) It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

- (d) It shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.
- (e) It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.
- (f) It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

**15 U.S.C. § 13a (Section 3 of the Robinson-Patman Act)**

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates to his knowledge against competitors of the purchaser, in that, any discount, rebate, allowance, or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance, or advertising service charge available at the time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity; to sell, or contract to sell, goods in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition, or eliminating a competitor in such part of the United States; or, to sell, or contract to sell, goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.

Any person violating any of the provisions of this section shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned not more than one year, or both.

## Federal Trade Commission Act

### *15 U.S.C. § 41 (Section 1 of the Federal Trade Commission Act)*

A commission is created and established, to be known as the Federal Trade Commission (hereinafter referred to as the Commission), which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the Commissioners shall be members of the same political party. The first Commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from September 26, 1914, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed: Provided, however, That upon the expiration of his term of office a Commissioner shall continue to serve until his successor shall have been appointed and shall have qualified. The President shall choose a chairman from the Commission's membership. No Commissioner shall engage in any other business, vocation, or employment. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the Commission shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission.

The Commission shall have an official seal, which shall be judicially noticed.

### *15 U.S.C. § 45 (Section 5 of the Federal Trade Commission Act)*

(a)

- (1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.
- (2) The Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958 [49 App. U.S.C. §§ 1301 et seq.], and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended [7 U.S.C. §§ 181 et seq.], except as provided in section 406(b) of said Act [7 U.S.C. § 227(b)], from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.
- (3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—
  - (A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—
    - (i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or
    - (ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States.

- (b) Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such persons, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this subchapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice, and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require, except that
- (1) the said person, partnership, or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals in the United States, in the manner provided in subsection (c) of this section; and
  - (2) in the case of an order, the Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part. The Commission shall determine whether to alter, modify, or set aside any order of the Commission in response to a request made by a person, partnership, or corporation under paragraph (2) not later than 120 days after the date of the filing of such request.

- (c) Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of Title 28 [the U.S. Code]. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the Commission until the filing of the record and shall have the power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commending obedience to the terms of such order of the Commission. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 347 of Title 28 [of the U.S. Code].
- (d) Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive.
- (e) No order of the Commission or judgment of court to enforce the same shall in anywise relieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts.
- (f) Complaints, orders, and other processes of the Commission under this section may be served by anyone duly authorized by the Commission, either
- (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; or
  - (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership, or corporation; or

(c) by mailing a copy thereof by registered mail or by certified mail addressed to such person, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt of said complaint, order, or other process mailed by registered mail or by certified mail as aforesaid shall be proof of the service of the same.

(g) An order of the Commission to cease and desist shall become final—

- (1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the Commission may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b) of this section.
- (2) Except as to any order provision subject to paragraph (4), upon the sixtieth day after such order is served, if a petition for review has been duly filed; except that any such order may be stayed, in whole or in part and subject to such conditions as may be appropriate, by—
  - (A) the Commission;
  - (B) an appropriate court of appeals of the United States, if
    - (i) a petition for review of such order is pending in such court, and
    - (ii) an application for such a stay was previously submitted to the Commission and the Commission, within the 30-day period beginning on the date the application was received by the Commission, either denied the application or did not grant or deny the application; or
  - (C) the Supreme Court, if an applicable petition for certiorari is pending.
- (3) For purposes of subsection (m)(1)(B) of this section and of section 57b(a)(2) of this title, if a petition for review of the order of the Commission has been filed—
  - (A) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals and no petition for certiorari has been duly filed;
  - (B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or
  - (C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.
- (4) In the case of an order provision requiring a person, partnership, or corporation to divest itself of stock, other share capital, or assets, if a petition for review of such order of the Commission has been filed—
  - (A) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals and no petition for certiorari has been duly filed;

- (B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or
  - (C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.
- (h) If the Supreme Court directs that the order of the Commission be modified or set aside, the order of the Commission rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the Commission shall become final when so corrected.
- (i) If the order of the Commission is modified or set aside by the court of appeals, and if
  - (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or
  - (2) the petition for certiorari has been denied, or
  - (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the Commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the Commission shall become final when so corrected.
- (j) If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the Commission for a rehearing; and if
  - (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or
  - (2) the petition for certiorari has been denied, or
  - (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered upon such rehearing shall become final in the same manner as though no prior order of the Commission had been rendered.
- (k) As used in this section the term “mandate”, in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.
- (l) Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than \$10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States. Each separate violation of such an order shall be a separate offense, except that in a case of a violation through continuing failure to obey or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission.

