

H. R. 9203

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 1973

Mr. RODINO introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To reform consent decree procedures, to increase penalties for violation of the Sherman Act, and to revise the expediting Act as it pertains to appellate review.

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 Procedures and
4 Penalties Act".

5 CONSENT DECREE PROCEDURES

6 SEC. 2. Section 5 of the Act entitled "An Act to supple-
7 ment existing laws against unlawful restraints and monop-
8 lies, and for other purposes", approved October 15, 1914
9 (38 Stat. 730; 15 U.S.C. 16), is amended by redesignating

1 subsection (b) as (i) and by inserting after subsection (a)
2 the following:

3 “(b) Any consent judgment proposed by the United
4 States for entry in any civil proceeding brought by or on
5 behalf of the United States under the antitrust laws shall be
6 filed with the district court before which that proceeding is
7 pending and published in the Federal Register at least sixty
8 days prior to the effective date of such decree. Any written
9 comments relating to the proposed consent judgment and any
10 responses thereto shall also be filed with the same district
11 court and published in the Federal Register within the afore-
12 mentioned sixty-day period. Copies of the proposed consent
13 judgment and such other materials and documents which the
14 United States considered determinative in formulating the
15 proposed consent judgment shall also be made available to
16 members of the public at the district court before which the
17 proceeding is pending and in such other districts as the court
18 may subsequently direct. Simultaneously with the filing of
19 the proposed consent judgment, unless otherwise instructed
20 by the court, the United States shall file with the district
21 court, cause to be published in the Federal Register, and
22 thereafter furnish to any person upon request a public impact
23 statement which shall recite—

24 “(1) the nature and purpose of the proceeding;

25 “(2) a description of the practices or events giving

1 rise to the alleged violation of the antitrust laws;

2 “(3) an explanation of the proposed judgment, relief
3 to be obtained thereby, and the anticipated effects on
4 competition of that relief, including an explanation of any
5 unusual circumstances giving rise to the proposed judg-
6 ment or any provision contained therein;

7 “(4) the remedies available to potential private
8 plaintiffs damaged by the alleged violation in the event
9 that the proposed judgment is entered;

10 “(5) a description of the procedures available for
11 modification of the proposed judgment;

12 “(6) a description and evaluation of alternatives
13 actually considered to the proposed judgment and the
14 anticipated effects on competition of such alternatives.

15 “(c) The United States shall also cause to be published,
16 commencing at least sixty days prior to the effective date of
17 such decree, for seven days over a period of two weeks in
18 newspapers of general circulation of the district in which the
19 case has been filed, in Washington, District of Columbia, and
20 in such other districts as the court may direct (i) a summary
21 of the terms of the proposed consent judgment, (ii) a sum-
22 mary of the public impact statement to be filed under subsec-
23 tion (b), (iii) and a list of the materials and documents
24 under subsection (b) which the United States shall make
25 available for purposes of meaningful public comment, and the

1 places where such material is available for public inspection.

2 “(d) During the sixty-day period provided above, and
3 such additional time as the United States may request and
4 the court may grant, the United States shall receive and
5 consider any written comments relating to the proposed con-
6 sent judgment. The Attorney General or his designate shall
7 establish procedures to carry out the provisions of this subsec-
8 tion, but the sixty-day time period set forth herein shall not
9 be shortened except by order of the district court upon a
10 showing that extraordinary circumstances require such
11 shortening and that such shortening of the time period is not
12 adverse to the public interest. At the close of the period
13 during which such comments may be received, the United
14 States shall file with the district court and cause to be pub-
15 lished in the Federal Register a response to such comments.

16 “(e) Before entering any consent judgment proposed
17 by the United States under this section, the court shall
18 determine that entry of that judgment is in the public
19 interest as defined by law. For the purpose of this determina-
20 tion, the court may consider—

21 “(1) the public impact of the judgment, including
22 termination of alleged violation, provisions for enforce-
23 ment and modification, duration of relief sought, antici-
24 pated effects of alternative remedies actually considered,
25 and any other considerations bearing upon the adequacy
26 of the judgment;

1 “(2) the public impact of entry of the judgment
2 upon the public generally and individuals alleging spe-
3 cific injury from the violations set forth in the complaint,
4 including consideration of the public benefit to be de-
5 rived from a determination of the issues at trial.

6 “(f) In making its determination under subsection (e),
7 the court may—

8 “(1) take testimony of Government officials or ex-
9 perts or such other expert witnesses, upon motion of
10 any party or participant or upon its own motion, as
11 the court may deem appropriate;

12 “(2) appoint a special master, pursuant to rule
13 53 of the Federal Rules of Civil Procedure, and such
14 outside consultants or expert witnesses as the court
15 may deem appropriate; and request and obtain the
16 views, evaluations, or advice of any individual group
17 or agency of government with respect to any aspect
18 of the proposed judgment of the effect thereof in such
19 manner as the court deems appropriate;

20 “(3) authorize full or limited participation in pro-
21 ceedings before the court by interested persons or agen-
22 cies, including appearance *amicus curiae*, intervention
23 as a party pursuant to rule 24 of the Federal Rules
24 of Civil Procedure, examination of witnesses or docu-
25 mentary materials, or participation in any other manner

1 and extent which serves the public interest as the court
2 may deem appropriate;

3 “(4) review any comments or objections concern-
4 ing the proposed judgment filed with the United States
5 under subsection (d) and the response of the United
6 States to such comments or objections;

7 “(5) take such other action in the public interest
8 as the court may deem appropriate.

