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REPORT
No. 93-298

ANTITRUST LAWS AMENDMENTS

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

REPORT

[To accompany S. 782]

The Committee on the Judiciary, to which was referred the bill (S. 782) to amend the antitrust laws of the United States, 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 1, line 10, after the word "as", strike "(h)" and insert in lieu thereof "(i)".

Amendment No. 2: On page 2, line 2, after the word "civil", strike "or criminal".

Amendment No. 3: On page 2, line 6, after the word "decree", insert the following:

> Any written comments relating to the proposed consent judgment and any responses thereto shall also be filed with the same district court and published in the Federal Register within the aforementioned sixty-day period. Copies of the proposed consent judgment and such other materials and documents which the United States considered determinative in formulating the proposed consent judgment shall also be made available to members of the public at the district court before which the proceeding is pending and in such other districts as the court may subsequently direct.

Amendment No. 4: On page 3, line 1, after the word "alternatives" and before the word "to", insert the words "actually considered".

Amendment No. 5: On page 3, after line 3, insert the following:

(c) The United States shall also cause to be published, commencing at least sixty days prior to the effective date of such decree, for seven days over a period of two weeks in newspapers of general circulation of the district in which the case has been filed, in Washington, District of Columbia, and in such other districts as the court may direct (i) a summary of the terms of the proposed consent judgment, (ii) a summary of the public impact statement to be filed under subsection (b), (iii) and a list of the materials and documents under subsection (b) which the United States shall make available for purposes of meaningful public comment, and the places where such material is available for public inspection.

Amendment No. 6: On page 3, line 4 strike "(c)" and insert in lieu thereof "(d)".

Amendment No. 7: On page 3, line 18, strike "(d)", and in lieu thereof, insert "(e)".

Amendment No. 8: On page 3, line 21, after the word "interest", delete the "." and add the following: "as defined by law".

Amendment No. 9: On page 3, line 22, strike "shall" and insert in lieu thereof "may".

Amendment No. 10: On page 4, line 2, after the word "remedies", add the following: "actually considered,".

Amendment No. 11: On page 4, line 9, strike "(e) in making its determination under subsection (d)," and insert in lieu thereof "(f) in making its determination of subsection (e),".

Amendment No. 12: On page 5, line 8, after the word "subsection", strike "(c)" and insert in lieu thereof "(d)".

Amendment No. 13: On page 5, line 12, strike "(f)" and insert in lieu thereof "(g)".

Amendment No. 14: On page 5, line 24, after the word "communications", strike the "." and add the following: "known to the defendant or which the defendant reasonably should have known."

Amendment No. 15: On page 5, line 25, strike "(g)" and insert in lieu thereof "(h)".

Amendment No. 16: On page 6, line 1, after the word "sections", strike "(d) and (e)" and insert in lieu thereof "(e) and (f)".

Amendment No. 17: On page 8, line 14, after the word "of", strike on down to and including the word "justice" on line 22 and insert in lieu thereof "justice."

Amendment No. 18: On page 8, lines 23 and 24, strike "or (3) or a certificate pursuant, to (2)".

And the title amendment.

Purpose of Amendments

Amendments No. 1, 2, 6, 7, 11, 12, 13, 15, and 16 are technical corrections to the bill. In most instances, these amendments merely redesignate certain subsections necessitated by the insertion of some of the remaining amendments.

The purpose of Amendment No. 3 is to afford an opportunity for comments written in response to a proposed consent decree to be published in the Federal Register. Also provision is made for a more

complete description of the proposed consent judgment and other materials and documents the Department of Justice considered significant in formulating the proposed consent decree. It is hoped that the provision will ensure more meaningful public notice in the consent decree approval process.

Amendments No. 4 and 10 were added to clarify the extent to which alternative remedies are to be included in the public impact statement and to be considered in determining whether or not entry of the proposed consent judgment is in the public interest. The Committee does not wish to impinge upon the free exchange of information among the staff of the Antitrust Division with respect to suggested remedies. On the other hand, where the relief proposed is of a lesser degree than that contained in the complaint, the public and the court should have access to the meaningful alternatives from which the Division made its choice. In order for the court to make a judgment as to whether or not the proposed relief is sufficient with respect to the conduct alleged in the complaint, it must have access to that which the Division considered in final form. The Committee recognizes, however, that in many instances an alternative may not have been actually considered.

