

109TH CONGRESS  
2D SESSION

# S. 2854

To prevent anti-competitive mergers and acquisitions in the oil and gas industry.

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IN THE SENATE OF THE UNITED STATES

MAY 18, 2006

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

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## A BILL

To prevent anti-competitive mergers and acquisitions in the oil and gas industry.

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 Industry Merger  
5       Antitrust Enforcement Act”.

6       **SEC. 2. STATEMENT OF FINDINGS AND DECLARATIONS OF**  
7       **PURPOSES.**

8       (a) FINDINGS.—Congress finds the following:

1           (1) American consumers are suffering from ex-  
2           cessively high prices for gasoline, natural gas, heat-  
3           ing oil, and other energy products.

4           (2) These excessively high energy prices have  
5           been caused, at least in substantial part, by undue  
6           concentration among companies involved in the pro-  
7           duction, refining, distribution, and retail sale of oil,  
8           gasoline, natural gas, heating oil, and other petro-  
9           leum-related products.

10          (3) There has been a sharp consolidation  
11          caused by mergers and acquisitions among oil com-  
12          panies over the last decade, and the antitrust en-  
13          forcement agencies (the Federal Trade Commission  
14          and the Department of Justice Antitrust Division)  
15          have failed to employ the antitrust laws to prevent  
16          this consolidation, to the detriment of consumers  
17          and competition. This consolidation has caused sub-  
18          stantial injury to competition and has enabled the  
19          remaining oil companies to gain market power over  
20          the sale, refining, and distribution of petroleum-re-  
21          lated products.

22          (4) The demand for oil, gasoline, and other pe-  
23          troleum-based products is highly inelastic so that oil  
24          companies can easily utilize market power to raise  
25          prices.

1           (5) Maintaining competitive markets for oil,  
2           gasoline, natural gas, and other petroleum-related  
3           products is in the highest national interest.

4           (b) PURPOSES.—The purposes of this Act are to—

5               (1) ensure vigorous enforcement of the antitrust  
6           laws in the oil industry;

7               (2) restore competition to the oil industry and  
8           to the production, refining, distribution, and mar-  
9           keting of gasoline and other petroleum-related prod-  
10          ucts; and

11               (3) prevent the accumulation and exercise of  
12          market power by oil companies.

13   **SEC. 3. BURDEN OF PROOF.**

14          Section 7 of the Clayton Act (15 U.S.C. 18) is  
15   amended by adding at the end the following:

16          “In any civil action brought against any person for  
17   violating this section in which the plaintiff—

18               “(1) alleges that the effect of a merger, acquisi-  
19          tion, or other transaction affecting commerce may be  
20          to substantially lessen competition, or to tend to cre-  
21          ate a monopoly, in the business of exploring for, pro-  
22          ducing, refining, or otherwise processing, storing,  
23          marketing, selling, or otherwise making available pe-  
24          troleum, oil, or natural gas, or products derived  
25          from petroleum, oil, or natural gas; and

1           “(2) establishes that a merger, acquisition, or  
2           transaction is between or involves persons competing  
3           in the business of exploring for, producing, refining,  
4           or otherwise processing, storing, marketing, selling,  
5           or otherwise making available petroleum, oil, or nat-  
6           ural gas, or products derived from petroleum, oil, or  
7           natural gas;  
8           the burden of proof shall be on the defendant or defend-  
9           ants to establish by a preponderance of the evidence that  
10          the merger, acquisition, or transaction at issue will not  
11          substantially lessen competition or tend to create a monop-  
12          oly.”.

13   **SEC. 4. ENSURING FULL AND FREE COMPETITION.**

14          (a) REVIEW.—The Federal Trade Commission and  
15          the Antitrust Division of the Department of Justice shall  
16          jointly review and revise all enforcement guidelines and  
17          policies, including the Horizontal Merger Guidelines  
18          issued April 2, 1992 and revised April 8, 1997, and the  
19          Non-Horizontal Merger Guidelines issued June 14, 1984,  
20          and modify those guidelines in order to—

21                (1) specifically address mergers and acquisi-  
22                tions in oil companies and among companies in-  
23                volved in the production, refining, distribution, or  
24                marketing of oil, gasoline, natural gas, heating oil,  
25                or other petroleum-related products; and

1           (2) ensure that the application of these guide-  
2       lines will prevent any merger and acquisition in the  
3       oil industry, when the effect of such a merger or ac-  
4       quisition may be to substantially lessen competition,  
5       or to tend to create a monopoly, and reflect the spe-  
6       cial conditions prevailing in the oil industry de-  
7       scribed in subsection (b).

8       (b) SPECIAL CONDITIONS.—The guidelines described  
9   in subsection (a) shall be revised to take into account the  
10  special conditions prevailing in the oil industry, includ-  
11  ing—

12           (1) the high inelasticity of demand for oil and  
13       petroleum-related products;

14           (2) the ease of gaining market power in the oil  
15       industry;

16           (3) supply and refining capacity limits in the oil  
17       industry;

18           (4) difficulties of market entry in the oil indus-  
19       try; and

20           (5) unique regulatory requirements applying to  
21       the oil industry.

22       (c) COMPETITION.—The review and revision of the  
23  enforcement guidelines required by this section shall be  
24  completed not later than 6 months after the date of enact-  
25  ment of this Act.

1 (d) REPORT.—Not later than 6 months after the date  
2 of enactment of this Act, the Federal Trade Commission  
3 and the Antitrust Division of the Department of Justice  
4 shall jointly report to the Committee on the Judiciary of  
5 the Senate and the Committee on the Judiciary of the  
6 House of Representatives regarding the review and revi-  
7 sion of the enforcement guidelines mandated by this sec-  
8 tion.

9 **SEC. 5. DEFINITIONS.**

10 In this Act:

11 (1) OIL INDUSTRY.—The term “oil industry”  
12 means companies and persons involved in the pro-  
13 duction, refining, distribution, or marketing of oil or  
14 petroleum-based products.

15 (2) PETROLEUM-BASED PRODUCT.—The term  
16 “petroleum-based product” means gasoline, diesel  
17 fuel, jet fuel, home heating oil, natural gas, or other  
18 products derived from the refining of oil or petro-  
19 leum.

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