

106TH CONGRESS
1ST SESSION

S. 467

To restate and improve section 7A of the Clayton Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 1999

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

A BILL

To restate and improve section 7A of the Clayton Act, 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 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Antitrust Merger Re-
5 view Act”.

6 **SEC. 2. RESTATEMENT AND IMPROVEMENT OF SECTION 7A**
7 **OF THE CLAYTON ACT.**

8 (a) IN GENERAL.—Section 7A of the Clayton Act (15
9 U.S.C. 18a) is amended to read as follows:

10 “SEC. 7A. (a) Except as exempted pursuant to sub-
11 section (c), no person shall acquire, directly or indirectly,

1 any voting securities or assets of any other person, unless
2 both persons (or in the case of a tender offer, the acquir-
3 ing person) file notification pursuant to rules under sub-
4 section (d)(1) and the waiting period described in sub-
5 section (b)(1) has expired, if—

6 “(1) the acquiring person, or the person whose
7 voting securities or assets are being acquired, is en-
8 gaged in commerce or in any activity affecting com-
9 merce;

10 “(2)(A) any voting securities or assets of a per-
11 son engaged in manufacturing which has annual net
12 sales or total assets of \$10,000,000 or more are
13 being acquired by any person which has total assets
14 or annual net sales of \$100,000,000 or more;

15 “(B) any voting securities or assets of a person
16 not engaged in manufacturing which has total assets
17 of \$10,000,000 or more are being acquired by any
18 person which has total assets or annual net sales of
19 \$100,000,000 or more; or

20 “(C) any voting securities or assets of a person
21 with annual net sales or total assets of
22 \$100,000,000 or more are being acquired by any
23 person with total assets or annual net sales of
24 \$10,000,000 or more; and

1 “(3) as a result of such acquisition, the acquir-
2 ing person would hold—

3 “(A) 15 per centum or more of the voting
4 securities or assets of the acquired person, or

5 “(B) an aggregate total amount of the vot-
6 ing securities and assets of the acquired person
7 in excess of \$15,000,000.

8 In the case of a tender offer, the person whose voting secu-
9 rities are sought to be acquired by a person required to
10 file notification under this subsection shall file notification
11 pursuant to rules under subsection (d).

12 “(b)(1) The waiting period required under subsection
13 (a) shall—

14 “(A) begin on the date of the receipt by the
15 Federal Trade Commission and the Assistant Attor-
16 ney General in charge of the Antitrust Division of
17 the Department of Justice (hereinafter referred to in
18 this section as the ‘Assistant Attorney General’)
19 of—

20 “(i) the completed notification required
21 under subsection (a), or

22 “(ii) if such notification is not completed,
23 the notification to the extent completed and a
24 statement of the reasons for such noncompli-
25 ance,

1 from both persons, or, in the case of a tender offer,
2 the acquiring person; and

3 “(B) end on the thirtieth day after the date of
4 such receipt (or in the case of a cash tender offer,
5 the fifteenth day), or on such later date as may be
6 set under subsection (e)(2) or (g)(2).

7 “(2) The Federal Trade Commission and the Assist-
8 ant Attorney General may, in individual cases, terminate
9 the waiting period specified in paragraph (1) and allow
10 any person to proceed with any acquisition subject to this
11 section, and promptly shall cause to be published in the
12 Federal Register a notice that neither intends to take any
13 action within such period with respect to such acquisition.

14 “(3) As used in this section—

15 “(A) The term ‘voting securities’ means any se-
16 curities which at present or upon conversion entitle
17 the owner or holder thereof to vote for the election
18 of directors of the issuer or, with respect to unincor-
19 porated issuers, persons exercising similar functions.

20 “(B) The amount or percentage of voting secu-
21 rities or assets of a person which are acquired or
22 held by another person shall be determined by ag-
23 gregating the amount or percentage of such voting
24 securities or assets held or acquired by such other
25 person and each affiliate thereof.

