

STATE ANTITRUST ENFORCEMENT VENUE ACT OF 2022

SEPTEMBER 26, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 3460]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3460) to amend title 28 of the United States Code to prevent the transfer of actions arising under the antitrust laws in which a State is a complainant, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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The amendments are as follows:  
Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “State Antitrust Enforcement Venue Act of 2022”.

**SEC. 2. AMENDMENTS.**

Section 1407 of title 28 of the United States Code is amended—

- (1) in subsection (g) by inserting “or a State” after “United States”, and  
 (2) by striking subsection (h).

**SEC. 3. EFFECTIVE DATE.**

This Act and the amendments made by this Act, shall take effect on June 1, 2021.

Amend the title so as to read:

A bill to promote competition by preventing the transfer of actions arising under the antitrust laws in which a State is a complainant.

**Purpose and Summary**

H.R. 3460, the “State Antitrust Enforcement Venue Act of 2022,” was introduced on May 21, 2021 by Representatives Ken Buck (R-CO), Burgess Owens (R-UT), David Cicilline (D-RJ), and Dan Bishop (R-NC). H.R. 3460 updates the transfer rules for multidistrict antitrust litigation when a state is a complainant. The legislation exempts antitrust litigation initiated in federal district court by a state from being transferred to another venue or consolidated with other antitrust claims by the Judicial Panel on Multidistrict Litigation (JPML). H.R. 3460 ensures that states are afforded deference when selecting an appropriate venue to enforce the antitrust laws and protect the public from antitrust injury. The bill also eliminates delays, inefficiencies, and associated higher costs that states face enforcing the antitrust laws under the current JPML process.

**Background and Need for the Legislation**

The JPML determines whether civil cases involving common questions of fact that are pending in multiple federal districts should be transferred to a single federal district court for coordinated or consolidated pretrial proceedings.<sup>1</sup> If the panel concludes such coordination or consolidation is warranted, the JPML also selects the court and judge to conduct these proceedings.<sup>2</sup> Under current law, the JPML may not transfer most antitrust enforcement actions brought by the United States from one district court to another venue.<sup>3</sup> Due to this exemption, the United States is entitled to litigate most antitrust actions in the federal district court where it files its claim. Additionally, at least one court has ruled that it is contrary to public policy to consolidate an antitrust enforcement action brought by the United States with tag-along litigation brought by private plaintiffs.<sup>4</sup> As a result, federal government enforcement actions can often proceed more quickly than those brought by states or private plaintiffs.

Unlike most antitrust claims brought by the United States, antitrust claims brought by a state alleging a violation of the federal antitrust laws are not exempt from consolidation or transfer under the JPML process.<sup>5</sup> The resolution of a state’s antitrust claim thus may be delayed because it is redirected to another venue, or the

<sup>1</sup> 28 U.S.C. § 1407(a).

<sup>2</sup> *Id.* § 1407(b).

<sup>3</sup> *Id.* § 1407(g).

<sup>4</sup> See *United States v. Dentsply Int’l, Inc.*, 190 F.R.D. 140 (D. Del. 1999) (denying motion to consolidate); see generally *Sam Fox Pub. Co. v. United States*, 366 U.S. 683, 693 (1961) (noting “the unquestionably sound policy of not permitting private antitrust plaintiffs to press their claims against alleged violators in the same suit as the Government”).

<sup>5</sup> 28 U.S.C. § 1407(h).

state may be required to coordinate or consolidate its case with slower-moving private antitrust litigation. As a result, current law undermines the ability of a state to litigate cases in federal court in its home state, even when that court is an appropriate venue and has clear jurisdiction.

H.R. 3460 exempts state claims brought under the federal antitrust laws from transfer or consolidation by the JPML. This change ensures that a state is afforded deference when selecting the appropriate venue to file its antitrust claim and eliminates the delay, inefficiency, and associated higher cost that a state may encounter under existing law. But this legislation does not impede antitrust defendants from seeking to transfer a case to a more convenient forum under the federal change-of-venue statute.<sup>6</sup>

Congress exempted most antitrust actions brought by the United States from being subject to transfer by the JPML to avoid litigation delays. In 1968, Deputy Attorney General Ramsey Clark explained that, if antitrust enforcement actions by the United States were subject to complex, multidistrict proceedings, there would likely be significant delay in enforcing the antitrust laws.<sup>7</sup> The legislative history shows that Members of Congress agreed, declining to subject most antitrust cases brought by the United States to JPML consolidation because “[g]overnment suits would then almost certainly be delayed.”<sup>8</sup> Delay is particularly undesirable in antitrust cases brought by the government because, as Deputy Attorney General Clark noted, “the purpose of the governmental [antitrust] suit differs from that of a private suit; the Government seeks to protect the public from competitive injury, while private parties are primarily interested in recovering damages for injuries already suffered.”<sup>9</sup>

