

84TH CONGRESS
1ST SESSION

H. R. 7309

IN THE HOUSE OF REPRESENTATIVES

JULY 13, 1955

Mr. CELLER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To authorize the Attorney General to compel the production of documentary evidence required in civil investigations for the enforcement of the antitrust laws, 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 That this Act may be cited as the "Antitrust Civil Process
4 Act of 1955".

DEFINITIONS

5
6 SEC. 2. As used in this Act—
7 (a) The term "antitrust laws", as used herein, is defined
8 in section 1 of "An Act to supplement existing laws against
9 unlawful restraints and monopolies, and for other purposes",
10 approved October 15, 1914 (38 Stat. 730, as amended;

1 15 U. S. C. 12), commonly known as the Clayton Act.
2 In addition, however, that term used herein shall include any
3 statute hereafter enacted which prohibits, or makes available
4 to the United States, any judicial remedy with respect to,
5 any restraint upon or monopolization of interstate or foreign
6 trade or commerce;

7 (b) The term "antitrust agency" means any board,
8 commission, or agency of the United States (other than the
9 Department of Justice) charged by law with the adminis-
10 tration or enforcement of any antitrust law;

11 (c) The term "antitrust order" means any final order
12 of any antitrust agency, or any final order, decree or judg-
13 ment of any court of the United States, duly entered in
14 any case or proceeding arising under any antitrust law;

15 (d) The term "antitrust investigator" means any attor-
16 ney or investigator employed by the Department of Justice
17 who is charged with the duty of enforcing or carrying into
18 effect any antitrust law;

19 (e) The term "person" means any corporation, asso-
20 ciation, partnership, or other legal entity;

21 (f) The term "documentary material" includes the orig-
22 inal or any copy of any book, record, report, memorandum,
23 paper communication, tabulation, chart, or other document
24 in the possession, custody, or control of any person; and

25 (g) The term "custodian" means the antitrust docu-

1 ment custodian or any deputy custodian designated under
2 section 4 (a) of this Act.

3 CIVIL INVESTIGATIVE DEMAND

4 SEC. 3. (a) Whenever the Attorney General or the
5 Assistant Attorney General in charge of the Antitrust Divi-
6 sion has reason to believe that any person may be in pos-
7 session, custody, or control of any documentary material
8 bearing on any antitrust investigation, he may issue in writ-
9 ing, and cause to be served upon such person, a civil inves-
10 tigative demand requiring such person to produce such evi-
11 dence for examination.

12 (b) Each such demand shall—

13 (1) state the statute and, where feasible, the sec-
14 tion of same alleged violation of which is under inves-
15 tigation;

16 (2) describe the class or classes of documentary
17 material to be produced thereunder with such definite-
18 ness and certainty as to permit such material to be
19 fairly identified;

20 (3) prescribe a return date which will provide a
21 reasonable period of time within which the evidence so
22 demanded may be assembled and produced; and

23 (4) identify the custodian to whom such evidence
24 is to be delivered.

25 (c) No such demand shall—

1 (1) contain any requirement which would be held
2 to be unreasonable if contained in a subpoena duces
3 tecum issued by a court of the United States in aid of
4 a grand jury investigation of such alleged violation; or

5 (2) require the production of any documentary evi-
6 dence which the recipient can show would be privileged
7 from disclosure if demanded by a subpoena duces tecum
8 issued by a court of the United States in aid of a grand
9 jury investigation of such alleged violation.

10 (d) Any such demand may be served by any antitrust
11 investigator or any United States Marshal or Deputy Mar-
12 shal at any place within the territorial jurisdiction of any
13 court of the United States.

14 (e) Service of any such demand or of any petition
15 filed under section 5 of this Act may be made by—

16 (1) delivering a duly executed copy thereof to any
17 executive officer of a corporation, association, or other
18 legal entity to be served or to any member of a partner-
19 ship to be served;

20 (2) delivering a duly executed copy thereof to the
21 principal office or place of business of the partnership,
22 corporation, association, or other legal entity to be
23 served; or

24 (3) mailing by registered or certified mail a copy
25 thereof addressed to such partnership, corporation, asso-

1 is so delivered shall take physical possession thereof, and
2 shall be responsible for the use made thereof and for the
3 return thereof pursuant to this Act. The custodian may
4 cause the preparation of such copies of such documentary
5 material as may be required for use by any individual en-
6 titled to have access to such evidence for examination.
7 While in the possession of the custodian, no material so
8 produced shall be available for examination, without the
9 consent of the person who produced such material, by any
10 individual other than an authorized employee of the De-
11 partment of Justice or any antitrust agency. Under such
12 reasonable terms and conditions as the Attorney General
13 shall prescribe, documentary material while in the posses-
14 sion of the custodian shall be available for examination by
15 the person who produced such material or any duly author-
16 ized representative of such person.