In order to enhance the degree of notice afforded the public, the Committee adopted Amendment No. 5. Publication in the Federal Register alone was not felt to be meaningful public notice.

The purpose of the amendment will be met if publication occurs in seven editions of newspapers of general circulation be they daily or weekly newspapers, or court or commercial newspapers published on a daily or weekly basis. It is not the intent of the Committee to require that all seven publications occur in the same newspaper.

The purpose of Amendment No. 8 is to clarify the meaning of the requirement that the court make an independent finding that the proposed consent decree is in the public interest. The phrase "as defined by law" is added after the word "interest" to make it clear that the court is to define public interest in accordance with the antitrust laws.

The purpose of Amendment No. 9 is to furnish the court some discretionary guidelines in making its determination as to whether or not the entry of a proposed consent decree is in the public interest. The Committee recognizes that the consent decree process is a legitimate and integral part of antitrust enforcement. It does not mean to mandate a hearing prior to the entry of every proposed consent decree, while recognizing that the court may determine that such a hearing is sometimes essential.

Amendment No. 14 has been added to clarify the requirement of disclosure of lobbying contacts made on behalf of the defendant relating to the consent decree. The phrase "known to the defendant or which the defendant reasonably should have known" is inserted after the word "communications" to make it clear that a firm is not responsible for unauthorized contacts. The Committee felt, for example, that a corporation clearly should not be responsible for a letter written to the Department of Justice by an irrate shareholder.

The purpose of Amendments No. 17 and 18 is to place the Department of Justice and the defendant on equal footing with respect to moving that a case be certified for direct appeal to the Supreme Court.

As originally introduced, S. 782 gave an advantage to the Government by providing that the Attorney General could automatically certify a case to be of general public importance and thus cause a direct appeal to the Supreme Court. The earlier version of S. 782 also provided that the district court could sua sponte certify a case for direct appeal to the Supreme Court. Pursuant to Amendment No. 17 and 18, either party must move that the district court enter an order saying that immediate consideration of the appeal by the Supreme Court is of general importance in the administration of justice.

Purpose of the Bill

The bill consists of three separate and distinct sections. The first Section is to provide that district courts make an independent determination as to whether or not the entry of a proposed consent judgment is in the public interest as expressed by the antitrust laws. The proposed legislation seeks to accomplish this end by encouraging additional comment by interested parties, requiring that the Department of Justice file a public impact statement and requiring the defendant to disclose all communications made on behalf of the firm relating to the consent decree other than those made exclusively by counsel of record.

The second Section seeks to increase the maximum criminal fine for violation of the Sherman Act to $500,000 if a corporation or $100,000 if any other person.

The purpose of the third Section is to amend the Expediting Act so as to require that final judgments and interlocutory orders in certain civil antitrust cases if appealed, be heard by the circuit courts of appeals. This Section of S. 782 would amend Section 1 of the Expediting Act (15 U.S.C. 28, 49 U.S.C. 44) providing for a three district judge court in civil actions wherein the United States is the plaintiff under the Sherman or Clayton Antitrust Acts or certain sections of the Interstate Commerce Act, upon the filing by the Attorney General with the district court of a certificate that the cases are of general public importance. The proposal would eliminate the provision that a three judge court be impaneled. It would however retain the expediting procedure in single judge district courts. The proposal would amend Section 2 of the Expediting Act (15 U.S.C. 29, 49 U.S.C. 45), providing that appeal from a final judgment of a district court in any civil action brought by the United States under any of the acts covered by Section 1 of the Expediting Act will lie only in the Supreme Court. Under the proposal only those cases of general public importance would be appealable directly to the Supreme Court and normal appellate review through the courts of appeals with discretionary review by the Supreme Court would be substituted therefor. An appeal shall lie directly to the Supreme Court on a finding that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice by order of the district judge upon application of a party. The proposal also would eliminate the reference in existing law to expedition of civil cases brought by the United States under the original Interstate Commerce Act and subsequent statutes of like purpose.

