

Calendar No. 416

109TH CONGRESS
2D SESSION**S. 2557**

To improve competition in the oil and gas industry, to strengthen antitrust enforcement with regard to industry mergers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 6, 2006

Mr. SPECTER (for himself, Mr. KOHL, Mr. DEWINE, Mr. LEAHY, Mrs. FEINSTEIN, Mr. DURBIN, Mr. LIEBERMAN, Mr. BIDEN, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

APRIL 27, 2006

Reported by Mr. SPECTER, without amendment

A BILL

To improve competition in the oil and gas industry, to strengthen antitrust enforcement with regard to industry mergers, 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. SHORT TITLE.**

4 This Act may be cited as the “Oil and Gas Industry
5 Antitrust Act of 2006”.

1 **SEC. 2. PROHIBITION ON UNILATERAL WITHHOLDING.**

2 The Clayton Act (15 U.S.C. 12 et seq.) is amended—

3 (1) by redesignating section 28 as section 29;

4 and

5 (2) by inserting after section 27 the following:

6 **“SEC. 28. OIL AND NATURAL GAS.**

7 “(a) IN GENERAL.—Except as provided in subsection
8 (b), it shall be unlawful for any person to refuse to sell,
9 or to export or divert, existing supplies of petroleum, gaso-
10 line, or other fuel derived from petroleum, or natural gas
11 with the primary intention of increasing prices or creating
12 a shortage in a geographic market.

13 “(b) CONSIDERATIONS.—In determining whether a
14 person who has refused to sell, or exported or diverted,
15 existing supplies of petroleum, gasoline, or other fuel de-
16 rived from petroleum or natural gas has done so with the
17 intent of increasing prices or creating a shortage in a geo-
18 graphic market under subsection (a), the court shall con-
19 sider whether—

20 “(1) the cost of acquiring, producing, refining,
21 processing, marketing, selling, or otherwise making
22 such products available has increased; and

23 “(2) the price obtained from exporting or di-
24 verting existing supplies is greater than the price ob-
25 tained where the existing supplies are located or are
26 intended to be shipped.”.

1 **SEC. 3. REVIEW OF CLAYTON ACT.**

2 (a) IN GENERAL.—The Attorney General and the
3 Chairman of the Federal Trade Commission shall conduct
4 a study, including a review of the report submitted under
5 section 4, regarding whether section 7 of the Clayton Act
6 should be amended to modify how that section applies to
7 persons engaged in the business of exploring for, pro-
8 ducing, refining, or otherwise processing, storing, mar-
9 keting, selling, or otherwise making available petroleum,
10 gasoline or other fuel derived from petroleum, or natural
11 gas.

12 (b) REPORT.—Not later than 270 days after the date
13 of enactment of this Act, the Attorney General and the
14 Chairman of the Federal Trade Commission shall submit
15 a report to Congress regarding the findings of the study
16 conducted under subsection (a), including recommenda-
17 tions and proposed legislation, if any.

18 **SEC. 4. STUDY BY THE GOVERNMENT ACCOUNTABILITY OF-**
19 **FICE.**

20 (a) DEFINITION.—In this section, the term “covered
21 consent decree” means a consent decree—

22 (1) to which either the Federal Trade Commis-
23 sion or the Department of Justice is a party;

24 (2) that was entered by the district court not
25 earlier than 10 years before the date of enactment
26 of this Act;

1 (3) that required divestitures; and

2 (4) that involved a person engaged in the busi-
3 ness of exploring for, producing, refining, or other-
4 wise processing, storing, marketing, selling, or other-
5 wise making available petroleum, gasoline or other
6 fuel derived from petroleum, or natural gas.

7 (b) REQUIREMENT FOR A STUDY.—Not later than
8 180 days after the date of enactment of this Act, the
9 Comptroller General of the United States shall conduct
10 a study evaluating the effectiveness of divestitures re-
11 quired under covered consent decrees.

12 (c) REQUIREMENT FOR A REPORT.—Not later than
13 180 days after the date of enactment of this Act, the
14 Comptroller General shall submit a report to Congress, the
15 Federal Trade Commission, and the Department of Jus-
16 tice regarding the findings of the study conducted under
17 subsection (b).

