

106TH CONGRESS
1ST SESSION

S. 1854

To reform the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 4, 1999

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

A BILL

To reform the Hart-Scott-Rodino Antitrust Improvements
Act of 1976.

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 “Hart-Scott-Rodino
5 Antitrust Improvements Act of 1999”.

6 **SEC. 2. INCREASE IN THE SIZE OF THE TRANSACTION**
7 **THRESHOLDS.**

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

1 (1) in paragraph (3)(B), by striking
2 “\$15,000,000” and inserting “\$35,000,000”; and

3 (2) by adding at the end the following: “The fil-
4 ing threshold established in paragraph (3)(B) shall
5 be adjusted by the Federal Trade Commission on
6 January 1, 2005, and each year thereafter, in the
7 same manner as is set forth in section 8(a)(5) of the
8 Clayton Act (15 U.S.C. 19(a)(5)). The adjusted
9 amount shall be rounded to the nearest \$1,000,000.
10 As soon as practicable, but not later than January
11 31 of each year, the Federal Trade Commission
12 shall publish the adjusted amount required by this
13 paragraph.”.

14 (b) FILING FEES.—Section 605 of Public Law 101–
15 162 (103 Stat. 1031; 15 U.S.C. 18a note) is transferred
16 to section 7A of the Clayton Act (15 U.S.C. 18a(a)) as
17 subsection (k) and amended to read as follows:

18 “(k)(1)(A) The Federal Trade Commission shall as-
19 sess and collect filing fees which shall be paid by persons
20 acquiring voting securities or assets who are required to
21 file premerger notifications by this section.

22 “(B) The filing fee shall be—

23 “(i) \$45,000 if, as a result of the acquisition,
24 the acquiring person would hold an aggregate total
25 amount of the voting securities and assets of the ac-

1 quired person in an amount of at least \$35,000,000
2 but not exceeding \$100,000,000; and

3 “(ii) \$100,000 if the total amount referred to
4 in clause (i) is greater than \$100,000,000.

5 “(2) When the filing threshold established in sub-
6 section (a)(3)(B) is adjusted pursuant to subsection (a),
7 the \$35,000,000 threshold established in paragraph
8 (1)(B)(i) shall be adjusted to the same amount.

9 “(3) No notification shall be considered filed until
10 payment of the fee required by this subsection.

11 “(4) Fees collected pursuant to this subsection shall
12 be divided and credited as provided in section 605 of Pub-
13 lic Law 101–162 (103 Stat. 1031; 15 U.S.C. 18a note)
14 (as in effect on the day before the date of enactment of
15 this subsection).”.

16 **SEC. 3. INFORMATION AND DOCUMENTARY REQUESTS.**

17 (a) IN GENERAL.—Section 7A(e) of the Clayton Act
18 (15 U.S.C. 18a(e)) is amended—

19 (1) in paragraph (1)—

20 (A) by inserting “(A)” after “(1)”; and

21 (B) by inserting at the end the following:

22 “(B)(i) A request for additional information or docu-
23 mentary material under this paragraph shall be limited
24 to—

1 “(I) information or documentary material that
2 is not unreasonably cumulative or duplicative; and

3 “(II) information or documentary material that
4 does not impose a burden or expense that substan-
5 tially outweighs the likely benefit of the information
6 to the Assistant Attorney General or Federal Trade
7 Commission in conducting a preliminary antitrust
8 review of the proposed acquisition.

9 “(ii) A person shall be deemed to have substantially
10 complied with a request for additional information or doc-
11 umentary material if that person’s response to the request
12 does not contain any deficiency that materially impairs the
13 ability of the Assistant Attorney General or the Federal
14 Trade Commission to conduct a preliminary antitrust re-
15 view of the proposed acquisition.

16 “(iii) The Assistant Attorney General or the Federal
17 Trade Commission shall, when requesting additional infor-
18 mation or documentary material, set forth a specific sum-
19 mary of the competitive concerns presented by the pro-
20 posed acquisition and the relation between such concerns
21 and the additional information or documentary material
22 requested.”;

23 (2) in paragraph (2), by striking “20 days” and
24 inserting “30 days”; and

25 (3) by adding at the end the following:

1 “(3)(A)(i) The acquiring person, or the person whose
2 voting securities or assets are being acquired, may certify
3 the substantial compliance of that person with a request
4 for additional information or documentary material.

5 “(ii) The Assistant Attorney General or Federal
6 Trade Commission shall have 20 days from the date on
7 which substantial compliance is certified under clause (i)
8 in which to issue a notice specifying with particularity the
9 basis for any asserted deficiency.

10 “(iii) If the Assistant Attorney General or Federal
11 Trade Commission does not issue a notice of deficiency
12 as specified under clause (ii) within the 20-day period pro-
13 vided in clause (ii), then the person responding to the re-
14 quest for additional information or documentary material
15 shall be deemed to have substantially complied with the
16 request.

17 “(B) The Assistant Attorney General and the Federal
18 Trade Commission shall jointly issue guidelines relating
19 to second requests and the steps that a person responding
20 to a request for additional information or documentary
21 material can take to comply.

22 “(4)(A) The acquiring person, or the person whose
23 voting securities or assets are being acquired, may petition
24 the designated United States magistrate judge in the
25 United States District Court for the District of Columbia

1 for expedited review of a request for the submission of ad-
2 ditional information or documentary material relevant to
3 the proposed acquisition under this subsection.

