

The funds will be used by the Museum and the local Native American community to research and catalog the history of the area's Native Americans in a cross-cultural context. As the chairman knows, Heritage Harbor revolves around the telling of our nation's history in an integrated environment. The museum will not focus on one ethnic or religious group but strive to present the independent and coexisting histories of many of our nation's peoples.

The task ahead for Heritage Harbor is a complex one, and I appreciate the committee underscoring the federal interest in the project by providing these funds. In order for the Native American perspective to be presented effectively, the museum will not only research records, data and artifacts, but it will also catalog the research and present it in formal exhibit fashion.

Is it the understanding of the Chairman that these funds are intended to be used for research and cataloging as well as exhibit presentation?

Mr. CAMPBELL. That is my understanding.

Mr. L. CHAFEE. Again, I thank the Senator for his interest in this project, and I look forward to inviting you to Rhode Island to see the results of the museum's effort.

PASSAGE OF S. 1854

Mr. LEAHY. Mr. President, last Thursday, the Senate passed the Hatch-Leahy-DeWine-Kohl substitute amendment to S. 1854, the "Hart-Scott-Rodino Antitrust Improvements Act," that will make significant improvements to this important antitrust law. Section 7 of the Clayton Act, as amended by the Hart-Scott-Rodino Act of 1976 (HSR), requires companies that plan to merge to notify the Justice Department's Antitrust Division and the Federal Trade Commission of their intention and submit certain information. HSR pre-merger notifications provide advance notice of potentially anti-competitive transactions and allow the antitrust agencies to block mergers before they are consummated, which is easier than undoing them after-the-fact.

Since passage of the Hart-Scott-Rodino Act, this law has worked well to help the American economy flourish, despite larger and more complex mergers and consolidations within and among different industries. The Hatch-Leahy-DeWine-Kohl substitute amendment to S. 1854, the "Hart-Scott-Rodino (HSR) Antitrust Improvements Act," will update this law and make it work even better.

Specifically, the substitute would raise the minimum threshold for the "size of the transaction" required to provide HSR notifications from \$15,000,000 to \$50,000,000. Thus, no pre-merger filing will be required if the transaction is valued at less than \$50,000,000. A pre-merger filing would always be required if the size of the

transaction is valued at more than \$200,000,000. With regard to transactions valued at between \$50,000,000 and \$200,000,000, the amendment would require pre-merger filing if the total assets or net annual sales of one party are over \$100,000,000 annually while the other party's total assets or net annual sales are over \$10,000,000 annually. The thresholds may be adjusted by the FTC every three years to reflect the percentage change in the gross national product for that period. These threshold changes are supported by the antitrust agencies.

The remaining part of the substitute directs the Federal Trade Commission and the DOJ's Antitrust Division to implement regulations to improve the manner in which these agencies obtain information as part of the review of a proposed merger. The antitrust agencies do not object to these parts of the substitute amendment.

As explained in more detail below, this substitute addresses the most significant flaws in the original bill.

To appreciate the issues addressed in the bill, the pre-merger review procedures currently in effect must be understood. Upon receipt of the merger notification, the agency takes a "quick look" and determines whether to open a Preliminary Investigation, PI. A PI may take from a few weeks to several months to determine whether to close the PI or proceed with a Second Request or Civil Investigative Demand, CID, for additional information. Second Requests were issued in only 2.5 percent of reported transactions in 1999.

Under statutory time limits, the Second Request must be made within 30 days from the initial filing. In addition, only a single Second Request is allowed so it must be complete. This Second Request extends the waiting period before the merger may be completed for up to 20 days from the time that all responsive documents are submitted to the agency. Second requests for voluminous documents, combined with the requirement that "all responsive documents" have been supplied by the companies to the agency, can cause substantial delays in the waiting period and the time when a merger may be completed.

To address business concerns over broad second requests and the delay such requests may cause, the original bill substantially limited the scope of agencies' second requests and authorized judicial review of both the scope of and compliance with these critical requests, as detailed below.