Delays in antitrust enforcement are also undesirable when the antitrust laws are enforced by a state. Like federal antitrust claims, state enforcement actions aim to protect residents of the state from competitive injury. In May 2021, 45 state attorneys general wrote to antitrust leaders in Congress explaining that states bring antitrust enforcement actions “in the public interest to protect consumers and the competitive process in our states.”<sup>10</sup> Additionally, like federal antitrust enforcers and unlike private litigants, state attorneys general have powerful tools to investigate antitrust violations, rendering much of the pretrial discovery proceedings in private actions superfluous in actions brought by a state. Exempting state antitrust actions from the JPML will eliminate unnecessary inefficiencies and delays and enable more timely and cost-efficient resolutions of state antitrust claims while also ensuring that a state can litigate claims in an appropriate venue of its choice.

<sup>6</sup>*Id.* § 1404.

<sup>7</sup>H.R. REP. NO. 90–1130, at 7 (1968).

<sup>8</sup>*Id.* at 5.

<sup>9</sup>*Id.* at 8.

<sup>10</sup>Letter from Nat’l Ass’n of State Att’ys Gen. to Hon. Amy Klobuchar, Chair, Subcomm. on Competition Pol’y, Antitrust, & Consumer Rts. of the S. Comm. on the Judiciary; Hon. Mike Lee, Ranking Member, Subcomm. on Competition Pol’y, Antitrust, & Consumer Rts. of the S. Comm. on the Judiciary; Hon. David N. Cicilline, Chair, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary, & Hon. Ken Buck, Ranking Member, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary 2 (May 10, 2021) [hereinafter NAAG Letter], <https://docs.house.gov/meetings/JU/JU00/20210623/112818/HMKP-117-JU00-20210623-SD015.pdf>.

Reducing the length of antitrust litigation, including by eliminating unnecessary delays that are the result of the JPML process, may strengthen enforcement of the antitrust laws. Litigation costs increase as litigation drags on. John Thorne of Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C. explained in testimony to the Subcommittee on Antitrust, Commercial, and Administrative Law (the Subcommittee) that “cost and time” are the “biggest obstacles to [antitrust] enforcement.”<sup>11</sup> Nebraska Attorney General Douglas Peterson testified to the Subcommittee that the resources to support expensive antitrust litigation “are readily available for large corporate defendants but are scarce for state and federal enforcers.”<sup>12</sup> Mr. Thorne underscored that, when enforcement actions are delayed, competition and consumers suffer because “[e]very extra year it takes to get to trial is an extra year of monopoly.”<sup>13</sup> The National Association of Attorneys General has emphasized that antitrust enforcement is costly, explaining that “[a]dditional funding of antitrust enforcement is required at both the federal and state levels. As our nation’s economy has grown, so too has the need to staff and finance a greater number of antitrust enforcement actions that are fundamentally more complex and resource-intensive than in the past.”<sup>14</sup> Reducing delays and inefficiencies in state antitrust enforcement is likely to lower the costs of enforcement, enabling states to investigate and bring more cases to protect their residents from anticompetitive conduct and monopolistic practices.

H.R. 3460 addresses these problems by exempting federal antitrust claims brought by a state from the JPML. The legislation ensures that a state receives deference when it selects an appropriate venue for an antitrust claim. It also eliminates unnecessary delay, inefficiency, and expenses that a state may encounter under existing law.

## Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the following hearings were used to develop H.R. 3460:

The Subcommittee on Antitrust, Commercial, and Administrative Law held a hearing entitled, “Reviving Competition, Part 1: Proposals to Address Gatekeeper Power and Lower Barriers to Entry Online” on February 25, 2021, to consider proposals to strengthen antitrust enforcement in digital markets and to explore potential legislative reforms to address these concerns.<sup>15</sup> The Majority witnesses at the hearing were: Eric Gundersen, Chief Executive Officer, Mapbox; Morgan Harper, Senior Advisor, American Economic Liberties Project; Hal Singer, Managing Director, Econ One; and

<sup>11</sup>*Reviving Competition, Part 1: Proposals to Address Gatekeeper Power and Lower Barriers to Entry Online: Hearing Before the Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary*, 117th Cong. 58 (2021) [hereinafter *Lowering Barriers to Entry Hearing*], <https://www.govinfo.gov/content/pkg/CHRG-117hhr47295/pdf/CHRG-117hhr47295.pdf> (statement of John Thorne, Partner, Kellogg, Hansen, Todd, Figel & Frederick P.L.L.C., at 1).

