

AUTHORIZING THE ATTORNEY GENERAL TO COMPEL THE
PRODUCTION OF DOCUMENTARY EVIDENCE REQUIRED IN
CIVIL INVESTIGATIONS FOR THE ENFORCEMENT OF THE
ANTITRUST LAWS

JUNE 29, 1959.—Ordered to be printed

Mr. KEFAUVER, from the Committee on the Judiciary, submitted the
following

R E P O R T

[To accompany S. 716]

The Committee on the Judiciary, to which was referred the bill (S. 716) 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, having considered the same, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

AMENDMENTS

Amendment No. 1: On page 3, line 17, after the word "entity" insert the words "not a natural person".

Amendment No. 2: Strike all of subparagraph (e), beginning on page 5, line 15, and ending on page 6, line 8, and insert in lieu thereof the following:

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

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

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

(3) depositing such copy in the United States mails, by registered or certified mail duly addressed to such

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partnership, corporation, association, or entity at its principal office or place of business.

Amendment No. 3: On page 8, line 3, after the words "antitrust agency" insert the following:

, provided nothing herein shall prevent the Attorney General from making available the material so produced for examination by the Committee on the Judiciary of each house of the Congress.

Amendment No. 4: On page 9, line 3, strike the letter "e" in parentheses and insert in lieu thereof the letter "c".

PURPOSE OF THE AMENDMENTS

Amendment No. 1 removes natural persons from application of the bill by excluding natural persons from the definition of the term "person" in section 1(g). In order that section 3(e), providing for service of civil demands, be adapted to the change in the definition of "person" to whom the bill is made applicable, subparagraph (e) is amended for that purpose.

Before amendment, the bill would have prohibited documentary material obtained by the Attorney General under the powers provided in the bill being made available by the Attorney General to a committee of Congress, regardless of the need for such availability to a committee of Congress or the desire of the Attorney General to make such material available. The bill, as amended, removes this prohibition against the Attorney General's right to make such material available to the Judiciary Committees of the Congress in proper cases as is permitted under present law with respect to other information in the possession of the Attorney General or the Department of Justice.

Line 3, page 9, refers to subsection (e) of the bill whereas the reference should have been to subsection (c) of the bill. Amendment No. 4 corrects this erroneous reference by substituting (c) for (e).

PURPOSE

The purpose of the proposed legislation, as amended, is to enable the Attorney General or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice to obtain documentary evidence needed in civil investigations for the enforcement of the antitrust laws in civil cases.

To accomplish this the legislation would give to the Attorney General or the Assistant Attorney General in charge of the Antitrust Division the authority to issue a civil investigative demand requiring any person, other than a natural person, to produce documentary material for examination whenever he has reason to believe that any person may be in possession, custody, or control of such material pertinent to any civil antitrust investigation. The legislation would require such a demand to be in writing and to set forth the nature of the conduct constituting the alleged antitrust violation which is under investigation and the applicable provision of law; to describe the documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly

identified; to prescribe a return date for compliance with the demand which would provide a reasonable period of time for the assembling and production of the material; and to identify the custodian designated in the Department of Justice to whom such material is to be delivered and the place at which the delivery is to be made.

The bill provides that the demand may be tested in a district court for the district in which the office of the custodian designated in the demand is situated by the filing in such court of a petition for an order of such court modifying or setting aside such demand. The reasonableness of the demand would be determined upon the same test as the reasonableness of the requirements contained in a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged antitrust violations. The demand may not require the production of any material which would be privileged from disclosure if the same material was demanded by a subpoena duces tecum in aid of a grand jury investigation of such alleged antitrust violations.

The proposed legislation provides for service of the civil demand and return of service in manners similar to that provided for service of complaints in civil cases in Federal district courts.