9 “(g) Not later than ten days following the filing of any
10 proposed consent judgment under subsection (b), each de-
11 fendant shall file with the district court a description of
12 any and all written or oral communications by or on behalf
13 of such defendant, including any officer, director, employee,
14 or agent thereof, or other person except counsel of record,
15 with any officer or employee of the United States concern-
16 ing or relevant to the proposed consent judgment. Prior
17 to the entry of any consent judgment pursuant to the anti-
18 trust laws, each defendant shall certify to the district court
19 that the requirements of this section have been complied
20 with and that such filing is a true and complete description
21 of such communications known to the defendant or which the
22 defendant reasonably should have known.

23 “(h) Proceedings before the district court under subsec-
24 tions (e) and (f), and public impact statements filed under
25 subsection (b) hereof, shall not be admissible against any

1 defendant in any action or proceeding brought by any other
2 party against such defendant under the antitrust laws or by
3 the United States under section 4A of this Act nor constitute
4 a basis for the introduction of the consent judgment as prima
5 facie evidence against such defendant in any such action or
6 proceeding.”

7

PENALTIES

8 SEC. 3. Sections 1, 2, and 3 of the Act entitled “An Act
9 to protect trade and commerce against unlawful restraints
10 and monopolies”, approved July 2, 1890 (26 Stat. 209; 15
11 U.S.C. 1, 2, and 3) are each amended by striking out “fifty
12 thousand dollars” and inserting “five hundred thousand dol-
13 lars if a corporation, or, if any other person, one hundred
14 thousand dollars”.

15

EXPEDITING ACT REVISIONS

16 SEC. 4. Section 1 of the Act of February 11, 1903 (32
17 Stat. 823), as amended (15 U.S.C. 28; 49 U.S.C. 44),
18 commonly known as the Expediting Act, is amended to read
19 as follows:

20 “SECTION 1. In any civil action brought in any district
21 court of the United States under the Act entitled ‘An Act
22 to protect trade and commerce against unlawful restraints
23 and monopolies’, approved July 2, 1890, or any other Acts
24 having like purpose that have been or hereafter may be
25 enacted, wherein the United States is plaintiff and equitable

1 relief is sought, the Attorney General may file with the
2 court, prior to the entry of final judgment, a certificate that,
3 in his opinion, the case is of a general public importance.
4 Upon filing of such certificate, it shall be the duty of the
5 judge designated to hear and determine the case, or the chief
6 judge of the district court if no judge has as yet been desig-
7 nated, to assign the case for hearing at the earliest practicable
8 date and to cause the case to be in every way expedited.”

9 SEC. 5. Section 2 of the Act (15 U.S.C. 29; 49 U.S.C.
10 45) is amended to read as follows:

11 “(a) Except as otherwise expressly provided by this
12 section, in every civil action brought in any district court
13 of the United States under the Act entitled ‘An Act to pro-
14 tect trade and commerce against unlawful restraints and
15 monopolies’, approved July 2, 1890, or any other Acts hav-
16 ing like purpose that have been or hereafter may be enacted,
17 in which the United States is the complainant and equitable
18 relief is sought, any appeal from a final judgment entered
19 in any such action shall be taken to the court of appeals
20 pursuant to sections 1291 and 2107 of title 28 of the United
21 States Code. Any appeal from an interlocutory order entered
22 in any such action shall be taken to the court of appeals pur-
23 suant to section 1292 (a) (1) and 2107 of title 28 of the
24 United States Code but not otherwise. Any judgment entered
25 by the court of appeals in any such action shall be subject

1 to review by the Supreme Court upon a writ of certiorari as
2 provided in section 1254 (1) of title 28 of the United States
3 Code.

4 “(b) An appeal from a final judgment pursuant to
5 subsection (a) shall lie directly to the Supreme Court if—

6 “(1) upon application of a party filed within five
7 days of the filing of a notice of appeal, the district judge
8 who adjudicated the case enters an order stating that
9 immediate consideration of the appeal by the Supreme
10 Court is of general public importance in the adminis-
11 tration of justice.

12 A court order pursuant to (1) must be filed within
13 fifteen days after the filing of a notice of appeal. When such
14 an order or certificate is filed, the appeal and any cross appeal
15 shall be docketed in the time and manner prescribed by the
16 rules of the Supreme Court. That Court shall thereupon
17 either (1) dispose of the appeal and any cross appeal in
18 the same manner as any other direct appeal authorized by
19 law, or (2) in its discretion, deny the direct appeal and
20 remand the case to the court of appeals, which shall then
21 have jurisdiction to hear and determine the same as if the
22 appeal and any cross appeal therein had been docketed in
23 the court of appeals in the first instance pursuant to sub-
24 section (a).”

25 SEC. 6. (a) Section 401 (d) of the Communications

1 Act of 1934 (47 U.S.C. 401 (d)) is repealed.

2 (b) The proviso in section 3 of the Act of February
3 19, 1903, as amended (32 Stat. 848, 849; 49 U.S.C. 43),
4 is repealed and the colon preceding it is changed to a
5 period.

6 SEC. 7. The amendment made by section 2 of this Act
7 shall not apply to an action in which a notice of appeal to
8 the Supreme Court has been filed on or before the fifteenth
9 day following the date of enactment of this Act. Appeal in
10 any such action shall be taken pursuant to the provisions
11 of section 2 of the Act of February 11, 1903 (32 Stat. 823),
12 as amended (15 U.S.C. 29; 49 U.S.C. 45) which were in
13 effect on the day preceding the date of enactment of this Act.

93D CONGRESS
1ST SESSION

H. R. 9203

A BILL

To reform consent decree procedures, to increase penalties for violation of the Sherman Act, and to revise the expediting Act as it pertains to appellate review.

By Mr. RODINO

JULY 11, 1973

Referred to the Committee on the Judiciary