1 “(c) The following classes of transactions are exempt
2 from the requirements of this section—

3 “(1) acquisitions of goods or realty transferred
4 in the ordinary course of business;

5 “(2) acquisitions of bonds, mortgages, deeds of
6 trust, or other obligations which are not voting secu-
7 rities;

8 “(3) acquisitions of voting securities of an
9 issuer at least 50 per centum of the voting securities
10 of which are owned by the acquiring person prior to
11 such acquisition;

12 “(4) transfers to or from a Federal agency or
13 a State or political subdivision thereof;

14 “(5) transactions specifically exempted from the
15 antitrust laws by Federal statute;

16 “(6) transactions specifically exempted from the
17 antitrust laws by Federal statute if approved by a
18 Federal agency, if copies of all information and doc-
19 umentary material filed with such agency are con-
20 temporaneously filed with the Federal Trade Com-
21 mission and the Assistant Attorney General;

22 “(7) transactions which require agency approval
23 under section 10(e) of the Home Owners’ Loan Act
24 (12 U.S.C. 1467a), section 18(c) of the Federal De-
25 posit Insurance Act (12 U.S.C. 1828(c)), or section

1 3 of the Bank Holding Company Act of 1956 (12
2 U.S.C. 1842);

3 “(8) transactions which require agency approval
4 under section 4 of the Bank Holding Company Act
5 of 1956 (12 U.S.C. 1843) or section 5 of the Home
6 Owners’ Loan Act (12 U.S.C. 1464), if copies of all
7 information and documentary material filed with any
8 such agency are contemporaneously filed with the
9 Federal Trade Commission and the Assistant Attor-
10 ney General at least 30 days prior to consummation
11 of the proposed transaction;

12 “(9) acquisitions, solely for the purpose of in-
13 vestment, of voting securities, if, as a result of such
14 acquisition, the securities acquired or held do not ex-
15 ceed 10 per centum of the outstanding voting securi-
16 ties of the issuer;

17 “(10) acquisitions of voting securities, if, as a
18 result of such acquisition, the voting securities ac-
19 quired do not increase, directly or indirectly, the ac-
20 quiring person’s per centum share of outstanding
21 voting securities of the issuer;

22 “(11) acquisitions, solely for the purpose of in-
23 vestment, by any bank, banking association, trust
24 company, investment company, or insurance com-
25 pany, of (A) voting securities pursuant to a plan of

1 reorganization or dissolution; or (B) assets in the or-
2 dinary course of its business; and

3 “(12) such other acquisitions, transfers, or
4 transactions, as may be exempted under subsection
5 (d)(2)(B).

6 “(d) The Federal Trade Commission, with the con-
7 currence of the Assistant Attorney General and by rule
8 in accordance with section 553 of title 5, United States
9 Code, consistent with the purposes of this section—

10 “(1) shall require that the notification required
11 under subsection (a) be in such form and contain
12 such documentary material and information relevant
13 to a proposed acquisition as is necessary and appro-
14 priate to enable the Federal Trade Commission and
15 the Assistant Attorney General to determine whether
16 such acquisition may, if consummated, violate the
17 antitrust laws; and

18 “(2) may—

19 “(A) define the terms used in this section;

20 “(B) exempt, from the requirements of this
21 section, classes of persons, acquisitions, trans-
22 fers, or transactions which are not likely to vio-
23 late the antitrust laws; and

1 “(C) prescribe such other rules as may be
2 necessary and appropriate to carry out the pur-
3 poses of this section.

4 “(e)(1) The Federal Trade Commission or the Assist-
5 ant Attorney General may, prior to the expiration of the
6 30-day waiting period (or in the case of a cash tender
7 offer, the 15-day waiting period) specified in subsection
8 (b)(1), require the submission of additional information or
9 documentary material relevant to the proposed acquisition,
10 from a person required to file notification with respect to
11 such acquisition under subsection (a) prior to the expira-
12 tion of the waiting period specified in subsection (b)(1),
13 or from any officer, director, partner, agent, or employee
14 of such person.

15 “(2) The Federal Trade Commission or the Assistant
16 Attorney General, in its or his discretion, may extend the
17 30-day waiting period (or in the case of a cash tender
18 offer, the 15-day waiting period) specified in subsection
19 (b)(1) for an additional period of not more than 20 days
20 (or in the case of a cash tender offer, 10 days) after the
21 date on which the Federal Trade Commission or the As-
22 sistant Attorney General, as the case may be, receives
23 from any person to whom a request is made under para-
24 graph (1), or in the case of tender offers, the acquiring
25 person, (A) all the information and documentary material

1 required to be submitted pursuant to such a request, or
2 (B) if such request is not fully complied with, the informa-
3 tion and documentary material submitted and a statement
4 of the reasons for such noncompliance. Such additional pe-
5 riod may be further extended only by the United States
6 district court, upon an application by the Federal Trade
7 Commission or the Assistant Attorney General pursuant
8 to subsection (g)(2).

