

78TH CONGRESS
1ST SESSION

H. R. 1517

IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 1943

Mr. SUMNERS of Texas introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend an Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (38 Stat. 730) as amended.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That sections 7 and 11 of an Act entitled "An Act to sup-
4 plement existing laws against unlawful restraints and monop-
5 olies, and for other purposes", approved October 15, 1914
6 (U. S. C. Annotated, title 15, sec. 18), are hereby amended
7 to read as follows:

8 "SEC. 7. That no corporation engaged in commerce shall
9 acquire, directly or indirectly, the whole or any part of the

1 stock or other share capital, or the whole or any part of the
2 assets, of another corporation engaged also in commerce,
3 where the effect of such acquisition may be (1) to substan-
4 tially lessen competition between the corporation whose stock
5 is, or whose assets are, so acquired and the corporation mak-
6 ing the acquisition, or (2) to restrain such commerce in any
7 section or community, or (3) to tend to create a monopoly
8 of any line of commerce.

9 "No corporation shall acquire, directly or indirectly, the
10 whole or any part of the stock or other share capital, or shall
11 acquire the whole or any part of the assets of one or more
12 corporations engaged in commerce, where the effect of such
13 acquisition, of such stocks or assets, or of the use of such
14 stock by the voting or granting of proxies or otherwise, may
15 be (1) to substantially lessen competition (a) between such
16 corporation or corporations or any of them, whose stock or
17 other share capital or assets are so acquired, and any other
18 corporation, engaged in commerce, owned or controlled by
19 the acquiring corporation, or (b) between any two or more
20 of the corporations whose stock or assets are so acquired;
21 or (2) to restrain such commerce in any section or com-
22 munity; or (3) to tend to create a monopoly of any line of
23 commerce.

24 "This section shall not apply to corporations purchasing
25 such stock solely for investment and not using the same by

1 voting or otherwise to bring about, or in attempting to bring
2 about, the substantial lessening of competition. Nor shall
3 anything contained in this section prevent a corporation en-
4 gaged in commerce from causing the formation of subsidiary
5 corporations for the actual carrying on of their immediate
6 lawful business, or the natural and legitimate branches or
7 extensions thereof, or from owning and holding all or a part
8 of the stock of such subsidiary corporations, when the effect
9 of such formation is not to substantially lessen competition.

10 “Nor shall anything herein contained be construed to
11 prohibit any common carrier subject to the laws to regulate
12 commerce from aiding in the construction of branches or
13 short lines so located as to become feeders to the main line
14 of the company so aiding in such construction or from ac-
15 quiring or owning all or any part of the stock of such
16 branch lines, nor to prevent any such common carrier from
17 acquiring and owning all or any part of the stock of a branch
18 or short line constructed by an independent company where
19 there is no substantial competition between the company
20 owning the branch line so constructed and the company
21 owning the main line acquiring the property or an interest
22 therein, nor to prevent such common carrier from extending
23 any of its lines through the medium of the acquisition of
24 stock or otherwise of any other common carrier where there
25 is no substantial competition between the company extending

1 its lines and the company whose stock, property, or an
2 interest therein is so acquired.

3 “Nothing contained in this section shall be held to affect
4 or impair any right heretofore legally acquired: *Provided,*
5 That nothing in this section shall be held or construed to
6 authorize or make lawful anything heretofore prohibited or
7 made illegal by the antitrust laws, nor to exempt any
8 person from the penal provisions thereof or the civil remedies
9 therein provided.

10 “Nothing contained in this section shall apply to trans-
11 actions duly consummated pursuant to authority given by
12 the Congress to the Civil Aeronautics Authority, Federal
13 Communications Commission, Federal Power Commission,
14 Federal Reserve Board, Interstate Commerce Commission,
15 or the Securities and Exchange Commission.

16 “Wherever the consummation of any plan, undertaking,
17 or agreement by or on behalf of any corporation engaged
18 in or affecting commerce or engaged in manufacturing or
19 processing for distribution in commerce or by or on behalf
20 of any of its subsidiaries so engaged, to acquire the whole
21 or any part of the stock or other share capital or the whole
22 or any part of the assets other than inventories of any other
23 corporation likewise engaged would involve property to the
24 value of more than \$, no such plan, undertaking, or

1 agreement by or on behalf of any corporation subject to the
2 jurisdiction of the Federal Trade Commission under sections
3 7 and 11 of the Clayton Act, as amended, shall be con-
4 summated, effectuated, and completed except upon and after
5 compliance with the following requirements:

6 “(1) That the parties to such acquisition shall have
7 discharged the burden of establishing before the Federal
8 Trade Commission that the acquisition would be consistent
9 with the public interest.