STATEMENT

I. CONSENT DECREE PROCESS

Approximately 80 percent of all complaints filed by the Antitrust Division of the Department of Justice are settled prior to trial by the entry of a consent decree. The entry of a consent decree is a judicial act which requires the approval of a United States district court. Once entered, the consent decree represents a contract between the government and the respondent upon which the parties agree to terminate the litigation. Pursuant to the terms of the decree, the defendant agrees to abide by certain conditions in the future. However, the defendant does not admit to having violated the law as alleged in the complaint. Obviously, the consent decree is of crucial importance as an enforcement tool, since it permits the allocation of resources elsewhere.

Presently, the Department of Justice follows certain procedures with respect to the filing of proposed consent decrees which are not mandated by statute. When the Department enters into a consent decree, it signs a stipulation with the respondent which provides that the proposed decree shall be entered as final and binding within thirty days after it is filed. The stipulation provides, however, that the government has the right to withdraw its consent decree at any time during that thirty days. The private party is bound during that time and may not withdraw its consent. On the date of filing, the Department also issues a press release advising the public of the terms of the consent decree and describing the illegal action alleged in the complaint. It also invites public comment to the court and to the Department for thirty days prior to the entry of the judgment.

The proposed legislation provides that the district court shall make an independent determination as to whether or not the entry of a proposed consent decree is in the public interest as expressed by the antitrust laws. The bill requires that certain procedures be followed in order to assist the court in making that determination.

By definition, antitrust violators wield great influence and economic power. They can often bring significant pressure to bear on government, and even on the courts, in connection with handling of consent decrees. S. 782 recognizes that in some instances, there may be a need for additional participation by interested parties in the approval of consent decrees. The bill seeks to encourage additional comment and response by providing more adequate notice to the public. When the consent decree is filed, the government must also file a public impact statement which contains the following:

(1) The nature and purpose of the proceeding;

(2) A description of the practices or events giving rise to the alleged violation of the antitrust laws;

(3) An explanation of the proposed judgment, relief to be obtained thereby, and the anticipated effects on competition of that relief, including an explanation on any unusual circumstances giving rise to the proposed judgment or any provision contained therein;

(4) The remedies available to potential, private plaintiffs damaged by the alleged violation in the event that the proposed judgment is entered;

(5) A description of the procedures available for modification of the proposed judgment; and

(6) A description and evaluation of alternatives actually considered to the proposed judgment and the anticipated effects on competition of such alternatives.

The proposed consent decree must be published in the Federal Register at least sixty days prior to the effective date of the decree. Any written comments in response thereto must also be published in the Federal Register within that sixty-day period. The government must also cause to be published for seven days over a period of two weeks in newspapers of general circulation a summary of the consent decree, a summary of the public impact statement and other materials. The newspaper publication must be in the district where the case is pending, in Washington, D.C., and such other places as the court may direct. At the close of the period during which written comments may have been received, the government must file with the district court and publish in the Federal Register a response thereto, but under no circumstances would the period required for the submission of any comments and the government's response be longer than sixty days.

In making its determination as to whether or not a consent decree is in the public interest, section 2(e) of the bill sets forth two criteria which the court may consider in its discretion. They are as follows:

(1) The public impact of the judgment, including termination of alleged violation, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered and other considerations bearing upon the adequacy of the judgment;

(2) The public impact of entry of the judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint, including consideration of the public benefit to be derived from a determination of the issues at trial.

The Committee recognizes that the court must have broad discretion to accommodate a balancing of interests. On the one hand, the court must obtain the necessary information to make its determination that the proposed consent decree is in the public interest. On the other hand, it must preserve the consent decree as a viable settlement option. It is not the intent of the Committe to compel a hearing or trial on the public interest issue. It is anticipated that the trial judge will adduce the necessary information through the least complicated and least time-consuming means possible. Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, this is the approach that should be utilized. Only where it is imperative that the court should resort to calling witnesses for the purpose of eliciting additional facts should it do so.