9 “(f) If a proceeding is instituted or an action is filed
10 by the Federal Trade Commission, alleging that a pro-
11 posed acquisition violates section 7 of this Act or section
12 5 of the Federal Trade Commission Act, or an action is
13 filed by the United States, alleging that a proposed acqui-
14 sition violates such section 7 or section 1 or 2 of the Sher-
15 man Act, and the Federal Trade Commission or the As-
16 sistant Attorney General (1) files a motion for a prelimi-
17 nary injunction against consummation of such acquisition
18 pendente lite, and (2) certifies the United States district
19 court for the judicial district within which the respondent
20 resides or carries on business, or in which the action is
21 brought, that it or he believes that the public interest re-
22 quires relief pendente lite pursuant to this subsection,
23 then upon the filing of such motion and certification, the
24 chief judge of such district court shall immediately notify
25 the chief judge of the United States court of appeals for

1 the circuit in which such district court is located, who shall
2 designate a United States district judge to whom such ac-
3 tion shall be assigned for all purposes.

4 “(g)(1) Any person, or any officer, director, or part-
5 ner thereof, who fails to comply with any provision of this
6 section shall be liable to the United States for a civil pen-
7 alty of not more than \$10,000 for each day during which
8 such person is in violation of this section. Such penalty
9 may be recovered in a civil action brought by the United
10 States.

11 “(2) If any person, or any officer, director, partner,
12 agent, or employee thereof, fails substantially to comply
13 with the notification requirement under subsection (a) or
14 any request for the submission of additional information
15 or documentary material under subsection (e)(1) within
16 the waiting period specified in subsection (b)(1) and as
17 may be extended under subsection (e)(2), the United
18 States district court—

19 “(A) may order compliance;

20 “(B) shall extend the waiting period specified in
21 subsection (b)(1) and as may have been extended
22 under subsection (e)(2) until there has been sub-
23 stantial compliance, except that, in the case of a ten-
24 der offer, the court may not extend such waiting pe-
25 riod on the basis of a failure, by the person whose

1 stock is sought to be acquired, to comply substan-
2 tially with such notification requirement or any such
3 request; and

4 “(C) may grant such other equitable relief as
5 the court in its discretion determines necessary or
6 appropriate,

7 upon application of the Federal Trade Commission or the
8 Assistant Attorney General.

9 “(h) Any information or documentary material filed
10 with the Assistant Attorney General or the Federal Trade
11 Commission pursuant to this section shall be exempt from
12 disclosure under section 552 of title 5, United States
13 Code, and no such information or documentary material
14 may be made public, except as may be relevant to any
15 administrative or judicial action or proceeding. Nothing in
16 this section is intended to prevent disclosure to either body
17 of Congress or to any duly authorized committee or sub-
18 committee of Congress.

19 “(i)(1) Any action taken by the Federal Trade Com-
20 mission or the Assistant Attorney General or any failure
21 of the Federal Trade Commission or the Assistant Attor-
22 ney General to take any action under this section shall
23 not bar any proceeding or any action with respect to such
24 acquisition at any time under any other section of this
25 Act or any other provision of law.

1 “(2) Nothing contained in this section shall limit the
2 authority of the Assistant Attorney General or the Federal
3 Trade Commission to secure at any time from any person
4 documentary material, oral testimony, or other informa-
5 tion under the Antitrust Civil Process Act, the Federal
6 Trade Commission Act, or any other provision of law.

7 “(j) Beginning not later than January 1, 1978, the
8 Federal Trade Commission, with the concurrence of the
9 Assistant Attorney General, shall annually report to Con-
10 gress on the operation of this section. Such report shall
11 include an assessment of the effects of this section, of the
12 effects, purpose, and need for any rules promulgated pur-
13 suant thereto, and any recommendations for revisions of
14 this section.

15 “(k)(1) The consideration by the Federal Commu-
16 nications Commission of any application for a transfer of
17 license, or the acquisition and operation of lines, that is
18 associated with an acquisition subject to this section shall
19 be governed by the procedures set forth in this subsection.

