

Calendar No. 576

106TH CONGRESS
2^D 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

MAY 25, 2000

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]**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~~”.

1 **SEC. 2. INCREASE IN THE SIZE OF THE TRANSACTION**
2 **THRESHOLDS.**

3 (a) **IN GENERAL.**—Section 7A(a) of the Clayton Act
4 (15 U.S.C. 18a(a)) is amended—

5 (1) in paragraph (3)(B), by striking
6 “\$15,000,000” and inserting “\$35,000,000”; and

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

18 (b) **FILING FEES.**—Section 605 of Public Law 101-
19 162 (103 Stat. 1031; 15 U.S.C. 18a note) is transferred
20 to section 7A of the Clayton Act (15 U.S.C. 18a(a)) as
21 subsection (k) and amended to read as follows:

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

26 “(B) The filing fee shall be—

1 “(i) \$45,000 if, as a result of the acquisition,
2 the acquiring person would hold an aggregate total
3 amount of the voting securities and assets of the ac-
4 quired person in an amount of at least \$25,000,000
5 but not exceeding \$100,000,000; and

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

8 “(2) When the filing threshold established in sub-
9 section (a)(3)(B) is adjusted pursuant to subsection (a),
10 the \$25,000,000 threshold established in paragraph
11 (1)(B)(i) shall be adjusted to the same amount.

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

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

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

20 (a) IN GENERAL.—Section 7A(e) of the Clayton Act
21 (15 U.S.C. 18a(e)) is amended—

22 (1) in paragraph (1)—

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

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

1 “(B)(i) A request for additional information or docu-
2 mentary material under this paragraph shall be limited
3 to—

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

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

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

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

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

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

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

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

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

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

1 “(4)(A) The acquiring person, or the person whose
2 voting securities or assets are being acquired, may petition
3 the designated United States magistrate judge in the
4 United States District Court for the District of Columbia
5 for expedited review of a request for the submission of ad-
6 ditional information or documentary material relevant to
7 the proposed acquisition under this subsection.

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

10 “(i) the issuance of the request for the submis-
11 sion of additional information or documentary mate-
12 rial; or

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

15 “(C) A petition for review pursuant to this paragraph
16 shall be limited to whether the request for additional infor-
17 mation or documentary material made pursuant to para-
18 graph (1)—

19 “(i) is unreasonably cumulative or duplicative;

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

1 “(iii) has been substantially complied with by
2 the petitioning person.

3 “(D) If a person does not prevail on the petition of
4 that person filed under this paragraph, then the extended
5 waiting period specified in paragraph (2) shall be further
6 extended in an amount of days equal to the amount of
7 days taken to resolve any such petition for expedited re-
8 view.

9 “(E)(i) The determination of the United States mag-
10 istrate judge under this paragraph may be appealed by
11 either party to the United States District Court for the
12 District of Columbia.

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

16 “(iii) The decision of the District Court shall be final
17 and not appealable and shall be issued on an expedited
18 basis.

19 “(F) A petitioning person under this paragraph has
20 substantially complied with the request for additional in-
21 formation or documentary material relevant to the pro-
22 posed acquisition under this subsection if there is an ab-
23 sence of any deficiency in the submission of that person
24 that materially impairs the ability of the Assistant Attor-

1 ney General or Federal Trade Commission to conduct a
 2 preliminary antitrust review of the proposed acquisition.

3 “(G) The petitioning person under this paragraph
 4 shall bear the burden of establishing by a preponderance
 5 of the evidence that the request for additional information
 6 or documentary material—

7 “(i) is unreasonably cumulative or duplicative;
 8 or

9 “(ii) imposes a burden or expense that substan-
 10 tially outweighs any likely benefit to the Assistant
 11 Attorney General or Federal Trade Commission in
 12 conducting a preliminary antitrust review of the pro-
 13 posed acquisition.

14 “(H) The Assistant Attorney General or the Federal
 15 Trade Commission shall bear the burden of establishing
 16 by a preponderance of the evidence that the petitioning
 17 person under this paragraph has not substantially com-
 18 plied with the request for additional information or docu-
 19 mentary material.”.

20 (b) MAGISTRATE FOR REVIEWING FILINGS AP-
 21 PEALS.—The chief judge of the United States District
 22 Court for the District of Columbia shall designate a
 23 United States magistrate judge for that district who shall
 24 have primary responsibility for reviewing petitions filed

1 pursuant to section 7A(e)(3) of the Clayton Act as added
2 by subsection (a).

