



THE ANTITRUST LAWS
A BASIS FOR ECONOMIC FREEDOM

A STAFF REPORT
TO THE
ANTITRUST SUBCOMMITTEE
(Subcommittee No. 5)
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TO CERTAIN MATTERS WITHIN ITS JURISDICTION



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PUBLICATIONS OF THE ANTITRUST SUBCOMMITTEE

84TH CONGRESS

LEGISLATIVE HEARINGS AND REPORTS

Increase Antitrust Fine to \$50,000. H. Rept. No. 70, February 23, 1955, on H. R. 3659; Public Law 135, July 7, 1955.

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Bank Mergers. Hearings, Serial No. 7, July 5 and 6, 1955; H. Rept. No. 1417, July 26, 1955, on H. R. 5948.

Premerger Notification Amendment to Clayton Act. Hearings, Serial No. 15, January 16, 18, 20, and 23, 1956; H. Rept. No. 1889, March 15, 1956, on H. R. 9424.

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INTRODUCTION

Almost a decade has passed since the last edition of this committee's publication, *The Antitrust Laws—A Basis for Economic Freedom*. In my introduction to the original publication I stated that while that compilation was designed originally only for the use of the Subcommittee on the Study of Monopoly Power, I deemed it so potentially useful that it would be published separately (from our hearings) as a committee print for its permanent value.

During the interval since January 1950, important changes and amendments have been made in the antitrust laws. For example, the Celler-Kefauver Act has been adopted to amend the merger provisions of the Clayton Act; the Sherman Act has been amended by increasing the maximum fine upon conviction thereunder from \$5,000 to \$50,000; the Clayton Act has been amended to grant a right of action to the United States to recover damages under the antitrust laws.

Since 1950 the large and constant volume of requests received for this work has demonstrated its value in filling a specific need. Teachers, lawyers, universities, law schools, and public administrators have found this publication particularly useful. Accordingly, I requested the staff of the Antitrust Subcommittee to revise and bring up to date the original print.

The table of contents discloses the careful examination of the statutes that has resulted in this comprehensive compendium of the antitrust laws as of January 1, 1959.

With the passage of the Sherman Act in 1890 Congress evinced its determination to eradicate the abuses of monopoly in our national economy and to provide safeguards for the private enterprise system.

The Sherman Act, prohibiting monopoly and restraints of trade, augmented by the Clayton Act and the Federal Trade Commission Act, lays down a fundamental policy which has permeated the entire fabric of Federal legislation.

Antitrust principles are a peculiarly American instrument for the promotion and preservation of competition in free markets. Congress has repeatedly declared its reliance on a private competitive economic system as the primary method by which essential energies are released for increased industrial productivity and for technological development. In addition to the economic benefits afforded by competition, we in the United States have come to recognize that our political freedoms under a representative government require the solid foundation of a free economy. We believe that for a democracy to be strong, adaptable, and progressive, it must be secure in its economic liberties.

Both of our major political parties, since the adoption of the policy set forth in the Sherman Act, have repeatedly affirmed the necessity to foster a competitive economy and to prevent business practices repugnant to economic rivalry.

Two general categories of exceptions have been made to the basic principles laid down by the Sherman, Clayton, and Federal Trade Commission Acts. These exceptions, rather than derogating from basic antitrust principles, demonstrate congressional desire to adhere to the general national policy in favor of a competitive economy. At the same time, the exceptions are a recognition of situations in which inflexible application of these principles is inappropriate.

The first of these involves agricultural, horticultural, labor, and fisheries organizations which face unique problems. The second is that granted to industries of a public utility or quasi-public utility nature. It should be here noted that no business segment exempted from the antitrust laws is without statutory regulation of some kind.

The first of these general exceptions is exemplified by the Capper-Volstead Act, permitting "persons engaged in the production of agricultural products * * * [to] act together in associations in collectively processing, preparing for market, handling, and marketing * * * such products * * *". An example of the second type is the Civil Aeronautics Act, under which the Civil Aeronautics Board has specific authority to approve price-fixing agreements and agreements for divisions of earnings and traffic service. The Board's general powers include authority to approve agreements among air carriers "for controlling, regulating, preventing, or otherwise eliminating destructive, oppressive, or wasteful competition" and to approve "other cooperative working arrangements."