4 “(B) The petition under this paragraph shall be filed
5 not later than 7 days after—

6 “(i) the issuance of the request for the submis-
7 sion of additional information or documentary mate-
8 rial; or

9 “(ii) the issuance of a notice of deficiency as
10 specified under paragraph (3)(A)(ii).

11 “(C) A petition for review pursuant to this paragraph
12 shall be limited to whether the request for additional infor-
13 mation or documentary material made pursuant to para-
14 graph (1)—

15 “(i) is unreasonably cumulative or duplicative;

16 “(ii) imposes a burden or expense that substan-
17 tially outweighs any likely benefit to the Assistant
18 Attorney General or Federal Trade Commission in
19 conducting a preliminary antitrust review of the pro-
20 posed acquisition; or

21 “(iii) has been substantially complied with by
22 the petitioning person.

23 “(D) If a person does not prevail on the petition of
24 that person filed under this paragraph, then the extended
25 waiting period specified in paragraph (2) shall be further

1 extended in an amount of days equal to the amount of
2 days taken to resolve any such petition for expedited re-
3 view.

4 “(E)(i) The determination of the United States mag-
5 istrate judge under this paragraph may be appealed by
6 either party to the United States District Court for the
7 District of Columbia.

8 “(ii) The District Court shall review the determina-
9 tion of the United States magistrate judge under a clearly
10 erroneous standard.

11 “(iii) The decision of the District Court shall be final
12 and not appealable and shall be issued on an expedited
13 basis.

14 “(F) A petitioning person under this paragraph has
15 substantially complied with the request for additional in-
16 formation or documentary material relevant to the pro-
17 posed acquisition under this subsection if there is an ab-
18 sence of any deficiency in the submission of that person
19 that materially impairs the ability of the Assistant Attor-
20 ney General or Federal Trade Commission to conduct a
21 preliminary antitrust review of the proposed acquisition.

22 “(G) The petitioning person under this paragraph
23 shall bear the burden of establishing by a preponderance
24 of the evidence that the request for additional information
25 or documentary material—

1 “(i) is unreasonably cumulative or duplicative;
2 or

3 “(ii) imposes a burden or expense that substan-
4 tially outweighs any likely benefit to the Assistant
5 Attorney General or Federal Trade Commission in
6 conducting a preliminary antitrust review of the pro-
7 posed acquisition.

8 “(H) The Assistant Attorney General or the Federal
9 Trade Commission shall bear the burden of establishing
10 by a preponderance of the evidence that the petitioning
11 person under this paragraph has not substantially com-
12 plied with the request for additional information or docu-
13 mentary material.”.

14 (b) MAGISTRATE FOR REVIEWING FILINGS AP-
15 PEALS.—The chief judge of the United States District
16 Court for the District of Columbia shall designate a
17 United States magistrate judge for that district who shall
18 have primary responsibility for reviewing petitions filed
19 pursuant to section 7A(e)(3) of the Clayton Act as added
20 by subsection (a).

21 **SEC. 4. CALCULATION OF FILING PERIODS.**

22 Section 7A(a) of the Clayton Act (15 U.S.C. 18a) is
23 amended by adding at the end the following:

24 “(l) If the end of any period of time provided in this
25 section falls on a Saturday, Sunday, or legal holiday, then

1 that period shall be extended to the end of the following
2 business day.”.

3 **SEC. 5. ADDITIONAL REQUIREMENTS FOR ANNUAL RE-**
4 **PORTS.**

5 Section 7A(j) of the Clayton Act (15 U.S.C. 18a(j))
6 is amended by—

7 (1) inserting “(1)” after “(j)”; and

8 (2) inserting at the end the following:

9 “(2) Beginning with the report filed in 2001, the
10 Federal Trade Commission, with the concurrence of the
11 Assistant Attorney General, shall include in the report to
12 Congress required by this subsection—

13 “(A) the number of notifications filed under
14 this section;

15 “(B) the number of notifications filed in which
16 the Assistant Attorney General or Federal Trade
17 Commission requested the submission of additional
18 information or documentary material relevant to the
19 proposed acquisition;

20 “(C) data relating to the length of time for par-
21 ties to comply with requests for the submission of
22 additional information or documentary material rel-
23 evant to the proposed acquisition;

24 “(D) the number of petitions filed with the des-
25 ignated United States magistrate judge for expe-

1 dited review of a request for the submission of addi-
2 tional information or documentary material relevant
3 to the proposed acquisition and the manner in which
4 such petitions were resolved;

5 “(E) data relating to the volume (in number of
6 boxes or pages) of materials submitted pursuant to
7 requests for additional information or documentary
8 material; and

9 “(F) the number of notifications filed in which
10 a request for additional information or documentary
11 materials was made but never complied with prior to
12 resolution of the case.”.

13 **SEC. 6. CONFORMING AMENDMENTS TO CERTAIN REGULA-**
14 **TIONS.**

15 (a) IN GENERAL.—The thresholds established by rule
16 and promulgated as 16 C.F.R. 802.20 shall be adjusted
17 by the Federal Trade Commission on January 1, 2005,
18 and each year thereafter, in the same manner as is set
19 forth in section 8(a)(5) of the Clayton Act (15 U.S.C.
20 19(a)(5)). The adjusted amount shall be rounded to the
21 nearest \$1,000,000.

22 (b) PUBLICATION.—As soon as practicable, but not
23 later than January 31 of each year, the Federal Trade

- 1 Commission shall publish the adjusted amount required
- 2 by this subsection (a).

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