

(1) in determining whether a person has violated or is about to violate any of the foreign antitrust laws administered or enforced by the foreign antitrust authority, or

(2) in enforcing any of such foreign antitrust laws.

(b) Contents of order

(1) Use of appointee to receive evidence

(A) An order issued under subsection (a) may direct that testimony or a statement be given, or a document or other thing be produced, to a person who shall be recommended by the Attorney General and appointed by the court.

(B) A person appointed under subparagraph (A) shall have power to administer any necessary oath and to take such testimony or such statement.

(2) Practice and procedure

(A) An order issued under subsection (a) may prescribe the practice and procedure for taking testimony and statements and for producing documents and other things.

(B) Such practice and procedure may be in whole or in part the practice and procedure of the foreign state, or the regional economic integration organization, represented by the foreign antitrust authority with respect to which the Attorney General requests such order.

(C) To the extent such order does not prescribe otherwise, any testimony and statements required to be taken shall be taken, and any documents and other things required to be produced shall be produced, in accordance with the Federal Rules of Civil Procedure.

(c) Rights and privileges preserved

A person may not be compelled under an order issued under subsection (a) to give testimony or a statement, or to produce a document or other thing, in violation of any legally applicable right or privilege.

(d) Voluntary conduct

This section does not preclude a person in the United States from voluntarily giving testimony or a statement, or producing a document or other thing, in any manner acceptable to such person for use in an investigation by a foreign antitrust authority.

(Pub. L. 103-438, § 4, Nov. 2, 1994, 108 Stat. 4599.)

Editorial Notes

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2)(C), are classified to Title 28, Appendix, Judiciary and Judicial Procedure.

§ 6204. Limitations on authority

Sections 6201, 6202, and 6203 of this title shall not apply with respect to the following antitrust evidence:

(1) Antitrust evidence that is received by the Attorney General or the Commission under section 18a of this title. Nothing in this paragraph shall affect the ability of the Attorney General or the Commission to disclose to a foreign antitrust authority antitrust evidence that is obtained otherwise than under section 18a of this title.

(2) Antitrust evidence that is matter occurring before a grand jury and with respect to which disclosure is prevented by Federal law, except that for the purpose of applying Rule 6(e)(3)(C)(iv) of the Federal Rules of Criminal Procedure with respect to this section—

(A) a foreign antitrust authority with respect to which a particularized need for such antitrust evidence is shown shall be considered to be an appropriate official of any of the several States, and

(B) a foreign antitrust law administered or enforced by the foreign antitrust authority shall be considered to be a State criminal law.

(3) Antitrust evidence that is specifically authorized under criteria established by Executive Order 12356, or any successor to such order, to be kept secret in the interest of national defense or foreign policy, and—

(A) that is classified pursuant to such order or such successor, or

(B) with respect to which a determination of classification is pending under such order or such successor.

(4) Antitrust evidence that is classified under section 2162 of title 42.

(Pub. L. 103-438, § 5, Nov. 2, 1994, 108 Stat. 4599.)

Editorial Notes

REFERENCES IN TEXT

Rule 6(e)(3)(C)(iv) of the Federal Rules of Criminal Procedure, referred to in par. (2), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

Executive Order 12356, referred to in par. (3), is Ex. Ord. No. 12356, Apr. 2, 1982, 47 F.R. 14874, 15557, which was formerly set out as a note under section 435 (now section 3161) of Title 50, War and National Defense, was revoked by Ex. Ord. No. 12958, § 6.1(d), Apr. 17, 1995, 60 F.R. 19843.

§ 6205. Exception to certain disclosure restrictions

Section 1313 of this title, and sections 46(f) and 57b-2 of this title, shall not apply to prevent the Attorney General or the Commission from providing to a foreign antitrust authority antitrust evidence in accordance with an antitrust mutual assistance agreement in effect under this chapter and in accordance with the other requirements of this chapter.

(Pub. L. 103-438, § 6, Nov. 2, 1994, 108 Stat. 4600.)

§ 6206. Publication requirements applicable to antitrust mutual assistance agreements

(a) Publication of proposed antitrust mutual assistance agreements

Not less than 45 days before an antitrust mutual assistance agreement is entered into, the Attorney General, with the concurrence of the Commission, shall publish in the Federal Register—

(1) the proposed text of such agreement and any modification to such proposed text, and

(2) a request for public comment with respect to such text or such modification, as the case may be.