<sup>12</sup>*Reviving Competition, Part 3: Strengthening the Laws to Address Monopoly Power: Hearing Before the Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary*, 117th Cong. 69 (2021) [hereinafter *Strengthening the Antitrust Laws Hearing*], <https://www.govinfo.gov/content/pkg/CHRG-117hhr47296/pdf/CHRG-117hhr47296.pdf> (statement of Hon. Douglas J. Peterson, Att’y Gen., Nebraska, at 1).

<sup>13</sup>*Lower Barriers to Entry Hearing* at 60 (statement of John Thorne, Partner, Kellogg, Hansen, Todd, Figel & Frederick P.L.L.C., at 3).

<sup>14</sup>NAAG Letter at 2.

<sup>15</sup>*Lowering Barriers to Entry Hearing*.

Charlotte Slaiman, Competition Policy Director, Public Knowledge. The Minority witnesses at the hearing were: John Thorne, Partner, Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.; and Tad Lipsky, Director, Competition Advocacy Program, Global Antitrust Institute, George Mason University.

The Subcommittee on Antitrust, Commercial, and Administrative Law held a legislative hearing entitled, “Reviving Competition, Part 3: Strengthening the Laws to Address Monopoly Power” on March 18, 2021, to consider proposals to strengthen the antitrust laws, including removing barriers to state antitrust enforcement.<sup>16</sup> The Majority witnesses at the hearing were: the Honorable Rebecca Kelly Slaughter, Acting Chairwoman, Federal Trade Commission; Mike Walker, Chief Economic Advisor, United Kingdom Competition and Markets Authority; the Honorable Philip J. Weiser, Attorney General, Colorado; and the Honorable Diane P. Wood, Judge, U.S. Court of Appeals for the Seventh Circuit. The Minority witnesses at the hearing were: the Honorable Doug Peterson, Attorney General, Nebraska; and the Honorable Noah Phillips, Commissioner, Federal Trade Commission.

#### **Committee Consideration**

On June 23, 2021, the Committee met in open session and ordered the bill, H.R. 3460, favorably reported, with an amendment, by a rollcall vote of 34 to 7, a quorum being present.

#### **Committee Votes**

In compliance with clause 3(b) of House rule XIII, the following rollcall votes occurred during the Committee’s consideration of H.R. 3460:

1. An amendment offered by Rep. Bishop to limit the type of state antitrust actions falling within the exemption from JPML consolidation was defeated by a rollcall vote of 11 to 31. The vote was as follows:

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<sup>16</sup>Strengthening the Antitrust Laws Hearing.

Roll Call No. 5

Date: 6/23/21

## COMMITTEE ON THE JUDICIARY

House of Representatives

117<sup>th</sup> Congress

Amendment # 1 ( ) to ANS HR 346 offered by Rep. Bishop

PASSED  
 FAILED

	AYES	NOS	PRES
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)		✓	
Karen Bass (CA-37)		✓	
Hakeem Jeffries (NY-08)		✓	
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)		✓	
Lou Correa (CA-46)		✓	
Marv Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)		✓	
Veronica Escobar (TX-16)		✓	
Mondaire Jones (NY-17)		✓	
Deborah Ross (NC-02)		✓	
Cori Bush (MO-01)		✓	
	AYES	NOS	PRES
Jim Jordan (OH-04)	✓		
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)			
Darrell Issa (CA-50)	✓		
Ken Buck (CO-04)		✓	
Matt Gaetz (FL-01)		✓	
Mike Johnson (LA-04)	✓		
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)	✓		
Greg Steube (FL-17)		✓	
Tom Tiffany (WI-07)	✓		
Thomas Massie (KY-04)	✓		
Chip Roy (TX-21)		✓	
Dan Bishop (NC-09)	✓		
Michelle Fischbach (MN-07)	✓		
Victoria Spartz (IN-05)		✓	
Scott Fitzgerald (WI-05)			
Cliff Bentz (OR-02)	✓		
Burgess Owens (UT-04)		✓	
	AYES	NOS	PRES
TOTAL	11	31	

2. A motion to order H.R. 3460 favorably reported to the House, as amended, passed by a rollcall vote of 34 to 7. The vote was as follows:

