

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.)

Editorial Notes

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) 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) 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.)

Editorial Notes

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 voluntary consensus standards or not later than 90 days after June 22, 2004, whichever is later,

¹ So in original.