

107TH CONGRESS
1ST SESSION

S. 520

To amend the Clayton Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 13, 2001

Mr. DEWINE (for himself, Mr. KOHL, Mr. GRASSLEY, and Mr. REID) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Clayton Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. CLAYTON ACT AMENDMENTS.**

4 The Clayton Act (15 U.S.C. 12 et seq.) is amended
5 to read as follows:

6 “That (a) ‘antitrust laws,’ as used herein, includes the Act
7 entitled ‘An Act to protect trade and commerce against
8 unlawful restraints and monopolies,’ approved July sec-
9 ond, eighteen hundred and ninety; sections seventy-three
10 to seventy-seven, inclusive, of an Act entitled ‘An Act to
11 reduce taxation, to provide revenue for the Government,

1 and for other purposes,’ of August twenty-seventh, eight-
2 een hundred and ninety-four; an Act entitled ‘An Act to
3 amend sections seventy-three and seventy-six of the Act
4 of August twenty-seventh, eighteen hundred and ninety-
5 four, entitled “An Act to reduce taxation, to provide rev-
6 enue for the Government, and for other purposes,”’ ap-
7 proved February twelfth, nineteen hundred and thirteen;
8 and also this Act.

9 “‘Commerce,’ as used herein, means trade or com-
10 merce among the several States and with foreign nations,
11 or between the District of Columbia or any Territory of
12 the United States and any State, Territory, or foreign na-
13 tion, or between any insular possessions or other places
14 under the jurisdiction of the United States, or between
15 any such possession or place and any State or Territory
16 of the United States or the District of Columbia or any
17 foreign nation, or within the District of Columbia or any
18 Territory or any insular possession or other place under
19 the jurisdiction of the United States: *Provided*, That noth-
20 ing in this Act contained shall apply to the Philippine Is-
21 lands.

22 “The word ‘person’ or ‘persons’ wherever used in this
23 Act shall be deemed to include corporations and associa-
24 tions existing under or authorized by the laws of either

1 the United States, the laws of any of the Territories, the
2 laws of any State, or the laws of any foreign country.

3 “(b) This Act may be cited as the ‘Clayton Act’.

4 “SEC. 2. (a) That it shall be unlawful for any person
5 engaged in commerce, in the course of such commerce, ei-
6 ther directly or indirectly, to discriminate in price between
7 different purchasers of commodities of like grade and
8 quality, where either or any of the purchases involved in
9 such discrimination are in commerce, where such commod-
10 ities are sold for use, consumption, or resale within the
11 United States or any Territory thereof or the District of
12 Columbia or any insular possession or other place under
13 the jurisdiction of the United States, and where the effect
14 of such discrimination may be substantially to lessen com-
15 petition or tend to create a monopoly in any line of com-
16 merce, or to injure, destroy, or prevent competition with
17 any person who either grants or knowingly receives the
18 benefits of such discrimination, or with customers of either
19 of them: *Provided*, That nothing herein contained shall
20 prevent differentials which make only due allowance for
21 differences in the cost of manufacture, sale, or delivery
22 resulting from the differing methods or quantities in which
23 such commodities are to such purchasers sold or delivered:
24 *Provided, however*, That the Federal Trade Commission
25 may, after due investigation and hearing to all interested

1 parties, fix and establish quantity limits, and revise the
 2 same as it finds necessary, as to particular commodities
 3 or classes of commodities, where it finds that available
 4 purchasers in greater quantities are so few as to render
 5 differentials on account thereof unjustly discriminatory or
 6 promotive of monopoly in any line of commerce; and the
 7 foregoing shall then not be construed to permit differen-
 8 tials based on differences in quantities greater than those
 9 so fixed and established: *And provided further*, That noth-
 10 ing herein contained shall prevent persons engaged in sell-
 11 ing goods, wares, or merchandise in commerce from select-
 12 ing their own customers in bona fide transactions and not
 13 in restraint of trade: *And provided further*, That nothing
 14 herein contained shall prevent price changes from time to
 15 time where in response to changing conditions affecting
 16 the market for or the marketability of the goods con-
 17 cerned, such as but not limited to actual or imminent dete-
 18 rioration of perishable goods, obsolescence of seasonal
 19 goods, distress sales under court process, or sales in good
 20 faith in discontinuance of business in the goods concerned.

21 “(b) Upon proof being made, at any hearing on a
 22 complaint under this section, that there has been discrimi-
 23 nation in price or services or facilities furnished, the bur-
 24 den of rebutting the prima-facie case thus made by show-
 25 ing justification shall be upon the person charged with a

1 violation of this section, and unless justification shall be
2 affirmatively shown, the Commission is authorized to issue
3 an order terminating the discrimination: *Provided, how-*
4 *ever,* That nothing herein contained shall prevent a seller
5 rebutting the prima-facie case thus made by showing that
6 his lower price or the furnishing of services or facilities
7 to any purchaser or purchasers was made in good faith
8 to meet an equally low price of a competitor, or the serv-
9 ices or facilities furnished by a competitor.

10 “(c) That it shall be unlawful for any person engaged
11 in commerce, in the course of such commerce, to pay or
12 grant, or to receive or accept, anything of value as a com-
13 mission, brokerage, or other compensation, or any allow-
14 ance or discount in lieu thereof, except for services ren-
15 dered in connection with the sale or purchase of goods,
16 wares, or merchandise, either to the other party to such
17 transaction or to an agent, representative, or other inter-
18 mediary therein where such intermediary is acting in fact
19 for or in behalf, or is subject to the direct or indirect con-
20 trol, of any party to such transaction other than the per-
21 son by whom such compensation is so granted or paid.

22 “(d) That it shall be unlawful for any person engaged
23 in commerce to pay or contract for the payment of any-
24 thing of value to or for the benefit of a customer of such
25 person in the course of such commerce as compensation

1 or in consideration for any services or facilities furnished
2 by or through such customer in connection with the proc-
3 essing, handling, sale, or offering for sale of any products
4 or commodities manufactured, sold, or offered for sale by
5 such person, unless such payment or consideration is
6 available on proportionally equal terms to all other cus-
7 tomers competing in the distribution of such products or
8 commodities.

9 “(e) That it shall be unlawful for any person to dis-
10 criminate in favor of one purchaser against another pur-
11 chaser or purchasers of a commodity bought for resale,
12 with or without processing, by contracting to furnish or
13 furnishing, or by contributing to the furnishing of, any
14 services or facilities connected with the processing, han-
15 dling, sale, or offering for sale of such commodity so pur-
16 chased upon terms not accorded to all purchasers on pro-
17 portionally equal terms.

18 “(f) That it shall be unlawful for any person engaged
19 in commerce, in the course of such commerce, knowingly
20 to induce or receive a discrimination in price which is pro-
21 hibited by this section.

22 “SEC. 3. That it shall be unlawful for any person en-
23 gaged in commerce, in the course of such commerce, to
24 lease or make a sale or contract for sale of goods, wares,
25 merchandise, machinery, supplies or other commodities,

1 whether patented or unpatented, for use, consumption or
2 resale within the United States or any Territory thereof
3 or the District of Columbia or any insular possession or
4 other place under the jurisdiction of the United States,
5 or fix a price charged therefor, or discount from, or rebate
6 upon, such price, on the condition, agreement or under-
7 standing that the lessee or purchaser thereof shall not use
8 or deal in the goods, wares, merchandise, machinery, sup-
9 plies or other commodities of a competitor or competitors
10 of the lessor or seller, where the effect of such lease, sale,
11 or contract for sale or such condition, agreement or under-
12 standing may be to substantially lessen competition or
13 tend to create a monopoly in any line of commerce.

14 “SEC. 4. (a) Except as provided in subsection (b),
15 any person who shall be injured in his business or property
16 by reason of anything forbidden in the antitrust laws may
17 sue therefor in any district court of the United States in
18 the district in which the defendant resides or is found or
19 has an agent, without respect to the amount in con-
20 troversy, and shall recover threefold the damages by him
21 sustained, and the cost of suit, including a reasonable at-
22 torney’s fee. The court may award under this section, pur-
23 suant to a motion by such person promptly made, simple
24 interest on actual damages for the period beginning on
25 the date of service of such person’s pleading setting forth

1 a claim under the antitrust laws and ending on the date
2 of judgment, or for any shorter period therein, if the court
3 finds that the award of such interest for such period is
4 just in the circumstances. In determining whether an
5 award of interest under this section for any period is just
6 in the circumstances, the court shall consider only—

7 “(1) whether such person or the opposing
8 party, or either party’s representative, made motions
9 or asserted claims or defenses so lacking in merit as
10 to show that such party or representative acted in-
11 tentiously for delay, or otherwise acted in bad faith;

12 “(2) whether, in the course of the action in-
13 volved, such person or the opposing party, or either
14 party’s representative, violated any applicable rule,
15 statute, or court order providing for sanctions for
16 dilatory behavior or otherwise providing for expedi-
17 tious proceedings; and

18 “(3) whether such person or the opposing
19 party, or either party’s representative, engaged in
20 conduct primarily for the purpose of delaying the
21 litigation or increasing the cost thereof.

22 “(b)(1) Except as provided in paragraph (2), any per-
23 son who is a foreign state may not recover under sub-
24 section (a) an amount in excess of the actual damages sus-

1 tained by it and the cost of suit, including a reasonable
 2 attorney’s fee.

3 “(2) Paragraph (1) shall not apply to a foreign state
 4 if—

5 “(A) such foreign state would be denied, under
 6 section 1605(a)(2) of title 28 of the United States
 7 Code, immunity in a case in which the action is
 8 based upon a commercial activity, or an act, that is
 9 the subject matter of its claim under this section;

10 “(B) such foreign state waives all defenses
 11 based upon or arising out of its status as a foreign
 12 state, to any claims brought against it in the same
 13 action;

14 “(C) such foreign state engages primarily in
 15 commercial activities; and

16 “(D) such foreign state does not function, with
 17 respect to the commercial activity, or the act, that
 18 is the subject matter of its claim under this section
 19 as a procurement entity for itself or for another for-
 20 eign state.

