

Exhibit A

Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (“ACPERA”)

PUBLIC LAW 108–237—JUNE 22, 2004

118 STAT. 665

the Attorney General and the Commission, a written notification disclosing—

“(A) the name and principal place of business of the standards development organization, and

“(B) documents showing the nature and scope of such activity.

Any standards development organization may file additional disclosure notifications pursuant to this section as are appropriate to extend the protections of section 4 to standards development activities that are not covered by the initial filing or that have changed significantly since the initial filing.”,

(2) in subsection (b)—

(A) in the 1st sentence by inserting “, or a notice with respect to such standards development activity that identifies the standards development organization engaged in such activity and that describes such activity in general terms” before the period at the end, and

(B) in the last sentence by inserting “or available to such organization, as the case may be” before the period, (3) in subsection (d)(2) by inserting “, or the standards development activity,” after “venture”,

(4) in subsection (e)—

(A) by striking “person who” and inserting “person or standards development organization that”, and

(B) by inserting “or any standards development organization” after “person” the last place it appears, and

(5) in subsection (g)(1) by inserting “or standards development organization” after “person”.

SEC. 108. RULE OF CONSTRUCTION.

Nothing in this title shall be construed to alter or modify the antitrust treatment under existing law of—

(1) parties participating in standards development activity of standards development organizations within the scope of this title, including the existing standard under which the conduct of the parties is reviewed, regardless of the standard under which the conduct of the standards development organizations in which they participate are reviewed, or

(2) other organizations and parties engaged in standard-setting processes not within the scope of this amendment to the title.

15 USC 4301
note.

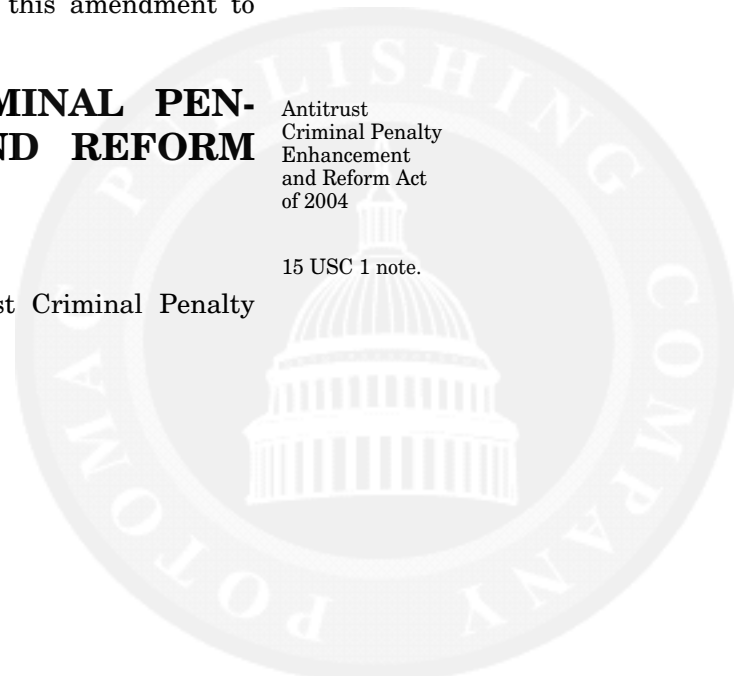
TITLE II—ANTITRUST CRIMINAL PENALTY ENHANCEMENT AND REFORM ACT OF 2004

Antitrust
Criminal Penalty
Enhancement
and Reform Act
of 2004

SEC. 201. SHORT TITLE.

This title may be cited as the “Antitrust Criminal Penalty Enhancement and Reform Act of 2004”.

15 USC 1 note.



118 STAT. 666

PUBLIC LAW 108–237—JUNE 22, 2004

Subtitle A—Antitrust Enforcement Enhancements and Cooperation Incentives

15 USC 1 note.

SEC. 211. SUNSET.

(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 USC 1 note.