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

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

6 “(1) If the end of any period of time provided in this
7 section falls on a Saturday, Sunday, or legal holiday, then
8 that period shall be extended to the end of the following
9 business day.”.

10 **SEC. 5. ADDITIONAL REQUIREMENTS FOR ANNUAL RE-**
11 **PORTS.**

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

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

15 (2) inserting at the end the following:

16 “(2) Beginning with the report filed in 2001, the
17 Federal Trade Commission, with the concurrence of the
18 Assistant Attorney General, shall include in the report to
19 Congress required by this subsection—

20 “(A) the number of notifications filed under
21 this section;

22 “(B) the number of notifications filed in which
23 the Assistant Attorney General or Federal Trade
24 Commission requested the submission of additional

1 information or documentary material relevant to the
2 proposed acquisition;

3 “(C) data relating to the length of time for par-
4 ties to comply with requests for the submission of
5 additional information or documentary material rel-
6 evant to the proposed acquisition;

7 “(D) the number of petitions filed with the des-
8 ignated United States magistrate judge for expe-
9 dited review of a request for the submission of addi-
10 tional information or documentary material relevant
11 to the proposed acquisition and the manner in which
12 such petitions were resolved;

13 “(E) data relating to the volume (in number of
14 boxes or pages) of materials submitted pursuant to
15 requests for additional information or documentary
16 material; and

17 “(F) the number of notifications filed in which
18 a request for additional information or documentary
19 materials was made but never complied with prior to
20 resolution of the case.”.

21 **SEC. 6. CONFORMING AMENDMENTS TO CERTAIN REGULA-**
22 **TIONS.**

23 (a) IN GENERAL.—The thresholds established by rule
24 and promulgated as 16 C.F.R. 802.20 shall be adjusted
25 by the Federal Trade Commission on January 1, 2005;

1 and each year thereafter, in the same manner as is set
2 forth in section 8(a)(5) of the Clayton Act (15 U.S.C.
3 19(a)(5)). The adjusted amount shall be rounded to the
4 nearest \$1,000,000.

5 (b) PUBLICATION.—As soon as practicable, but not
6 later than January 31 of each year, the Federal Trade
7 Commission shall publish the adjusted amount required
8 by this subsection (a).

9 **SECTION 1. SHORT TITLE.**

10 *This Act may be cited as the “Hart-Scott-Rodino Anti-*
11 *trust Improvements Act of 2000”.*

12 **SEC. 2. INCREASE IN THE SIZE OF THE TRANSACTION**
13 **THRESHOLDS.**

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

16 (1) in paragraph (3)(B), by striking
17 “\$15,000,000” and inserting “\$50,000,000”; and

18 (2) by adding at the end the following: “The fil-
19 ing threshold established in paragraph (3)(B) shall be
20 adjusted by the Federal Trade Commission on Janu-
21 ary 1, 2005, and each year thereafter, in the same
22 manner as is set forth in section 8(a)(5) of the Clay-
23 ton Act (15 U.S.C. 19(a)(5)). The adjusted amount
24 shall be rounded to the nearest \$1,000,000. As soon as
25 practicable, but not later than January 31 of each

1 year, the Federal Trade Commission shall publish the
2 adjusted amount required by this paragraph.”.

3 (b) *FILING FEES*.—Section 605 of Public Law 101–
4 162 (103 Stat. 1031; 15 U.S.C. 18a note) is amended to
5 read as follows:

6 “SEC. 605.(a)(1) The Federal Trade Commission shall
7 assess and collect filing fees which shall be paid by persons
8 acquiring voting securities or assets who are required to file
9 premerger notifications by this section.

10 “(2) The filing fee shall be—

11 “(A) \$45,000 if, as a result of the acquisition,
12 the acquiring person would hold an aggregate total
13 amount of the voting securities and assets of the ac-
14 quired person in an amount of at least \$50,000,000
15 but not exceeding \$100,000,000;

16 “(B) \$100,000 if the total amount referred to in
17 clause (i) is greater than \$100,000,000 but not exceed-
18 ing \$1,000,000,000; and

19 “(C) \$200,000 if the total amount referred to in
20 clause (i) is greater than \$1,000,000,000.

21 “(2) When the filing threshold established in subsection
22 (a)(3)(B) is adjusted pursuant to subsection (a), the
23 \$50,000,000 threshold established in paragraph (1)(B)(i)
24 shall be adjusted to the same amount.