21 “(c) For purposes of this section—

22 “(1) the term “commercial activity” shall have
 23 the meaning given it in section 1603(d) of title 28,
 24 United States Code, and

1 “(2) the term “foreign state” shall have the
2 meaning given it in section 1603(a) of title 28,
3 United States Code.

4 “SEC. 4A. Whenever the United States is hereafter
5 injured in its business or property by reason of anything
6 forbidden in the antitrust laws it may sue therefor in the
7 United States district court for the district in which the
8 defendant resides or is found or has an agent, without re-
9 spect to the amount in controversy, and shall recover
10 threefold the damages by it sustained and the cost of suit.
11 The court may award under this section, pursuant to a
12 motion by the United States promptly made, simple inter-
13 est on actual damages for the period beginning on the date
14 of service of the pleading of the United States setting
15 forth a claim under the antitrust laws and ending on the
16 date of judgment, or for any shorter period therein, if the
17 court finds that the award of such interest for such period
18 is just in the circumstances. In determining whether an
19 award of interest under this section for any period is just
20 in the circumstances, the court shall consider only—

21 “(1) whether the United States or the opposing
22 party, or either party’s representative, made motions
23 or asserted claims or defenses so lacking in merit as
24 to show that such party or representative acted in-
25 tentionally for delay or otherwise acted in bad faith;

1 “(2) whether, in the course of the action in-
2 volved, the United States or the opposing party, or
3 either party’s representative, violated any applicable
4 rule, statute, or court order providing for sanctions
5 for dilatory behavior or otherwise providing for expe-
6 ditious proceedings;

7 “(3) whether the United States or the opposing
8 party, or either party’s representative, engaged in
9 conduct primarily for the purpose of delaying the
10 litigation or increasing the cost thereof; and

11 “(4) whether the award of such interest is nec-
12 essary to compensate the United States adequately
13 for the injury sustained by the United States.

14 “SEC. 4B. Any action to enforce any cause of action
15 under section 4, 4A, or 4C shall be forever barred unless
16 commenced within four years after the cause of action ac-
17 rued. No cause of action barred under existing law on
18 the effective date of this Act shall be revived by this Act.

19 “ACTIONS BY STATE ATTORNEYS GENERAL

20 “SEC. 4C. (a)(1) Any attorney general of a State may
21 bring a civil action in the name of such State, as *parens*
22 *patriae* on behalf of natural persons residing in such
23 State, in any district court of the United States having
24 jurisdiction of the defendant, to secure monetary relief as
25 provided in this section for injury sustained by such nat-
26 ural persons to their property by reason of any violation

1 of the Sherman Act. The court shall exclude from the
2 amount of monetary relief awarded in such action any
3 amount of monetary relief (A) which duplicates amounts
4 which have been awarded for the same injury, or (B)
5 which is properly allocable to (i) natural persons who have
6 excluded their claims pursuant to subsection (b)(2) of this
7 section, and (ii) any business entity.

8 “(2) The court shall award the State as monetary re-
9 lief threefold the total damage sustained as described in
10 paragraph (1) of this subsection, and the cost of suit, in-
11 cluding a reasonable attorney’s fee. The court may award
12 under this paragraph, pursuant to a motion by such State
13 promptly made, simple interest on the total damage for
14 the period beginning on the date of service of such State’s
15 pleading setting forth a claim under the antitrust laws and
16 ending on the date of judgment, or for any shorter period
17 therein, if the court finds that the award of such interest
18 for such period is just in the circumstances. In deter-
19 mining whether an award of interest under this paragraph
20 for any period is just in the circumstances, the court shall
21 consider only—

22 “(A) whether such State or the opposing party,
23 or either party’s representative, made motions or as-
24 serted claims or defenses so lacking in merit as to

1 show that such party or representative acted inten-
2 tionally for delay or otherwise acted in bad faith;

3 “(B) whether, in the course of the action in-
4 volved, such State or the opposing party, or either
5 party’s representative, violated any applicable rule,
6 statute, or court order providing for sanctions for
7 dilatory behavior or otherwise providing for expedi-
8 tious proceedings; and

9 “(C) whether such State or the opposing party,
10 or either party’s representative, engaged in conduct
11 primarily for the purpose of delaying the litigation
12 or increasing the cost thereof.

13 “(b)(1) In any action brought under subsection (a)(1)
14 of this section, the State attorney general shall, at such
15 times, in such manner, and with such content as the court
16 may direct, cause notice thereof to be given by publication.
17 If the court finds that notice given solely by publication
18 would deny due process of law to any person or persons,
19 the court may direct further notice to such person or per-
20 sons according to the circumstances of the case.

21 “(2) Any person on whose behalf an action is brought
22 under subsection (a)(1) may elect to exclude from adju-
23 dication the portion of the State claim for monetary relief
24 attributable to him by filing notice of such election with

1 the court within such time as specified in the notice given
 2 pursuant to paragraph (1) of this subsection.

3 “(3) The final judgment in an action under sub-
 4 section (a)(1) shall be res judicata as to any claim under
 5 section 4 of this Act by any person on behalf of whom
 6 such action was brought and who fails to give such notice
 7 within the period specified in the notice given pursuant
 8 to paragraph (1) of this subsection.

9 “(c) An action under subsection (a)(1) shall not be
 10 dismissed or compromised without the approval of the
 11 court, and notice of any proposed dismissal or compromise
 12 shall be given in such manner as the court directs.

13 “(d) In any action under subsection (a)—

14 “(1) the amount of the plaintiffs’ attorney’s fee,
 15 if any, shall be determined by the court; and

16 “(2) the court may, in its discretion, award a
 17 reasonable attorney’s fee to a prevailing defendant
 18 upon a finding that the State attorney general has
 19 acted in bad faith, vexatiously, wantonly, or for op-
 20 pressive reasons.

21 “MEASUREMENT OF DAMAGES

22 “SEC. 4D. In any action under section 4C(a)(1), in
 23 which there has been a determination that a defendant
 24 agreed to fix prices in violation of the Sherman Act, dam-
 25 ages may be proved and assessed in the aggregate by sta-
 26 tistical or sampling methods, by the computation of illegal

1 overcharges, or by such other reasonable system of esti-
 2 mating aggregate damages as the court in its discretion
 3 may permit without the necessity of separately proving the
 4 individual claim of, or amount of damage to, persons on
 5 whose behalf the suit was brought.

6 “DISTRIBUTION OF DAMAGES

7 “SEC. 4E. Monetary relief recovered in an action
 8 under section 4C(a)(1) shall—

9 “(1) be distributed in such manner as the dis-
 10 trict court in its discretion may authorize; or

11 “(2) be deemed a civil penalty by the court and
 12 deposited with the State as general revenues;

13 subject in either case to the requirement that any distribu-
 14 tion procedure adopted afford each person a reasonable
 15 opportunity to secure his appropriate portion of the net
 16 monetary relief.

17 “ACTIONS BY ATTORNEY GENERAL OF THE UNITED
 18 STATES

19 “SEC. 4F. (a) Whenever the Attorney General of the
 20 United States has brought an action under the antitrust
 21 laws, and he has reason to believe that any State attorney
 22 general would be entitled to bring an action under this
 23 Act based substantially on the same alleged violation of
 24 the antitrust laws, he shall promptly give written notifica-
 25 tion thereof to such State attorney general.

1 “(b) To assist a State attorney general in evaluating
 2 the notice or in bringing any action under this Act, the
 3 Attorney General of the United States shall, upon request
 4 by such State attorney general, make available to him, to
 5 the extent permitted by law, any investigative files or other
 6 materials which are or may be relevant or material to the
 7 actual or potential cause of action under this Act.

8 “DEFINITIONS

9 “SEC. 4G. For the purposes of sections 4C, 4D, 4E,
 10 and 4F of this Act:

11 “(1) The term ‘State attorney general’ means
 12 the chief legal officer of a State, or any other person
 13 authorized by State law to bring actions under sec-
 14 tion 4C of this Act, and includes the Corporation
 15 Counsel of the District of Columbia, except that
 16 such term does not include any person employed or
 17 retained on—

18 “(A) a contingency fee based on a percent-
 19 age of the monetary relief awarded under this
 20 section; or

21 “(B) any other contingency fee basis, un-
 22 less the amount of the award of a reasonable
 23 attorney’s fee to a prevailing plaintiff is deter-
 24 mined by the court under section 4C(d)(1).

25 “(2) The term ‘State’ means a State, the Dis-
 26 trict of Columbia, the Commonwealth of Puerto

1 Rico, and any other territory or possession of the
2 United States.

3 “(3) The term ‘natural persons’ does not in-
4 clude proprietorships or partnerships.

5 “APPLICABILITY OF PARENS PATRIAE ACTIONS

6 “SEC. 4H. Sections 4C, 4D, 4E, 4F, and 4G shall
7 apply in any State, unless such State provides by law for
8 its nonapplicability in such State.

