

Public Law 96-349
96th Congress

An Act

Sept. 12, 1980

[S. 390]

Antitrust
Procedural
Improvements
Act
of 1980.
15 USC 1311
note.

To expedite and reduce the cost of antitrust litigation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Antitrust Procedural Improvements Act of 1980".

CIVIL INVESTIGATIVE DEMANDS FOR PRODUCTS OF DISCOVERY

SEC. 2. (a) Section 2 of the Antitrust Civil Process Act (15 U.S.C. 1311; 76 Stat. 548) is amended—

(1) in subsection (g), by striking out “; and” at the end thereof and inserting in lieu thereof the following: “, and any product of discovery;”;

(2) in subsection (h), by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new paragraph:

“Product of
discovery.”

“(i) The term ‘product of discovery’ includes without limitation the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission obtained by any method of discovery in any judicial litigation or in any administrative litigation of an adversarial nature; any digest, analysis, selection, compilation, or any derivation thereof; and any index or manner of access thereto; and”.

Civil
investigative
demands.

(b)(1) Section 3(a) of the Antitrust Civil Process Act (15 U.S.C. 1312(a)) is amended by adding at the end thereof the following new sentence: “Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General or the Assistant Attorney General in charge of the Antitrust Division shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and notify the person to whom such demand is issued of the date on which such copy was served.”.

(2) Section 3(b) of that Act (15 U.S.C. 1312(b)) is amended by adding at the end thereof the following new sentence:

“Any such demand which is an express demand for any product of discovery shall not be returned or returnable until twenty days after a copy of such demand has been served upon the person from whom the discovery was obtained.”.

(3) Section 3(c) of that Act (15 U.S.C. 1312(c)) is amended—

(A) by inserting “(1)” immediately after “(c)”;

(B) by striking out “(1)” and inserting in lieu thereof “(A)”;

(C) by striking out “(2)” and inserting in lieu thereof “(B)”;

(D) by adding at the end thereof the following new paragraph:

Disclosure or
restrain.

“(2) Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this Act) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a

waiver of any right or privilege, including without limitation any right or privilege which may be invoked to resist discovery of trial preparation materials, to which the person making such disclosure may be entitled.”

(4) Paragraph (3) of section 4(c) of that Act (15 U.S.C. 1313(c)(3)) is amended by inserting immediately after “transcripts” the second place it appears the following: “, and, in the case of any product of discovery produced pursuant to an express demand for such material, of the person from whom the discovery was obtained”.

Responsibility
for materials,
disclosure.

(5) Section 5 of that Act (15 U.S.C. 1314) is amended—

(A) by amending subsection (b) to read as follows:

Judicial
proceedings.

“(b)(1) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding twenty days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any antitrust investigator named in the demand, such person may file and serve upon such antitrust investigator, and in the case of an express demand for any product of discovery upon the person from whom such discovery was obtained, a petition for an order modifying or setting aside such demand—

Demand for
material,
petition;
modification.

“(A) in the district court of the United States for the judicial district within which such person resides, is found, or transacts business; or

“(B) in the case of a petition addressed to an express demand for any product of discovery, only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending.

“(2) The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court, except that such person shall comply with any portions of the demand not sought to be modified or set aside. Such petition shall specify each ground upon which the petitioner relies in seeking such relief and may be based upon any failure of such demand to comply with the provisions of this Act, or upon any constitutional or other legal right or privilege of such person.”;

Compliance.

(B) by redesignating subsections (c), (d), (e), and (f) as subsections (d), (e), (f), and (g), respectively;

(C) by inserting immediately after subsection (b) the following new subsection:

“(c) Whenever any such demand is an express demand for any product of discovery, the person from whom such discovery was obtained may file, at any time prior to compliance with such express demand, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any antitrust investigator named in the demand and upon the recipient of the demand, a petition for an order of such court modifying or setting aside those portions of the demand requiring production of any such product of discovery. Such petition shall specify each ground upon which the petitioner relies in seeking such relief and may be based upon any failure of such portions of the demand to comply with the provisions of this Act, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of such petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.”; and

Portions of
demand,
petition;
modification.