18 (d) FEDERAL AGENCY CONSIDERATION.—Upon re-
19 ceipt of the report required by subsection (c), the Attorney
20 General or the Chairman of the Federal Trade Commis-
21 sion, as appropriate, shall consider whether any additional
22 action is required to restore competition or prevent a sub-
23 stantial lessening of competition occurring as a result of
24 any transaction that was the subject of the study con-
25 ducted under subsection (b).

1 **SEC. 5. JOINT FEDERAL AND STATE TASK FORCE.**

2 The Attorney General and the Chairman of the Fed-
 3 eral Trade Commission shall establish a joint Federal-
 4 State task force, which shall include the attorney general
 5 of any State that chooses to participate, to investigate in-
 6 formation sharing (including through the use of exchange
 7 agreements and commercial information services) among
 8 persons in the business of exploring for, producing, refin-
 9 ing, or otherwise processing, storing, marketing, selling,
 10 or otherwise making available petroleum, gasoline or other
 11 fuel derived from petroleum, or natural gas (including any
 12 person about which the Energy Information Administra-
 13 tion collects financial and operating data as part of its
 14 Financial Reporting System).

15 **SEC. 6. NO OIL PRODUCING AND EXPORTING CARTELS.**

16 (a) **SHORT TITLE.**—This section may be cited as the
 17 “No Oil Producing and Exporting Cartels Act of 2006”
 18 or “NOPEC”.

19 (b) **SHERMAN ACT.**—The Sherman Act (15 U.S.C.
 20 1 et seq.) is amended—

21 (1) by redesignating section 8 as section 9; and

22 (2) by inserting after section 7 the following:

23 **“SEC. 8. OIL PRODUCING CARTELS.**

24 “(a) **IN GENERAL.**—It shall be illegal and a violation
 25 of this Act for any foreign state, or any instrumentality
 26 or agent of any foreign state, in the circumstances de-

1 scribed in subsection (b), to act collectively or in combina-
 2 tion with any other foreign state, any instrumentality or
 3 agent of any other foreign state, or any other person,
 4 whether by cartel or any other association or form of co-
 5 operation or joint action—

6 “(1) to limit the production or distribution of
 7 oil, natural gas, or any other petroleum product;

8 “(2) to set or maintain the price of oil, natural
 9 gas, or any petroleum product; or

10 “(3) to otherwise take any action in restraint of
 11 trade for oil, natural gas, or any petroleum product.

12 “(b) CIRCUMSTANCES.—The circumstances described
 13 in this subsection are an instance when an action, com-
 14 bination, or collective action described in subsection (a)
 15 has a direct, substantial, and reasonably foreseeable effect
 16 on the market, supply, price, or distribution of oil, natural
 17 gas, or other petroleum product in the United States.

18 “(c) SOVEREIGN IMMUNITY.—A foreign state en-
 19 gaged in conduct in violation of subsection (a) shall not
 20 be immune under the doctrine of sovereign immunity from
 21 the jurisdiction or judgments of the courts of the United
 22 States in any action brought to enforce this section.

23 “(d) INAPPLICABILITY OF ACT OF STATE DOC-
 24 TRINE.—No court of the United States shall decline,

1 based on the act of state doctrine, to make a determina-
2 tion on the merits in an action brought under this section.

3 “(e) ENFORCEMENT.—The Attorney General of the
4 United States may bring an action to enforce this section
5 in any district court of the United States as provided
6 under the antitrust laws, as defined in section 1(a) of the
7 Clayton Act (15 U.S.C. 12(a)).”.

8 (c) SOVEREIGN IMMUNITY.—Section 1605(a) of title
9 28, United States Code, is amended—

10 (1) in paragraph (6), by striking “or” at the
11 end;

12 (2) in paragraph (7), by striking the period at
13 the end and inserting “; or”; and

14 (3) by adding at the end the following:

15 “(8) in which the action is brought under sec-
16 tion 8 of the Sherman Act.”.

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