(m)

(1)

- (A) The Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person, partnership, or corporation which violates any rule under this chapter respecting unfair or deceptive acts or practices (other than an interpretive rule or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of subsection (a)(1) of this section) with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule. In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than \$10,000 for each violation.
- (B) If the Commission determines in a proceeding under subsection (b) of this section that any act or practice is unfair or deceptive, and issues a final cease and desist order, other than a consent order with respect to such act or practice, then the Commission may commence a civil action to obtain a civil penalty in a district court of the United States against any person, partnership, or corporation which engages in such act or practice—
- (1) after such cease and desist order becomes final (whether or not such person, partnership, or corporation was subject to such cease and desist order), and
  - (2) with actual knowledge that such act or practice is unfair or deceptive and is unlawful under subsection (a)(1) of this section.

In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than \$10,000 for each violation.

- (C) In the case of a violation through continuing failure to comply with a rule or with subsection (a)(1) of this section, each day of continuance of such failure shall be treated as a separate violation, for purposes of subparagraph (A) and (B). In determining the amount of such a civil penalty, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.
- (2) If the cease and desist order establishing that the act or practice is unfair or deceptive was not issued against the defendant in a civil penalty action under paragraph (1)(B) the issues of fact in such action against such defendant shall be tried de novo. Upon request of any party to such an action against such defendant, the court shall also review the determination of law made by the Commission in the proceeding under subsection (b) of this section that the act or practice which was the subject of such proceeding constituted an unfair or deceptive act or practice in violation of subsection (a) of this section.
- (3) The Commission may compromise or settle any action for a civil penalty if such compromise or settlement is accompanied by public statement of its reasons and is approved by the court.

- (n) The Commission shall have no authority under this section or section 57a of this title to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

**15 U.S.C. § 53 (Section 13 of the Federal Trade Commission Act)**

- (a) Whenever the Commission has reason to believe—
- (1) that any person, partnership, or corporation is engaged in, or is about to engage in, the dissemination or the causing of the dissemination of any advertisement in violation of section 52 of this title, and
  - (2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 45 of this title, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 45 of this title, would be to the interest of the public, the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States or in the United States court of any Territory, to enjoin the dissemination or the causing of the dissemination of such advertisement. Upon proper showing a temporary injunction or restraining order shall be granted without bond. Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28. In addition, the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise proper in the district in which the suit is brought. In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found.
- (b) Whenever the Commission has reason to believe—
- (1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and
  - (2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public—
- the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond: Provided, however, That if a complaint is not filed within such period (not exceeding 20 days) as may be specified by the court after issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect: Provided further,

That in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction. Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of Title 28. In addition, the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise proper in the district in which the suit is brought. In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found.

- (c) Any process of the Commission under this section may be served by any person duly authorized by the Commission—
- (1) by delivering a copy of such process to the person to be served, to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served;
  - (2) by leaving a copy of such process at the residence or the principal office or place of business of such person, partnership, or corporation; or
  - (3) by mailing a copy of such process by registered mail or certified mail addressed to such person, partnership, or corporation at his, or her, or its residence, principal office, or principal place or business.
- The verified return by the person serving such process setting forth the manner of such service shall be proof of the same.
- (d) Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals—
- (1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and
  - (2) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the court shall exclude such issue from the operation of the restraining order or injunction.

## **Foreign Trade Antitrust Improvements Act of 1982**

### **15 U.S.C. § 6a**

[The Sherman Act] shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—

- (1) such conduct has a direct, substantial, and reasonably foreseeable effect—
  - (A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or
  - (B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and
- (2) such effect gives rise to a claim under the provisions of [the Sherman Act], other than this section.

If [the Sherman Act applies] to such conduct only because of the operation of paragraph (1)(B), then [the Sherman Act] shall apply to such conduct only for injury to export business in the United States.

