

109TH CONGRESS
2^D SESSION

S. 2854

To prevent anti-competitive mergers and acquisitions in the oil and gas industry.

IN THE SENATE OF THE UNITED STATES

MAY 18, 2006

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

A BILL

To prevent anti-competitive mergers and acquisitions in the oil and gas industry.

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 “Oil Industry Merger
5 Antitrust Enforcement Act”.

6 **SEC. 2. STATEMENT OF FINDINGS AND DECLARATIONS OF**
7 **PURPOSES.**

8 (a) FINDINGS.—Congress finds the following:

1 (1) American consumers are suffering from ex-
2 cessively high prices for gasoline, natural gas, heat-
3 ing oil, and other energy products.

4 (2) These excessively high energy prices have
5 been caused, at least in substantial part, by undue
6 concentration among companies involved in the pro-
7 duction, refining, distribution, and retail sale of oil,
8 gasoline, natural gas, heating oil, and other petro-
9 leum-related products.

10 (3) There has been a sharp consolidation
11 caused by mergers and acquisitions among oil com-
12 panies over the last decade, and the antitrust en-
13 forcement agencies (the Federal Trade Commission
14 and the Department of Justice Antitrust Division)
15 have failed to employ the antitrust laws to prevent
16 this consolidation, to the detriment of consumers
17 and competition. This consolidation has caused sub-
18 stantial injury to competition and has enabled the
19 remaining oil companies to gain market power over
20 the sale, refining, and distribution of petroleum-re-
21 lated products.

22 (4) The demand for oil, gasoline, and other pe-
23 troleum-based products is highly inelastic so that oil
24 companies can easily utilize market power to raise
25 prices.

1 (5) Maintaining competitive markets for oil,
2 gasoline, natural gas, and other petroleum-related
3 products is in the highest national interest.

4 (b) PURPOSES.—The purposes of this Act are to—

5 (1) ensure vigorous enforcement of the antitrust
6 laws in the oil industry;

7 (2) restore competition to the oil industry and
8 to the production, refining, distribution, and mar-
9 keting of gasoline and other petroleum-related prod-
10 ucts; and

11 (3) prevent the accumulation and exercise of
12 market power by oil companies.

13 **SEC. 3. BURDEN OF PROOF.**

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

16 “In any civil action brought against any person for
17 violating this section in which the plaintiff—

18 “(1) alleges that the effect of a merger, acquisi-
19 tion, or other transaction affecting commerce may be
20 to substantially lessen competition, or to tend to cre-
21 ate a monopoly, in the business of exploring for, pro-
22 ducing, refining, or otherwise processing, storing,
23 marketing, selling, or otherwise making available pe-
24 troleum, oil, or natural gas, or products derived
25 from petroleum, oil, or natural gas; and

1 “(2) establishes that a merger, acquisition, or
2 transaction is between or involves persons competing
3 in the business of exploring for, producing, refining,
4 or otherwise processing, storing, marketing, selling,
5 or otherwise making available petroleum, oil, or nat-
6 ural gas, or products derived from petroleum, oil, or
7 natural gas;
8 the burden of proof shall be on the defendant or defend-
9 ants to establish by a preponderance of the evidence that
10 the merger, acquisition, or transaction at issue will not
11 substantially lessen competition or tend to create a monop-
12 oly.”.

13 **SEC. 4. ENSURING FULL AND FREE COMPETITION.**

14 (a) REVIEW.—The Federal Trade Commission and
15 the Antitrust Division of the Department of Justice shall
16 jointly review and revise all enforcement guidelines and
17 policies, including the Horizontal Merger Guidelines
18 issued April 2, 1992 and revised April 8, 1997, and the
19 Non-Horizontal Merger Guidelines issued June 14, 1984,
20 and modify those guidelines in order to—

21 (1) specifically address mergers and acquisi-
22 tions in oil companies and among companies in-
23 volved in the production, refining, distribution, or
24 marketing of oil, gasoline, natural gas, heating oil,
25 or other petroleum-related products; and

1 (2) ensure that the application of these guide-
2 lines will prevent any merger and acquisition in the
3 oil industry, when the effect of such a merger or ac-
4 quisition may be to substantially lessen competition,
5 or to tend to create a monopoly, and reflect the spe-
6 cial conditions prevailing in the oil industry de-
7 scribed in subsection (b).

8 (b) SPECIAL CONDITIONS.—The guidelines described
9 in subsection (a) shall be revised to take into account the
10 special conditions prevailing in the oil industry, includ-
11 ing—

12 (1) the high inelasticity of demand for oil and
13 petroleum-related products;

14 (2) the ease of gaining market power in the oil
15 industry;

16 (3) supply and refining capacity limits in the oil
17 industry;

18 (4) difficulties of market entry in the oil indus-
19 try; and

20 (5) unique regulatory requirements applying to
21 the oil industry.

22 (c) COMPETITION.—The review and revision of the
23 enforcement guidelines required by this section shall be
24 completed not later than 6 months after the date of enact-
25 ment of this Act.

1 (d) REPORT.—Not later than 6 months after the date
2 of enactment of this Act, the Federal Trade Commission
3 and the Antitrust Division of the Department of Justice
4 shall jointly report to the Committee on the Judiciary of
5 the Senate and the Committee on the Judiciary of the
6 House of Representatives regarding the review and revi-
7 sion of the enforcement guidelines mandated by this sec-
8 tion.

9 **SEC. 5. DEFINITIONS.**

10 In this Act:

11 (1) OIL INDUSTRY.—The term “oil industry”
12 means companies and persons involved in the pro-
13 duction, refining, distribution, or marketing of oil or
14 petroleum-based products.

15 (2) PETROLEUM-BASED PRODUCT.—The term
16 “petroleum-based product” means gasoline, diesel
17 fuel, jet fuel, home heating oil, natural gas, or other
18 products derived from the refining of oil or petro-
19 leum.

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