20 “(2)(A) Upon receipt of an application referred to in
21 paragraph (1), the Federal Communications Commission
22 may submit to the party or parties covered by the applica-
23 tion a request for any documents and information nec-
24 essary for consideration of the transfer of license, or ac-

1 quision and operation of lines, addressed in the applica-
2 tion.

3 “(B) The Federal Communications Commission shall
4 submit a request under subparagraph (A), if at all, not
5 later than 30 days after receipt of the application in ques-
6 tion.

7 “(3)(A) A party subject to a request from the Federal
8 Communications Commission under paragraph (2) shall
9 submit to the Federal Communications Commission the
10 documents and information identified in the request.

11 “(B) At the completion of the submission to the Fed-
12 eral Communications Commission of documents and infor-
13 mation pursuant to a request under subparagraph (A), the
14 party submitting such documents and information shall
15 certify to the Federal Communications Commission wheth-
16 er or not such party has complied substantially with the
17 request.

18 “(4) Whenever consideration of an application re-
19 ferred to in paragraph (1) includes one or more requests
20 for documents and information under paragraph (2), the
21 Federal Communications Commission shall complete the
22 consideration of the application not later than 180 days
23 after the date on which all parties covered by such re-
24 quests have certified to the Federal Communications Com-

1 mission under paragraph (3)(B) that such parties have
2 complied substantially with such requests.

3 “(5)(A) In any case in which the Federal Commu-
4 nications Commission does not request under paragraph
5 (2) any documents and information for the consideration
6 of an application referred to in paragraph (1), the Federal
7 Communications Commission shall approve or deny the
8 transfer of license, or the acquisition and operation of
9 lines, covered by the application not later than 30 days
10 after the date of the submittal of the application to the
11 Federal Communications Commission.

12 “(B) In any case in which the Federal Communica-
13 tions Commission requests under paragraph (2) docu-
14 ments and information for the consideration of an applica-
15 tion referred to in paragraph (1), the Federal Communica-
16 tions Commission shall approve or deny the transfer of
17 license, or the acquisition and operation of lines, covered
18 by the application on the date of the completion of consid-
19 eration of the application under paragraph (4).

20 “(C) If the Federal Communications Commission
21 does not approve or deny an application for a transfer of
22 license, or for the acquisition and operation of lines, by
23 the date set forth in subparagraph (A) or (B), whichever
24 applies, the application shall be deemed approved by the
25 Federal Communications Commission as of such date. Ap-

1 proval under this subparagraph shall be without condi-
2 tions.

3 “(6)(A) Any party seeking to challenge the reason-
4 ableness of a request of the Federal Communications
5 Commission under paragraph (2) shall bring an action in
6 the United States District Court of the District of Colum-
7 bia seeking a declaratory judgment or injunctive relief
8 with respect to that challenge.

9 “(B) In seeking to challenge the compliance under
10 paragraph (3) of a party with a request under paragraph
11 (2), the Federal Communications Commission shall bring
12 an action in the United States District Court of the Dis-
13 trict of Columbia seeking a declaratory judgment or in-
14 junctive relief with respect to that challenge.

15 “(C) The period of an action under this paragraph
16 may not be taken into account in determining the passage
17 of time under a deadline under this subsection.

18 “(7) No provision of this subsection may be construed
19 to limit or modify—

20 “(A) the standards utilized by the Federal
21 Communications Commission under the Communica-
22 tions Act of 1934 (47 U.S.C. 151 et seq.) in consid-
23 ering or approving transfers of licenses, or the ac-
24 quisition and operation of lines, covered by an appli-
25 cation referred to in paragraph (1); or

1 “(2) the authority of the Federal Communica-
2 tions Commission under that Act to impose condi-
3 tions upon the transfer of licenses, or the acquisition
4 and operation of lines, pursuant to such consider-
5 ation or approval.

6 “(8) Subsection (g)(1) shall not apply with respect
7 to the activities of a party under this subsection.”.

8 (b) EFFECTIVE DATE.—(1) Except as provided in
9 paragraph (2), the amendment made by subsection (a)
10 shall take effect on the date of the enactment of this Act.

11 (2) Subsection (k) of section 7A of the Clayton Act,
12 as amended by subsection (a) of this section, shall take
13 effect 30 days after the date of the enactment of this Act,
14 and shall apply with respect to applications referred to in
15 such subsection (k) that are submitted to the Federal
16 Communications Commission on or after that date.

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