## **International Antitrust Enforcement Assistance Act of 1994 (IAEAA)**

### **15 U.S.C. § 6201 (Section 2 of the IAEAA)**

In accordance with an antitrust mutual assistance agreement in effect under this chapter, subject to section 6207 of this title, and except as provided in section 6204 of this title, the Attorney General of the United States and the Federal Trade Commission may provide to a foreign antitrust authority with respect to which such agreement is in effect under this chapter, antitrust evidence to assist the foreign antitrust authority—

- (1) in determining whether a person has violated or is about to violate any of the foreign antitrust laws administered or enforced by the foreign antitrust authority, or
- (2) in enforcing any of such foreign antitrust laws.

### **15 U.S.C. § 6202 (Section 3 of the IAEAA)**

- (a) Request for investigative assistance

A request by a foreign antitrust authority for investigative assistance under this section shall be made to the Attorney General, who may deny the request in whole or in part. No further action shall be taken under this section with respect to any part of a request that has been denied by the Attorney General.

- (b) Authority to investigate

In accordance with an antitrust mutual assistance agreement in effect under this chapter, subject to section 6207 of this title, and except as provided in section 6204 of this title, the Attorney General and the Commission may, using their respective authority to investigate possible violations of the Federal antitrust laws, conduct investigations to obtain antitrust evidence relating to a possible violation of the foreign antitrust laws administered or enforced by the foreign antitrust authority with respect to which such

agreement is in effect under this chapter, and may provide such antitrust evidence to the foreign antitrust authority, to assist the foreign antitrust authority—

- (1) in determining whether a person has violated or is about to violate any of such foreign antitrust laws, or
  - (2) in enforcing any of such foreign antitrust laws.
- (c) Special scope of authority

An investigation may be conducted under subsection (b) of this section, and antitrust evidence obtained through such investigation may be provided, without regard to whether the conduct investigated violates any of the Federal antitrust laws.

- (d) Rights and privileges preserved

A person may not be compelled in connection with an investigation under this section to give testimony or a statement, or to produce a document or other thing, in violation of any legally applicable right or privilege.

**15 U.S.C. § 6203 (Section 4 of the IAEAA)**

- (a) Authority of district courts

On the application of the Attorney General made in accordance with an antitrust mutual assistance agreement in effect under this chapter, the United States district court for the district in which a person resides, is found, or transacts business may order such person to give testimony or a statement, or to produce a document or other thing, to the Attorney General to assist a foreign antitrust authority with respect to which such agreement is in effect under this chapter—

- (1) in determining whether a person has violated or is about to violate any of the foreign antitrust laws administered or enforced by the foreign antitrust authority, or
- (2) in enforcing any of such foreign antitrust laws.

- (b) Contents of order

- (1) Use of appointee to receive evidence

- (A) An order issued under subsection (a) of this section may direct that testimony or a statement be given, or a document or other thing be produced, to a person who shall be recommended by the Attorney General and appointed by the court.
- (B) A person appointed under subparagraph (A) shall have power to administer any necessary oath and to take such testimony or such statement.

- (2) Practice and procedure

- (A) An order issued under subsection (a) of this section may prescribe the practice and procedure for taking testimony and statements and for producing documents and other things.
- (B) Such practice and procedure may be in whole or in part the practice and procedure of the foreign state, or the regional economic integration organization, represented by the foreign antitrust authority with respect to which the Attorney General requests such order.
- (C) To the extent such order does not prescribe otherwise, any testimony and statements required to be taken shall be taken, and any documents and other things required to be produced shall be produced, in accordance with the Federal Rules of Civil Procedure.

## (c) Rights and privileges preserved

A person may not be compelled under an order issued under subsection (a) of this section to give testimony or a statement, or to produce a document or other thing, in violation of any legally applicable right or privilege.

## (d) Voluntary conduct

This section does not preclude a person in the United States from voluntarily giving testimony or a statement, or producing a document or other thing, in any manner acceptable to such person for use in an investigation by a foreign antitrust authority.