First, the original bill would have limited the scope of second requests to information or documents "not unreasonably cumulative or duplicative" and that "do not impose a burden or expense that substantially outweighs the likely benefit of the information to the agency." The antitrust agencies raised significant, valid questions about whether these limitations were workable. In particular, at the time a sec-

ond request is issued, an agency generally cannot evaluate the cost/benefit tradeoff because it does not know the costs of production, and has only limited knowledge about the potential benefits of the information for the investigation (in part because the anti-competitive issues are often still indefinite). The documents themselves provide this information.

The bill would also have required the antitrust agency to provide, with each second request, a specific summary of the competitive concerns presented by the proposed acquisition and the relation between such concerns and the second request specifications. The antitrust agencies questioned this requirement because anticompetitive concerns are still often general and evolving at the time a second request is issued. Consequently, a specific summary may not be possible at that time and would likely be incomplete since additional competitive concerns may be discovered during the investigation. Furthermore, according to the agencies, this requirement was unnecessary since they ordinarily provide a general explanation of their concerns and provide more specific information as it develops, in face-to-face conferences between parties (or their counsel) and investigating staff.

Second, the original bill would have limited the agencies' ability to claim that the production of documents in response to a second request is deficient only if the deficiency "materially impairs the ability of the agency to conduct a preliminary antitrust review." This proposed standard for claiming deficiency (that is, for requiring further document production) is higher than the ordinary standard for discovery and would limit the agency's ability to investigate, especially given HSR's stringent time frames and the fact that the second request is the single opportunity to seek information in a premerger review. This could have seriously harmed the agency's posture in court, as courts often examine the entire substance of the agency's case even in a preliminary injunction action.

Finally, the original bill would have authorized a merging company to seek review by a magistrate judge of both the scope of the second request and any claim of deficient production. The magistrate was required to apply the scope and deficiency standards described above, which impose more limits on antitrust agencies than general civil discovery rules. Moreover, magistrates were unlikely to be familiar with the types of information that form the basis for the complex antitrust analysis required in predicting likely future competitive effects of a proposed transaction—a shortcoming with possible adverse consequences for antitrust agencies seeking relevant information for an investigation since

this experience is particularly important in light of HSR's special time constraints and the agencies' single opportunity to seek documents prior to the merger.

The substitute amendment eliminates these three problematic procedural limitations on the second request investigation process contained in the original bill. Instead, the Hatch-Leahy-DeWine-Kohl substitute amendment directs the agencies to reform the merger review process to eliminate unnecessary delay, costly duplication and undue delay. In addition, the agencies are directed to designate senior officials within the agencies to review the second requests to determine whether the requests are burdensome or duplicative and whether the request has been substantially complied with by the merging companies.

These changes are consistent with reforms that the FTC and Antitrust Division already have underway. Indeed, the FTC on April 5, 2000, and the Antitrust Division the next day, announced their adoption of new procedures and other initiatives to improve the premerger "second request" investigation process to make the process more efficient for both businesses and the agencies. I commend both agencies for their efforts in this regard and look forward to working with them to ensure that implementation of their regulations proceeds smoothly.

The Hatch-Leahy-DeWine-Kohl substitute amendment also imposes a reporting requirement on the FTC to provide the Congress with information on the number of HSR notices filed and on the reviews conducted by the antitrust agencies.

The antitrust agencies did not support the fee structure in the Committee reported bill since, in their view, the level of fees authorized in the substitute amendment would not provide them with the ability to collect sufficient fees to meet their budget request for FY 2001. Although these agencies are funded by direct appropriations and not by their fees, the reality is that the appropriations to these agencies usually corresponds to the level of the fees collected. Nevertheless, the Committee reported bill authorized the collection of sufficient fees to be revenue neutral and at a level that would enable the agencies, according to the CBO, to collect fees at a level amounting to an increase of ten percent over the agencies' last year's budget.

The Hatch-Leahy-DeWine-Kohl substitute amendment eliminates reference to the revised fee structure. I intend to work with my colleagues and the antitrust agencies, as I have in the past, to ensure that they receive all the funding necessary to support their mission and carry out their important work through the appropriations process.

THE SAVAGE RAPIDS DAM ACT OF 2000

Mr. WYDEN. Mr. President, I am pleased to be the original cosponsor of the Savage Rapids Dam Act of 2000, introduced by my friend and colleague from Oregon, Senator GORDON SMITH.