Nor is Section 2(e) intended to force the government to go to trial for the benefit of potential private plaintiffs. The primary focus of the Department's enforcement policy should be to obtain a judgment—either litigated or consensual—which protects the public by insuring healthy competition in the future. The Committee believes that in the majority of instances the interests of private litigants can be accommodated without the risk, delay and expense of the government going to trial. For example, the court can condition approval of the consent

decree on the Antitrust Division's making available information and evidence obtained by the government to potential, private plaintiffs which will assist in the effective prosecution of their claims.

Section 2(f) sets forth some techniques which the court may utilize in its discretion in making its public interest determination. It is not the intent of the Committee to in any way limit the court to the techniques enumerated.

Section 2(g) imposes a requirement of disclosure upon the mandate within ten days after the filing of the proposed consent judgment. The defendant must file a description of all communications made on its behalf with any officer or employee of the government by anyone except counsel of record. Prior to the entry of any consent judgment, the defendant shall certify to the district court that the requirements of this subsection have been complied with, and that such filing is a true and complete description of all such communications either known to the defendant or which the defendant reasonably should have known. If an employee or officer of the respondent is present with counsel of record during negotiations with the Antitrust Division, that communication must be disclosed to the court. On the other hand, the Committee recognizes that a firm cannot be held responsible for communications which are unauthorized. The Committee recognizes that all but a few of the communications between Antitrust defendants and the government are perfectly proper. Those few, however, cast doubt on the entire enforcement process.

Section 2(h) provides that neither the public impact statements nor any proceedings utilized by the court to make its public interest determination shall be admissible in an action for damages, either by the government or a private party. It is the intent of the Committee to retain the provision presently in Section 5 of the Clayton Act which prevents the use of a consent decree in any way in subsequent litigation as prima facie evidence of a violation. As previously stated, the Committee wishes to retain the consent judgment as a substantial antitrust enforcement tool.

II. INCREASING SHERMAN ACT FINES

A second part of S. 782 increases the fines for criminal violations of the Sherman Act from $50,000 to $100,000 for individuals and to $500,000 for corporations. The Committee recognizes that profits available through antitrust violations can run to the millions of dollars, and believes that this increase in penalties is long overdue. Indeed, considerable testimony was received during the hearings on this provision of the bill claiming that the increase was too low. By comparison, the maximum fine in the European economic community for a violation of its antitrust laws is up to 10 percent of the gross annual sales volume of the defendant.

III. AMENDING THE EXPEDITING ACT

The Expediting Act became law in 1903, a time when the Sherman Act was a relatively new and untried method of restraining combinations and trusts. There was apprehension that the newly created system of courts of appeals, because of their supposed unfamiliarity

with the new law and because of the additional time required by thei procedures, would delay and frustrate the efforts to control monopolies Responding to that concern the Attorney General recommended th(expenditing legislation, and it became law after Congress approvec it without debate.

One of the principal arguments offered in support of the proposa is to relieve the Supreme Court of the burden of hearing the numerous cases coming to it under the Expediting Act. Many civil antitrust cases require the Supreme Court to read thousands of pages of transcript from the district court. A question arises as to the adequacy of the review the Supreme Court can give to those cases in which there are voluminous trial records. Almost all the present Justices have, both in and out of Court, asked that these cases go first to the court of appeals. Some of the Justices are of the opinion that adherence to the customary appellate procedure would benefit the Supreme Court by reducing the numbers of matters presented to it. Further, having the initial appellate review in the courts of appeals would be of benefit to the litigants by refining the issues presented to the Supreme Court and also give litigants an opportunity of appellate review of the district court decrees which are seldom reviewed by the Supreme Court under existing practice.

It is generally conceded that the existing law has permitted more expeditious determinations of civil antitrust cases but the factual situation prevalent when the law was enacted no longer obtains: dilatory practices, such as protracted delays in filing appeals, are not now available. Additionally, by permitting appellate review of preliminary injunctions more expeditious treatment of merger cases should obtain since the trial court's decision would be subject to an immediate review prior to a full-blown trial on all the issues.

The Committee is of the opinion that the proposed legislation provides a suitable means of meeting the problems arising from the Expediting Act and would assure that the interest of all parties would be protected.