(D) in subsection (d), as that subsection has been redesignated by subparagraph (B), by inserting immediately after "such person" the following: ", and, in the case of an express demand for any product of discovery, the person from whom such discovery was obtained,".

SANCTIONS FOR ATTORNEY DELAY

SEC. 3. Section 1927 of title 28, United States Code, is amended—
(1) by striking out "as to increase costs"; and
(2) by striking out "such excess costs" and inserting in lieu thereof "the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct".

PREJUDGMENT INTEREST

Suits by persons injured.

Award of interest, eligibility.

SEC. 4. (a)(1) Section 4 of the Clayton Act (15 U.S.C. 15) is amended by adding at the end thereof the following new sentences: "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."

Suits by U.S.

Award of interest, eligibility.

(2) Section 4A of the Clayton Act (15 U.S.C. 15a) is amended by adding at the end thereof the following new sentences: "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.”

(3) Section 4C(a)(2) of the Clayton Act (15 U.S.C. 15c(a)(2)) is amended by adding at the end thereof the following new sentences: “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—

Award
to States.

“(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;

Eligibility.

“(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) The amendments made by this section shall apply only with respect to actions commenced after the date of the enactment of this Act.

Effective
date.
15 USC 15 note.

APPLICATION OF COLLATERAL ESTOPPEL

SEC. 5. (a) Section 5(a) of the Clayton Act (15 U.S.C. 16(a)) is amended—

(1) by striking out “or by the United States under section 4A,”;

(2) by striking out “or to judgments or decrees entered in actions under section 4A”; and

(3) by inserting at the end thereof the following new sentence: “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.”

15 USC 45.

(b) The amendments made by this section shall not apply with respect to any actions brought by or on behalf of the United States under the antitrust laws before the date of the enactment of this Act.

15 USC 16
note.

MERGER JURISDICTION

SEC. 6. (a) Section 7 of the Clayton Act (15 U.S.C. 18) is amended—

Effective date. 15 USC 18 note.

"Agent."

Ante, p. 1155.

- (1) by striking out "corporation" each place it appears in the first and second paragraphs and inserting in lieu thereof "person" in each such place;
 - (2) by striking out "corporations" in the second paragraph and in the first sentence of the third paragraph and inserting in lieu thereof "persons"; and
 - (3) by inserting "or in any activity affecting commerce" after "commerce" each place it appears in the first three paragraphs.
- (b) The amendments made by this section shall apply only with respect to acquisitions made after the date of the enactment of this Act.

USE OF AGENTS BY THE DEPARTMENT OF JUSTICE

SEC. 7. (a)(1) Section 2 of the Antitrust Civil Process Act (15 U.S.C. 1311), as amended by section 2 of this Act, is further amended by adding at the end thereof the following new paragraph:

"(j) The term 'agent' includes any person retained by the Department of Justice in connection with the enforcement of the antitrust laws."

(2) Paragraphs (2) and (3) of section 4(c) of the Antitrust Civil Process Act (15 U.S.C. 1313(c) (2) and (3)) are amended by striking out "official or employee" each place it appears and inserting in lieu thereof "official, employee, or agent" in each such place.

(b) Section 1905 of title 18, United States Code, is amended by inserting after "thereof," the first place it appears the following: "or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311-1314)."

Approved September 12, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 96-875 (Comm. on the Judiciary) accompanying H.R. 4048 and No. 96-1234 (Comm. of Conference).

SENATE REPORT No. 96-238 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 125 (1979): July 20, considered and passed Senate.

Vol. 126 (1980): June 12, H.R. 4048 considered and passed House; passage vacated and S. 390, amended, passed in lieu.

Aug. 18, Senate agreed to conference report.

Aug. 28, House agreed to conference report.

[See also the following bills and their accompanying reports: H.R. 4046, H.R. 4049, H.R. 4050, and H.R. 5949.]