The Assistant Attorney General in charge of the Antitrust Division would be required to designate an antitrust investigator as custodian of the documents required to be produced under any civil demand. Responsibility for the physical possession and control of the documents after delivery until they are returned to the person by whom they were produced is placed on the custodian designated in the civil demand, or his designated successor. While in the custodian's possession the material may be made available only to a duly authorized officer, member, or employee of the Department of Justice or any antitrust agency and to the person who produced such material or any duly authorized representative of such person, but nothing in the bill shall prevent the Attorney General from making available the material for examination by the Committee on the Judiciary of each House of the Congress. Such material may be used before any court, grand jury, or antitrust agency in any case or proceeding involving any alleged antitrust violation. Upon the conclusion of any such case or proceeding, such documents produced (not including copies made by the Department of Justice) which have not passed into the control of such court, grand jury, or antitrust agency through the introduction thereof into the record of such case or proceeding, shall be returned by the custodian to the person who produced the documents. If no case or proceeding has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, the person producing the documentary evidence may demand in writing the return of all documents so produced by such person.

The bill provides for the enforcement of civil investigative demands. Whenever any person fails to comply with such a demand duly served upon him, the Attorney General may file in the district court of the United States for any district in which such person resides, is found, or transacts business, a petition for an order of such court for the enforcement of such demand, and any final order entered by the district court shall be subject to appeal pursuant to section 1291 of title 28 of

the United States Code. Disobedience to any final order entered by the court shall be punished as a contempt thereof. The bill also provides that the duties of the custodian of any documentary material delivered by any person in compliance with such a demand may be enforced by such person by the filing of a petition in the district court for the district within which the office of such custodian is situated for an order of such court requiring the performance by such custodian of any duty imposed upon him by the bill.

Any obstruction of the antitrust civil process as provided in the bill would be punishable by a fine of not more than \$5,000, or imprisonment for not more than 5 years, or both. This is accomplished in the bill by amending chapter 73 of title 18 of the United States Code (relating to obstruction of justice). This amendment would require that the obstruction be done with "intent to avoid, evade, prevent, or obstruct compliance in whole or in part, by any person with any civil investigative demand" made pursuant to this bill.

STATEMENT

The Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary held public hearings on the proposed legislation on March 3, 1959, and held the record open after those hearings until March 21, 1959, for the filing of statements of interested persons and organizations.

History

Legislation similar to that provided in this bill has been recommended in the Economic Reports by the President to the last three Congresses.¹ It was again recommended in the "Economic Report of the President" to the present Congress.² In its second progress report, issued December 31, 1958, the Cabinet Committee on Small Business reiterated its support of legislation giving powers similar to those provided in this bill to the Attorney General which it had first approved in its progress report of August 7, 1956, at page 9.

Bills to carry out these recommendations were presented in the 84th and 85th Congresses.³ Neither of these bills was acted upon. The Attorney General, in letters under date of February 3, 1959, to the Vice President as presiding officer of the Senate and the Speaker of the House, recommended that legislation be passed authorizing the Attorney General to make civil investigative demands for the production of evidence in civil antitrust cases in order to strengthen the antitrust laws. Pursuant to the recommendation of the administration, Senator Alexander Wiley introduced bill S. 1003 which is similar to S. 716 in providing authority to the Attorney General to obtain documentary evidence in civil antitrust investigations by the use of civil investigative demands.

In public hearings before the Antitrust and Monopoly Subcommittee of the Senate Judiciary Committee on August 5, 1958, Judge Victor R. Hansen, Assistant Attorney General in charge of the Antitrust Division, testified that the antitrust laws and their enforcement would be greatly strengthened by the passage of legislation affording such authority to the Attorney General. Judge Hansen further testified that he would be satisfied with either of the two bills. The

¹ "Economic Report of the President," January 1956, p. 79; January 1957, p. 51; January 1958, p. 64.

² "Economic Report of the President," January 1959, p. 53.

³ H.R. 7309, 84th Cong., 1st sess., and S. 2129, 85th Cong., 2d sess.

Chairman of the Federal Trade Commission stated that authority such as that provided in this legislation is not only essential to properly prepare complaints but its exercise is in the public interest in avoiding the precipitous issuance of complaints in instances where fuller developed facts show that complaints would not be warranted. He further stated that—

The Commission is therefore of the opinion that it would be desirable to afford the Department of Justice the authority to issue civil investigative demands for the production of documentary evidence.