10 “(2) That the parties of such acquisition shall have
11 obtained the written and publicly announced finding of the
12 Federal Trade Commission that consummation of the acquisi-
13 tion would be consistent with the public interest. If upon
14 the showing made by the parties to such acquisition the
15 Commission shall be of the opinion that it is not consistent
16 with the public interest according to the standards herein-
17 above established, it shall make a finding to that effect and
18 give the reasons therefor.

19 “(3) That the Federal Trade Commission shall not find
20 the proposed acquisition to be consistent with the public
21 interest unless it also finds—

22 “(a) that the acquisition will not substantially
23 lessen competition, restrain trade, or tend to create a
24 monopoly (either in a single section of the country or in

1 the country as a whole) in the trade, industry, or line
2 of commerce in which such corporations are engaged;

3 “(b) that the size of the acquiring corporation after
4 the acquisition will be compatible with the existence
5 and maintenance of effective competition in the trade,
6 industry, or line of commerce in which it is engaged;

7 “(c) that the acquisition will not so reduce the
8 number of competing companies in the trade, industry,
9 or line of commerce affected as materially to lessen the
10 effectiveness of competition therein;

11 “(d) that the acquiring corporation has not, to in-
12 duce the acquisition, indulged in any unlawful methods
13 of competition and has not otherwise violated the provi-
14 sions of the Federal Trade Commission Act, as amended;

15 “(e) that the acquisition will not be incompatible
16 with greater efficiency and economy of production, dis-
17 tribution, and management.

18 “Upon consummation of any acquisition pursuant to the
19 required finding of the Federal Trade Commission, no pro-
20 ceedings shall thereafter be brought by the Government on
21 the ground that such acquisition constitutes a violation of
22 section 7 of the Clayton Act, as amended.

23 “SEC. 11. That authority to enforce compliance with
24 sections 2, 3, 7, and 8 of this Act by the persons respectively
25 subject thereto is hereby vested in the Interstate Commerce

1 Commission where applicable to common carriers subject to
2 the Interstate Commerce Act, as amended; in the Federal
3 Communications Commission where applicable to common
4 carriers engaged in wire or radio communication or radio
5 transmission of energy; in the Civil Aeronautics Authority
6 where applicable to air carriers and foreign air carriers sub-
7 ject to the Civil Aeronautics Act of 1938; in the Federal
8 Reserve Board where applicable to banks, banking associa-
9 tions, and trust companies; and in the Federal Trade Com-
10 mission where applicable to all other character of commerce,
11 to be exercised as follows:

12 “Whenever the commission, authority, or board vested
13 with jurisdiction thereof shall have reason to believe that any
14 person is violating or has violated any of the provisions of
15 sections 2, 3, 7, and 8 of this Act, it shall issue and serve
16 upon such person a complaint stating its charges in that
17 respect, and containing a notice of a hearing upon a day and
18 at a place therein fixed at least thirty days after service of
19 said complaint. The person so complained of shall have the
20 right to appear at the place and time so fixed and show cause
21 why an order should not be entered by the commission, au-
22 thority, or board requiring such person to cease and desist
23 from the violation of the law so charged in said complaint.
24 Any person may make application, and upon good cause
25 shown may be allowed by the commission, authority, or

1 board, to intervene and appear in said proceeding by counsel
2 or in person. The testimony in any such proceeding shall
3 be reduced to writing and filed in the office of the commission,
4 authority, or board. If upon such hearing the commission,
5 authority, or board, as the case may be, shall be of the opinion
6 that any of the provisions of said sections have been or are
7 being violated, it shall make a report in writing in which it
8 shall state its findings as to the facts, and shall issue and cause
9 to be served on such person an order requiring such person
10 to cease and desist from such violations, and divest itself of
11 the stock, or other share capital, or assets, held, or rid itself
12 of the directors chosen contrary to the provisions of sections
13 7 and 8 of this Act, if any there be, in the manner and within
14 the time fixed by said order. Until a transcript of the record
15 in such hearing shall have been filed in a circuit court of
16 appeals of the United States, as hereinafter provided, the com-
17 mission, authority, or board may at any time, upon such
18 notice, and in such manner as it shall deem proper, modify
19 or set aside, in whole or in part, any report or any order
20 made or issued by it under this section.

