

“(3) the antitrust laws may have been mistakenly perceived to inhibit procompetitive cooperative innovation arrangements, and so clarification serves a useful purpose in helping to promote such arrangements.

“(b) PURPOSE.—It is the purpose of this Act [see Short Title of 1993 Amendment note above] to promote innovation, facilitate trade, and strengthen the competitiveness of the United States in world markets by clarifying the applicability of the rule of reason standard and establishing a procedure under which businesses may notify the Department of Justice and Federal Trade Commission of their cooperative ventures and thereby qualify for a single-damages limitation on civil antitrust liability.”

§ 4302. Rule of reason standard

In any action under the antitrust laws, or under any State law similar to the antitrust laws, the conduct of—

- (1) any person in making or performing a contract to carry out a joint venture, or
- (2) a standards development organization while engaged in a standards development activity,

shall not be deemed illegal per se; such conduct shall be judged on the basis of its reasonableness, taking into account all relevant factors affecting competition, including, but not limited to, effects on competition in properly defined, relevant research, development, product, process, and service markets. For the purpose of determining a properly defined, relevant market, worldwide capacity shall be considered to the extent that it may be appropriate in the circumstances.

(Pub. L. 98-462, §3, Oct. 11, 1984, 98 Stat. 1816; Pub. L. 103-42, §3(d), June 10, 1993, 107 Stat. 119; Pub. L. 108-237, title I, §104, June 22, 2004, 118 Stat. 663.)

AMENDMENTS

2004—Pub. L. 108-237 substituted “of—

“(1) any person in making or performing a contract to carry out a joint venture, or

“(2) a standards development organization while engaged in a standards development activity, shall” for “of any person in making or performing a contract to carry out a joint venture shall”.

1993—Pub. L. 103-42 substituted “joint venture” for “joint research and development venture” and “, development, product, process, and service” for “and development” and inserted at end “For the purpose of determining a properly defined, relevant market, worldwide capacity shall be considered to the extent that it may be appropriate in the circumstances.”

§ 4303. Limitation on recovery

(a) Amount recoverable

Notwithstanding section 15 of this title and in lieu of the relief specified in such section, any person who is entitled to recovery on a claim under such section shall recover the actual damages sustained by such person, interest calculated at the rate specified in section 1961 of title 28 on such actual damages as specified in subsection (d) of this section, and the cost of suit attributable to such claim, including a reasonable attorney’s fee pursuant to section 4304 of this title if such claim—

- (1) results from conduct that is within the scope of a notification that has been filed

under section 4305(a) of this title for a joint venture, or for a standards development activity engaged in by a standards development organization against which such claim is made, and

- (2) is filed after such notification becomes effective pursuant to section 4305(c) of this title.

(b) Recovery by States

Notwithstanding section 15c of this title, and in lieu of the relief specified in such section, any State that is entitled to monetary relief on a claim under such section shall recover the total damage sustained as described in subsection (a)(1) of such section, interest calculated at the rate specified in section 1961 of title 28 on such total damage as specified in subsection (d) of this section, and the cost of suit attributable to such claim, including a reasonable attorney’s fee pursuant to section 15c of this title if such claim—

- (1) results from conduct that is within the scope of a notification that has been filed under section 4305(a) of this title for a joint venture, or for a standards development activity engaged in by a standards development organization against which such claim is made, and

- (2) is filed after such notification becomes effective pursuant to section 4305(c) of this title.

(c) Conduct similar under State law

Notwithstanding any provision of any State law providing damages for conduct similar to that forbidden by the antitrust laws, any person who is entitled to recovery on a claim under such provision shall not recover in excess of the actual damages sustained by such person, interest calculated at the rate specified in section 1961 of title 28 on such actual damages as specified in subsection (d) of this section, and the cost of suit attributable to such claim, including a reasonable attorney’s fee pursuant to section 4304 of this title if such claim—

- (1) results from conduct that is within the scope of a notification that has been filed under section 4305(a) of this title for a joint venture, or for a standards development activity engaged in by a standards development organization against which such claim is made, and

- (2) is filed after notification has become effective pursuant to section 4305(c) of this title.

(d) Interest

Interest shall be awarded on the damages involved for the period beginning on the earliest date for which injury can be established and ending on the date of judgment, unless the court finds that the award of all or part of such interest is unjust in the circumstances.

(e) Rule of construction

Subsections (a), (b), and (c) of this section shall not be construed to modify the liability under the antitrust laws of any person (other than a standards development organization) who—

- (1) directly (or through an employee or agent) participates in a standards develop-

ment activity with respect to which a violation of any of the antitrust laws is found,

(2) is not a fulltime employee of the standards development organization that engaged in such activity, and

(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.