**15 U.S.C. § 6204 (Section 5 of the IAEAA)**

Sections 6201, 6202, and 6203 of this title shall not apply with respect to the following antitrust evidence:

- (1) Antitrust evidence that is received by the Attorney General or the Commission under section 18a of this title. Nothing in this paragraph shall affect the ability of the Attorney General or the Commission to disclose to a foreign antitrust authority antitrust evidence that is obtained otherwise than under section 18a of this title.
- (2) Antitrust evidence that is matter occurring before a grand jury and with respect to which disclosure is prevented by Federal law, except that for the purpose of applying Rule 6(e)(3)(C)(iv) of the Federal Rules of Criminal Procedure with respect to this section—
  - (A) a foreign antitrust authority with respect to which a particularized need for such antitrust evidence is shown shall be considered to be an appropriate official of any of the several States, and
  - (B) a foreign antitrust law administered or enforced by the foreign antitrust authority shall be considered to be a State criminal law.
- (3) Antitrust evidence that is specifically authorized under criteria established by Executive Order 12356, or any successor to such order, to be kept secret in the interest of national defense or foreign policy, and—
  - (A) that is classified pursuant to such order or such successor, or
  - (B) with respect to which a determination of classification is pending under such order or such successor.
- (4) Antitrust evidence that is classified under section 2162 of title 42.

**15 U.S.C. § 6205 (Section 6 of the IAEAA)**

Section 1313 of this title, and sections 46 (f) and 57b-2 of this title, shall not apply to prevent the Attorney General or the Commission from providing to a foreign antitrust authority antitrust evidence in accordance with an antitrust mutual assistance agreement in effect under this chapter and in accordance with the other requirements of this chapter.

**15 U.S.C. § 6206 (Section 7 of the IAEAA)**

## (a) Publication of proposed antitrust mutual assistance agreements

Not less than 45 days before an antitrust mutual assistance agreement is entered into, the Attorney General, with the concurrence of the Commission, shall publish in the Federal Register—

- (1) the proposed text of such agreement and any modification to such proposed text, and
- (2) a request for public comment with respect to such text or such modification, as the case may be.

## (b) Publication of proposed amendments to antitrust mutual assistance agreements in effect

Not less than 45 days before an agreement is entered into that makes an amendment to an antitrust mutual assistance agreement, the Attorney General, with the concurrence of the Commission, shall publish in the Federal Register—

- (1) the proposed text of such amendment, and
- (2) a request for public comment with respect to such amendment.

## (c) Publication of antitrust mutual assistance agreements, amendments, and terminations

Not later than 45 days after an antitrust mutual assistance agreement is entered into or terminated, or an agreement that makes an amendment to an antitrust mutual assistance agreement is entered into, the Attorney General, with the concurrence of the Commission, shall publish in the Federal Register—

- (1) the text of the antitrust mutual assistance agreement or amendment, or the terms of the termination, as the case may be, and
- (2) in the case of an agreement that makes an amendment to an antitrust mutual assistance agreement, a notice containing—
  - (A) citations to the locations in the Federal Register at which the text of the antitrust mutual assistance agreement that is so amended, and of any previous amendments to such agreement, are published, and
  - (B) a description of the manner in which a copy of the antitrust mutual assistance agreement, as so amended, may be obtained from the Attorney General and the Commission.

## (d) Condition for validity

An antitrust mutual assistance agreement, or an agreement that makes an amendment to an antitrust mutual assistance agreement, with respect to which publication does not occur in accordance with subsections (a), (b), and (c) of this section shall not be considered to be in effect under this chapter.

**15 U.S.C. § 6207 (Section 8 of the IAEAA)**

## (a) Determinations

Neither the Attorney General nor the Commission may conduct an investigation under section 6202 of this title, apply for an order under section 6203 of this title, or provide antitrust evidence to a foreign antitrust authority under an antitrust mutual assistance agreement, unless the Attorney General or the Commission, as the case may be, determines in the particular instance in which the investigation, application, or antitrust evidence is requested that—

- (1) the foreign antitrust authority—
  - (A) will satisfy the assurances, terms, and conditions described in subparagraphs (A), (B), and (E) of section 6211 (2) of this title, and
  - (B) is capable of complying with and will comply with the confidentiality requirements applicable under such agreement to the requested antitrust evidence,
- (2) providing the requested antitrust evidence will not violate section 6204 of this title, and
- (3) conducting such investigation, applying for such order, or providing the requested antitrust evidence, as the case may be, is consistent with the public interest of the United States, taking into consideration, among other factors, whether the foreign state or regional economic integration organization represented by the foreign antitrust authority holds any proprietary interest that could benefit or otherwise be affected by such investigation, by the granting of such order, or by the provision of such antitrust evidence.

