

86TH CONGRESS
1ST SESSION

S. 716

[Report No. 451]

IN THE SENATE OF THE UNITED STATES

JANUARY 27, 1959

Mr. KEFAUVER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JUNE 29, 1959

Reported by Mr. KEFAUVER, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To authorize the Attorney General to compel the production of documentary evidence required in civil investigations for the enforcement of the antitrust laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Antitrust Civil Process
4 Act".

DEFINITIONS

6 SEC. 2. As used in this Act—

7 (a) The term "antitrust law" includes:

8 (1) Each provision of law defined as one of the
9 antitrust laws by section 1 of the Act entitled "An Act
10 to supplement existing laws against unlawful restraints

1 and monopolies, and for other purposes", approved Octo-
2 ber 15, 1914 (38 Stat. 730, as amended; 15 U.S.C.
3 12), commonly known as the Clayton Act;

4 (2) The Federal Trade Commission Act (15
5 U.S.C. 41 and the following);

6 (3) Section 3 of the Act entitled "An Act to amend
7 section 2 of the Act entitled 'An Act to supplement
8 existing laws against unlawful restraints and monopolies,
9 and for other purposes', approved October 15, 1914, as
10 amended, U.S.C., title 15, sec. 13), and for other pur-
11 poses", approved June 19, 1936 (49 Stat. 1528; 15
12 U.S.C. 13a), commonly known as the Robinson-Patman
13 Act; and

14 (4) Any statute hereafter enacted by the Congress
15 which prohibits, or makes available to the United States
16 in any court or antitrust agency of the United States
17 any civil remedy with respect to (A) any restraint
18 upon or monopolization of interstate or foreign trade
19 or commerce, or (B) any unfair trade practice in or
20 affecting such commerce;

21 (b) The term "antitrust agency" means any board,
22 commission, or agency of the United States (other than
23 the Department of Justice) charged by law with the admin-
24 istration or enforcement of any antitrust law or the adjudi-
25 cation of proceedings arising under any such law:

1 (c) The term "antitrust order" means any final order
 2 of any antitrust agency, or any final order, decree, or judg-
 3 ment of any court of the United States, duly entered in any
 4 case or proceeding arising under any antitrust law;

5 (d) The term "antitrust investigation" means any in-
 6 quiry conducted by any antitrust investigator for the purpose
 7 of ascertaining whether any person is or has been engaged
 8 in any antitrust violation;

9 (e) The term "antitrust violation" means any act or
 10 omission in violation of any antitrust law or any antitrust
 11 order;

12 (f) The term "antitrust investigator" means any attor-
 13 ney or investigator employed by the Department of Justice
 14 who is charged with the duty of enforcing or carrying into
 15 effect any antitrust law;

16 (g) The term "person" means any corporation, associa-
 17 tion, partnership, or other legal entity *not a natural person*;

18 (h) The term "documentary material" includes the
 19 original or any copy of any book, record, report, memoran-
 20 dum, paper, communication, tabulation, chart, or other
 21 document; and

22 (i) The term "custodian" means the antitrust document
 23 custodian or any deputy custodian designated under section
 24 4 (a) of this Act.

CIVIL INVESTIGATIVE DEMAND

SEC. 3. (a) Whenever the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, has reason to believe that any person may be in possession, custody, or control of any documentary material pertinent to any antitrust investigation, he may issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall—

(1) state the nature of the conduct constituting the alleged antitrust violation which is under investigation and the provision of law applicable thereto;

(2) describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and produced;

(4) identify the custodian to whom such evidence is to be delivered; and

(5) specify a place at which such delivery is to be made.

11 (c) No such demand shall—

12 (1) contain any requirement which would be held
13 to be unreasonable if contained in a subpoena duces tecum
14 issued by a court of the United States in aid of a grand
15 jury investigation of such alleged antitrust violation; or

16 (2) require the production of any documentary evi-
17 dence which would be privileged from disclosure if
18 demanded by a subpoena duces tecum issued by a court
19 of the United States in aid of a grand jury investigation
20 of such alleged antitrust violation.

21 (d) Any such demand may be served by any antitrust
22 investigator, or by any United States marshal or deputy
23 marshal, at any place within the territorial jurisdiction of any
24 court of the United States.

15 (e) Service of any such demand or of any petition filed
16 under section 5 of this Act may be made—

17 (1) upon an individual by (A) delivering a duly
18 executed copy thereof to such individual personally, or
19 (B) delivering such copy to his office or residence by
20 leaving such copy with any individual of suitable age and
21 discretion in his employment at such office or residing
22 at his residence, or (C) depositing such copy in the
23 United States mails, by registered or certified mail, duly
24 addressed to his office or residence; and

1 (2) upon a partnership, corporation, association,
 2 or other legal entity by delivering a duly executed copy
 3 thereof to any partner, executive officer, managing agent,
 4 or general agent thereof, or to any other agent thereof
 5 authorized by appointment or by law to receive service
 6 of process on behalf of such partnership, corporation,
 7 association, or entity, by any of the means prescribed
 8 in paragraph (1).