(f) Applicability

This section shall be applicable only if the challenged conduct of a person defending against a claim is not in violation of any decree or order, entered or issued after October 11, 1984, in any case or proceeding under the antitrust laws or any State law similar to the antitrust laws challenging such conduct as part of a joint venture, or of a standards development activity engaged in by a standards development organization.

(Pub. L. 98-462, §4, Oct. 11, 1984, 98 Stat. 1816; Pub. L. 103-42, §3(e)(1), June 10, 1993, 107 Stat. 119; Pub. L. 108-237, title I, §105, June 22, 2004, 118 Stat. 663.)

AMENDMENTS

2004—Subsecs. (a)(1), (b)(1), (c)(1). Pub. L. 108-237, §105(1), inserted “, or for a standards development activity engaged in by a standards development organization against which such claim is made” after “joint venture”.

Subsec. (e). Pub. L. 108-237, §105(3), added subsec. (e). Former subsec. (e) redesignated (f).

Pub. L. 108-237, §105(2)(A), inserted “, or of a standards development activity engaged in by a standards development organization” before period at end.

Subsec. (f). Pub. L. 108-237, §105(2)(B), redesignated subsec. (e) as (f).

1993—Subsecs. (a) to (c). Pub. L. 103-42, §3(e)(1)(A), (B), in introductory provisions inserted “of this section” after “subsection (d)” and in par. (1) substituted “joint venture” for “joint research and development venture”.

Subsec. (e). Pub. L. 103-42, §3(e)(1)(A), (C), substituted “October 11, 1984,” for “the effective date of this Act” and substituted “joint venture” for “joint research and development venture”.

§ 4304. Award of costs, including attorney’s fees, to substantially prevailing party; offset

(a) Notwithstanding sections 15 and 26 of this title, in any claim under the antitrust laws, or any State law similar to the antitrust laws, based on the conducting of a joint venture, or of a standards development activity engaged in by a standards development organization, the court shall, at the conclusion of the action—

(1) award to a substantially prevailing claimant the cost of suit attributable to such claim, including a reasonable attorney’s fee, or

(2) award to a substantially prevailing party defending against any such claim the cost of suit attributable to such claim, including a reasonable attorney’s fee, if the claim, or the claimant’s conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith.

(b) The award made under subsection (a) of this section may be offset in whole or in part by

an award in favor of any other party for any part of the cost of suit, including a reasonable attorney’s fee, attributable to conduct during the litigation by any prevailing party that the court finds to be frivolous, unreasonable, without foundation, or in bad faith.

(c) Subsections (a) and (b) of this section shall not apply with respect to any person who—

(1) directly participates in a standards development activity with respect to which a violation of any of the antitrust laws is found,

(2) is not a fulltime employee of a standards development organization that engaged in such activity, and

(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.

(Pub. L. 98-462, §5, Oct. 11, 1984, 98 Stat. 1817; Pub. L. 103-42, §3(e)(2), June 10, 1993, 107 Stat. 119; Pub. L. 108-237, title I, §106, June 22, 2004, 118 Stat. 664.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-237, §106(1), inserted “, or of a standards development activity engaged in by a standards development organization” after “joint venture” in introductory provisions.

Subsec. (c). Pub. L. 108-237, §106(2), added subsec. (c). 1993—Subsec. (a). Pub. L. 103-42 substituted “joint venture” for “joint research and development venture” in introductory provisions.

§ 4305. Disclosure of joint venture

(a) Written notifications; filing

(1) Any party to a joint venture, acting on such venture’s behalf, may, not later than 90 days after entering into a written agreement to form such venture or not later than 90 days after October 11, 1984, whichever is later, file simultaneously with the Attorney General and the Commission a written notification disclosing—

(A) the identities of the parties to such venture,

(B) the nature and objectives of such venture, and

(C) if a purpose of such venture is the production of a product, process, or service, as referred to in section 4301(a)(6)(D) of this title, the identity and nationality of any person who is a party to such venture, or who controls any party to such venture whether separately or with one or more other persons acting as a group for the purpose of controlling such party.

Any party to such venture, acting on such venture’s behalf, may file additional disclosure notifications pursuant to this section as are appropriate to extend the protections of section 4303 of this title. In order to maintain the protections of section 4303 of this title, such venture shall, not later than 90 days after a change in its membership, file simultaneously with the Attorney General and the Commission a written notification disclosing such change.

(2) A standards development organization may, not later than 90 days after commencing a standards development activity engaged in for the purpose of developing or promulgating a¹

¹ So in original.