17 (d) Whenever any attorney has been designated to ap-
18 pear on behalf of the United States before any court, grand
19 jury, or antitrust agency in any case or proceeding involving
20 any alleged antitrust violation, the custodian may deliver to
21 such attorney such documentary material in the possession of
22 the custodian as such attorney determines to be required for
23 use in the presentation of such case or proceeding on behalf of
24 the United States. Upon the conclusion of any such case or
25 proceeding, such attorney shall return to the custodian any

1 documentary material so withdrawn which has not passed
2 into the control of such court, grand jury, or antitrust agency
3 through the introduction thereof into the record of such case
4 or proceeding.

5 (e) Upon the completion of (1) the antitrust investiga-
6 tion for which any documentary material was produced under
7 this Act, and (2) any case or proceeding arising from such
8 investigation, the custodian shall return to the person who
9 produced such material all such material, not including copies
10 thereof made by the Department of Justice or any antitrust
11 agency, which has not so passed into the control of any court,
12 grand jury, or antitrust agency through the introduction
13 thereof into the record of such case or proceeding.

14 (f) When any documentary material has been produced
15 by any person under this Act for use in any antitrust investi-
16 gation, and no such case or proceeding arising therefrom has
17 been instituted within a reasonable time after completion of
18 the examination and analysis of all evidence assembled in
19 the course of such investigation, such person shall be entitled,
20 upon written demand made upon the Attorney General or
21 upon the Assistant Attorney General in charge of the Anti-
22 trust Division to the return of all documentary material so
23 produced by such person.

24 JUDICIAL PROCEEDINGS

25 SEC. 5. (a) Whenever any person fails to comply with

1 any demand served upon him under section 3, the issuing
2 antitrust investigator may file, in the district court of the
3 United States for that judicial district, within which the
4 Antitrust Division maintains an office, nearest to such per-
5 son's principal office or place of business, or in such other
6 judicial district as the parties may agree such person trans-
7 acts business or is found and serve upon such person a
8 petition for an order of such court for the enforcement of
9 such demand.

10 (b) Within twenty days after the demand has been
11 served, or at any time before the return date specified in the
12 demand, whichever period is shorter, the person upon whom
13 the demand is served may file, in the district court of the
14 United States where the petition under section 5 (a) was
15 filed, or in such other district as the parties may agree, and
16 serve upon such investigator a petition for an order of such
17 court modifying or setting aside such demand. Such peti-
18 tion shall specify each ground upon which the petitioner
19 relies in seeking such relief, and may be based upon any
20 failure of such demand to comply with the provisions of this
21 Act, or upon any constitutional right or privilege of such
22 person.

23 (c) Whenever any documentary material has been de-
24 livered by any person to any custodian in compliance with
25 a demand made under section 3, such person at any time

1 may file, in the district court of the United States for any
2 judicial district within which such custodian maintains an
3 office and serve upon such custodian a petition for an order
4 of such court requiring the performance by such custodian
5 of any duty imposed upon him by the provisions of this Act.

6 (d) Whenever any petition is filed in any district court
7 of the United States pursuant to the provisions of this section,
8 such court shall have jurisdiction to hear and determine the
9 matter so presented, and to enter such order or orders as
10 may be required to carry into effect the provisions of this
11 Act. Any final order so entered shall be subject to appeal
12 pursuant to section 1291 of title 28 of the United States
13 Code. Any disobedience of any final order entered under
14 this section by any court shall be punished as a contempt
15 thereof.

16 **CRIMINAL PENALTY**

17 **SEC. 6. (a)** Chapter 73 of title 18 of the United States
18 Code (relating to obstruction of justice) is amended by
19 adding at the end thereof the following new section:

20 "§ 1508. Obstruction of antitrust civil process

21 "Whoever, with intent to avoid, evade, prevent, or
22 obstruct compliance in whole or in part, by any person with
23 any civil investigative demand made under the Antitrust
24 Civil Process Act of 1955, willfully removes from any place,
25 conceals, withholds, destroys, mutilates, alters, or by any

1 other means falsifies any documentary material in the pos-
2 session, custody or control of any person which is the subject
3 of any such demand duly served upon any person shall be
4 fined not more than \$5,000 or imprisoned not more than five
5 years, or both.”

6 (b) The analysis to such chapter is amended by insert-
7 ing at the end thereof the following new item:

“1508. Obstruction of antitrust civil process.”

8

SAVING PROVISION

9 SEC. 7. Nothing contained in this Act shall impair the
10 authority of the Attorney General or any antitrust investi-
11 gator to (a) lay before any grand jury impaneled before any
12 district court of the United States any evidence concerning
13 any alleged antitrust violation, (b) invoke the power of any
14 such court to compel the production of any evidence before
15 any such grand jury, or (c) institute any proceeding for
16 the enforcement of any order or process issued in execution
17 of such power, or to punish disobedience of any such order
18 or process by any person.

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