Need for such legislation

Under existing law, when the Department of Justice believes that the antitrust laws are being violated and that a civil case is more appropriate than criminal prosecution, and further facts which respect to the violation are needed, it must follow one of four courses. It may undertake to obtain the cooperation of prospective violators in agreeing to furnish evidence against themselves. This is an unsatisfactory method of enforcement since it leaves the public interest in the enforcement of antitrust laws subject to the will of violators of those laws. The Department may hold a grand jury investigation to obtain evidence to be used in a civil case. This appears to be a harsh method for the procurement of civil evidence in the enforcement of the antitrust laws. In addition to the delay and inconvenience for the Government, there may be embarrassment and stigma caused by the Department being required to use grand jury process for the development of civil evidence. Third, the Attorney General could request the Federal Trade Commission to conduct an investigation in order to obtain the evidence upon which the Department of Justice would proceed in a civil case. It is clear that the consistent use of this means by the Department of Justice to enforce the antitrust laws in civil cases would entail delay in action by the Department and greatly encumber the work of the Federal Trade Commission, as well as disrupt the orderly use by the Federal Trade Commission of its staff and funds.

Without the authority provided in this legislation, the Department must use one of the above unsatisfactory methods of obtaining evidence or be placed in the position of filing a civil complaint without sufficient prior information as to the exact nature of the violations and without certainty that sufficient evidence existed to enable a successful prosecution of a civil case. After the filing of such a civil complaint, resort could be had to compulsory discovery process under the Federal Rules of Civil Procedure, such as interrogatories, motions to produce documents, depositions, etc. The Rules of Civil Procedure, however, do not come into play until after the complaint is filed.

The Attorney General's National Committee To Study the Antitrust Laws, in its report on March 31, 1955, page 345, stated:

The problem is, therefore, to devise a precomplaint civil discovery process for use where civil proceedings are initially contemplated and voluntary cooperation by those under investigation fails.

In discussing the need for legislation such as that provided in this bill, the Attorney General's committee recognized that antitrust cases

are usually extensive and complicated cases. Such cases often involve large and complicated industries and extensive dealings in those industries. Effective enforcement necessarily requires extensive factual information and knowledge of the industry and the conduct within the industry before suit is filed. At pages 343-345 the report of the committee states:

The inevitable generality of most statutory antitrust prohibitions renders facts of paramount importance. Accordingly, effective enforcement requires full and comprehensive investigation before formal proceedings, civil or criminal, are commenced. Incomplete investigation may mean proceedings not justified by more careful search and study. Public retreat by the prosecutor may then be difficult, if not impossible, and the result may be a futile trial exhausting the resources of the litigants and increasing court congestion. Thus the adequacy of investigatory processes can make or break any enforcement program.

* * * * *

Thus the Department cannot utilize them [Rules of Civil Procedure] to determine whether institution of formal proceedings is warranted. Moreover, the filing of a skeleton complaint in hopes that the Federal rules' discovery procedures will unearth facts essential to a valid accusation is unwise. For we agree with the Judicial Conference of the United States that no plaintiff, including the Government, may "pretend to bring charges in order to discover whether actual charges should be brought."⁴ These rules "were not intended to make the courts an investigatory adjunct to the Department of Justice."⁵

The proposed legislation would place the Department of Justice in position to obtain such evidence as would be available. Upon the basis of such evidence it could determine whether the belief which the Attorney General had that there had been a violation of the antitrust laws was in fact well founded or that no case should be filed. Thus the statement of the Judicial Conference of the United States that no plaintiff, including the Government, may "pretend to bring charges in order to discover whether actual charges should be brought" could be met without detriment to the enforcement of the antitrust laws in civil cases. It is evident that the effects of the bill would be to expedite the obtaining of proper information necessary to a determination of whether charges should be brought without increasing court congestion and unnecessary expenses to parties who are believed to have violated the antitrust laws. We accept the conclusion of the Judicial Conference that present civil investigative machinery is inadequate for effective antitrust enforcement.⁶

The Federal Trade Commission has had similar discovery power since the passage in 1914 of the Federal Trade Commission Act (secs. 6 and 9).

It appears to this committee that S. 716, as amended, would be effective legislation in meeting the problem recognized by the

⁴ Judicial Conference of the United States, "Report on Procedures in Antitrust and Other Protracted Cases," 13 F.R.D. 62, 67 (1951).