9 (e) Service of any such demand or of any petition filed
 10 under section 5 of this Act may be made upon a partnership,
 11 corporation, association, or other legal entity by—

12 (1) delivering a duly executed copy thereof to any
 13 partner, executive officer, managing agent, or general
 14 agent thereof, or to any agent thereof authorized by
 15 appointment or by law to receive service of process on
 16 behalf of such partnership, corporation, association, or
 17 entity; or

18 (2) delivering a duly executed copy thereof to the
 19 principal office or place of business of the partnership,
 20 corporation, association, or entity to be served; or

21 (3) depositing such copy in the United States mails,
 22 by registered or certified mail duly addressed to such
 23 partnership, corporation, association, or entity at its
 24 principal office or place of business.

25 (f) A verified return by the individual serving any

1 such demand or petition setting forth the manner of such
2 service shall be proof of such service. In the case of service
3 by registered or certified mail, such return shall be accom-
4 panied by the return post office receipt of delivery of such
5 demand.

6 ANTITRUST DOCUMENT CUSTODIAN

7 SEC. 4. (a) The Assistant Attorney General in charge
8 of the Antitrust Division of the Department of Justice shall
9 designate an antitrust investigator to serve as antitrust docu-
10 ment custodian, and such additional antitrust investigators
11 as he shall determine from time to time to be necessary to
12 serve as deputies to such officer.

13 (b) Any person upon whom any demand issued under
14 section 3 has been duly served shall deliver such material
15 to the custodian designated therein at the place specified
16 therein (or at such other place as such custodian thereafter
17 may prescribe in writing) on the return date specified in
18 such demand (or on such later date as such custodian may
19 prescribe in writing). No such demand or custodian may
20 require delivery of any documentary material to be made—

21 (1) at any place outside the territorial jurisdiction
22 of the United States without the consent of the person
23 upon whom such demand was served; or

24 (2) at any place other than the place at which such
25 documentary material is situated at the time of service of

1 such demand until the custodian has tendered to such
2 person (A) a sum sufficient to defray the cost of trans-
3 porting such material to the place prescribed for delivery
4 or (B) the transportation thereof to such place at Gov-
5 ernment expense.

6 (c) The custodian to whom any documentary material
7 is so delivered shall take physical possession thereof, and
8 shall be responsible for the use made thereof and for the
9 return thereof pursuant to this Act. The custodian may
10 cause the preparation of such copies of such documentary
11 material as may be required for official use by any individual
12 who is entitled, under regulations which shall be promulgated
13 by the Attorney General, to have access to such material
14 for examination. While in the possession of the custodian,
15 no material so produced shall be available for examination,
16 without the consent of the person who produced such mate-
17 rial, by any individual other than a duly authorized officer,
18 member, or employee of the Department of Justice or any
19 antitrust agency, *provided nothing herein shall prevent the*
20 *Attorney General from making available the material so*
21 *produced for examination by the Committee on the Judiciary*
22 *of each House of the Congress.* Under such reasonable terms
23 and conditions as the Attorney General shall prescribe, docu-
24 mentary material while in the possession of the custodian

1 shall be available for examination by the person who pro-
2 duced such material or any duly authorized representative
3 of such person.

4 (d) Whenever any attorney has been designated to
5 appear on behalf of the United States before any court, grand
6 jury, or antitrust agency in any case or proceeding involving
7 any alleged antitrust violation, the custodian may deliver
8 to such attorney such documentary material in the possession
9 of the custodian as such attorney determines to be required
10 for use in the presentation of such case or proceeding on
11 behalf of the United States. Upon the conclusion of any
12 such case or proceeding, such attorney shall return to the
13 custodian and documentary material so withdrawn which
14 has not passed into the control of such court, grand jury,
15 or antitrust agency through the introduction thereof into the
16 record of such case or proceeding.

17 (e) Upon the completion of (1) the antitrust investi-
18 gation for which any documentary material was produced
19 under this Act, and (2) any case or proceeding arising
20 from such investigation, the custodian shall return to the
21 person who produced such material all such material (other
22 than copies thereof made by the Department of Justice or
23 any antitrust agency pursuant to subsection ~~(e)~~ (c)) which

1 has not passed into the control of any court, grand jury, or
2 antitrust agency through the introduction thereof into the
3 record of such case or proceeding.