This legislation is another good example of the Oregon way: bringing together varied interests to get win-win results for all stakeholders. Born out of controversy concerning the detrimental effects of the Savage Rapids Dam on fish passage and survival, this legislation is now supported by the Grants Pass Irrigation District, Waterwatch, Oregon's Governor Kitzhaber, Trout Unlimited, and various Oregon river guide and sport fishing concerns.

The winners under this legislation are Oregon's environmental and agricultural interests. The legislation begins the important process of restoring salmon habitat on the Rogue River, while retaining access to necessary irrigation water from the Rogue River for the Grants Pass Irrigation District. The legislation authorizes the acquisition by the Secretary of Interior of the Savage Rapids Dam for the purpose of removing the Dam to promote the recovery of coastal salmon. But prior to that acquisition, the legislation directs the Secretary of Interior, through the Bureau of Reclamation, to design and install modern electric irrigation pumps for the Grants Pass Irrigation District so they may continue to access Rogue River water for crop irrigation, as they have done since 1921.

This legislation is good for irrigators: by maintaining water accessibility, it will help sustain local agricultural businesses. It is good for fish because it takes important steps toward habitat restoration by authorizing Dam removal as well as the monitoring, mitigation, and restoration activities necessary to restore the fish population in on the Rogue River.

I look forward to continuing to improve the legislation with my colleagues in the Senate and the stakeholders at home. As I work over the recess and on into the next Congress on this issue, I know, eventually, we will have another win for the Oregon way.

RESOLUTION FOR SUBPOENA TO SECRETARY RICHARDSON

Mr. LEAHY. Mr. President, during the last presidential debate, Governor Bush told the American people, as he has frequently during the campaign, that if he and Republicans are in control, there will be a more even-handed, cordial and respectful atmosphere in Washington and less partisan politics. I know that Governor Bush has tried to cast himself as a Washington outsider, so maybe he has not been paying attention to how the Republican majority here in Washington has been doing things these past few years. A resolution on the agenda for the final two

meetings of the Judiciary Committee in this Congress might help bring Governor Bush up to speed.

That resolution proposed by the Republican leadership of the Judiciary Subcommittee on Administrative Oversight and the Courts sought to authorize issuance of a subpoena compelling Department of Energy Secretary Bill Richardson to testify before the Subcommittee about the investigation and prosecution of Wen Ho Lee and provide thirteen different categories of documents. Under the proposed resolution, if by November 8, 2000, Secretary Richardson did not agree to testify and provide the demanded documents, the subpoena would be authorized. This resolution was ultimately not brought to a vote due to the lack of the requisite quorum, sparing the Judiciary Committee from making an unnecessary and embarrassing demand for which the only enforcement mechanism is a contempt trial in the Senate.

It might appear from the targets of this subpoena resolution, namely, Secretary Richardson and the Department of Energy, that the Judiciary Committee and the Subcommittee on Administrative Oversight and the Courts are charged with oversight of the Department of Energy (DOE). In fact, the Republicans have proposed this resolution as part of the Subcommittee's oversight of the Justice Department. While the Department of Energy may have information helpful to an understanding of the Justice Department's handling of the Lee case, the manner in which the Republican majority has chosen to proceed both with regard to Secretary Richardson and other matters before the Subcommittee have been marked by an unprecedented political intervention in pending criminal matters and second-guessing of the handling of certain cases by federal agencies.

For example, the majority on the Senate Judiciary Committee has broken from tradition and called line assistants to testify before the Subcommittee, questioned federal judges about pending cases over which they are presiding, attempted to exact assurances that particular cases will be handled particular ways, and made public internal and confidential recommendations by senior prosecutors to the Attorney General on how to proceed in ongoing investigations. The Subcommittee's earlier intervention in the Waco matter prompted a rebuke from Special Counsel Jack Danforth, who wrote to the Senate Judiciary Committee twice in September, 1999, requesting that the Committee "conduct its inquiries in a way that does not undermine the work of the Special Counsel." I should note that the Subcommittee on Administrative Oversight and the Courts persisted in seeking documents from the Department of Justice on the Waco matter, and that 250 boxes of Waco documents produced by the Department of Justice sit largely unopened in Judiciary Committee offices.