⁵ *Id.*, at p. 67.

⁶ *Ibid.*

President, the Judicial Conference and the Attorney General's National Committee.

The bill would provide ample power to the Attorney General and the Assistant Attorney General in charge of the Antitrust Division to obtain the evidence from any legal entity which is believed to be in possession of evidence of a violation of the antitrust laws for the purpose of investigating and prosecuting civil violations in civil cases. This legislation would give adequate court remedies to both the Government and those upon whom civil investigative demands are served. The rights of those who produce documents pursuant to such demands and the preservation of their material are fully protected by the provisions of the bill and the enforcement of those rights is assured through proper court action. The civil demands may not go further than the Government could go in subpoenas duces tecum issued in aid of grand jury investigations, thereby protecting those to whom civil demands are issued against any unlawful search and seizure by the Government. The validity of the demands made by the Attorney General or the Assistant Attorney General can be examined and determined in the courts whenever any person upon whom such a demand has been served believes that his constitutional or other legal rights have been violated or that the terms of the civil demand are unreasonable.

The committee is in agreement with the Department of Justice and the Federal Trade Commission that necessary authorization be given to the Attorney General to compel the production of documentary evidence required in civil investigations for the enforcement of the antitrust laws. The committee believes that the approach taken by this legislation will aid materially in enforcement of the antitrust laws. Accordingly, the committee recommends favorable consideration of S. 716, as amended.

Attached hereto and made a part hereof is the report submitted by the Federal Trade Commission in connection with this proposed legislation.

FEDERAL TRADE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, March 3, 1959.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is a report upon S. 716 and S. 1003, 86th Congress, 1st session, bills 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.

It is our understanding that the Attorney General has recommended such legislation because of a present lack of authority to compel the production of documents during the investigative or precomplaint stage of civil antitrust proceedings.

Neither bill would amend any of the laws administered by the Federal Trade Commission, and the Commission is obviously not in a position to discuss the detailed requirements of the Department of Justice for investigatory authority preliminary to the institution of

antitrust proceedings. At the same time, the Commission, by virtue of its experience in enforcing the Federal Trade Commission and Clayton Acts and the other acts which it administers, fully recognizes the necessity for adequate investigatory powers prior to issuance of complaint.

Such authority is not only essential to properly prepare complaints and undertake the formal presentation of cases, but its exercise is also in the public interest in avoiding the precipitous issuance of complaints in instances where the facts, when fully developed, show that complaints would not be warranted. The Commission is therefore of the opinion that it would be desirable to afford the Department of Justice the authority to issue civil investigative demands for the production of documentary evidence.

The Commission, however, is strongly opposed to the provisions of section 4(a) of S. 1003 to the effect that no documentary material secured by civil investigative demand may be made available, nor the contents disclosed, to any person other than an authorized employee of the Department of Justice. Such a prohibition would completely disrupt the current cooperative practices of the Department of Justice and the Federal Trade Commission to exchange information with each other and to allow the other to inspect, copy, and use evidence other than that secured by grand jury subpoena.

In addition, there are instances where one agency may initiate and develop an investigation to the point where it is mutually determined that it would be more appropriate for the other agency to proceed with the case. Section 4 (a), as presently drafted, would prevent the Department of Justice from turning over pertinent materials procured by means of civil investigative demand to the Federal Trade Commission in such a situation.

Antitrust prosecutions often require the development of voluminous factual materials pertaining to the particular respondents or to an entire industry. Much of this data may be historical in nature. Both the Department of Justice and the Federal Trade Commission have developed a considerable amount of such evidentiary material which at the time of requirement may not be available from any other source. Further, to preclude one agency from utilizing the evidence secured by the other would require the duplication of investigative effort and expense.

The Commission, therefore, opposes the present restrictive provisions of section 4(a) of S. 1003 as hampering the administration and enforcement of the antitrust laws and needlessly requiring the duplication of investigative effort and expense. Recommendation is therefore made that the words "or any antitrust agency" be inserted after the words "Department of Justice" in lines 8 and 16 of page 5 of the bill.