9 “SEC. 5. (a) A final judgment or decree heretofore
10 or hereafter rendered in any civil or criminal proceeding
11 brought by or on behalf of the United States under the
12 antitrust laws to the effect that a defendant has violated
13 said laws shall be prima facie evidence against such de-
14 fendant in any action or proceeding brought by any other
15 party against such defendant under said laws as to all
16 matters respecting which said judgment or decree would
17 be an estoppel as between the parties thereto: *Provided*,
18 That this section shall not apply to consent judgments or
19 decrees entered before any testimony has been taken.
20 Nothing contained in this section shall be construed to im-
21 pose any limitation on the application of collateral estop-
22 pel, except that, in any action or proceeding brought under
23 the antitrust laws, collateral estoppel effect shall not be
24 given to any finding made by the Federal Trade Commis-
25 sion under the antitrust laws or under section 5 of the

1 Federal Trade Commission Act which could give rise to
2 a claim for relief under the antitrust laws.

3 “(b) Any proposal for a consent judgment submitted
4 by the United States for entry in any civil proceeding
5 brought by or on behalf of the United States under the
6 antitrust laws shall be filed with the district court before
7 which such proceeding is pending and published by the
8 United States in the Federal Register at least 60 days
9 prior to the effective date of such judgment. Any written
10 comments relating to such proposal and any responses by
11 the United States thereto, shall also be filed with such
12 district court and published by the United States in the
13 Federal Register within such sixty-day period. Copies of
14 such proposal and any other materials and documents
15 which the United States considered determinative in for-
16 mulating such proposal, shall also be made available to
17 the public at the district court and in such other districts
18 as the court may subsequently direct. Simultaneously with
19 the filing of such proposal, unless otherwise instructed by
20 the court, the United States shall file with the district
21 court, publish in the Federal Register, and thereafter fur-
22 nish to any person upon request, a competitive impact
23 statement which shall recite—

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

1 “(2) a description of the practices or events giv-
2 ing rise to the alleged violation of the antitrust laws;

3 “(3) an explanation of the proposal for a con-
4 sent judgment, including an explanation of any un-
5 usual circumstances giving rise to such proposal or
6 any provision contained therein, relief to be obtained
7 thereby, and the anticipated effects on competition
8 of such relief;

9 “(4) the remedies available to potential private
10 plaintiffs damaged by the alleged violation in the
11 event that such proposal for the consent judgment is
12 entered in such proceeding;

13 “(5) a description of the procedures available
14 for modification of such proposal; and

15 “(6) a description and evaluation of alternatives
16 to such proposal actually considered by the United
17 States.

18 “(c) the United States shall also cause to be pub-
19 lished, commencing at least 60 days prior to the effective
20 date of the judgment described in subsection (b) of this
21 section, for 7 days over a period of 2 weeks in newspapers
22 of general circulation of the district in which the case has
23 been filed, in the District of Columbia, and in such other
24 districts as the court may direct—

1 “(1) a summary of the terms of the proposal
2 for the consent judgment,

3 “(2) a summary of the competitive impact
4 statement filed under subsection (b),

5 “(3) and a list of the materials and documents
6 under subsection (b) which the United States shall
7 make available for purposes of meaningful public
8 comment, and the place where such materials and
9 documents are available for public inspection.

10 “(d) during the 60-day period as specified in sub-
11 section (b) of this section, and such additional time as the
12 United States may request and the court may grant, the
13 United States shall receive and consider any written com-
14 ments relating to the proposal for the consent judgment
15 submitted under subsection (b). The Attorney General or
16 his designee shall establish procedures to carry out the
17 provisions of this subsection, but such 60-day time period
18 shall not be shortened except by order of the district court
19 upon a showing that (1) extraordinary circumstances re-
20 quire such shortening and (2) such shortening is not ad-
21 verse to the public interest. At the close of the period dur-
22 ing which such comments may be received, the United
23 States shall file with the district court and cause to be
24 published in the Federal Register a response to such com-
25 ments.

1 “(e) Before entering any consent judgment proposed
2 by the United States under this section, the court shall
3 determine that entry of such judgment is in the public
4 interest. For the purpose of such determination, the court
5 may consider—

6 “(1) The competitive impact of such judgment,
7 including termination of alleged violations, provisions
8 for enforcement and modification, duration or relief
9 sought, anticipated effects of alternative remedies
10 actually considered, and any other considerations
11 bearing upon the adequacy of such judgment;

12 “(2) the impact of entry of such judgment upon
13 the public generally and individuals alleging specific
14 injury from the violations set forth in the complaint
15 including consideration of the public benefit, if any,
16 to be derived from a determination of the issues at
17 trial.

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

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

24 “(2) appoint a special master and such outside
25 consultants or expert witnesses as the court may

1 deem appropriate; and request and obtain the views,
2 evaluations, or advice of any individual, group or
3 agency of government with respect to any aspects of
4 the proposed judgment or the effect of such judgment,
5 in such manner as the court deems appropriate;
6 appropriate;

7 “(3) authorize full or limited participation in
8 proceedings before the court by interested persons or
9 agencies, including appearance amicus curiae, intervention
10 as a party pursuant to the Federal Rules of
11 Civil Procedure, examination of witnesses or documentary
12 materials, or participation in any other
13 manner and extent which serves the public interest
14 as the court may deem appropriate.

15 “(4) review any comments including any objections
16 filed with the United States under subsection
17 (d) concerning the proposed judgment and the responses
18 of the United States to such comments and
19 objections; and

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

22 “(g) Not later than 10 days following the date of the
23 filing of any proposal for a consent judgment under subsection
24 (b), each defendant shall file with the district court
25 a description of any and all written or oral communica-

1 tions by or on behalf of such defendant, including any and
2 all written or oral communications on behalf of such de-
3 fendant, or other person, with any officer or employee of
4 the United States concerning or relevant to such proposal,
5 except that any such communications made by counsel of
6 record alone with the Attorney General or the employees
7 of the Department of Justice alone shall be excluded from
8 the requirements of this subsection. Prior to the entry of
9 any consent judgment pursuant to the antitrust laws, each
10 defendant shall certify to the district court that the re-
11 quirements of this subsection have been complied with and
12 that such filing is a true and complete description of such
13 communications known to the defendant or which the de-
14 fendant reasonably should have known.

15 “(h) Proceedings before the district court under sub-
16 sections (e) and (f) of this section, and the competitive
17 impact statement filed under subsection (b) of this section,
18 shall not be admissible against any defendant in any ac-
19 tion or proceeding brought by any other party against
20 such defendant under the antitrust laws or by the United
21 States under section 4A of this Act nor constitute a basis
22 for the introduction of the consent judgment as prima
23 facie evidence against such defendant in any such action
24 or proceeding.

1 “(i) Whenever any civil or criminal proceeding is in-
2 stituted by the United States to prevent, restrain, or pun-
3 ish violations of any of the antitrust laws, but not includ-
4 ing an action under section 4A, the running of the statute
5 of limitations in respect of every private or State right
6 of action arising under said laws and based in whole or
7 in part on any matter complained of in said proceeding
8 shall be suspended during the pendency thereof and for
9 one year thereafter: *Provided, however,* That whenever the
10 running of the statute of limitations in respect of a cause
11 of action arising under section 4 or 4C is suspended here-
12 under, any action to enforce such cause of action shall be
13 forever barred unless commenced either within the period
14 of suspension or within four years after the cause of action
15 accrued.

16 “SEC. 6. That the labor of a human being is not a
17 commodity or article of commerce. Nothing contained in
18 the antitrust laws shall be construed to forbid the exist-
19 ence and operation of labor, agricultural, or horticultural
20 organizations, instituted for the purposes of mutual help,
21 and not having capital stock or conducted for profit, or
22 to forbid or restrain individual members of such organiza-
23 tions from lawfully carrying out the legitimate objects
24 thereof; nor shall such organizations, or the members
25 thereof, be held or construed to be illegal combinations

1 or conspiracies in restraint of trade, under the antitrust
2 laws.

3 “SEC. 7. That no person engaged in commerce or in
4 any activity affecting commerce shall acquire, directly or
5 indirectly, the whole or any part of the stock or other
6 share capital and no person subject to the jurisdiction of
7 the Federal Trade Commission shall acquire the whole or
8 any part of the assets of another person engaged also in
9 commerce or in any activity affecting commerce, where in
10 any line of commerce or in any activity affecting commerce
11 in any section of the country, the effect of such acquisition
12 may be substantially to lessen competition, or to tend to
13 create a monopoly.

14 “No person shall acquire, directly or indirectly, the
15 whole or any part of the stock or other share capital and
16 no person subject to the jurisdiction of the Federal Trade
17 Commission shall acquire the whole or any part of the as-
18 sets of one or more persons engaged in commerce or in
19 any activity affecting commerce, where in any line of com-
20 merce, or in any activity affecting commerce in any section
21 of the country, the effect of such acquisition, of such
22 stocks or assets, or of the use of such stock by the voting
23 or granting of proxies or otherwise, may be substantially
24 to lessen competition, or to tend to create a monopoly.

1 “‘This section shall not apply to persons purchasing
2 such stock solely for investment and not using the same
3 by voting or otherwise to bring about, or in attempting
4 to bring about, the substantial lessening of competition.
5 Nor shall anything contained in this section prevent a cor-
6 poration engaged in commerce or in any activity affecting
7 commerce from causing the formation of subsidiary cor-
8 porations for the actual carrying on of their immediate
9 lawful business, or the natural and legitimate branches or
10 extensions thereof, or from owning and holding all or a
11 part of the stock of such subsidiary corporations, when
12 the effect of such formation is not to substantially lessen
13 competition.

14 “‘Nor shall anything herein contained be construed to
15 prohibit any common carrier subject to the laws to regu-
16 late commerce from aiding in the construction of branches
17 or short lines so located as to become feeders to the main
18 line of the company so aiding in such construction or from
19 acquiring or owning all or any part of the stock of such
20 branch lines, nor to prevent any such common carrier from
21 acquiring and owning all or any part of the stock of a
22 branch or short line constructed by an independent com-
23 pany where there is no substantial competition between
24 the company owning the branch line so constructed and
25 the company owning the main line acquiring the property

1 or an interest therein, nor to prevent such common carrier
2 from extending any of its lines through the medium of the
3 acquisition of stock or otherwise of any other common car-
4 rier where there is no substantial competition between the
5 company extending its lines and the company whose stock,
6 property, or an interest therein is so acquired.

7 “Nothing contained in this section shall be held to
8 affect or impair any right heretofore legally acquired: *Pro-*
9 *vided*, That nothing in this section shall be held or con-
10 strued to authorize or made lawful anything heretofore
11 prohibited or made illegal by the antitrust laws, nor to
12 exempt any person from the penal provisions thereof or
13 the civil remedies therein provided.