(b) Publication of proposed amendments to antitrust mutual assistance agreements in effect

Not less than 45 days before an agreement is entered into that makes an amendment to an antitrust mutual assistance agreement, the Attorney General, with the concurrence of the Commission, shall publish in the Federal Register—

- (1) the proposed text of such amendment, and
- (2) a request for public comment with respect to such amendment.

(c) Publication of antitrust mutual assistance agreements, amendments, and terminations

Not later than 45 days after an antitrust mutual assistance agreement is entered into or terminated, or an agreement that makes an amendment to an antitrust mutual assistance agreement is entered into, the Attorney General, with the concurrence of the Commission, shall publish in the Federal Register—

- (1) the text of the antitrust mutual assistance agreement or amendment, or the terms of the termination, as the case may be, and

(2) in the case of an agreement that makes an amendment to an antitrust mutual assistance agreement, a notice containing—

(A) citations to the locations in the Federal Register at which the text of the antitrust mutual assistance agreement that is so amended, and of any previous amendments to such agreement, are published, and

(B) a description of the manner in which a copy of the antitrust mutual assistance agreement, as so amended, may be obtained from the Attorney General and the Commission.

(d) Condition for validity

An antitrust mutual assistance agreement, or an agreement that makes an amendment to an antitrust mutual assistance agreement, with respect to which publication does not occur in accordance with subsections (a), (b), and (c) shall not be considered to be in effect under this chapter.

(Pub. L. 103-438, §7, Nov. 2, 1994, 108 Stat. 4600.)

§ 6207. Conditions on use of antitrust mutual assistance agreements**(a) Determinations**

Neither the Attorney General nor the Commission may conduct an investigation under section 6202 of this title, apply for an order under section 6203 of this title, or provide antitrust evidence to a foreign antitrust authority under an antitrust mutual assistance agreement, unless the Attorney General or the Commission, as the case may be, determines in the particular instance in which the investigation, application, or antitrust evidence is requested that—

- (1) the foreign antitrust authority—
 - (A) will satisfy the assurances, terms, and conditions described in subparagraphs (A), (B), and (E) of section 6211(2) of this title, and

(B) is capable of complying with and will comply with the confidentiality requirements applicable under such agreement to the requested antitrust evidence,

(2) providing the requested antitrust evidence will not violate section 6204 of this title, and

(3) conducting such investigation, applying for such order, or providing the requested antitrust evidence, as the case may be, is consistent with the public interest of the United States, taking into consideration, among other factors, whether the foreign state or regional economic integration organization represented by the foreign antitrust authority holds any proprietary interest that could benefit or otherwise be affected by such investigation, by the granting of such order, or by the provision of such antitrust evidence.

(b) Limitation on disclosure of certain antitrust evidence

Neither the Attorney General nor the Commission may disclose in violation of an antitrust mutual assistance agreement any antitrust evidence received under such agreement, except that such agreement may not prevent the disclosure of such antitrust evidence to a defendant in an action or proceeding brought by the Attorney General or the Commission for a violation of any of the Federal laws if such disclosure would otherwise be required by Federal law.

(c) Required disclosure of notice received

If the Attorney General or the Commission receives a notice described in section 6211(2)(H) of this title, the Attorney General or the Commission, as the case may be, shall transmit such notice to the person that provided the evidence with respect to which such notice is received.

(Pub. L. 103-438, §8, Nov. 2, 1994, 108 Stat. 4601.)

§ 6208. Limitations on judicial review**(a) Determinations**

Determinations made under paragraphs (1) and (3) of section 6207(a) of this title shall not be subject to judicial review.

(b) Citations to and descriptions of confidentiality laws

Whether an antitrust mutual assistance agreement satisfies section 6211(2)(C) of this title shall not be subject to judicial review.

(c) Rules of construction**(1) Administrative Procedure Act**

The requirements in section 6206 of this title with respect to publication and request for public comment shall not be construed to create any availability of judicial review under chapter 7 of title 5.

(2) Laws referenced in section 6204 of this title

Nothing in this section shall be construed to affect the availability of judicial review under laws referred to in section 6204 of this title.

(Pub. L. 103-438, §9, Nov. 2, 1994, 108 Stat. 4602.)

§ 6209. Preservation of existing authority**(a) In general**

The authority provided by this chapter is in addition to, and not in lieu of, any other authority vested in the Attorney General, the Commission, or any other officer of the United States.