SEC. 212. DEFINITIONS.

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 USC 1 note.

SEC. 213. LIMITATION ON RECOVERY.

(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

PUBLIC LAW 108–237—JUNE 22, 2004

118 STAT. 667

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.

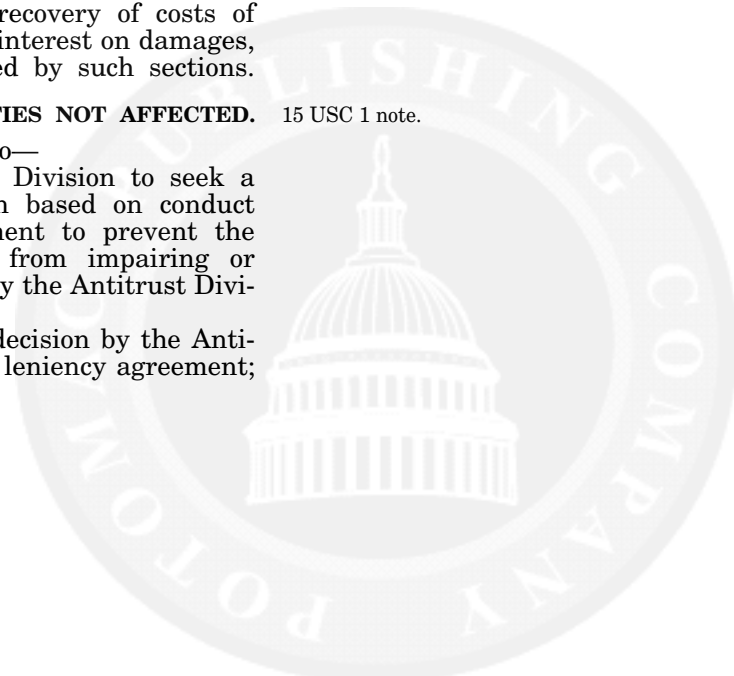
(d) **CONTINUATION.**—Nothing in this section shall be construed to modify, impair, or supersede the provisions of sections 4, 4A, and 4C of the Clayton Act relating to the recovery of costs of suit, including a reasonable attorney's fee, and interest on damages, to the extent that such recovery is authorized by such sections.

SEC. 214. RIGHTS, AUTHORITIES, AND LIABILITIES NOT AFFECTED. 15 USC 1 note.

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



118 STAT. 668

PUBLIC LAW 108–237—JUNE 22, 2004

(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.

SEC. 215. INCREASED PENALTIES FOR ANTITRUST VIOLATIONS.

(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”.

Subtitle B—Tunney Act Reform

15 USC 16 note.

SEC. 221. PUBLIC INTEREST DETERMINATION.

(a) **CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES.**—

(1) **FINDINGS.**—Congress finds that—

(A) the purpose of the Tunney Act was to ensure that the entry of antitrust consent judgments is in the public interest; and

(B) it would misconstrue the meaning and Congressional intent in enacting the Tunney Act to limit the discretion of district courts to review antitrust consent judgments solely to determining whether entry of those consent judgments would make a “mockery of the judicial function”.

(2) **PURPOSES.**—The purpose of this section is to effectuate the original Congressional intent in enacting the Tunney Act and to ensure that United States settlements of civil antitrust suits are in the public interest.

(b) **PUBLIC INTEREST DETERMINATION.**—Section 5 of the Clayton Act (15 U.S.C. 16) is amended—

(1) in subsection (d), by inserting at the end the following: “Upon application by the United States, the district court may, for good cause (based on a finding that the expense of publication in the Federal Register exceeds the public interest benefits to be gained from such publication), authorize an alternative method of public dissemination of the public comments received and the response to those comments.”;

(2) in subsection (e)—

(A) in the matter before paragraph (1), by—

(i) striking “court may” and inserting “court shall”;

and

(ii) inserting “(1)” before “Before”; and

(B) striking paragraphs (1) and (2) and inserting the following:

