

section 3701 of this title] recognized the importance of technical standards developed by voluntary consensus standards bodies to our national economy by requiring the use of such standards to the extent practicable by Federal agencies and by encouraging Federal agency representatives to participate in ongoing standards development activities. The Office of Management and Budget on February 18, 1998, revised Circular A-119 to reflect these changes made in law.

“(3) Following enactment of the National Technology Transfer and Advancement Act of 1995, technical standards developed or adopted by voluntary consensus standards bodies have replaced thousands of unique Government standards and specifications allowing the national economy to operate in a more unified fashion.

“(4) Having the same technical standards used by Federal agencies and by the private sector permits the Government to avoid the cost of developing duplicative Government standards and to more readily use products and components designed for the commercial marketplace, thereby enhancing quality and safety and reducing costs.

“(5) Technical standards are written by hundreds of nonprofit voluntary consensus standards bodies in a nonexclusionary fashion, using thousands of volunteers from the private and public sectors, and are developed under the standards development principles set out in Circular Number A-119, as revised February 18, 1998, of the Office of Management and Budget, including principles that require openness, balance, transparency, consensus, and due process. Such principles provide for—

“(A) notice to all parties known to be affected by the particular standards development activity,

“(B) the opportunity to participate in standards development or modification,

“(C) balancing interests so that standards development activities are not dominated by any single group of interested persons,

“(D) readily available access to essential information regarding proposed and final standards,

“(E) the requirement that substantial agreement be reached on all material points after the consideration of all views and objections, and

“(F) the right to express a position, to have it considered, and to appeal an adverse decision.

“(6) There are tens of thousands of voluntary consensus standards available for government use. Most of these standards are kept current through interim amendments and interpretations, issuance of addenda, and periodic reaffirmation, revision, or reissuance every 3 to 5 years.

“(7) Standards developed by government entities generally are not subject to challenge under the antitrust laws.

“(8) Private developers of the technical standards that are used as Government standards are often not similarly protected, leaving such developers vulnerable to being named as codefendants in lawsuits even though the likelihood of their being held liable is remote in most cases, and they generally have limited resources to defend themselves in such lawsuits.

“(9) Standards development organizations do not stand to benefit from any antitrust violations that might occur in the voluntary consensus standards development process.

“(10) As was the case with respect to research and production joint ventures before the passage of the National Cooperative Research and Production Act of 1993, if relief from the threat of liability under the antitrust laws is not granted to voluntary consensus standards bodies, both regarding the development of new standards and efforts to keep existing standards current, such bodies could be forced to cut back on standards development activities at great financial cost both to the Government and to the national economy.”

Pub. L. 103-42, § 2, June 10, 1993, 107 Stat. 117, provided that:

“(a) FINDINGS.—The Congress finds that—

“(1) technological innovation and its profitable commercialization are critical components of the ability of the United States to raise the living standards of Americans and to compete in world markets;

“(2) cooperative arrangements among nonaffiliated businesses in the private sector are often essential for successful technological innovation; and

“(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 anti-

trust 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,

(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.