

A BILL

To modify the operation of Federal and State antitrust laws for conducting certain research and development activities jointly, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Research and Development Joint Venture Act of 1984".

FINDINGS

Sec. 2. The Congress finds that there is a need to modify the operation of the antitrust laws and of similar State laws with respect to joint research and development projects in order to encourage commercial entities to carry out such projects and thereby increase industrial innovation, productivity, employment, and the economic competitiveness of the United States.

DISCLOSURE TO ATTORNEY GENERAL

SEC. 3. (a) Except as provided in subsection (b), no person shall be liable in any civil action brought under the antitrust laws, or under any State law similar to the antitrust laws, against any person for making a contract or for performing a contract to carry out a research and development project jointly with another person if disclosure of such activities is made to the Attorney General pursuant to subsection (c).

(b) Nothing in this section shall affect the ability of the Attorney General or of any person to obtain injunctive relief in any action under the antitrust laws, but no such injunctive relief shall have the effect of rescinding the protections of subsection (a), including protection against the imposition of damages, with respect to conduct occurring during the period covered by any disclosure made pursuant to subsection (c) but occurring prior to the date on which temporary or permanent injunctive relief is initially granted, if such relief is not vacated by subsequent conclusive judicial action. With respect to conduct occurring after such period, the court may, in granting such relief, suspend, terminate, or extend conditionally the protections of subsection (a).

(c) Any person making, having made, or performing a contract to carry out a research and development project jointly with another person may disclose such activities to the Attorney General. Such disclosure shall identify the parties making, having made, or performing each such project, describe the nature, scope, and duration of each project, and provide any information or document expressing the content of such contract and any other information relating to such contract which the Attorney General may, by regulation, require. Only the persons and the activities of those persons specified in such disclosure shall be entitled to the protections of subsection (a), but additional disclosure may be made as appropriate.

(d) Within 30 days of any disclosure made pursuant to this section, the Attorney General shall cause to be

published in the Federal Register notice of such disclosure, identifying the parties to each project, describing in general terms each research and development project, and specifying the extent to which information and documents submitted under subsection (c) are available to the public.

(e)(1) All information and documentary materials submitted as part of the disclosure pursuant to this section shall be available to the public upon request within 30 days after its submission to the Attorney General except that no information or documentary material shall be made available to the public if such information or documentary material is subject to section 552(b) of title 5, United States Code, or if its availability would not be permitted under paragraph (2).

(2) Any person making a disclosure pursuant to this section may request that information or documentary material submitted as part of such disclosure, which is not otherwise exempt from availability to the public under section 552 of title 5, United States Code, not be made available to the public. Any such request shall specify precisely which information or documentary material should not be made available to the public, state the minimum period of time during which it is considered necessary that such information or documentary material not be made available to the public, and justify such request both as to substance and time. If the Attorney General determines that there is good cause to withhold such information or documentary material, it shall not be made available to the public for the time period involved.

RULE OF REASON STANDARD

SEC. 4. In any action under the antitrust laws, or under any State law similar to the antitrust laws, the conduct of any person in making, or performing a contract to carry out a joint research and development program shall not be deemed illegal per se but 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 and development markets, and effects in promoting competition through innovation or enhancement of efficiency.

DAMAGES

SEC. 5. (a) Notwithstanding any provision of law, no person shall be liable under the antitrust laws or under any State law similar to the antitrust laws for an amount in excess of the actual damages sustained by reason of the violation of any such law, the cost of suit (including a reasonable attorney's fee), and any interest awarded with respect to such damages if such liability results from attempting to make, making, or performing a contract to carry out a research and development project jointly with another person.

(b) Notwithstanding sections 4 and 4C of the Clayton Act (15 U.S.C. 15, 15c) and in lieu of any interest

authorized to be awarded under any such section to a claimant with respect to liability under such section resulting from attempting to make, making, or performing a contract to carry out a research and development program jointly with another person, the court shall award interest calculated in accordance with the provisions of section 1961 of title 28, United States Code, on actual damages with respect to such period of time, prior to the date of judgment, that such damages have been incurred but in no event with respect to any period of time prior to the date of service of the pleading setting forth the claim, except that the court may reduce or withhold such award in the interest of justice.

ATTORNEY'S FEES

~~SEC. 6. In any action under the antitrust laws, or any State law similar to the antitrust laws, brought against a defendant who is not found liable with respect to a claim arising from defendant's attempting to make, making, or performing a contract to carry out a research and development project jointly with another person, the court shall award to the prevailing defendant the cost of suit, including a reasonable attorney's fee, attributable to defending against such claim, except that the court may reduce or withhold such award in the interest of justice.~~

DEFINITIONS

SEC. 6. For purposes of this Act --

(1) The term "antitrust laws" shall have the meaning given it in subsection (a) of the first section of the

Clayton Act (15 U.S.C. 12(a)), except that such term shall include section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 relates to unfair methods of competition.

(2) The term "Attorney General" means the Attorney General of the United States.

(3) The term "contract" means the agreement written or otherwise by which two or more persons engage in research and development activity jointly, including any ancillary agreements or understandings.

(4) The term "person" shall have the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)).

(5) The term "research and development project" means a project involving basic research, applied research, exploratory development, technology development, or demonstration development, but does not include the production or marketing of products or services developed for commercial use. For purposes of this paragraph --

(A) the term "basic research" means systematic study having the objective of gaining fuller knowledge or understanding of the fundamental aspects of phenomena and of observable facts, without attempting to discover specific applications, or processes,

(B) the term "applied research" means systematic study having the objective of

gaining knowledge or understanding necessary for determining the means by which a recognized and specific need may be met,

(C) the term "exploratory development" means the conduct of activities designed or intended to lead to a practical utilization of research results for the development of a particular application or product,

(D) the term "technology development" means activities designed to provide a transition from research and exploratory development to engineering systems development to solve a particularly defined technical problem in order to achieve proof of principle or to show technical feasibility, and

(E) the term "demonstration development" means engineering development activities designed to achieve standards of performance, reliability, and process function to identify solutions to meet functional or economic requirements or to otherwise prove concept feasibility, including the design, construction, and testing of prototype units, but not including the development or preparation of any manufacturing design of a product that may be offered for sale.

(6) The term "State" shall have the meaning given it in section 4G(2) of the Clayton Act (15 U.S.C. 15g(2)).