14 “Nothing contained in this section shall apply to
15 transactions duly consummated pursuant to authority
16 given by the Secretary of Transportation, Federal Power
17 Commission, Surface Transportation Board, the Securi-
18 ties and Exchange Commission in the exercise of its juris-
19 diction under section 10 of the Public Utility Holding
20 Company Act of 1935, the United States Maritime Com-
21 mission, or the Secretary of Agriculture under any statu-
22 tory provision vesting such power in such Commission,
23 Board, or Secretary.

24 “SEC. 7A. (a) Except as exempted pursuant to sub-
25 section (c), no person shall acquire, directly or indirectly,

1 any voting securities or assets of any other person, unless
2 both persons (or in the case of a tender offer, the acquir-
3 ing person) file notification pursuant to rules under sub-
4 section (d)(1) and the waiting period described in sub-
5 section (b)(1) has expired, if—

6 “(1) the acquiring person, or the person whose
7 voting securities or assets are being acquired, is en-
8 gaged in commerce or in any activity affecting com-
9 merce; and

10 “(2) as a result of such acquisition, the acquir-
11 ing person would hold an aggregate total amount of
12 the voting securities and assets of the acquired
13 person—

14 “(A) in excess of \$200,000,000 (as ad-
15 justed and published for each fiscal year begin-
16 ning after September 30, 2004, in the same
17 manner as provided in section 8(a)(5) to reflect
18 the percentage change in the gross national
19 product for such fiscal year compared to the
20 gross national product for the year ending Sep-
21 tember 30, 2003); or

22 “(B)(i) in excess of \$50,000,000 (as so ad-
23 justed and published) but not in excess of
24 \$200,000,000 (as so adjusted and published);
25 and

1 “(ii)(I) any voting securities or assets of a
2 person engaged in manufacturing which has an-
3 nual net sales or total assets of \$10,000,000
4 (as so adjusted and published) or more are
5 being acquired by any person which has total
6 assets or annual net sales of \$100,000,000 (as
7 so adjusted and published) or more;

8 “(II) any voting securities or assets of a
9 person not engaged in manufacturing which has
10 total assets of \$10,000,000 (as so adjusted and
11 published) or more are being acquired by any
12 person which has total assets or annual net
13 sales of \$100,000,000 (as so adjusted and pub-
14 lished) or more; or

15 “(III) any voting securities or assets of a
16 person with annual net sales or total assets of
17 \$100,000,000 (as so adjusted and published) or
18 more are being acquired by any person with
19 total assets or annual net sales of \$10,000,000
20 (as so adjusted and published) or more.

21 In the case of a tender offer, the person whose voting secu-
22 rities are sought to be acquired by a person required to
23 file notification under this subsection shall file notification
24 pursuant to rules under subsection (d).

1 “(b)(1) The waiting period required under subsection
2 (a) shall—

3 “(A) begin on the date of the receipt by the
4 Federal Trade Commission and the Assistant Attor-
5 ney General in charge of the Antitrust Division of
6 the Department of Justice (hereinafter referred to in
7 this section as the ‘Assistant Attorney General’)
8 of—

9 “(i) the completed notification required
10 under subsection (a), or

11 “(ii) if such notification is not completed,
12 the notification to the extent completed and a
13 statement of the reasons for such noncompli-
14 ance,

15 from both persons, or, in the case of a tender offer,
16 the acquiring person; and

17 “(B) end on the thirtieth day after the date of
18 such receipt (or in the case of a cash tender offer,
19 the fifteenth day), or on such later date as may be
20 set under subsection (e)(2) or (g)(2).

21 “(2) The Federal Trade Commission and the Assist-
22 ant Attorney General may, in individual cases, terminate
23 the waiting period specified in paragraph (1) and allow
24 any person to proceed with any acquisition subject to this
25 section, and promptly shall cause to be published in the

1 Federal Register a notice that neither intends to take any
2 action within such period with respect to such acquisition.

3 “(3) As used in this section—

4 “(A) The term ‘voting securities’ means any se-
5 curities which at present or upon conversion entitle
6 the owner or holder thereof to vote for the election
7 of directors of the issuer or, with respect to unincor-
8 porated issuers, persons exercising similar functions.

9 “(B) The amount or percentage of voting secu-
10 rities or assets of a person which are acquired or
11 held by another person shall be determined by ag-
12 gregating the amount or percentage of such voting
13 securities or assets held or acquired by such other
14 person and each affiliate thereof.

15 “(c) The following classes of transactions are exempt
16 from the requirements of this section—

17 “(1) acquisitions of goods or realty transferred
18 in the ordinary course of business;

19 “(2) acquisitions of bonds, mortgages, deeds of
20 trust, or other obligations which are not voting secu-
21 rities;

22 “(3) acquisitions of voting securities of an
23 issuer at least 50 per centum of the voting securities
24 of which are owned by the acquiring person prior to
25 such acquisition;

1 “(4) transfers to or from a Federal agency or
2 a State or political subdivision thereof;

3 “(5) transactions specifically exempted from the
4 antitrust laws by Federal statute;

5 “(6) transactions specifically exempted from the
6 antitrust laws by Federal statute if approved by a
7 Federal agency, if copies of all information and doc-
8 umentary material filed with such agency are con-
9 temporaneously filed with the Federal Trade Com-
10 mission and the Assistant Attorney General;

11 “(7) transactions which require agency approval
12 under section 10(e) of the Home Owners’ Loan Act,
13 section 18(c) of the Federal Deposit Insurance Act
14 (12 U.S.C. 1828(c)), or section 3 of the Bank Hold-
15 ing Company Act of 1956 (12 U.S.C. 1842), except
16 that a portion of a transaction is not exempt under
17 this paragraph if such portion of the transaction (A)
18 is subject to section 4(k) of the Bank Holding Com-
19 pany Act of 1956; and (B) does not require agency
20 approval under section 3 of the Bank Holding Com-
21 pany Act of 1956;

22 “(8) transactions which require agency approval
23 under section 4 of the Bank Holding Company Act
24 of 1956 (12 U.S.C. 1843) or section 5 of the Home
25 Owners’ Loan Act of 1933 (12 U.S.C. 1464), if cop-

1 ies of all information and documentary material filed
2 with any such agency are contemporaneously filed
3 with the Federal Trade Commission and the Assist-
4 ant Attorney General at least 30 days prior to con-
5 summation of the proposed transaction, except that
6 a portion of a transaction is not exempt under this
7 paragraph if such portion of the transaction (A) is
8 subject to section 4(k) of the Bank Holding Com-
9 pany Act of 1956; and (B) does not require agency
10 approval under section 4 of the Bank Holding Com-
11 pany Act of 1956;

12 “(9) acquisitions, solely for the purpose of in-
13 vestment, of voting securities, if, as a result of such
14 acquisition, the securities acquired or held do not ex-
15 ceed 10 per centum of the outstanding voting securi-
16 ties of the issuer;

17 “(10) acquisitions of voting securities, if, as a
18 result of such acquisition, the voting securities ac-
19 quired do not increase, directly or indirectly, the ac-
20 quiring person’s per centum share of outstanding
21 voting securities of the issuer;

22 “(11) acquisitions, solely for the purpose of in-
23 vestment, by any bank, banking association, trust
24 company, investment company, or insurance com-
25 pany, of (A) voting securities pursuant to a plan of

1 reorganization or dissolution; or (B) assets in the or-
 2 dinary course of its business; and

3 “(12) such other acquisitions, transfers, or
 4 transactions, as may be exempted under subsection
 5 (d)(2)(B).

6 “(d) The Federal Trade Commission, with the con-
 7 currence of the Assistant Attorney General and by rule
 8 in accordance with section 553 of title 5, United States
 9 Code, consistent with the purposes of this section—

10 “(1) shall require that the notification required
 11 under subsection (a) be in such form and contain
 12 such documentary material and information relevant
 13 to a proposed acquisition as is necessary and appro-
 14 priate to enable the Federal Trade Commission and
 15 the Assistant Attorney General to determine whether
 16 such acquisition may, if consummated, violate the
 17 antitrust laws; and

18 “(2) may—

19 “(A) define the terms used in this section;

20 “(B) exempt, from the requirements of this
 21 section, classes of persons, acquisitions, trans-
 22 fers, or transactions which are not likely to vio-
 23 late the antitrust laws; and

1 “(C) prescribe such other rules as may be
2 necessary and appropriate to carry out the pur-
3 poses of this section.

4 “(e)(1)(A) The Federal Trade Commission or the As-
5 sistant Attorney General may, prior to the expiration of
6 the 30-day waiting period (or in the case of a cash tender
7 offer, the 15-day waiting period) specified in subsection
8 (b)(1) of this section, require the submission of additional
9 information or documentary material relevant to the pro-
10 posed acquisition, from a person required to file notifica-
11 tion with respect to such acquisition under subsection (a)
12 of this section prior to the expiration of the waiting period
13 specified in subsection (b)(1) of this section, or from any
14 officer, director, partner, agent, or employee of such per-
15 son.

16 “(B)(i) The Assistant Attorney General and the Fed-
17 eral Trade Commission shall each designate a senior offi-
18 cial who does not have direct responsibility for the review
19 of any enforcement recommendation under this section
20 concerning the transaction at issue, to hear any petition
21 filed by such person to determine—

22 “(I) whether the request for additional informa-
23 tion or documentary material is unreasonably cumu-
24 lative, unduly burdensome, or duplicative; or

1 “(II) whether the request for additional infor-
2 mation or documentary material has been substan-
3 tially complied with by the petitioning person.

4 “(ii) Internal review procedures for petitions filed
5 pursuant to clause (i) shall include reasonable deadlines
6 for expedited review of such petitions, after reasonable ne-
7 gotiations with investigative staff, in order to avoid undue
8 delay of the merger review process.