4 (f) When any documentary material has been produced
5 by any person under this Act for use in any antitrust investi-
6 gation, and no such case or proceeding arising therefrom
7 has been instituted within a reasonable time after completion
8 of the examination and analysis of all evidence assembled
9 in the course of such investigation, such person shall be
10 entitled, upon written demand made upon the Attorney
11 General or upon the Assistant Attorney General in charge
12 of the Antitrust Division, to the return of all documentary
13 material (other than copies thereof made by the Depart-
14 ment of Justice or any antitrust agency pursuant to sub-
15 section (e)) so produced by such person.

16 (g) In the event of the death, disability, or separation
17 from service in the Department of Justice of the custodian
18 of any documentary material produced under any demand
19 issued under this Act, or the official relief of such custodian
20 from responsibility for the custody and control of such
21 material, the Assistant Attorney General in charge of the
22 Antitrust Division shall promptly, (1) designate another
23 antitrust investigator to serve as custodian thereof, and (2)
24 transmit notice in writing to the person who produced such
25 material as to the identity and address of the successor so

1 designated. Any successor so designated shall have with
2 regard to such materials all duties and responsibilities im-
3 posed by this Act upon his predecessor in office with regard
4 thereto, except that he shall not be held responsible for any
5 default or dereliction which occurred before his designation
6 as custodian.

7 JUDICIAL PROCEEDINGS

8 SEC. 5. (a) Whenever any person fails to comply with
9 any civil investigative demand duly served upon him under
10 section 3, the Attorney General, through such officers or
11 attorneys as he may designate, may file, in the district court
12 of the United States for any judicial district in which such
13 person resides, is found, or transacts business, and serve upon
14 such person a petition for an order of such court for the
15 enforcement of such demand, except that if such person
16 transacts business in more than one such district such peti-
17 tion shall be filed in the district in which such person main-
18 tains his principal place of business, or in such other district
19 in which such person transacts business as may be agreed
20 upon by the parties to such petition.

21 (b) Within twenty days after the service of any such
22 demand upon any person, or at any time before the return
23 date specified in the demand, whichever period is shorter,
24 such person may file, in the district court of the United
25 States for the judicial district within which the office of the

1 custodian designated therein is situated, and serve upon such
2 custodian a petition for an order of such court modifying or
3 setting aside such demand. Such petition shall specify
4 each ground upon which the petitioner relies in seeking
5 such relief, and may be based upon any failure of such de-
6 mand to comply with the provisions of this Act, or upon
7 any constitutional right or privilege of such person.

8 (c) At any time during which any custodian is in cus-
9 tody or control of any documentary material delivered by any
10 person in compliance with any such demand, such person
11 may file, in the district court of the United States for the
12 judicial district within which the office of such custodian is
13 situated, and serve upon such custodian a petition for an
14 order of such court requiring the performance by such cus-
15 todian of any duty imposed upon him by this Act.

16 (d) Whenever any petition is filed in any district court
17 of the United States under this section, such court shall have
18 jurisdiction to hear and determine the matter so presented,
19 and to enter such order or orders as may be required to carry
20 into effect the provisions of this Act. Any final order so
21 entered shall be subject to appeal pursuant to section 1291
22 of title 28 of the United States Code. Any disobedience of
23 any final order entered under this section by any court shall
24 be punished as a contempt thereof.

CRIMINAL PENALTY

1

2 SEC. 6. (a) Chapter 73 of title 18 of the United States
3 Code (relating to obstruction of justice) is amended by add-
4 ing at the end thereof the following new section:

5 "§ 1509. Obstruction of antitrust civil process

6 "Whoever, with intent to avoid, evade, prevent, or ob-
7 struct compliance in whole or in part, by any person with
8 any civil investigative demand made under the Antitrust
9 Civil Process Act, willfully removes from any place, con-
10 ceals, withholds, destroys, mutilates, alters, or by any other
11 means falsifies any documentary material in the possession,
12 custody or control of any person which is the subject of any
13 such demand duly served upon any person shall be fined not
14 more than \$5,000 or imprisoned not more than five years,
15 or both."

16 (b) The analysis to such chapter is amended by insert-
17 ing at the end thereof the following new item:

"1509. Obstruction of antitrust civil process."

18

SAVING PROVISION

19 SEC. 7. Nothing contained in this Act shall impair the
20 authority of the Attorney General, the Assistant Attorney
21 General in charge of the Antitrust Division of the Depart-
22 ment of Justice, or any antitrust investigator to (a) lay be-
23 fore any grand jury impaneled before any district court of

1 the United States any evidence concerning any alleged anti-
2 trust violation, (b) invoke the power of any such court to
3 compel the production of any evidence before any such
4 grand jury, or (c) institute any proceeding for the enforce-
5 ment of any order or process issued in execution of such
6 power, or to punish disobedience of any such order or process
7 by any person.

Calendar No. 446

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