

AMENDMENT NO. 1766

Calendar No. 687

Purpose: To amend the Clayton Act to prohibit certain acquisitions by major oil companies.

IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.

S. 598

To clarify the circumstances under which territorial provisions in licenses to manufacture, distribute, and sell trademarked soft drink products are lawful under the antitrust laws.

May 14 (legislative day, January 3), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. METZENBAUM

Viz: On page 3, after line 15, add the following:

1 SEC. 5. (a) Section 7 of the Clayton Act (15 U.S.C. 18)
2 is amended by inserting “(a)” after “SEC. 7.” and the follow-
3 ing immediately after the end of the section:

4 “(b)(1) No major producer engaged in commerce, or af-
5 filiate thereof, shall, directly or indirectly, through merger,
6 consolidation, or acquisition, acquire control or a majority of
7 the assets of any other person if—

8 “(A) such other person is in the business of
9 energy exploration, extraction, production, or conver-
10 sion and has total assets of \$100,000,000 or more and,
11 in the case of an acquisition of a majority of the assets,
12 \$100,000,000 or more of assets would be acquired; or

1 “(B) such other person is not in the business of
2 energy exploration, extraction, production, or conver-
3 sion and has total assets of \$50,000,000 or more and,
4 in the case of an acquisition of a majority of the assets,
5 \$50,000,000 or more of assets would be acquired.

6 “(2) No acquisition shall be prohibited by this subsection
7 if the likely effect of the acquisition would be—

8 “(A) substantially to enhance competition in the
9 domestic or foreign commerce of the United States, or

10 “(B) materially to increase or substantially to pro-
11 mote energy exploration, extraction, production, or
12 conversion.

13 “(3) This subsection shall not apply to the formation of
14 joint undertakings for the purpose of new energy exploration,
15 extraction, production, conversion, transportation, or distri-
16 bution.

17 “(4)(A) For the purposes of this subsection, the total
18 assets of a person shall include those of all persons controlled
19 by such person.

20 “(B) Assets acquired within a period of three years shall
21 be presumed to be the subject of a single acquisition.

22 “(i) Except as provided in (ii) hereof the value of
23 assets is the amount at which such assets are carried
24 on the books used as the basis for reports filed by a
25 person pursuant to section 13 or section 15(d) of the

1 Securities Exchange Act of 1934 or which would be
2 used if section 13 or section 15(d) of the Securities Ex-
3 change Act of 1934 were applicable to require report-
4 ing to such person.

5 “(ii) In the case of acquisition of less than all of
6 the assets of a person, in determining whether a major-
7 ity of person’s assets would be acquired, the value of
8 assets is the fair market value.

9 “(5) For purposes of this subsection:

10 “(A) A ‘major producer’ is any person incorpo-
11 rated in the United States who is subject to section 13
12 of the Securities Exchange Act of 1934 and who, to-
13 gether with the person it controls, produced in calen-
14 dar year 1978 an average of one hundred and fifty
15 thousand barrels or more per day worldwide of crude
16 oil and natural gas liquids. Production of crude oil and
17 natural gas liquids shall include interests in such pro-
18 duction.

19 “(B) An ‘affiliate’ of a major producer is a person
20 who is controlled by such major producer.

21 “(C) ‘Control’ means having the power, directly
22 or indirectly, to direct or cause the direction of the
23 management and policies of a person through the own-
24 ership of voting securities or otherwise: *Provided, how-*
25 *ever,* That control shall not arise solely out of a bona

1 fide credit transaction. Ownership of, or the power to
2 vote, 15 per centum or more of the outstanding voting
3 securities of a person creates a rebuttable presumption
4 of control. Ownership of, or the power to vote, less
5 than 15 per centum of the outstanding voting securities
6 of a person does not create a presumption of control or
7 lack of control.

8 “(D) ‘Joint undertakings’ includes any business
9 enterprise composed of or owned by two or more per-
10 sons who combine their property, money, efforts, skill,
11 or knowledge in such enterprise.

12 “(E) ‘Conversion’ means the production of syn-
13 thetic fuels including any liquid, gaseous, solid hydro-
14 carbon (including mixtures of coal and petroleum)
15 which can be used as a substitute for supplies of petro-
16 leum or natural gas (and for any domestic derivatives
17 thereof) derived from domestic sources of—

18 “(i) coal, including lignite and peat;

19 “(ii) shale;

20 “(iii) tar sands, including those heavy oil re-
21 sources which cannot technically or economically
22 be produced using conventional or unconventional
23 petroleum recovery techniques; and

24 “(iv) biomass, which shall include timber,
25 animal and timber waste, municipal and industrial

1 waste, sewage, sludge, oceanic and terrestrial
2 plants, and other organic matter.

3 “(F) ‘United States’ includes the several States,
4 the territories, possessions, and Commonwealths of the
5 United States and the District of Columbia.

6 “(6)(A) For purposes of sections 4 and 16 of this Act,
7 this subsection shall not be considered part of the antitrust
8 laws.

9 “(B) In any action to enforce this subsection, whenever
10 a challenged acquisition has been or may be consummated,
11 the court shall, upon petition, issue an order appropriate to
12 ensure that the assets and operations of the parties to the
13 acquisition are kept intact and held separate and that the
14 parties do not interfere with or participate in the manage-
15 ment or internal affairs of one another pending final adjudica-
16 tion: *Provided*, That this shall not be construed to affect in
17 any way any determination as to the need for or propriety of
18 a temporary restraining order or preliminary injunction en-
19 joining consummation of any acquisition which may be pro-
20 hibited by this subsection.

21 “(C) No action shall be brought by the Attorney Gener-
22 al to enforce this subsection more than ninety days after expi-
23 ration of the waiting period under section 7A of this Act, or,
24 in the case of any acquisition not reportable under section 7A
25 and the regulations promulgated thereunder, more than one

1 hundred and twenty days after its consummation: *Provided*,
2 That the limitations of this paragraph shall not apply to any
3 action brought within one hundred and twenty days after the
4 date of enactment of this Act.

5 “(7)(A) Nothing contained herein shall be construed to
6 prohibit any acquisition involving solely persons controlling,
7 controlled by, or under common control with one another.

8 “(B) Nothing contained herein shall be construed to
9 render unlawful any acquisition on the basis of increases in
10 production or assets after consummation.

11 “(8) Nothing contained herein shall be construed to pro-
12 vide any defense or immunity to any acquisition which would
13 violate subsection 7(a) of this Act or otherwise be lawful.

14 “(9) This subsection shall apply to acquisitions consum-
15 mated after November 20, 1979, and prior to January 1,
16 1991:

17 “(10) This subsection’s applicability to foreign acquisi-
18 tions shall be interpreted in accordance with the principles of
19 international law and comity.”.

20 (b) This section shall be effective as of November 20,
21 1979.

22 SEC. 6. (a) The Federal Trade Commission, in consulta-
23 tion with the Department of Energy and the Department of
24 Justice, shall file, not later than October 31, 1984, a prog-
25 ress report with the Congress on the impact of the provisions

1 of subsection 7(b) of the Clayton Act, as added by section 5
2 of this Act, with respect to the effectiveness of the provisions
3 enforcement problems related to the provisions, and any rec-
4 ommendations for legislative change in those provisions.

5 (b) Not later than October 31, 1989, the Federal Trade
6 Commission, in consultation with the Department of Energy
7 and the Department of Justice, shall file a final report with
8 Congress on the impact of the provisions of section 7(b) of the
9 Clayton Act, as added by section 5 of this Act, containing the
10 information required under subsection 6(a).

Amendment No. 1766

S. 598