(b) Limitation on disclosure of certain antitrust evidence

Neither the Attorney General nor the Commission may disclose in violation of an antitrust mutual assistance agreement any antitrust evidence received under such agreement, except that such agreement may not prevent the disclosure of such antitrust evidence to a defendant in an action or proceeding brought by the Attorney General or the Commission for a violation of any of the Federal laws if such disclosure would otherwise be required by Federal law.

(c) Required disclosure of notice received

If the Attorney General or the Commission receives a notice described in section 6211 (2)(H) of this title, the Attorney General or the Commission, as the case may be, shall transmit such notice to the person that provided the evidence with respect to which such notice is received.

**15 U.S.C. § 6208 (Section 9 of the IAEAA)**

(a) Determinations

Determinations made under paragraphs (1) and (3) of section 6207 (a) of this title shall not be subject to judicial review.

(b) Citations to and descriptions of confidentiality laws

Whether an antitrust mutual assistance agreement satisfies section 6211 (2)(C) of this title shall not be subject to judicial review.

(c) Rules of construction

(1) Administrative Procedure Act

The requirements in section 6206 of this title with respect to publication and request for public comment shall not be construed to create any availability of judicial review under chapter 7 of title 5.

(2) Laws referenced in section 6204 of this title

Nothing in this section shall be construed to affect the availability of judicial review under laws referred to in section 6204 of this title.

**15 U.S.C. § 6209 (Section 10 of the IAEAA)**

## (a) In general

The authority provided by this chapter is in addition to, and not in lieu of, any other authority vested in the Attorney General, the Commission, or any other officer of the United States.

## (b) Attorney General and Commission

This chapter shall not be construed to modify or affect the allocation of responsibility between the Attorney General and the Commission for the enforcement of the Federal antitrust laws.

**15 U.S.C. § 6210 (Section 11 of the IAEAA)**

In the 30-day period beginning 3 years after November 2, 1994, and with the concurrence of the Commission, the Attorney General shall submit, to the Speaker of the House of Representatives and the President pro tempore of the Senate, a report—

- (1) describing how the operation of this chapter has affected the enforcement of the Federal antitrust laws,
- (2) describing the extent to which foreign antitrust authorities have complied with the confidentiality requirements applicable under antitrust mutual assistance agreements in effect under this chapter,
- (3) specifying separately the identities of the foreign states, regional economic integration organizations, and foreign antitrust authorities that have entered into such agreements and the identities of the foreign antitrust authorities with respect to which such foreign states and such organizations have entered into such agreements,
- (4) specifying the identity of each foreign state, and each regional economic integration organization, that has in effect a law similar to this chapter,
- (5) giving the approximate number of requests made by the Attorney General and the Commission under such agreements to foreign antitrust authorities for antitrust investigations and for antitrust evidence,
- (6) giving the approximate number of requests made by foreign antitrust authorities under such agreements to the Attorney General and the Commission for investigations under section 6202 of this title, for orders under section 6203 of this title, and for antitrust evidence, and
- (7) describing any significant problems or concerns of which the Attorney General is aware with respect to the operation of this chapter.

**15 U.S.C. § 6211 (Section 12 of the IAEAA)**

For purposes of this chapter:

- (1) The term “antitrust evidence” means information, testimony, statements, documents, or other things that are obtained in anticipation of, or during the course of, an investigation or proceeding under any of the Federal antitrust laws or any of the foreign antitrust laws.
- (2) The term “antitrust mutual assistance agreement” means a written agreement, or written memorandum of understanding, that is entered into by the United States and a foreign state or regional economic integration organization (with respect to the foreign antitrust authorities of such foreign state or such organization, and such other governmental

entities of such foreign state or such organization as the Attorney General and the Commission jointly determine may be necessary in order to provide the assistance described in subparagraph (A)), or jointly by the Attorney General and the Commission and a foreign antitrust authority, for the purpose of conducting investigations under section 6202 of this title, applying for orders under section 6203 of this title, or providing antitrust evidence, on a reciprocal basis and that includes the following:

