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:

SEC. 5. (a) Section 7 of the Clayton Act (15 U.S.C. 18) is amended by inserting "(a)" after "SEC. 7." and the following immediately after the end of the section:

"(b)(1) No major producer engaged in commerce, or affiliate thereof, shall, directly or indirectly, through merger, consolidation, or acquisition, acquire control or a majority of the assets of any other person if—

"(A) such other person is in the business of energy exploration, extraction, production, or conversion and has total assets of $100,000,000 or more and, in the case of an acquisition of a majority of the assets, $100,000,000 or more of assets would be acquired; or

"(B) such other person is not in the business of energy exploration, extraction, production, or conversion and has total assets of $50,000,000 or more and, in the case of an acquisition of a majority of the assets, $50,000,000 or more of assets would be acquired.

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

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

"(B) materially to increase or substantially to promote energy exploration, extraction, production, or conversion.

"(3) This subsection shall not apply to the formation of joint undertakings for the purpose of new energy exploration, extraction, production, conversion, transportation, or distribution.

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

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

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

Securities Exchange Act of 1934 or which would be used if section 13 or section 15(d) of the Securities Exchange Act of 1934 were applicable to require reporting to such person.

"(ii) In the case of acquisition of less than all of the assets of a person, in determining whether a majority of person's assets would be acquired, the value of assets is the fair market value.

"(5) For purposes of this subsection:

"(A) A 'major producer' is any person incorporated in the United States who is subject to section 13 of the Securities Exchange Act of 1934 and who, together with the person it controls, produced in calendar year 1978 an average of one hundred and fifty thousand barrels or more per day worldwide of crude oil and natural gas liquids. Production of crude oil and natural gas liquids shall include interests in such production.

"(B) An 'affiliate' of a major producer is a person who is controlled by such major producer.

"(C) 'Control' means having the power, directly or indirectly, to direct or cause the direction of the management and policies of a person through the ownership of voting securities or otherwise: *Provided, however,* That control shall not arise solely out of a bona

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

"(D) 'Joint undertakings' includes any business enterprise composed of or owned by two or more persons who combine their property, money, efforts, skill, or knowledge in such enterprise.

"(E) 'Conversion' means the production of synthetic fuels including any liquid, gaseous, solid hydrocarbon (including mixtures of coal and petroleum) which can be used as a substitute for supplies of petroleum or natural gas (and for any domestic derivatives thereof) derived from domestic sources of—

"(i) coal, including lignite and peat;

"(ii) shale;

"(iii) tar sands, including those heavy oil resources which cannot technically or economically be produced using conventional or unconventional petroleum recovery techniques; and

"(iv) biomass, which shall include timber, animal and timber waste, municipal and industrial

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

"(F) 'United States' includes the several States, the territories, possessions, and Commonwealths of the United States and the District of Columbia.

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

"(B) In any action to enforce this subsection, whenever a challenged acquisition has been or may be consummated, the court shall, upon petition, issue an order appropriate to ensure that the assets and operations of the parties to the acquisition are kept intact and held separate and that the parties do not interfere with or participate in the management or internal affairs of one another pending final adjudication: *Provided,* That this shall not be construed to affect in any way any determination as to the need for or propriety of a temporary restraining order or preliminary injunction enjoining consummation of any acquisition which may be prohibited by this subsection.

"(C) No action shall be brought by the Attorney General to enforce this subsection more than ninety days after expiration of the waiting period under section 7A of this Act, or, in the case of any acquisition not reportable under section 7A and the regulations promulgated thereunder, more than one

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

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

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

"(8) Nothing contained herein shall be construed to provide any defense or immunity to any acquisition which would violate subsection 7(a) of this Act or otherwise be lawful.

"(9) This subsection shall apply to acquisitions consummated after November 20, 1979, and prior to January 1, 1991.

"(10) This subsection's applicability to foreign acquisitions shall be interpreted in accordance with the principles of international law and comity.".

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

SEC. 6. (a) The Federal Trade Commission, in consultation with the Department of Energy and the Department of Justice, shall file, not later than October 31, 1984, a progress report with the Congress on the impact of the provisions

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

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

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