

(A) engaged in whole or in part in commerce; and

(B) by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws;

if each of the corporations has capital, surplus, and undivided profits aggregating more than \$10,000,000 as adjusted pursuant to paragraph (5) of this subsection.

(2) Notwithstanding the provisions of paragraph (1), simultaneous service as a director or officer in any two corporations shall not be prohibited by this section if—

(A) the competitive sales of either corporation are less than \$1,000,000, as adjusted pursuant to paragraph (5) of this subsection;

(B) the competitive sales of either corporation are less than 2 per centum of that corporation's total sales; or

(C) the competitive sales of each corporation are less than 4 per centum of that corporation's total sales.

For purposes of this paragraph, "competitive sales" means the gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services in that corporation's last completed fiscal year. For the purposes of this paragraph, "total sales" means the gross revenues for all products and services sold by one corporation over that corporation's last completed fiscal year.

(3) The eligibility of a director or officer under the provisions of paragraph (1) shall be determined by the capital, surplus and undivided profits, exclusive of dividends declared but not paid to stockholders, of each corporation at the end of that corporation's last completed fiscal year.

(4) For purposes of this section, the term "officer" means an officer elected or chosen by the Board of Directors.

(5) For each fiscal year commencing after September 30, 1990, the \$10,000,000 and \$1,000,000 thresholds in this subsection shall be increased (or decreased) as of October 1 each year by an amount equal to the percentage increase (or decrease) in the gross national product, as determined by the Department of Commerce or its successor, for the year then ended over the level so established for the year ending September 30, 1989. As soon as practicable, but not later than January 31 of each year, the Federal Trade Commission shall publish the adjusted amounts required by this paragraph.

(b) When any person elected or chosen as a director or officer of any corporation subject to the provisions hereof is eligible at the time of his election or selection to act for such corporation in such capacity, his eligibility to act in such capacity shall not be affected by any of the provisions hereof by reason of any change in the capital, surplus and undivided profits, or affairs of such corporation from whatever cause, until the expiration of one year from the date on which the event causing ineligibility occurred.

(Oct. 15, 1914, ch. 323, § 8, 38 Stat. 732; May 15, 1916, ch. 120, 39 Stat. 121; May 26, 1920, ch. 206, 41

Stat. 626; Mar. 9, 1928, ch. 165, 45 Stat. 253; Mar. 2, 1929, ch. 581, 45 Stat. 1536; Aug. 23, 1935, ch. 614, § 329, 49 Stat. 717; Pub. L. 101-588, § 2, Nov. 16, 1990, 104 Stat. 2879; Pub. L. 103-203, § 1, Dec. 17, 1993, 107 Stat. 2368.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (a)(1)(B), are defined in section 12 of this title.

AMENDMENTS

1993—Subsec. (a)(5). Pub. L. 103-203 substituted "January 31" for "October 30".

1990—Pub. L. 101-588 amended section generally, completely revising it in form by substituting text divided into a subsec. (a) consisting of five numbered paragraphs and a subsec. (b) consisting of a single unnumbered paragraph for former provisions which had consisted of a series of five undesignated paragraphs, and in substance by increasing the jurisdictional threshold for application of the section to corporations from \$1,000,000 in net worth to \$10,000,000 in net worth, creating three "de minimis" exceptions to applications of the section in cases of insignificant competitive overlaps, and expanding the section to cover officers elected or chosen by the Board of Directors.

1935—Act Aug. 23, 1935, amended section generally.

1929—Act Mar. 2, 1929, amended second par.

1928—Act Mar. 9, 1928, amended second par.

§ 19a. Repealed. Aug. 23, 1935, ch. 614, § 329, 49 Stat. 717

Section, act Oct. 15, 1914, ch. 323, § 8a, as added June 16, 1933, ch. 89, § 33, 48 Stat. 194, related to interlocking corporations or partnerships making loans on securities.

§ 20. Repealed. Pub. L. 101-588, § 3, Nov. 16, 1990, 104 Stat. 2880

Section, act Oct. 15, 1914, ch. 323, § 10, 38 Stat. 734, related to a \$50,000 yearly, aggregate limitation on purchases and contracts between a common carrier and any entity with whom such carrier has any form of interlocking directorate, etc., required filing with ICC of a full statement of transactions excluded from such limitation, and set forth fines and penalties for violation of such limitation.

§ 21. Enforcement provisions

(a) Commission, Board, or Secretary authorized to enforce compliance

Authority to enforce compliance with sections 13, 14, 18, and 19 of this title by the persons respectively subject thereto is vested in the Surface Transportation Board where applicable to common carriers subject to jurisdiction under subtitle IV of title 49; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the Secretary of Transportation where applicable to air carriers and foreign air carriers subject to part A of subtitle VII of title 49; in the Board of Governors of the Federal Reserve System where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce to be exercised as follows:

(b) Issuance of complaints for violations; hearing; intervention; filing of testimony; report; cease and desist orders; reopening and alteration of reports or orders

Whenever the Commission, Board, or Secretary vested with jurisdiction thereof shall