

108TH CONGRESS  
1ST SESSION

# S. 1737

To amend the Clayton Act to enhance the authority of the Federal Trade Commission or the Attorney General to prevent anticompetitive practices in tightly concentrated gasoline markets.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 15, 2003

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the Clayton Act to enhance the authority of the Federal Trade Commission or the Attorney General to prevent anticompetitive practices in tightly concentrated gasoline markets.

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. SHORT TITLE.**

4       This Act may be cited as the “Gasoline Free Market  
5       Competition Act of 2003”.

6       **SEC. 2. RESTRAINT OF TRADE.**

7       The Clayton Act (15 U.S.C. 12 et seq.) is amended  
8       by adding at the end the following new section:

1 **“SEC. 27. RESTRAINT OF TRADE REGARDING GASOLINE**  
2 **MARKET ANTICOMPETITIVE PRACTICES.**

3 “(a) IN GENERAL.—It shall be unlawful for any per-  
4 son engaged in commerce, in the course of such commerce,  
5 directly or indirectly—

6 “(1) to impose any condition, restriction, agree-  
7 ment, or understanding between a refiner and dis-  
8 tributor that limits or prevents the distributor from  
9 supplying branded gasoline to independent retailers  
10 in a highly concentrated market, unless the limita-  
11 tion can be proven not to injure, destroy, or limit  
12 competition;

13 “(2) if that person is a refiner, to sell the same  
14 brand of gasoline to retailers owned or controlled by  
15 that refiner in a highly concentrated market at dif-  
16 ferent prices than the refiner sells to its independent  
17 dealers, or to sell to independent dealers in the same  
18 relevant geographic market at different prices if  
19 those dealers are located in a highly concentrated  
20 market; or

21 “(3) to engage in any other practice that the  
22 Commission determines by regulation, after notice  
23 and opportunity for public comment, would be likely  
24 to reduce supply or increase the price of gasoline in  
25 a highly concentrated market.

26 “(b) CONSUMER WATCH ZONE.—

1           “(1) NOTICE.—Not later than 90 days after the  
2           date of enactment of this section, the Commission or  
3           the Attorney General shall provide notice to each re-  
4           finer, distributor, and retailer doing business in a  
5           highly concentrated market that the highly con-  
6           centrated market is a consumer watch zone and sub-  
7           ject to the conditions of paragraph (2).

8           “(2) CONDITIONS.—In a consumer watch zone  
9           the following conditions shall apply to a refiner, dis-  
10          tributor, or retailer:

11           “(A) SHIFT OF BURDEN OF PROOF.—If  
12          the Commission or the Attorney General makes  
13          a prima facie case of a violation of subsection  
14          (a) against a refiner, distributor, or retailer, the  
15          burden of proof of proving a benefit to the con-  
16          sumers shall shift to the refiner, distributor, or  
17          retailer. A refiner, distributor, or retailer may  
18          rebut the prima facie case by showing that the  
19          action that is the basis of the alleged violation  
20          was taken to lower gasoline price in a good  
21          faith effort to meet an equally low price of a  
22          competitor.

23           “(B) CEASE AND DESIST.—The Commis-  
24          sion or the Attorney General may issue a cease

1           and desist order under this section for a viola-  
2           tion of subsection (a).

3           “(c) EVALUATION OF OIL MERGER.—In evaluating  
4 whether any combination of refiners violates the antitrust  
5 laws, the Commission or the Attorney General shall not  
6 approve any combination that would create a highly con-  
7 centrated market that would injure, destroy, or limit com-  
8 petition.

9           “(d) ACTION BY STATE ATTORNEY GENERAL.—Any  
10 attorney general of a State may bring a civil action in the  
11 name of such State in any district court of the United  
12 States having jurisdiction of the defendant to secure relief  
13 for a violation of subsection (a) or (b) as provided in sec-  
14 tion 4C.

15          “(e) DEFINITIONS.—In this section:

16           “(1) HIGHLY CONCENTRATED MARKET.—The  
17 term ‘highly concentrated market’ means a gasoline  
18 market where the 4 largest refiners control 70 per-  
19 cent or more of the gasoline market in a relevant ge-  
20 ographic market area.

21           “(2) OTHER TERMS.—The terms ‘distributor’,  
22 ‘refiner’, ‘retailer’, and ‘relevant geographic market  
23 area’ have the same meanings given those terms in

- 1 section 101 of the Petroleum Marketing Practices
- 2 Act (15 U.S.C. 2801).”.

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