Roll Call No. 6

Date: 6/23/21

## COMMITTEE ON THE JUDICIARY

House of Representatives

117<sup>th</sup> Congress

Final Passage on: HR 3460

PASSED  
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)	✓		
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-22)	✓		
Karen Bass (CA-37)	✓		
Hakeem Jeffries (NY-08)	✓		
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)			
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Veronica Escobar (TX-16)			
Mondaire Jones (NY-17)	✓		
Deborah Ross (NC-02)	✓		
Cori Bush (MO-01)	✓		
	AYES	NOS	PRES.
Jim Jordan (OH-04)	✓		
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Darrell Issa (CA-50)		✓	
Ken Buck (CO-04)	✓		
Matt Gaetz (FL-01)	✓		
Mike Johnson (LA-04)	✓		
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)		✓	
Greg Steube (FL-17)	✓		
Tom Tiffany (WI-07)	✓		
Thomas Massie (KY-04)		✓	
Chip Roy (TX-21)	✓		
Dan Bishop (NC-09)	✓		
Michelle Fischbach (MN-07)		✓	
Victoria Spartz (IN-05)	✓		
Scott Fitzgerald (WI-05)			
Cliff Bentz (OR-02)	✓		
Burgess Owens (UT-04)	✓		
	AYES	NOS	PRES.
TOTAL	34	7	



### Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of House rule X, are incorporated in the descriptive portions of this report.

### Committee Estimate of Budgetary Effects

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

### New Budget Authority and Congressional Budget Office Cost Estimate

Pursuant to clause 3(c)(2) of House rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause (3)(c)(3) of House rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee sets forth, with respect to the bill, H.R. 3460, the following analysis and estimate prepared by the Director of the Congressional Budget Office:

<b>H.R. 3460, State Antitrust Enforcement Venue Act of 2021</b>			
As ordered reported by the House Committee on the Judiciary on June 24, 2021			
By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	1	not estimated
Statutory pay-as-you-go procedures apply?	No	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

Under current law, antitrust suits that are filed in more than one federal court district may be transferred and consolidated in a single venue at the request of a litigant or the initiative of judiciary officials. Antitrust suits brought by federal law enforcement agencies are exempt.

H.R. 3460 would exempt from transfer and consolidation antitrust cases brought by state attorneys general, allowing those cases to remain in the court district in which they were filed. Over the 2016–2020 period, state attorneys general brought, on average, 10 antitrust suits per year in federal courts; few, if any, were consolidated.

Using information from the Administrative Office of the U.S. Courts (AOUSC) and the Department of Justice, CBO anticipates that although some cases affected by the bill might be resolved

more quickly if they remained in their original venues, in many cases, the total workload for judiciary staff members would increase if related suits were not consolidated. Using information from the AOUSC, CBO estimates that, on balance, administrative costs for the judiciary would increase by a total of \$1 million over the 2022–2026 period. Such spending would be subject to the availability of appropriated funds.

CBO’s estimate is subject to significant uncertainty concerning the number of antitrust cases that state attorneys general would file each year, how many cases would be consolidated in the absence of the legislation, and how staff workload would be affected for each case.

On February 15, 2022, CBO transmitted a cost estimate for S. 1787, the State Antitrust Enforcement Venue Act of 2021, as reported by Senate Committee on the Judiciary on February 3, 2022. The two pieces of legislation are similar, and the estimated budgetary effects are the same for both bills.

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.

### **Duplication of Federal Programs**

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 3460 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

### **Performance Goals and Objectives**

The Committee states that, pursuant to clause 3(c)(4) of House rule XIII, H.R. 3460 would enable a state to bring and litigate claims under the federal antitrust laws in an appropriate and convenient venue of its choosing, without the prospect of transfer and consolidation under the multi-district litigation statute. The bill would reduce unnecessary delays, costs, and inefficiencies that result when state antitrust actions are transferred to another venue or consolidated with private antitrust claims by the JPML. It would ensure a state can protect its residents from competitive injury by vigorously enforcing the antitrust laws to stop and deter anticompetitive conduct and illegal merger activity, thereby protecting consumers and the public; preventing and unwinding excessive concentrations of economic power; and promoting choice and competition, innovation, and investment throughout the economy.

### **Advisory on Earmarks**

In accordance with clause 9 of House rule XXI, H.R. 3460 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of House rule XXI.

### **Section-by-Section Analysis**

*Sec. 1. Short Title.* Section 1 sets forth the short title of the bill as the “State Antitrust Enforcement Venue Act of 2022”.

*Sec. 2. Amendments.* Section 2 amends section 1407 of title 28 of the United States Code.

Paragraph (1) exempts antitrust actions brought by a state from being transferred for coordinated or consolidated pretrial proceedings by the judicial panel on multidistrict litigation.

Paragraph (2) eliminates the ability of the judicial panel on multi-district litigation to consolidate and transfer actions brought under the Clayton Act by the attorney general of a state on behalf of persons residing in the state.