9 “(iii) Not later than 90 days after the date of the
10 enactment of this Act, the Assistant Attorney General and
11 the Federal Trade Commission shall conduct an internal
12 review and implement reforms of the merger review proc-
13 ess in order to eliminate unnecessary burden, remove cost-
14 ly duplication, and eliminate undue delay, in order to
15 achieve a more effective and more efficient merger review
16 process.

17 “(iv) Not later than 120 days after the date of enact-
18 ment of this Act, the Assistant Attorney General and the
19 Federal Trade Commission shall issue or amend their re-
20 spective industry guidance, regulations, operating manuals
21 and relevant policy documents, to the extent appropriate,
22 to implement each reform in this subparagraph.

23 “(v) Not later than 180 days after the date the of
24 enactment of this Act, the Assistant Attorney General and

1 the Federal Trade Commission shall each report to
2 Congress—

3 “(I) which reforms each agency has adopted
4 under this subparagraph;

5 “(II) which steps each has taken to implement
6 such internal reforms; and

7 “(III) the effects of such reforms.

8 “(2) The Federal Trade Commission or the Assistant
9 Attorney General, in its or his discretion, may extend the
10 30-day waiting period (or in the case of a cash tender
11 offer, the 15-day waiting period) specified in subsection
12 (b)(1) of this section for an additional period of not more
13 than 30 days (or in the case of a cash tender offer, 10
14 days) after the date on which the Federal Trade Commis-
15 sion or the Assistant Attorney General, as the case may
16 be, receives from any person to whom a request is made
17 under paragraph (1), or in the case of tender offers, the
18 acquiring person, (A) all the information and documentary
19 material required to be submitted pursuant to such a re-
20 quest, or (B) if such request is not fully complied with,
21 the information and documentary material submitted and
22 a statement of the reasons for such noncompliance. Such
23 additional period may be further extended only by the
24 United States district court, upon an application by the

1 Federal Trade Commission or the Assistant Attorney Gen-
2 eral pursuant to subsection (g)(2).

3 “(f) If a proceeding is instituted or an action is filed
4 by the Federal Trade Commission, alleging that a pro-
5 posed acquisition violates section 7 of this Act or section
6 5 of the Federal Trade Commission Act, or an action is
7 filed by the United States, alleging that a proposed acqui-
8 sition violates such section 7 or section 1 or 2 of the Sher-
9 man Act, and the Federal Trade Commission or the As-
10 sistant Attorney General (1) files a motion for a prelimi-
11 nary injunction against consummation of such acquisition
12 pendente lite, and (2) certifies the United States district
13 court for the judicial district within which the respondent
14 resides or carries on business, or in which the action is
15 brought, that it or he believes that the public interest re-
16 quires relief pendente lite pursuant to this subsection,
17 then upon the filing of such motion and certification, the
18 chief judge of such district court shall immediately notify
19 the chief judge of the United States court of appeals for
20 the circuit in which such district court is located, who shall
21 designate a United States district judge to whom such ac-
22 tion shall be assigned for all purposes.

23 “(g)(1) Any person, or any officer, director, or part-
24 ner thereof, who fails to comply with any provision of this
25 section shall be liable to the United States for a civil pen-

1 alty of not more than \$10,000 for each day during which
2 such person is in violation of this section. Such penalty
3 may be recovered in a civil action brought by the United
4 States.

5 “(2) If any person, or any officer, director, partner,
6 agent, or employee thereof, fails substantially to comply
7 with the notification requirement under subsection (a) or
8 any request for the submission of additional information
9 or documentary material under subsection (e)(1) of this
10 section within the waiting period specified in subsection
11 (b)(1) and as may be extended under subsection (e)(2),
12 the United States district court—

13 “(A) may order compliance;

14 “(B) shall extend the waiting period specified in
15 subsection (b)(1) and as may have been extended
16 under subsection (e)(2) until there has been sub-
17 stantial compliance, except that, in the case of a ten-
18 der offer, the court may not extend such waiting pe-
19 riod on the basis of a failure, by the person whose
20 stock is sought to be acquired, to comply substan-
21 tially with such notification requirement or any such
22 request; and

23 “(C) may grant such other equitable relief as
24 the court in its discretion determines necessary or
25 appropriate,

1 upon application of the Federal Trade Commission or the
2 Assistant Attorney General.

3 “(h) Any information or documentary material filed
4 with the Assistant Attorney General or the Federal Trade
5 Commission pursuant to this section shall be exempt from
6 disclosure under section 552 of title 5, United States
7 Code, and no such information or documentary material
8 may be made public, except as may be relevant to any
9 administrative or judicial action or proceeding. Nothing in
10 this section is intended to prevent disclosure to either body
11 of Congress or to any duly authorized committee or sub-
12 committee of the Congress.

13 “(i)(1) Any action taken by the Federal Trade Com-
14 mission or the Assistant Attorney General or any failure
15 of the Federal Trade Commission or the Assistant Attor-
16 ney General to take any action under this section shall
17 not bar any proceeding or any action with respect to such
18 acquisition at any time under any other section of this
19 Act or any other provision of law.

20 “(2) Nothing contained in this section shall limit the
21 authority of the Assistant Attorney General or the Federal
22 Trade Commission to secure at any time from any person
23 documentary material, oral testimony, or other informa-
24 tion under the Antitrust Civil Process Act, the Federal
25 Trade Commission Act, or any other provision of law.

1 “(j) Beginning not later than January 1, 1978, the
 2 Federal Trade Commission, with the concurrence of the
 3 Assistant Attorney General, shall annually report to the
 4 Congress on the operation of this section. Such report
 5 shall include an assessment of the effects of this section,
 6 of the effects, purpose, and need for any rules promul-
 7 gated pursuant thereto, and any recommendations for re-
 8 visions of this section.

9 “(k) If the end of any period of time provided in this
 10 section falls on a Saturday, Sunday, or legal public holiday
 11 (as defined in section 6103(a) of title 5 of the United
 12 States Code), then such period shall be extended to the
 13 end of the next day that is not a Saturday, Sunday, or
 14 legal public holiday.

15 “SEC. 8. (a)(1) No person shall, at the same time,
 16 serve as a director or officer in any two corporations
 17 (other than banks, banking associations, and trust compa-
 18 nies) that are—

19 “(A) engaged in whole or in part in commerce;
 20 and

21 “(B) by virtue of their business and location of
 22 operation, competitors, so that the elimination of
 23 competition by agreement between them would con-
 24 stitute a violation of any of the antitrust laws;

1 if each of the corporations has capital, surplus, and undi-
2 vided profits aggregating more than \$10,000,000 as ad-
3 justed pursuant to paragraph (5) of this subsection.

4 “(2) Notwithstanding the provisions of paragraph
5 (1), simultaneous service as a director or officer in any
6 two corporations shall not be prohibited by this section
7 if—

8 “(A) the competitive sales of either corporation
9 are less than \$1,000,000, as adjusted pursuant to
10 paragraph (5) of this subsection;

11 “(B) the competitive sales of either corporation
12 are less than 2 per centum of that corporation’s
13 total sales; or

14 “(C) the competitive sales of each corporation
15 are less than 4 per centum of that corporation’s
16 total sales.

17 For purposes of this paragraph, ‘competitive sales’ means
18 the gross revenues for all products and services sold by
19 one corporation in competition with the other, determined
20 on the basis of annual gross revenues for such products
21 and services in that corporation’s last completed fiscal
22 year. For the purposes of this paragraph, ‘total sales’
23 means the gross revenues for all products and services sold
24 by one corporation over that corporation’s last completed
25 fiscal year.

1 “(3) The eligibility of a director or officer under the
2 provisions of paragraph (1) shall be determined by the
3 capital, surplus and undivided profits, exclusive of divi-
4 dends declared but not paid to stockholders, of each cor-
5 poration at the end of that corporation’s last completed
6 fiscal year.

7 “(4) For purposes of this section, the term ‘officer’
8 means an officer elected or chosen by the Board of Direc-
9 tors.

10 “(5) For each fiscal year commencing after Sep-
11 tember 30, 1990, the \$10,000,000 and \$1,000,000 thresh-
12 olds in this subsection shall be increased (or decreased)
13 as of October 1 each year by an amount equal to the per-
14 centage increase (or decrease) in the gross national prod-
15 uct, as determined by the Department of Commerce or
16 its successor, for the year then ended over the level so
17 established for the year ending September 30, 1989. As
18 soon as practicable, but not later than January 31 of each
19 year, the Federal Trade Commission shall publish the ad-
20 justed amounts required by this paragraph.

21 “(b) When any person elected or chosen as a director
22 or officer of any corporation subject to the provisions here-
23 of is eligible at the time of his election or selection to act
24 for such corporation in such capacity, his eligibility to act
25 in such capacity shall not be affected by any of the provi-

1 sions hereof by reason of any change in the capital, sur-
2 plus and undivided profits, or affairs of such corporation
3 from whatever cause, until the expiration of one year from
4 the date on which the event causing ineligibility occurred.

5 “SEC. 9.

6 “Section 10 is repealed by P.L. 101–588, sec. 3, 104
7 Stat. 2880.