In view of time schedules, this report has not been submitted in advance to the Bureau of the Budget.

By direction of the Commission:

JOHN W. GWYNNE, *Chairman.*

CHANGES IN EXISTING LAW

In compliance with subsection (4) of Rule XXIX* of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is

enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in *roman*).

DEFINITIONS

Sec. 2. As used in this Act—

(a) The term "antitrust law" includes:

(1) Each provision of law defined as one of the antitrust laws by section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (38 Stat. 730, as amended; 15 U.S.C. 12), commonly known as the Clayton Act;

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

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

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

(b) The term "antitrust agency" means any board, commission, or agency of the United States (other than the Department of Justice) charged by law with the administration or enforcement of any antitrust law or the adjudication of proceedings arising under any such law;

(c) The term "antitrust order" means any final order of any antitrust agency, or any final order, decree, or judgment of any court of the United States, duly entered in any case or proceeding arising under any antitrust law;

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

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

(f) The term "antitrust investigator" means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any antitrust law;

(g) The term "person" means any corporation, association, partnership, or other legal entity not a natural person;

(h) The term "documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document; and

(i) The term "custodian" means the antitrust document custodian or any deputy custodian designated under section 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

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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.

(c) No such demand shall—

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

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

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

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

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

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

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

(f) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

ANTITRUST DOCUMENT CUSTODIAN

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

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

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

(2) *at any place other than the place at which such documentary material is situated at the time of service of such demand until the custodian has tendered to such person (A) a sum sufficient to defray the cost of transporting such material to the place prescribed for delivery or (B) the transportation thereof to such place at Government expense.*

(c) *The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this Act. The custodian may cause the preparation of such copies of such documentary material as may be required for official use by any individual who is entitled, under regulations which shall be promulgated by the Attorney General, to have access to such material for examination. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than a duly authorized officer, member, or employee of the Department of Justice or any antitrust agency, provided nothing herein shall prevent the Attorney General from making available the material so produced for examination by the Committee on the Judiciary of each house of the Congress. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representative of such person.*

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

(e) *Upon the completion of (1) the antitrust investigation for which any documentary material was produced under this Act, and (2) any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material (other than copies thereof made by the Department of Justice, any antitrust agency or any committee of the Congress, pursuant to subsection (c)) which has not passed into the control of any court, grand jury, or antitrust agency through the introduction thereof into the record of such case or proceeding.*

(f) When any documentary material has been produced by any person under this Act for use in any antitrust investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General or upon the Assistant Attorney General in charge of the Antitrust Division, to the return of all documentary material (other than copies thereof made by the Department of Justice or any antitrust agency pursuant to subsection (e) so produced by such person.

(g) In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material produced under any demand issued under this Act, or the official relief of such custodian from responsibility for the custody and control of such material, the Assistant Attorney General in charge of the Antitrust Division shall promptly (1) designate another antitrust investigator to serve as custodian thereof, and (2) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated. Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this Act upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

JUDICIAL PROCEEDINGS

SEC. 5. (a) Whenever any person fails to comply with any civil investigative demand duly served upon him under section 3, the Attorney General, through such officers or attorneys as he may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of such demand, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(b) 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, such person may file, in the district court of the United States for the judicial district within which the office of the custodian designated therein is situated, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. 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 right or privilege of such person.

(c) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this Act.

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

CRIMINAL PENALTY

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

"§ 1509. Obstruction of antitrust civil process

"Whoever, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part, by any person with any civil investigative demand made under the Antitrust Civil Process Act, willfully removes from any place, conceals, withholds, destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody or control of any person which is the subject of any such demand duly served upon any person shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

(b) The analysis to such chapter is amended by inserting at the end thereof the following new item:

"1509. Obstruction of antitrust civil process."

SAVING PROVISION

SEC. 7. Nothing contained in this Act shall impair the authority of the Attorney General, the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, or any antitrust investigator to (a) lay before any grand jury impaneled before any district court of the United States any evidence concerning any alleged antitrust violation, (b) invoke the power of any such court to compel the production of any evidence before any such grand jury, or (c) institute any proceeding for the enforcement of any order or process issued in execution of such power, or to punish disobedience of any such order or process by any person.

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