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 italics, existing law in which no change is proposed is shown in roman):

That Section 5 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; 15 U.S.C. 16), commonly known as the Clayton Act is amended to read as follows:

(a) A final judgment or decree heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said laws or by the United States under section 4A of this title, as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: Provided, That this section shall not apply to consent judgments or decrees entered

before any testimony has been taken or to judgments or decrees entered in actions under section 4A.

(b) *Any consent judgment proposed by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws shall be filed with the district court before which that proceeding is pending and published in the Federal Register at least sixty days prior to the effective date of such decree.*

Any written comments relating to the proposed consent judgment and any responses thereto shall also be filed with the same district court and published in the Federal Register within the aforementioned sixty-day period. Copies of the proposed consent judgment and such other materials and documents which the United States considered determinative in formulating the proposed consent judgment shall also be made available to members of the public at the district court before which the proceeding is pending and in such other districts as the court may subsequently direct.

Simultaneously with the filing of the proposed consent judgment, unless otherwise instructed by the court, the United States shall file with the district court, cause to be published in the Federal Register and thereafter furnish to any person upon request a public impact statement which shall recite—

(1) the nature and purpose of the proceeding;

(2) a description of the practices or events giving rise to the alleged violation of the antitrust laws;

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

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

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

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

(c) *The United States shall also cause to be published, commencing at least sixty days prior to the effective date of such decree, for seven days over a period of two weeks in newspapers of general circulation of the district in which the case has been filed, in Washington, District of Columbia, and in such other districts as the court may direct (i) a summary of the terms of the proposed consent judgment, (ii) a summary of the public impact statement to be filed under subsection (b), (iii) and a list of the materials and documents under subsection (b) which the United States shall make available for purposes of meaningful public comment, and the places where such material is available for public inspection.*

(d) *During the sixty-day period provided above, and such additional time as the United States may request and the court may grant, the United States shall receive and consider any written comments relating to the proposed consent judgment. The Attorney General or his designate shall establish procedures to carry out the provisions of this subsection, but the sixty-day time period set forth herein shall not be shortened except by order of the district court upon a showing that extraordinary circumstances require such shortening and that such shortening of the time period is*

not adverse to the public interest. At the close of the period during which such comments may be received, the United States shall file with the district court and cause to be published in the Federal Register a response to such comments.

(e) Before entering any consent judgment proposed by the United States under this section, the court shall determine that entry of that judgment is in the public interest as defined by law. For the purpose of this determination, the court may consider—

(1) the public impact of the judgment, including termination of alleged violation, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered and any other considerations bearing upon the adequacy of the judgment;

(2) the public impact of entry of the judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint, including consideration of the public benefit to be derived from a determination of the issues at trial.

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

(1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

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

(3) authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, intervention as a party pursuant to rule 24 of the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;

(4) review any comments or objections concerning the proposed judgment filed with the United States under subsection (d) and the response of the United States to such comments or objections;

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

(g) Not later than ten days following the filing of any proposed consent judgment under subsection (b), each defendant shall file with the district court a description of any and all written or oral communications by or on behalf of such defendant, including any officer, director, employee, or agent thereof, or other person except counsel or record, with any officer or employee of the United States concerning or relevant to the proposed consent judgment. Prior to the entry of any consent judgment pursuant to the antitrust laws, each defendant shall certify to the district court that the requirements of this section have been complied with and that such filing is a true and complete description of such communications known to the defendant or which the defendant reasonably should have known.

(h) Proceedings before the district court under subsections (e) and (f), and public impact statements filed under subsection (b) hereof, shall

not be admissible against any defendant in any action or proceeding brought by any other party against such defendant under the antitrust laws or by the United States under section 4A of the Act nor constitute a basis for the introduction of the consent judgment as prima facie evidence against such defendant in any such action or proceeding.

[(b)] (*i*) Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, but not including an action under section 15a of this title, the running of the statute of limitations in respect of every private right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: *Provided, however*, That whenever the running of the statute of limitations in respect of a cause of action arising under section 15 of this title is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years, after the cause of action accrued. Oct. 15, 1914, c. 323, § 5, 38 Stat. 731; July 7, 1955, c. 283, § 2, 69 Stat. 283.