8 “SEC. 11. (a) That authority to enforce compliance
9 with sections 2, 3, 7, and 8 of this Act by the persons
10 respectively subject thereto is hereby vested in the Surface
11 Transportation Board where applicable to common car-
12 riers subject to jurisdiction under subtitle IV of title 49,
13 United States Code; in the Federal Communications Com-
14 mission where applicable to common carriers engaged in
15 wire or radio communication or radio transmission of en-
16 ergy; in the Secretary of Transportation where applicable
17 to air carriers and foreign air carriers subject to the Fed-
18 eral Aviation Act of 1958; in the Federal Reserve Board
19 where applicable to banks, banking associations, and trust
20 companies; and in the Federal Trade Commission where
21 applicable to all other character of commerce to be exer-
22 cised as follows:

23 “(b) Whenever the Commission, Board, or Secretary
24 vested with jurisdiction thereof shall have reason to believe
25 that any person is violating or has violated any of the pro-

visions of sections 2, 3, 7, and 8 of this Act, it shall issue and serve upon such person and the Attorney General a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission, Board, or Secretary requiring such person to cease and desist from the violation of the law so charged in said complaint. The Attorney General shall have the right to intervene and appear in said proceeding and any person may make application, and upon good cause shown may be allowed by the Commission, Board, or Secretary, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission, Board, or Secretary. If upon such hearing the Commission, Board, or Secretary, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock, or other

1 share capital, or assets, held or rid itself of the directors
2 chosen contrary to the provisions of sections 7 and 8 of
3 this Act, if any there be, in the manner and within the
4 time fixed by said order. Until the expiration of the time
5 allowed for filing a petition for review, if no such petition
6 has been duly filed within such time, or, if a petition for
7 review has been filed within such time then until the
8 record in the proceeding has been filed in a court of ap-
9 peals of the United States, as hereinafter provided, the
10 Commission, Board, or Secretary may at any time, upon
11 such notice and in such manner as it shall deem proper,
12 modify or set aside, in whole or in part, any report or
13 any order made or issued by it under this section. After
14 the expiration of the time allowed for filing a petition for
15 review, if no such petition has been duly filed within such
16 time, the Commission, Board, or Secretary may at any
17 time, after notice and opportunity for hearing, reopen and
18 alter, modify, or set aside, in whole or in part, any report
19 or order made or issued by it under this section, whenever
20 in the opinion of the Commission, Board, or Secretary
21 conditions of fact or of law have so changed as to require
22 such action or if the public interest shall so require: *Pro-*
23 *vided, however,* That the said person may, within sixty
24 days after service upon him or it of said report or order
25 entered after such a reopening, obtain a review thereof in

1 the appropriate court of appeals of the United States, in
2 the manner provided in subsection (c) of this section.

3 “(c) Any person required by such order of the com-
4 mission, board, or Secretary to cease and desist from any
5 such violation may obtain a review of such order in the
6 court of appeals of the United States for any circuit within
7 which such violation occurred or within which such person
8 resides or carries on business, by filing in the court, within
9 sixty days after the date of the service of such order, a
10 written petition praying that the order of the commission,
11 board, or Secretary be set aside. A copy of such petition
12 shall be forthwith transmitted by the clerk of the court
13 to the commission, board, or Secretary, and thereupon the
14 commission, board, or Secretary shall file in the court the
15 record in the proceeding, as provided in section 2112 of
16 title 28, United States Code. Upon such filing of the peti-
17 tion the court shall have jurisdiction of the proceeding and
18 of the question determined therein concurrently with the
19 commission, board, or Secretary until the filing of the
20 record, and shall have power to make and enter a decree
21 affirming, modifying, or setting aside the order of the
22 commission, board, or Secretary, and enforcing the same
23 to the extent that such order is affirmed, and to issue such
24 writs as are ancillary to its jurisdiction or are necessary
25 in its judgment to prevent injury to the public or to com-

1 petitors pendente lite. The findings of the commission,
2 board, or Secretary as to the facts, if supported by sub-
3 stantial evidence, shall be conclusive. To the extent that
4 the order of the commission, board, or Secretary is af-
5 firmed, the court shall issue its own order commanding
6 obedience to the terms of such order of the commission,
7 board, or Secretary. If either party shall apply to the court
8 for leave to adduce additional evidence, and shall show to
9 the satisfaction of the court that such additional evidence
10 is material and that there were reasonable grounds for the
11 failure to adduce such evidence in the proceeding before
12 the commission, board, or Secretary, the court may order
13 such additional evidence to be taken before the commis-
14 sion, board, or Secretary, and to be adduced upon the
15 hearing in such manner and upon such terms and condi-
16 tions as to the court may seem proper. The commission,
17 board, or Secretary may modify its findings as to the
18 facts, or make new findings, by reason of the additional
19 evidence so taken, and shall file such modified or new find-
20 ings, which, if supported by substantial evidence, shall be
21 conclusive, and its recommendation, if any, for the modi-
22 fication or setting aside of its original order, with the re-
23 turn of such additional evidence. The judgment and decree
24 of the court shall be final, except that the same shall be
25 subject to review by the Supreme Court upon certiorari,

1 as provided in section 1254 of title 28 of the United States
2 Code.

3 “(d) Upon the filing of the record with it the jurisdic-
4 tion of the court of appeals to affirm, enforce, modify, or
5 set aside orders of the commission, board, or Secretary
6 shall be exclusive.

7 “(e) No order of the commission, board, or Secretary
8 or judgment of the court to enforce the same shall in any-
9 wise relieve or absolve any person from any liability under
10 the antitrust laws.

11 “(f) Complaints, orders, and other processes of the
12 commission, board, or Secretary under this section may
13 be served by anyone duly authorized by the commission,
14 board, or Secretary, either (1) by delivering a copy thereof
15 to the person to be served, or to a member of the partner-
16 ship to be served, or to the president, secretary, or other
17 executive officer or a director of the corporation to be
18 served; or (2) by leaving a copy thereof at the residence
19 or the principal office or place of business of such person;
20 or (3) by mailing by registered or certified mail a copy
21 thereof addressed to such person at his or its residence
22 or principal office or place of business. The verified return
23 by the person so serving said complaint, order, or other
24 process setting forth the manner of said service shall be
25 proof of the same, and the return post office receipt for

1 said complaint, order, or other process mailed by reg-
2 istered or certified mail as aforesaid shall be proof of the
3 service of the same.

4 “(g) Any order issued under subsection (b) shall be-
5 come final—

6 “(1) upon the expiration of the time allowed for
7 filing a petition for review, if no such petition has
8 been duly filed within such time; but the commis-
9 sion, board, or Secretary may thereafter modify or
10 set aside its order to the extent provided in the last
11 sentence of subsection (b); or

12 “(2) upon the expiration of the time allowed for
13 filing a petition for certiorari, if the order of the
14 commission, board, or Secretary has been affirmed,
15 or the petition for review has been dismissed by the
16 court of appeals, and no petition for certiorari has
17 been duly filed; or

18 “(3) upon the denial of a petition for certiorari,
19 if the order of the commission, board, or Secretary
20 has been affirmed or the petition for review has been
21 dismissed by the court of appeals; or

22 “(4) upon the expiration of thirty days from the
23 date of issuance of the mandate of the Supreme
24 Court, if such Court directs that the order of the

1 commission, board, or Secretary be affirmed or the
2 petition for review be dismissed.

3 “(h) If the Supreme Court directs that the order of
4 the commission, board, or Secretary be modified or set
5 aside, the order of the commission, board, or Secretary
6 rendered in accordance with the mandate of the Supreme
7 Court shall become final upon the expiration of thirty days
8 from the time it was rendered, unless within such thirty
9 days either party has instituted proceedings to have such
10 order corrected to accord with the mandate, in which event
11 the order of the commission, board, or Secretary shall be-
12 come final when so corrected.

13 “(i) If the order of the commission, board, or Sec-
14 retary is modified or set aside by the court of appeals,
15 and if (1) the time allowed for filing a petition for certio-
16 rari has expired and no such petition has been duly filed,
17 or (2) the petition for certiorari has been denied, or (3)
18 the decision of the court has been affirmed by the Su-
19 preme Court, then the order of the commission, board, or
20 Secretary rendered in accordance with the mandate of the
21 court of appeals shall become final on the expiration of
22 thirty days from the time such order of the commission,
23 board, or Secretary was rendered, unless within such thir-
24 ty days either party has instituted proceedings to have
25 such order corrected so that it will accord with the man-

1 date, in which event the order of the commission, board,
2 or Secretary shall become final when so corrected.

3 “(j) If the Supreme Court orders a rehearing; or if
4 the case is remanded by the court of appeals to the com-
5 mission, board, or Secretary for a rehearing, and if (1)
6 the time allowed for filing a petition for certiorari has ex-
7 pired, and no such petition has been duly filed, or (2) the
8 petition for certiorari has been denied, or (3) the decision
9 of the court has been affirmed by the Supreme Court, then
10 the order of the commission, board, or Secretary rendered
11 upon such rehearing shall become final in the same man-
12 ner as though no prior order of the commission, board,
13 or Secretary had been rendered.

14 “(k) As used in this section the term ‘mandate’, in
15 case a mandate has been recalled prior to the expiration
16 of thirty days from the date of issuance thereof, means
17 the final mandate.

18 “(l) Any person who violates any order issued by the
19 commission, board, or Secretary under subsection (b) after
20 such order has become final, and while such order is in
21 effect, shall forfeit and pay to the United States a civil
22 penalty of not more than \$5,000 for each violation, which
23 shall accrue to the United States and may be recovered
24 in a civil action brought by the United States. Each sepa-
25 rate violation of any such order shall be a separate offense,

1 except that in the case of a violation through continuing
 2 failure or neglect to obey a final order of the commission,
 3 board, or Secretary each day of continuance of such fail-
 4 ure or neglect shall be deemed a separate offense.

5 “SEC. 12. That any suit, action, or proceeding under
 6 the antitrust laws against a corporation may be brought
 7 not only in the judicial district whereof it is an inhabitant,
 8 but also in any district wherein it may be found or trans-
 9 acts business; and all process in such cases may be served
 10 in the district of which it is an inhabitant, or wherever
 11 it may be found.

12 “SEC. 13. That in any suit, action, or proceeding
 13 brought by or on behalf of the United States subpoenas
 14 for witnesses who are required to attend a court of the
 15 United States in any judicial district in any case, civil or
 16 criminal, arising under the antitrust laws may run into
 17 any other district: *Provided*, That in civil cases no writ
 18 of subpoena shall issue for witnesses living out of the dis-
 19 trict in which the court is held at a greater distance than
 20 one hundred miles from the place of holding the same
 21 without the permission of the trial court being first had
 22 upon proper application and cause shown.