*Sec. 3. Effective Date.* Section 3 sets June 1, 2021, as the effective date for the Act and amendments made by the Act.

### **Changes in Existing Law Made by the Bill, as Reported**

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

#### **TITLE 28, UNITED STATES CODE**

\* \* \* \* \*

#### **PART IV—JURISDICTION AND VENUE**

\* \* \* \* \*

#### **CHAPTER 87—DISTRICT COURTS; VENUE**

\* \* \* \* \*

#### **§ 1407. Multidistrict litigation**

(a) When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions. Each action so transferred shall be remanded by the panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated: *Provided, however,* That the panel may separate any claim, cross-claim, counter-claim, or third-party claim and remand any of such claims before the remainder of the action is remanded.

(b) Such coordinated or consolidated pretrial proceedings shall be conducted by a judge or judges to whom such actions are assigned by the judicial panel on multidistrict litigation. For this purpose, upon request of the panel, a circuit judge or a district judge may be designated and assigned temporarily for service in the transferee district by the Chief Justice of the United States or the chief judge of the circuit, as may be required, in accordance with the provisions of chapter 13 of this title. With the consent of the transferee district court, such actions may be assigned by the panel to a judge or judges of such district. The judge or judges to whom

such actions are assigned, the members of the judicial panel on multidistrict litigation, and other circuit and district judges designated when needed by the panel may exercise the powers of a district judge in any district for the purpose of conducting pretrial depositions in such coordinated or consolidated pretrial proceedings.

(c) Proceedings for the transfer of an action under this section may be initiated by—

(i) the judicial panel on multidistrict litigation upon its own initiative, or

(ii) motion filed with the panel by a party in any action in which transfer for coordinated or consolidated pretrial proceedings under this section may be appropriate. A copy of such motion shall be filed in the district court in which the moving party's action is pending.

The panel shall give notice to the parties in all actions in which transfers for coordinated or consolidated pretrial proceedings are contemplated, and such notice shall specify the time and place of any hearing to determine whether such transfer shall be made. Orders of the panel to set a hearing and other orders of the panel issued prior to the order either directing or denying transfer shall be filed in the office of the clerk of the district court in which a transfer hearing is to be or has been held. The panel's order of transfer shall be based upon a record of such hearing at which material evidence may be offered by any party to an action pending in any district that would be affected by the proceedings under this section, and shall be supported by findings of fact and conclusions of law based upon such record. Orders of transfer and such other orders as the panel may make thereafter shall be filed in the office of the clerk of the district court of the transferee district and shall be effective when thus filed. The clerk of the transferee district court shall forthwith transmit a certified copy of the panel's order to transfer to the clerk of the district court from which the action is being transferred. An order denying transfer shall be filed in each district wherein there is a case pending in which the motion for transfer has been made.

(d) The judicial panel on multidistrict litigation shall consist of seven circuit and district judges designated from time to time by the Chief Justice of the United States, no two of whom shall be from the same circuit. The concurrence of four members shall be necessary to any action by the panel.

(e) No proceedings for review of any order of the panel may be permitted except by extraordinary writ pursuant to the provisions of title 28, section 1651, United States Code. Petitions for an extraordinary writ to review an order of the panel to set a transfer hearing and other orders of the panel issued prior to the order either directing or denying transfer shall be filed only in the court of appeals having jurisdiction over the district in which a hearing is to be or has been held. Petitions for an extraordinary writ to review an order to transfer or orders subsequent to transfer shall be filed only in the court of appeals having jurisdiction over the transferee district. There shall be no appeal or review of an order of the panel denying a motion to transfer for consolidated or coordinated proceedings.

(f) The panel may prescribe rules for the conduct of its business not inconsistent with Acts of Congress and the Federal Rules of Civil Procedure.

(g) Nothing in this section shall apply to any action in which the United States *or a State* is a complainant arising under the anti-trust laws. "Antitrust laws" as used herein include those acts referred to in the Act of October 15, 1914, as amended (38 Stat. 730; 15 U.S.C. 12), and also include the Act of June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13, 13a, and 13b) and the Act of September 26, 1914, as added March 21, 1938 (52 Stat. 116, 117; 15 U.S.C. 56); but shall not include section 4A of the Act of October 15, 1914, as added July 7, 1955 (69 Stat. 282; 15 U.S.C. 15a).

[(h) Notwithstanding the provisions of section 1404 or subsection (f) of this section, the judicial panel on multidistrict litigation may consolidate and transfer with or without the consent of the parties, for both pretrial purposes and for trial, any action brought under section 4C of the Clayton Act.]

\* \* \* \* \*