That Section 1 of the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (26 Stat. 209; 15 U.S.C. 1) commonly known as the Sherman Act, is amended to read as follows:

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided*, That nothing contained in sections 1–7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other.

Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1–7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding [fifty thousand dollars,] *five hundred thousand dollars if a corporation, or, if any other person, one hundred thousand dollars*, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

That Section 2 of the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (Stat. 210; U.S.C. 2) commonly known as the Sherman Act, is amended to read as follows:

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding [fifty thousand dollars,] *five hundred thousand dollars if a corporation, or, if any other person, one hundred thousand dollars*, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

That Section 3 of the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (STAT. 211; U.S.C. 3) commonly known as the Sherman Act, is amended to read as follows:

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding [fifty thousand dollars,] *five hundred thousand dollars if a corporation, or, if any other person, one hundred thousand dollars*, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

That section 1 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 28; 49 U.S.C. 44), commonly known as the Expediting Act, is amended to read as follows:

"Section 1. In any civil action brought in any district court of the United States under the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, ["an Act to regulate commerce," approved February 4, 1887,] or any other Acts having like purpose that *have been or* hereafter may be enacted, wherein the United States is plaintiff *and equitable relief is sought*, the Attorney General may file with the [clerk of such] court, *prior to the entry of final judgment*, a certificate that, in his opinion, the case is of general public importance. [, a copy of which shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge) of the circuit in which the case is pending.] Upon [receipt of the copy] *filing* of such certificate, it shall be the duty of the [chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof,] *judge designated to hear and determine the case, or the chief*

judge of the district court if no judge has as yet been designated, to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited."

That Section 2 of the Act of February 11, 1903 (32 Stat. 824), as amended (15 U.S.C. 29; 49 U.S.C. 45), commonly known as the Expediting Act, is amended to read as follows:

[In every civil action brought in any district court of the United States under any of said Acts, wherein the United States is complainant, an appeal from—the final judgment of the district court will lie only to the Supreme Court.]

"(a) Except as otherwise expressly provided by this section, in every civil action brought in any district court of the United States under the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, in which the United States is the complainant and equitable relief is sought, any appeal from a final judgment entered in any such action shall be taken to the court of appeals pursuant to sections 1291 and 2107 of title 28 of the United States Code. Any appeal from an interlocutory order entered in any such action shall be taken to the court of appeals pursuant to sections 1292(a) (1) and 2107 of title 28 of the United States Code but not otherwise. Any judgment entered by the court of appeals in any such action shall be subject to review by the Supreme Court upon a writ of certiorari as provided in section 1254(1) of title 28 of the United States Code.

"(b) An appeal from a final judgment pursuant to subsection (a) shall lie directly to the Supreme Court if:

> *(1) upon application of a party filed within five days of the filing of a notice of appeal, the district judge who adjudicated the case enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice.*

A court order pursuant to (1) within fifteen days after the filing of a notice of appeal. When such an order or certificate is filed, the appeal and any cross-appeal shall be docketed in the time and manner prescribed by the rules of the Supreme Court. That Court shall thereupon either (1) dispose of the appeal and any cross-appeal in the same manner as any other direct appeal authorized by law, or (2) in its discretion, deny the direct appeal and remand the case to the court of appeals, which shall then have jurisdiction to hear and determine the same as if the appeal and any cross-appeal therein had been docketed in the court of appeals in the first instance pursuant to subsection (a)."

Section 3. (a) Section 401(d) of the Communications Act of 1934 (47 U.S.C. 401(d) is repealed.

(b) The proviso in section 3 of the Act of February 9, 1903, as amended (32 Stat. 848, 849; U.S.C. 49 43), is repealed and the colon preceding it is changed to a period.

Section 4. The amendment made by section 2 shall not apply to an action in which a notice of appeal to the Supreme Court has been filed on or before the fifteenth day following the date of enactment of this Act. Appeal in any such action shall be taken pursuant to the provisions of section 2 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 29; 49 U.S.C. 45) which were in effect on the day preceding the date of enactment of this Act.

O

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