- (A) An assurance that the foreign antitrust authority will provide to the Attorney General and the Commission assistance that is comparable in scope to the assistance the Attorney General and the Commission provide under such agreement or such memorandum.
- (B) An assurance that the foreign antitrust authority is subject to laws and procedures that are adequate to maintain securely the confidentiality of antitrust evidence that may be received under section 6201, 6202, or 6203 of this title and will give protection to antitrust evidence received under such section that is not less than the protection provided under the laws of the United States to such antitrust evidence.
- (C) Citations to and brief descriptions of the laws of the United States, and the laws of the foreign state or regional economic integration organization represented by the foreign antitrust authority, that protect the confidentiality of antitrust evidence that may be provided under such agreement or such memorandum. Such citations and such descriptions shall include the enforcement mechanisms and penalties applicable under such laws and, with respect to a regional economic integration organization, the applicability of such laws, enforcement mechanisms, and penalties to the foreign states composing such organization.
- (D) Citations to the Federal antitrust laws, and the foreign antitrust laws, with respect to which such agreement or such memorandum applies.
- (E) Terms and conditions that specifically require using, disclosing, or permitting the use or disclosure of, antitrust evidence received under such agreement or such memorandum only—
  - (i) for the purpose of administering or enforcing the foreign antitrust laws involved, or
  - (ii) with respect to a specified disclosure or use requested by a foreign antitrust authority and essential to a significant law enforcement objective, in accordance with the prior written consent that the Attorney General or the Commission, as the case may be, gives after—
    - (I) determining that such antitrust evidence is not otherwise readily available with respect to such objective,
    - (II) making the determinations described in paragraphs (2) and (3) of section 6207 (a) of this title, with respect to such disclosure or use, and
    - (III) making the determinations applicable to a foreign antitrust authority under section 6207 (a)(1) of this title (other than the determination regarding the assurance described in subparagraph (A) of this paragraph), with respect to each additional governmental entity, if any, to be provided such antitrust evidence in the course of such disclosure or use, after having received adequate written assurances applicable to each such governmental entity.

- (F) An assurance that antitrust evidence received under section 6201, 6202, or 6203 of this title from the Attorney General or the Commission, and all copies of such evidence, in the possession or control of the foreign antitrust authority will be returned to the Attorney General or the Commission, respectively, at the conclusion of the foreign investigation or proceeding with respect to which such evidence was so received.
  - (G) Terms and conditions that specifically provide that such agreement or such memorandum will be terminated if—
    - (i) the confidentiality required under such agreement or such memorandum is violated with respect to antitrust evidence, and
    - (ii) adequate action is not taken both to minimize any harm resulting from the violation and to ensure that the confidentiality required under such agreement or such memorandum is not violated again.
  - (H) Terms and conditions that specifically provide that if the confidentiality required under such agreement or such memorandum is violated with respect to antitrust evidence, notice of the violation will be given—
    - (i) by the foreign antitrust authority promptly to the Attorney General or the Commission with respect to antitrust evidence provided by the Attorney General or the Commission, respectively, and
    - (ii) by the Attorney General or the Commission to the person (if any) that provided such evidence to the Attorney General or the Commission.
- (3) The term “Attorney General” means the Attorney General of the United States.
  - (4) The term “Commission” means the Federal Trade Commission.
  - (5) The term “Federal antitrust laws” has the meaning given the term “antitrust laws” in subsection (a) of section 12 of this title but also includes section 45 of this title to the extent that such section 45 applies to unfair methods of competition.
  - (6) The term “foreign antitrust authority” means a governmental entity of a foreign state or of a regional economic integration organization that is vested by such state or such organization with authority to enforce the foreign antitrust laws of such state or such organization.
  - (7) The term “foreign antitrust laws” means the laws of a foreign state, or of a regional economic integration organization, that are substantially similar to any of the Federal antitrust laws and that prohibit conduct similar to conduct prohibited under the Federal antitrust laws.
  - (8) The term “person” has the meaning given such term in subsection (a) of section 12 of this title.
  - (9) The term “regional economic integration organization” means an organization that is constituted by, and composed of, foreign states, and on which such foreign states have conferred sovereign authority to make decisions that are binding on such foreign states, and that are directly applicable to and binding on persons within such foreign states, including the decisions with respect to—
    - (A) administering or enforcing the foreign antitrust laws of such organization, and
    - (B) prohibiting and regulating disclosure of information that is obtained by such organization in the course of administering or enforcing such laws.