23 “SEC. 14. That whenever a corporation shall violate
 24 any of the penal provisions of the antitrust laws, such vio-
 25 lation shall be deemed to be also that of the individual

1 directors, officers, or agents of such corporation who shall
2 have authorized, ordered, or done any of the acts consti-
3 tuting in whole or in part such violation, and such viola-
4 tion shall be deemed a misdemeanor, and upon conviction
5 therefor of any such director, officer, or agent he shall
6 be punished by a fine of not exceeding \$5,000 or by im-
7 prisonment for not exceeding one year, or by both, in the
8 discretion of the court.

9 “SEC. 15. That the several district courts of the
10 United States are hereby invested with jurisdiction to pre-
11 vent and restrain violations of this Act, and it shall be
12 the duty of the several district attorneys of the United
13 States, in their respective districts, under the direction of
14 the Attorney General, to institute proceedings in equity
15 to prevent and restrain such violations. Such proceedings
16 may be by way of petition setting forth the case and pray-
17 ing that such violation shall be enjoined or otherwise pro-
18 hibited. When the parties complained of shall have been
19 duly notified of such petition, the court shall proceed, as
20 soon as may be, to the hearing and determination of the
21 case; and pending such petition, and before final decree,
22 the court may at any time make such temporary restrain-
23 ing order or prohibition as shall be deemed just in the
24 premises. Whenever it shall appear to the court before
25 which any such proceeding may be pending that the ends

1 of justice require that other parties should be brought be-
2 fore the court, the court may cause them to be summoned,
3 whether they reside in the district in which the court is
4 held or not, and subpoenas to that end may be served in
5 any district by the marshal thereof.

6 “SEC. 16. That any person, firm, corporation, or as-
7 sociation shall be entitled to sue for and have injunctive
8 relief, in any court of the United States having jurisdiction
9 over the parties, against threatened loss or damage by a
10 violation of the antitrust laws, including sections two,
11 three, seven and eight of this Act, when and under the
12 same conditions and principles as injunctive relief against
13 threatened conduct that will cause loss or damage is
14 granted by courts of equity, under the rules governing
15 such proceedings, and upon the execution of proper bond
16 against damages for an injunction improvidently granted
17 and a showing that the danger of irreparable loss or dam-
18 age is immediate, a preliminary injunction may issue: *Pro-*
19 *vided*, That nothing herein contained shall be construed
20 to entitle any person, firm, corporation, or association, ex-
21 cept the United States, to bring suit for injunctive relief
22 against any common carrier subject to the jurisdiction of
23 the Surface Transportation Board under subtitle IV of
24 title 49, United States Code. In any action under this sec-
25 tion in which the plaintiff substantially prevails, the court

1 shall award the cost of suit, including a reasonable attor-
2 ney's fee, to such plaintiff.

3 "SEC. 17.

4 "SEC. 18.

5 "SEC. 19.

6 "SEC. 20. That no restraining order or injunction
7 shall be granted by any court of the United States, or a
8 judge or the judges thereof, in any case between an em-
9 ployer and employees, or between employers and employ-
10 ees, or between employees, or between persons employed
11 and persons seeking employment, involving, or growing
12 out of, a dispute concerning terms or conditions of employ-
13 ment, unless necessary to prevent irreparable injury to
14 property, or to a property right, of the party making the
15 application, for which injury there is no adequate remedy
16 at law, and such property or property right must be de-
17 scribed with particularity in the application, which must
18 be in writing and sworn to by the applicant or by his agent
19 or attorney.

20 "And no such restraining order or injunction shall
21 prohibit any person or persons, whether singly or in con-
22 cert, from terminating any relation of employment, or
23 from ceasing to perform any work or labor, or from recom-
24 mending, advising, or persuading others by peaceful
25 means so to do; or from attending at any place where any

1 such person or persons may lawfully be, for the purpose
2 of peacefully obtaining or communicating information, or
3 from peacefully persuading any person to work or to ab-
4 stain from working; or from ceasing to patronize or to em-
5 ploy any party to such dispute, or from recommending,
6 advising, or persuading others by peaceful and lawful
7 means so to do; or from paying or giving to, or withholding
8 from, any person engaged in such dispute, any strike bene-
9 fits or other moneys or things of value; or from peaceably
10 assembling in a lawful manner, and for lawful purposes;
11 or from doing any act or thing which might lawfully be
12 done in the absence of such dispute by any party thereto;
13 nor shall any of the acts specified in this paragraph be
14 considered or held to be violations of any law of the United
15 States.

16 “SEC. 21.

17 “SEC. 22.

18 “SEC. 23.

19 “SEC. 24.

20 “SEC. 25.

21 “SEC. 26. (a) Except as provided in subsection (b),
22 it shall be unlawful for any person engaged in commerce,
23 in the course of such commerce, directly or indirectly to
24 impose any condition, restriction, agreement, or under-
25 standing that—

1 “(1) limits the use of credit instruments in any
2 transaction concerning the sale, resale, or transfer of
3 gasohol or other synthetic motor fuel of equivalent
4 usability in any case in which there is no similar lim-
5 itation on transactions concerning such person’s con-
6 ventional motor fuel; or

7 “(2) otherwise unreasonably discriminates
8 against or unreasonably limits the sale, resale, or
9 transfer of gasohol or other synthetic motor fuel of
10 equivalent usability in any case in which such syn-
11 thetic or conventional motor fuel is sold for use, con-
12 sumption, or resale within the United States.

13 “(b)(1) Nothing in this section or in any other provi-
14 sion of law in effect on the date of the enactment of this
15 Act which is specifically applicable to the sale of petroleum
16 products shall preclude any person referred to in sub-
17 section (a) from imposing a reasonable fee for credit on
18 the sale, resale, or transfer of the gasohol or other syn-
19 thetic motor fuel referred to in subsection (a) if such fee
20 equals no more than the actual costs to such person of
21 extending that credit.

22 “(2) The prohibitions in this section shall not apply
23 to any person who makes available sufficient supplies of
24 gasohol and other synthetic motor fuels of equivalent
25 usability to satisfy his customers’ needs for such products,

1 if the gasohol and other synthetic fuels are made available
2 on terms and conditions which are equivalent to the terms
3 and conditions on which such person's conventional motor
4 fuel products are made available.

5 “(3) Nothing in this section shall—

6 “(A) preclude any person referred to in sub-
7 section (a) from requiring reasonable labeling of
8 pumps dispensing the gasohol or other synthetic
9 motor fuel referred to in subsection (a) to indicate,
10 as appropriate, that such gasohol or other synthetic
11 motor fuel is not manufactured, distributed, or sold
12 by such person;

13 “(B) preclude such person from issuing appro-
14 priate disclaimers of product liability for damage re-
15 sulting from use of the gasohol or other synthetic
16 motor fuel;

17 “(C) require such person to provide advertising
18 support for the gasohol or other synthetic motor
19 fuel; or

20 “(D) require such person to furnish or provide,
21 at such person's own expense, any additional pumps,
22 tanks, or other related facilities required for the sale
23 of the gasohol or other synthetic motor fuel.

24 “(c) As used in this section, ‘United States’ includes
25 the several States, the District of Columbia, any territory

1 of the United States, and any insular possession or other
2 place under the jurisdiction of the United States.

3 “SEC. 27. If any clause, sentence, paragraph, or part
4 of this Act shall, for any reason, be adjudged by any court
5 of competent jurisdiction to be invalid, such judgment
6 shall not affect, impair, or invalidate the remainder there-
7 of, but shall be confined in its operation to the clause,
8 sentence, paragraph, or part thereof directly involved in
9 the controversy in which such judgment shall have been
10 rendered.

11 “SEC. 27. (a) Subject to subsections (b) through (d),
12 the conduct, acts, practices, or agreements of persons in
13 the business of organized professional major league base-
14 ball directly relating to or affecting employment of major
15 league baseball players to play baseball at the major
16 league level are subject to the antitrust laws to the same
17 extent such conduct, acts, practices, or agreements would
18 be subject to the antitrust laws if engaged in by persons
19 in any other professional sports business affecting inter-
20 state commerce.

21 “(b) No court shall rely on the enactment of this sec-
22 tion as a basis for changing the application of the anti-
23 trust laws to any conduct, acts, practices, or agreements
24 other than those set forth in subsection (a). This section
25 does not create, permit or imply a cause of action by which

1 to challenge under the antitrust laws, or otherwise apply
 2 the antitrust laws to, any conduct, acts, practices, or
 3 agreements that do not directly relate to or affect employ-
 4 ment of major league baseball players to play baseball at
 5 the major league level, including but not limited to—

6 “(1) any conduct, acts, practices, or agreements
 7 of persons engaging in, conducting or participating
 8 in the business of organized professional baseball re-
 9 lating to or affecting employment to play baseball at
 10 the minor league level, any organized professional
 11 baseball amateur or first-year player draft, or any
 12 reserve clause as applied to minor league players;

13 “(2) the agreement between organized profes-
 14 sional major league baseball teams and the teams of
 15 the National Association of Professional Baseball
 16 Leagues, commonly known as the ‘Professional
 17 Baseball Agreement’, the relationship between orga-
 18 nized professional major league baseball and orga-
 19 nized professional minor league baseball, or any
 20 other matter relating to organized professional base-
 21 ball’s minor leagues;

22 “(3) any conduct, acts, practices, or agreements
 23 of persons engaging in, conducting or participating
 24 in the business of organized professional baseball re-
 25 lating to or affecting franchise expansion, location or

1 relocation, franchise ownership issues, including
2 ownership transfers, the relationship between the Of-
3 fice of the Commissioner and franchise owners, the
4 marketing or sales of the entertainment product of
5 organized professional baseball and the licensing of
6 intellectual property rights owned or held by orga-
7 nized professional baseball teams individually or col-
8 lectively;

9 “(4) any conduct, acts, practices, or agreements
10 protected by Public Law 87–331 (15 U.S.C. § 1291
11 et seq.) (commonly known as the ‘Sports Broad-
12 casting Act of 1961’);

13 “(5) the relationship between persons in the
14 business of organized professional baseball and um-
15 pires or other individuals who are employed in the
16 business of organized professional baseball by such
17 persons; or

18 “(6) any conduct, acts, practices, or agreements
19 of persons not in the business of organized profes-
20 sional major league baseball.