21 "If such person fails or neglects to obey such order of
22 the commission, authority, or board while the same is in
23 effect, the commission, authority, or board may apply to
24 the circuit court of appeals of the United States, within
25 any circuit where the violation complained of was or is

1 being committed or where such person resides or carries on
2 business, for the enforcement of its order, and shall certify
3 and file with its application a transcript of the entire record
4 in the proceeding, including all the testimony taken and the
5 report and order of the commission, authority, or board.
6 Upon such filing of the application and transcript the court
7 shall cause notice thereof to be served upon such person,
8 and thereupon shall have jurisdiction of the proceeding and
9 of the question determined therein, and shall have power to
10 make and enter upon the pleadings, testimony, and proceed-
11 ings set forth in such transcript a decree affirming, modify-
12 ing, or setting aside the order of the commission, authority,
13 or board. The findings of the commission, authority, or
14 board as to the facts, if supported by testimony, shall be
15 conclusive. If either party shall apply to the court for leave
16 to adduce additional evidence, and shall show to the satisfac-
17 tion of the court that such additional evidence is material
18 and that there were reasonable grounds for the failure to
19 adduce such evidence in the proceeding before the commis-
20 sion, authority, or board, the court may order such addi-
21 tional evidence to be taken before the commission, authority,
22 or board and to be adduced upon the hearing in such manner
23 and upon such terms and conditions as to the court may
24 seem proper. The commission, authority, or board may
25 modify its findings as to the facts, or make new findings,

1 by reason of the additional evidence so taken, and it shall
2 file such modified or new findings, which, if supported by
3 testimony, shall be conclusive, and its recommendations, if
4 any, for the modification or setting aside of its original order,
5 with the return of such additional evidence. The judgment
6 and decree of the court shall be final, except that the same
7 shall be subject to review by the Supreme Court upon
8 certiorari as provided in section 240 of the Judicial Code.

9 "Any party required by such order of the commission,
10 authority, or board to cease and desist from a violation
11 charged may obtain a review of such order in said circuit
12 court of appeals by filing in the court a written petition pray-
13 ing that the order of the commission, authority, or board be
14 set aside. A copy of such petition shall be forthwith served
15 upon the commission, authority, or board, and thereupon
16 the commission, authority, or board forthwith shall certify
17 and file in the court a transcript of the record as hereinbefore
18 provided. Upon the filing of the transcript the court shall
19 have the same jurisdiction to affirm, set aside, or modify the
20 order of the commission, authority, or board, as in the case
21 of an application by the commission, authority, or board for
22 the enforcement of its order, and the findings of the commis-
23 sion, authority, or board as to the facts, if supported by
24 testimony, shall in like manner be conclusive.

25 "The jurisdiction of the circuit court of appeals of the

1 United States to enforce, set aside, or modify orders of the
2 commission, authority, or board shall be exclusive.

3 “Such proceedings in the circuit court of appeals shall
4 be given procedure over other cases pending therein, and
5 shall be in every way expedited. No order of the commis-
6 sion, authority, or board or the judgment of the court to
7 enforce the same shall in anywise relieve or absolve any
8 person from any liability under the antitrust Acts.

9 “Complaints, orders, and other processes of the com-
10 mission, authority, or board under this section may be served
11 by anyone duly authorized by the commission, authority,
12 or board, either (a) by delivering a copy thereof to the
13 person to be served, or to a member of the partnership to
14 be served, or to the president, secretary, or other executive
15 officer or a director of the corporation to be served; or (b)
16 by leaving a copy thereof at the principal office or place of
17 business of such person; or (c) by registering and mailing
18 a copy thereof addressed to such person at his principal
19 office or place of business. The verified return by the person
20 so serving said complaint, order, or other process setting
21 forth the manner of said service shall be proof of the same,
22 and the return post-office receipt for said complaint, order,
23 or other process registered and mailed as aforesaid shall be
24 proof of the service of the same.”

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