

110TH CONGRESS  
1ST SESSION

# S. 878

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

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IN THE SENATE OF THE UNITED STATES

MARCH 14, 2007

Mr. KOHL (for himself and Mr. SPECTER) 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:

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.

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

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

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, acquisition  
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 acqui-  
22       sitions 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

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-  
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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