21 “(c) Only a major league baseball player has standing
22 to sue under this section. For the purposes of this section,
23 a major league baseball player is—

1 “(1) a person who is a party to a major league
2 player’s contract, or is playing baseball at the major
3 league level; or

4 “(2) a person who was a party to a major
5 league player’s contract or playing baseball at the
6 major league level at the time of the injury that is
7 the subject of the complaint; or

8 “(3) a person who has been a party to a major
9 league player’s contract or who has played baseball
10 at the major league level, and who claims he has
11 been injured in his efforts to secure a subsequent
12 major league player’s contract by an alleged viola-
13 tion of the antitrust laws: *Provided however*, That
14 for the purposes of this paragraph, the alleged anti-
15 trust violation shall not include any conduct, acts,
16 practices, or agreements of persons in the business
17 of organized professional baseball relating to or af-
18 fecting employment to play baseball at the minor
19 league level, including any organized professional
20 baseball amateur or first-year player draft, or any
21 reserve clause as applied to minor league players; or

22 “(4) a person who was a party to a major
23 league player’s contract or who was playing baseball
24 at the major league level at the conclusion of the
25 last full championship season immediately preceding

1 the expiration of the last collective bargaining agree-
2 ment between persons in the business of organized
3 professional major league baseball and the exclusive
4 collective bargaining representative of major league
5 baseball players.

6 “(d)(1) As used in this section, ‘person’ means any
7 entity, including an individual, partnership, corporation,
8 trust or unincorporated association or any combination or
9 association thereof. As used in this section, the National
10 Association of Professional Baseball Leagues, its member
11 leagues and the clubs of those leagues, are not ‘in the busi-
12 ness of organized professional major league baseball’.

13 “(2) In cases involving conduct, acts, practices, or
14 agreements that directly relate to or affect both employ-
15 ment of major league baseball players to play baseball at
16 the major league level and also relate to or affect any other
17 aspect of organized professional baseball, including but
18 not limited to employment to play baseball at the minor
19 league level and the other areas set forth in subsection
20 (b), only those components, portions or aspects of such
21 conduct, acts, practices, or agreements that directly relate
22 to or affect employment of major league players to play
23 baseball at the major league level may be challenged under
24 subsection (a) and then only to the extent that they di-

1 rectly relate to or affect employment of major league base-
 2 ball players to play baseball at the major league level.

3 “(3) As used in subsection (a), interpretation of the
 4 term ‘directly’ shall not be governed by any interpretation
 5 of section 151 et seq. of title 29, United States Code (as
 6 amended).

7 “(4) Nothing in this section shall be construed to af-
 8 fect the application to organized professional baseball of
 9 the nonstatutory labor exemption from the antitrust laws.

10 “(5) The scope of the conduct, acts, practices, or
 11 agreements covered by subsection (b) shall not be strictly
 12 or narrowly construed.

13 “SEC. 29. (a) DEFINITIONS.—In this section:

14 “(1) AFFILIATED AIR CARRIER.—

15 “(A) IN GENERAL.—The term ‘affiliated
 16 air carrier’ means an air carrier that operates
 17 under the same designator code as another air
 18 carrier, or that has entered into a code-share
 19 agreement with another air carrier.

20 “(B) CONTROLLED AFFILIATED AIR CAR-
 21 RIER.—The term ‘controlled affiliated air car-
 22 rier’, with respect to an air carrier, means an
 23 affiliated air carrier 51 percent of the voting
 24 power and value of which is owned directly or

1 indirectly by an air carrier with which it is af-
2 filiated.

3 “(2) AIR CARRIER.—The term ‘air carrier’ has
4 the meaning given that term in section 40102(a)(2)
5 of title 49, United States Code.

6 “(3) AVAILABLE SEAT MILES.—The term ‘avail-
7 able seat miles’ has the meaning given that term in
8 section 19-5(c)(19) of title 14, Code of Federal Reg-
9 ulations.

10 “(4) DOMESTIC AVAILABLE SEAT MILES.—The
11 term ‘domestic available seat miles’, with respect to
12 an air carrier, means the available seat miles on do-
13 mestic flights of the air carrier.

14 “(5) EXCESS SLOT.—The term ‘excess slot’
15 means any slot at an ineligible high-density airport
16 that exceeds the number of slots authorized under
17 subsection (b).

18 “(6) INELIGIBLE HIGH-DENSITY AIRPORT.—
19 The term ‘ineligible high-density airport’ means
20 LaGuardia Airport and Ronald Reagan Washington
21 National Airport.

22 “(b) PROTECTION OF COMPETITION.—Subject to
23 subsections (c) and (d), it shall be unlawful for an air car-
24 rier that operates more than 15 percent of the domestic
25 available seat miles and holds or operates more than 20

1 percent of the slots at an ineligible high-density airport
2 that are issued under subparts K and S of part 93 of title
3 14, Code of Federal Regulations, to own or operate, in
4 any two-hour period, more than 20 percent of such slots.

5 “(c) DISPOSITION OF EXCESS SLOTS.—If an air car-
6 rier owns or operates any excess slot, that air carrier
7 shall—

8 “(1) not later than 60 days after the date of
9 enactment of this Act or after the date on which the
10 air carrier acquires or begins operating any excess
11 slot, return to the Federal Aviation Administration
12 any excess slot; or

13 “(2) not later than 60 days after the date of
14 enactment of this Act or after the date on which the
15 air carrier acquires or begins operating any excess
16 slot, sell any excess slot through an auction de-
17 scribed in subsection (d).

18 “(d) AUCTION.—An auction described in this sub-
19 section is an auction conducted by the Administrator of
20 the Federal Aviation Administration under regulations
21 prescribed by the Administrator pursuant to which—

22 “(1) the air carrier selling any excess slot may
23 not know the identity of any bidder for the excess
24 slot offered for sale;

25 “(2) only an air carrier may be a bidder; and

1 “(3) the slots will be sold individually in slot
2 pairs.

3 “(e) SPECIAL RULES.—

4 “(1) CALCULATION OF SEAT MILES.—For pur-
5 poses of calculating the percentage of domestic avail-
6 able seat miles operated by an air carrier under sub-
7 section (b), the term ‘air carrier’ means a controlled
8 affiliated air carrier and the air carrier with which
9 it is affiliated.

10 “(2) CALCULATION OF SLOTS.—For purposes
11 of calculating the percentage of slots owned or oper-
12 ated by an air carrier at an ineligible high-density
13 airport under subsection (b), the term ‘air carrier’
14 means an air carrier and any affiliated air carrier of
15 that air carrier that operates at that airport.”.

16 **SEC. 2. BUY/SELL RULES.**

17 (a) IN GENERAL.—Subchapter I of chapter 417 of
18 title 49, United States Code, is amended by inserting after
19 section 41718 the following new section:

20 **“§ 41718A. Buy/sell rules**

21 “(a) DEFINITIONS.—In this section:

22 “(1) AFFILIATED AIR CARRIER.—

23 “(A) IN GENERAL.—The term ‘affiliated
24 air carrier’ means an air carrier that operates
25 under the same designator code as another air

1 carrier, or that has entered into a code-share
2 agreement with another air carrier.

3 “(B) CONTROLLED AFFILIATED AIR CAR-
4 RIER.—The term ‘controlled affiliated air car-
5 rier’, with respect to an air carrier, means an
6 affiliated air carrier 51 percent of the voting
7 power and value of which is owned directly or
8 indirectly by an air carrier with which it is af-
9 filiated.

10 “(2) AVAILABLE SEAT MILES.—The term ‘avail-
11 able seat miles’ has the meaning given that term in
12 section 19-5(c)(19) of title 14, Code of Federal Reg-
13 ulations.

14 “(3) DOMESTIC AVAILABLE SEAT MILES.—The
15 term ‘domestic available seat miles’ means the avail-
16 able seat miles on domestic flights.

17 “(4) INELIGIBLE HIGH DENSITY AIRPORT.—
18 The term ‘ineligible high density airport’ means
19 LaGuardia Airport and Ronald Reagan Washington
20 National Airport.

21 “(b) LIMITATIONS ON SLOT TRANSFERS.—

22 “(1) IN GENERAL.—Section 93.221 of title 14,
23 Code of Federal Regulations (relating to the transfer
24 of slots) shall not apply to the transfer of slots at
25 an ineligible high density airport by an air carrier

1 that operates more than 15 percent of the domestic
 2 available seat miles, if the air carrier owns or oper-
 3 ates more than 20 percent of the slots at that air-
 4 port.

5 “(2) SPECIAL RULES.—

6 “(A) CALCULATION OF SEAT MILES.—For
 7 purposes of calculating the percentage of do-
 8 mestic available seat miles operated by an air
 9 carrier under paragraph (1), the term ‘air car-
 10 rier’ means a controlled affiliated air carrier
 11 and the air carrier with which it is affiliated.

12 “(B) CALCULATION OF SLOTS.—For pur-
 13 poses of calculating the percentage of slots
 14 owned or operated by an air carrier at an ineli-
 15 gible high-density airport under paragraph (1),
 16 the term ‘air carrier’ means an air carrier and
 17 any affiliated air carrier of that air carrier that
 18 operates at that airport.”.

19 (b) CONFORMING AMENDMENT.—The chapter anal-
 20 ysis for chapter 417, of title 49, United States Code, is
 21 amended by inserting after the item relating to section
 22 41718 the following new item:

“41718A. Buy/sell rules.”.