1 “(3) No notification shall be considered filed until pay-
2 ment of the fee required by this subsection.

3 “(4) Fees collected pursuant to this subsection shall be
4 divided and credited as provided in section 605 of Public
5 Law 101–162 (103 Stat. 1031; 15 U.S.C. 18a note) (as in
6 effect on the day before the date of enactment of this sub-
7 section).”.

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

9 Section 7A(e)(1) of the Clayton Act (15 U.S.C. 18a(e))
10 is amended)—

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

12 (2) by inserting at the end the following:

13 “(B)(i) The Assistant Attorney General and the Fed-
14 eral Trade Commission shall each designate a senior official
15 not directly having supervisory responsibility in, or having
16 responsibility for, the review of any enforcement rec-
17 ommendation under this section concerning the transaction
18 at issue to hear any petition filed by the acquiring person
19 or the person whose voting securities or assets are to be ac-
20 quired, to determine—

21 “(I) whether the request for additional informa-
22 tion or documentary material is unreasonably cumu-
23 lative, unduly burdensome or duplicative; or

1 “(II) whether the request for additional informa-
2 tion or documentary material has been substantially
3 complied with by the petitioning person.

4 “(ii) Internal review procedures for petitions filed pur-
5 suant to clause (i) shall include reasonable deadlines for
6 expedited review of any such petitions filed, after reasonable
7 negotiations with investigative staff, in order to avoid
8 undue delay of the merger review process.

9 “(iii) Upon the date of enactment of the Hart-Scott-
10 Rodino Antitrust Improvements Act of 2000, the Assistant
11 Attorney General and the Federal Trade Commission shall
12 conduct an internal review and implement reforms of the
13 merger review process in order to eliminate unnecessary
14 burden, remove costly duplication, and eliminate undue
15 delay, in order to achieve a more effective and more efficient
16 merger review process.

17 “(iv) Not later than 120 days after the date of enact-
18 ment of the Hart-Scott-Rodino Antitrust Improvements Act
19 of 2000, the Assistant Attorney General and the Federal
20 Trade Commission shall issue or amend their respective in-
21 dustry guidance, regulations, operating manuals and rel-
22 evant policy documents, where appropriate, to implement
23 each reform in this subparagraph.

24 “(v) Not later than 180 days after the date of enact-
25 ment of the Hart-Scott-Rodino Antitrust Improvements Act

1 of 2000, the Assistant Attorney General and the Federal
2 Trade Commission shall each report to Congress—

3 “(I) what reforms each agency has adopted
4 under this subparagraph;

5 “(II) what steps each has taken to implement
6 such internal reforms; and

7 “(III) the effects of those reforms.”.

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

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

11 (1) in subsection (e)(2), by striking “20 days”
12 and inserting “30 days”; and

13 (2) by adding at the end the following:

14 “(k) If the end of any period of time provided in this
15 section falls on a Saturday, Sunday, or legal holiday, then
16 that period shall be extended to the end of the following busi-
17 ness day.”.

18 **SEC. 5. ADDITIONAL REQUIREMENTS FOR ANNUAL**
19 **REPORTS.**

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

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

23 (2) inserting at the end the following:

24 “(2) Beginning with the report filed in 2001, the Fed-
25 eral Trade Commission, in consultation with the Assistant

1 *Attorney General, shall include in the report to Congress*
2 *required by this subsection—*

3 “(A) *the number of notifications filed under this*
4 *section;*

5 “(B) *the number of notifications filed in which*
6 *the Assistant Attorney General or Federal Trade*
7 *Commission requested the submission of additional*
8 *information or documentary material relevant to the*
9 *proposed acquisition;*

10 “(C) *data relating to the length of time for par-*
11 *ties to comply with requests for the submission of ad-*
12 *ditional information or documentary material rel-*
13 *evant to the proposed acquisition;*

14 “(D) *the number of petitions filed pursuant to*
15 *rules and regulations promulgated under this Act re-*
16 *garding a request for the submission of additional in-*
17 *formation or documentary material relevant to the*
18 *proposed acquisition and the manner in which such*
19 *petitions were resolved;*

20 “(E) *data relating to the volume (in number of*
21 *boxes or pages) of materials submitted pursuant to re-*
22 *quests for additional information or documentary*
23 *material; and*

24 “(F) *the number of notifications filed in which*
25 *a request for additional information or documentary*

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To reform the Hart-Scott-Rodino Antitrust
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