

§ 18. Acquisition by one corporation of stock of another

No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

This section shall not apply to persons purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make

lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Secretary of Transportation, Federal Power Commission, Surface Transportation Board, the Securities and Exchange Commission in the exercise of its jurisdiction under section 79j of this title,¹ the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission, Board, or Secretary.

(Oct. 15, 1914, ch. 323, § 7, 38 Stat. 731; Dec. 29, 1950, ch. 1184, 64 Stat. 1125; Pub. L. 96-349, § 6(a), Sept. 12, 1980, 94 Stat. 1157; Pub. L. 98-443, § 9(7), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 104-88, title III, § 318(1), Dec. 29, 1995, 109 Stat. 949; Pub. L. 104-104, title VI, § 601(b)(3), Feb. 8, 1996, 110 Stat. 143.)

REFERENCES IN TEXT

Section 79j of this title, referred to in text, was repealed by Pub. L. 109-58, title XII, § 1263, Aug. 8, 2005, 119 Stat. 974.

AMENDMENTS

1996—Pub. L. 104-104, in sixth par., struck out “Federal Communications Commission,” after “Secretary of Transportation,”.

1995—Pub. L. 104-88, in sixth par., substituted “Surface Transportation Board” for “Interstate Commerce Commission” and inserted “, Board,” after “vesting such power in such Commission”.

1984—Pub. L. 98-443 substituted “Secretary of Transportation” for “Civil Aeronautics Board” and “Commission or Secretary” for “Commission, Secretary, or Board” in sixth par.

1980—Pub. L. 96-349, substituted “person” for “corporation” wherever appearing in first and second pars.; substituted “persons” for “corporations” in second par. and first sentence of third par.; and inserted “or in any activity affecting commerce” after “commerce” wherever appearing in first, second, and third pars.

1950—Act Dec. 29, 1950, amended section generally so as to prohibit the acquisition of the whole or any part of the assets of another corporation when the effect of the acquisition may substantially lessen competition or tend to create a monopoly.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-349, § 6(b), Sept. 12, 1980, 94 Stat. 1158, provided that: “The amendments made by this section [amending this section] shall apply only with respect to acquisitions made after the date of the enactment of this Act [Sept. 12, 1980].”

TRANSFER OF FUNCTIONS

Federal Power Commission terminated and functions, personnel, property, funds, etc., transferred to Sec-

¹ See References in Text note below.

retary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

Executive and administrative functions of Maritime Commission transferred to Chairman of Maritime Commission by Reorg. Plan No. 6 of 1949, eff. Aug. 19, 1949, 14 F.R. 5228, 63 Stat. 1069, which was repealed by Pub. L. 109-304, §19, Oct. 6, 2006, 120 Stat. 1710, and was formerly set out in the Appendix to Title 5, Government Organization and Employees.

United States Maritime Commission abolished by Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, which was superseded in part by Reorg. Plan No. 7 of 1961, §305, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, repealed in part by Pub. L. 109-304, §19, Oct. 6, 2006, 120 Stat. 1710, and remains only partially set out in the Appendix to Title 5. Reorg. Plan No. 21 of 1950 transferred part of Commission's functions and part of functions of its Chairman, to Federal Maritime Board and Chairman thereof, such Board having been created by that Plan as an agency within Department of Commerce with an independent status in some respects, and transferred remainder of such Commission's functions and functions of its Chairman to Secretary of Commerce, with power vested in Secretary to authorize their performance by Maritime Administrator (the head of Maritime Administration, which likewise established by the Plan in Department of Commerce) with provision that Chairman of Federal Maritime Board should, ex officio, be such Administrator.

Section 304 of Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, abolished Federal Maritime Board, including offices of members of Board. Functions of Board transferred either to Federal Maritime Commission, by section 103 of Reorg. Plan No. 7 of 1961, which was repealed by Pub. L. 109-304, §19, Oct. 6, 2006, 120 Stat. 1710 and formerly set out in the Appendix to Title 5, or to Secretary of Commerce, by section 202 of Reorg. Plan No. 7 of 1961, set out in the Appendix to Title 5.

Maritime Administration of Department of Commerce transferred to Department of Transportation, and all related functions of Secretary and other officers and offices of Department of Commerce transferred to Department of Transportation and vested in Secretary of Transportation, by Maritime Act of 1981, Pub. L. 97-31, Aug. 6, 1981, 95 Stat. 151, which was repealed in part by Pub. L. 109-304, §19, Oct. 6, 2006, 120 Stat. 1710. See section 109 of Title 49, Transportation.

§ 18a. Premerger notification and waiting period

(a) Filing

Except as exempted pursuant to subsection (c), no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) and the waiting period described in subsection (b)(1) has expired, if—

(1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce; and

(2) as a result of such acquisition, the acquiring person would hold an aggregate total amount of the voting securities and assets of the acquired person—

(A) in excess of \$200,000,000 (as adjusted and published for each fiscal year beginning after September 30, 2004, in the same manner as provided in section 19(a)(5) of this title to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2003); or

(B)(i) in excess of \$50,000,000 (as so adjusted and published) but not in excess of \$200,000,000 (as so adjusted and published); and

(ii)(I) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of \$10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 (as so adjusted and published) or more;

(II) any voting securities or assets of a person not engaged in manufacturing which has total assets of \$10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 (as so adjusted and published) or more; or

(III) any voting securities or assets of a person with annual net sales or total assets of \$100,000,000 (as so adjusted and published) or more are being acquired by any person with total assets or annual net sales of \$10,000,000 (as so adjusted and published) or more.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d).

(b) Waiting period; publication; voting securities

(1) The waiting period required under subsection (a) shall—

(A) begin on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereinafter referred to in this section as the "Assistant Attorney General") of—

(i) the completed notification required under subsection (a), or

(ii) if such notification is not completed, the notification to the extent completed and a statement of the reasons for such non-compliance,

from both persons, or, in the case of a tender offer, the acquiring person; and

(B) end on the thirtieth day after the date of such receipt (or in the case of a cash tender offer, the fifteenth day), or on such later date as may be set under subsection (e)(2) or (g)(2).

(2) The Federal Trade Commission and the Assistant Attorney General may, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the Federal Register a notice that neither intends to take any action within such period with respect to such acquisition.

(3) As used in this section—

(A) The term "voting securities" means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.

(B) The amount or percentage of voting securities or assets of a person which are ac-