The present compilation of the antitrust laws includes all of the amendments of the existing laws, new laws which have been enacted, and laws which, while not specifically antitrust in substance, are related to the antitrust laws. It will aid the committee in its functions and should serve to assist all those who use it in a better understanding of The Antitrust Laws—A Basis for Economic Freedom.

EMANUEL CELLER, *Chairman.*

JANUARY 1, 1959.

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THE ANTITRUST LAWS—A BASIS FOR ECONOMIC FREEDOM

I. PROHIBITION AND PENALTY

SHERMAN ACT¹

SECTION 1.² 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 hereby declared to be illegal: *Provided*, That nothing herein contained 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 trade mark, 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 5, as amended and supplemented, of the act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914: *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 hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars,³ or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

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

¹ 26 Stat. 209; 15 U. S. C. 1-7; Public, No. 190, 51st Cong. (1890).

² As amended by Miller-Tydings Act, 50 Stat. 693; 15 U. S. C. 1; Public, No. 314, 75th Cong. (1937).

³ 1955 Amendment, Act of July 7, 1955, amended section by substituting words "fifty thousand dollars" for the figure "\$5,000" in the last sentence. 69 Stat. 282; 15 U. S. C. 1; Public Law 135, 84th Cong.

exceeding fifty thousand dollars,⁴ or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

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 hereby 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,⁵ or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 4. The several district ^a courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SEC. 7.⁷ Repealed.

SEC. 8. That the word "person", or "persons", wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws

⁴ 1955 Amendment, Act of July 7, 1955, amended section by substituting words "fifty thousand dollars" for words "five thousand dollars." 69 Stat. 282; 15 U. S. C. 1; Public Law 135, 84th Cong.

⁵ 1955 Amendment, Act of July 7, 1955, amended section by substituting words "fifty thousand dollars" for words "five thousand dollars." 69 Stat. 282; 15 U. S. C. 3; Public Law 135, 84th Cong.

^a Act of March 3, 1911, 36 Stat. 1167, substituted "district" for "circuit" courts.

⁷ Repealed by Act of July 7, 1955, 69 Stat. 283; Public Law 137, 84th Cong. and superseded by sec. 4, Clayton Act (15 U. S. C. 15). To become effective six months after enactment (July 7, 1955).

of any of the Territories, the laws of any State, or the laws of any foreign country.

CLAYTON ACT ⁸

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That "antitrust laws", as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July second, eighteen hundred and ninety; sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes'", approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce", as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

SEC. 2.⁹ (a) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however*, That the Fed-

⁸ 38 Stat. 730; 15 U. S. C. 12 ff.; Public, No. 212, 63d Cong. (1914).

⁹ As amended by Robinson-Patman Act, 49 Stat. 1526; 15 U. S. C. 13; Public, No. 692, 74th Cong. (1936).

eral Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: *And provided further*, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however*, That nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

(c) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(d) That it shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(e) That it shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing

of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(f) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodity of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

SEC. 4. That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

SEC. 4A.¹⁰ Whenever the United States is hereafter injured in its business or property by reason of anything forbidden in the antitrust laws it may sue therefor in the United States district court for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover actual damages by it sustained and the cost of suit.

SEC. 4B.¹¹ Any action to enforce any cause of action under sections 4 or 4A shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.

SEC. 5. (a)¹² 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, 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.

¹⁰ As added July 7, 1955, sec. 1, 69 Stat. 282; 15 U. S. C. 15a, to become effective six months after enactment. Public Law 137, 84th Cong.

¹¹ *Ibid.*; 15 U. S. C. 15b.

¹² As amended July 7, 1955, sec. 2, 69 Stat. 283; 15 U. S. C. 16 (a); Public Law 137, 84th Cong.

(b)¹³ 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 4A, 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 4 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.

SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profits, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the antitrust laws.

SEC. 7.¹⁴ That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more corporations engaged in commerce, where in any line of commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become

¹³ As amended July 7, 1955, sec. 2, 69 Stat. 283; 15 U. S. C. 16 (b); Public Law 137, 84th Cong.

¹⁴ As amended by Celler-Kefauver Act, Dec. 29, 1950, 64 Stat. 1125; 15 U. S. C. 18; Public Law 899, 81st Cong.