**15 U.S.C. § 6212 (Section 13 of the IAEAA)**

The Attorney General and the Commission are authorized to receive from a foreign antitrust authority, or from the foreign state or regional economic integration organization represented by such foreign antitrust authority, reimbursement for the costs incurred by the Attorney General or the Commission, respectively, in conducting an investigation under section 6202 of this title requested by such foreign antitrust authority, applying for an order under section 6203 of this title to assist such foreign antitrust authority, or providing antitrust evidence to such foreign antitrust authority under an antitrust mutual assistance agreement in effect under this chapter with respect to such foreign antitrust authority.

**Alternative Fines Statute****18 U.S.C. § 3571**

- (a) In General.—A defendant who has been found guilty of an offense may be sentenced to pay a fine.
- (b) Fines for Individuals.—Except as provided in subsection (e) of this section, an individual who has been found guilty of an offense may be fined not more than the greatest of—
  - (1) the amount specified in the law setting forth the offense;
  - (2) the applicable amount under subsection (d) of this section;
  - (3) for a felony, not more than \$250,000;
  - (4) for a misdemeanor resulting in death, not more than \$250,000;
  - (5) for a Class A misdemeanor that does not result in death, not more than \$100,000;
  - (6) for a Class B or C misdemeanor that does not result in death, not more than \$5,000;
  - or
  - (7) for an infraction, not more than \$5,000.
- (c) Fines for Organizations.—Except as provided in subsection (e) of this section, an organization that has been found guilty of an offense may be fined not more than the greatest of—
  - (1) the amount specified in the law setting forth the offense;
  - (2) the applicable amount under subsection (d) of this section;
  - (3) for a felony, not more than \$500,000;
  - (4) for a misdemeanor resulting in death, not more than \$500,000;
  - (5) for a Class A misdemeanor that does not result in death, not more than \$200,000;
  - (6) for a Class B or C misdemeanor that does not result in death, not more than \$10,000; and
  - (7) for an infraction, not more than \$10,000.

- (d) **Alternative Fine Based on Gain or Loss.**—If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.
- (e) **Special Rule for Lower Fine Specified in Substantive Provision.**—If a law setting forth an offense specifies no fine or a fine that is lower than the fine otherwise applicable under this section and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under this section, the defendant may not be fined more than the amount specified in the law setting forth the offense.

#### **Antitrust Criminal Penalty Enhancement and Reform Act of 2004, Subtitle A**

##### ***15 U.S.C. § 1 note (Section 211 of the ACPERA)***

- (a) **In General.**—Except as provided in subsection (b), the provisions of sections 211 through 214 shall cease to have effect 5 years after the date of enactment of this Act.
- (b) **Exception.**—With respect to an applicant who has entered into an antitrust leniency agreement on or before the date on which the provisions of sections 211 through 214 of this subtitle shall cease to have effect, the provisions of sections 211 through 214 of this subtitle shall continue in effect.

##### ***15 U.S.C. § 1 note (Section 212 of the ACPERA)***

In this subtitle:

- (1) **Antitrust division.**—The term “Antitrust Division” means the United States Department of Justice Antitrust Division.
- (2) **Antitrust leniency agreement.**—The term “antitrust leniency agreement,” or “agreement,” means a leniency letter agreement, whether conditional or final, between a person and the Antitrust Division pursuant to the Corporate Leniency Policy of the Antitrust Division in effect on the date of execution of the agreement.
- (3) **Antitrust leniency applicant.**—The term “antitrust leniency applicant,” or “applicant,” means, with respect to an antitrust leniency agreement, the person that has entered into the agreement.
- (4) **Claimant.**—The term “claimant” means a person or class, that has brought, or on whose behalf has been brought, a civil action alleging a violation of section 1 or 3 of the Sherman Act or any similar State law, except that the term does not include a State or a subdivision of a State with respect to a civil action brought to recover damages sustained by the State or subdivision.
- (5) **Cooperating individual.**—The term “cooperating individual” means, with respect to an antitrust leniency agreement, a current or former director, officer, or employee of the antitrust leniency applicant who is covered by the agreement.
- (6) **Person.**—The term “person” has the meaning given it in subsection (a) of the first section of the Clayton Act.

