

“(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) 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 development activity with respect to which a violation of any of the antitrust laws is found,