**15 U.S.C. § 1 note (Section 213 of the ACPERA)**

- (a) In General.—Subject to subsection (d), in any civil action alleging a violation of section 1 or 3 of the Sherman Act, or alleging a violation of any similar State law, based on conduct covered by a currently effective antitrust leniency agreement, the amount of damages recovered by or on behalf of a claimant from an antitrust leniency applicant who satisfies the requirements of subsection (b), together with the amounts so recovered from cooperating individuals who satisfy such requirements, shall not exceed that portion of the actual damages sustained by such claimant which is attributable to the commerce done by the applicant in the goods or services affected by the violation.
- (b) Requirements.—Subject to subsection (c), an antitrust leniency applicant or cooperating individual satisfies the requirements of this subsection with respect to a civil action described in subsection (a) if the court in which the civil action is brought determines, after considering any appropriate pleadings from the claimant, that the applicant or cooperating individual, as the case may be, has provided satisfactory cooperation to the claimant with respect to the civil action, which cooperation shall include—
- (1) providing a full account to the claimant of all facts known to the applicant or cooperating individual, as the case may be, that are potentially relevant to the civil action;
  - (2) furnishing all documents or other items potentially relevant to the civil action that are in the possession, custody, or control of the applicant or cooperating individual, as the case may be, wherever they are located; and
  - (3)
    - (A) in the case of a cooperating individual—
      - (i) making himself or herself available for such interviews, depositions, or testimony in connection with the civil action as the claimant may reasonably require; and
      - (ii) responding completely and truthfully, without making any attempt either falsely to protect or falsely to implicate any person or entity, and without intentionally withholding any potentially relevant information, to all questions asked by the claimant in interviews, depositions, trials, or any other court proceedings in connection with the civil action; or
    - (B) in the case of an antitrust leniency applicant, using its best efforts to secure and facilitate from cooperating individuals covered by the agreement the cooperation described in clauses (i) and (ii) and subparagraph (A).
- (c) Timeliness.—If the initial contact by the antitrust leniency applicant with the Antitrust Division regarding conduct covered by the antitrust leniency agreement occurs after a State, or subdivision of a State, has issued compulsory process in connection with an investigation of allegations of a violation of section 1 or 3 of the Sherman Act or any similar State law based on conduct covered by the antitrust leniency agreement or after a civil action described in subsection (a) has been filed, then the court shall consider, in making the determination concerning satisfactory cooperation described in subsection (b), the timeliness of the applicant's initial cooperation with the claimant.
- (d) Continuation.—Nothing in this section shall be construed to modify, impair, or supersede the provisions of sections 4, 4A, and 4C of the Clayton Act relating to the recovery of costs of suit, including a reasonable attorney's fee, and interest on damages, to the extent that such recovery is authorized by such sections.

**15 U.S.C. § 1 note (Section 214 of the ACPERA)**

Nothing in this subtitle shall be construed to—

- (1) affect the rights of the Antitrust Division to seek a stay or protective order in a civil action based on conduct covered by an antitrust leniency agreement to prevent the cooperation described in section 213(b) from impairing or impeding the investigation or prosecution by the Antitrust Division of conduct covered by the agreement;
- (2) create any right to challenge any decision by the Antitrust Division with respect to an antitrust leniency agreement; or
- (3) affect, in any way, the joint and several liability of any party to a civil action described in section 213(a), other than that of the antitrust leniency applicant and cooperating individuals as provided in section 213(a) of this title.

**amending 15 U.S.C. § 1 (Section 215 of the ACPERA)**

- (a) Restraint of Trade Among the States.—Section 1 of the Sherman Act (15 U.S.C. 1) is amended by—
  - (1) striking “\$10,000,000” and inserting “\$100,000,000”;
  - (2) striking “\$350,000” and inserting “\$1,000,000”; and
  - (3) striking “three” and inserting “10.”
- (b) Monopolizing Trade.—Section 2 of the Sherman Act (15 U.S.C. 2) is amended by—
  - (1) striking “\$10,000,000” and inserting “\$100,000,000”;
  - (2) striking “\$350,000” and inserting “\$1,000,000”; and
  - (3) striking “three” and inserting “10.”
- (c) Other Restraints of Trade.—Section 3 of the Sherman Act (15 U.S.C. 3) is amended by—
  - (1) striking “\$10,000,000” and inserting “\$100,000,000”;
  - (2) striking “\$350,000” and inserting “\$1,000,000”; and
  - (3) striking “three” and inserting “10.”