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Senate

By Mr. TSONGAS:

S. 2714. A bill to clarify antitrust law with respect to joint research and development ventures to encourage the formation of such ventures, and for other purposes; to the Committee on the Judiciary.

JOINT RESEARCH AND DEVELOPMENT VENTURES ACT

Mr. TSONGAS. Mr. President, U.S. technological leadership is eroding. The Japanese have launched the most serious challenge to U.S. industrial competitiveness that we have ever faced. The Japanese have learned to capitalize on the fruits of scientific research more effectively than we do despite the fact that much of that basic R. & D. is ours. Most importantly, the Japanese have used technology to dramatically increase the quality and productivity of their industrial production.

R. & D. is critical to technological innovation, industrial competitive strength, increased productivity, and economic growth. We must expand the amount and diversity of U.S. R. & D.; maintaining our leadership in basic research and launching new efforts in manufacturing technology.

Industrial supported R. & D. accounts for half the roughly \$80 billion our Nation spends on R. & D. But three-quarters of that is spent on product development and only 4 percent on basic R. & D. Additionally, there are substantial technological opportunities that are not being exploit-

ed, particularly in manufacturing technology.

There is significant evidence that the private sector underinvests in R. & D. Research and development is often expensive and results are highly uncertain. Given the sophistication of reverse engineering by competitors, it is often difficult for an individual firm to appropriate the benefits of its own R. & D. Basic research is unlikely to provide short term returns on investment and industry tends to focus on incremental product improvements that can return quick profits. Industries with many small firms, such as housing, frequently spend very little on R. & D. and innovations are rare. Improvements to the technology base of a given industry, such as automation, machining, and chemical processing, which are important to an industry as a whole, are often too costly and risky for a single firm to pursue. It has also been shown that the social rate of return of R. & D. is often twice the private rate of return.

The formation of industrywide joint research and development ventures can overcome some of these barriers. Joint R. & D. ventures allow individual firms to share risks, aggregate resources to undertake large projects, permit R. & D. on a scale that maximizes efficiency and avoids duplication. Joint R. & D. ventures also combine complementary resources and talents possessed by different firms in different phases of a technology, and can result in accelerating the innovative process.

The Japanese have effectively used joint R. & D. efforts to accelerate technological development. The very large scale integration project in semiconductors and the fifth generation computer project are just two examples of Japanese-sponsored joint R. & D.

In Japan, joint research and development projects are exempt from Japan's antimonopoly law. In this country, joint R. & D. ventures can raise serious antitrust concerns. Ambiguities in the law and variability of enforcement create an uncertain legal environment that can expose a joint venture to Federal antitrust action as well as private suits.

In 1980, the Justice Department issued guidelines setting forth the Attorney General's views regarding the legality of joint R. & D. ventures, and began to utilize a business review procedure to give specific guidance to firms contemplating joint R. & D. ventures. But the Justice Department's review provides only a statement of present enforcement intentions, and does not preclude subsequent action that could be retroactive, or private suits. While the Justice Department business review provides substantial guidance, it still leaves uncertainty.

The legislation which I am introducing today would clarify antitrust law by giving protection to joint R. & D. ventures that have received Justice Department approval through the business review procedure.

The bill establishes criteria drawn from the Justice Department's Antitrust Guide Concerning Research Joint Ventures, that the Attorney General will use in approving ventures. Briefly, the Attorney General must find that:

First, participation in the joint R. & D. venture is open to all firms.

Second, results of the R. & D. will be made available to nonmembers on a reasonable basis.

Third, the venture will not lessen competition.

Fourth, restrictions, such as fees, are the minimum necessary for purpose of the venture, and not part of a pattern that would limit competition.

Fifth, the venture does not violate provisions of the Federal Trade Commission Act.

The bill allows a joint R. & D. venture to exclude foreign companies if their countries do not allow participation of U.S. firms in their joint R. & D. ventures. Finally, the bill gives immunization to joint R. & D. ventures that have been approved.

The particular approach taken by this bill is by no means the only way to resolve the antitrust uncertainty that now deters the formation of joint R. & D. ventures. Other bills have been or will be introduced in the House and Senate on this topic. I join my colleagues in urging prompt and favorable consideration of a measure to encourage joint R. & D. ventures. I believe this will be an important step in maintaining this Nation's technological leadership.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2714

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Joint Research and Development Ventures Act".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) research and development are major factors in the growth and progress of our industry and national economy;

(2) many firms are unable to perform their desired level of research and development due to the capital intensive nature of such research and development programs;

(3) the expense of carrying on certain research and development programs is prohibitive for many businesses;

(4) a firm's or an industry's ability to commit capital to research and development ventures is sometimes dependent upon such firm or industry being able to share the risks which such projects often entail; and

(5) to the extent that new information or products are brought forward as a result of such sharing, there are genuine procompetitive benefits.

(b) The purposes of this Act are to—

(1) encourage business concerns to undertake and obtain the benefits of research and development in order to strengthen the national economy and the United States international industrial competitive position;

(2) encourage greater use of joint research and development ventures by the private sector as a means of augmenting the total amount of research and development performed as well as increasing the diversity of research; and

(3) immunize an applicant from any retroactive prosecution from the moment the United States Department of Justice approves a stated venture until the project is completed, or the Department considers it injurious to the competitive balance for that venture to continue.

Sec. 3. For purposes of this Act—

(1) the term “applicant” means an individual who is a citizen of the United States or a partnership, corporation, or other legal entity organized under the laws of the United States or any State or territory of the United States seeking approval of a joint program for research and development;

(2) the term “research and development program” means a program which is—

(A) a systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(B) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(C) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements;

(3) the term “joint research and development venture” means an association or venture established to carry out research and development programs; and

(4) the term “Attorney General” means the Attorney General of the United States or his designee.

ATTORNEY GENERAL REVIEW

SEC. 4. (a) Prior to the initiation of any joint research and development venture, the business concerns involved in such an effort may request and obtain the approval of the Attorney General.

(b) The request required by this section shall be in such form and contain such information and documentary material as the Attorney General shall by general regulations prescribe pursuant to section 553 of title 5, United States Code.

(c)(1) The Attorney General shall notify the applicants of his decision within 60 days after the filing of such request.

(2) Such decision shall be accompanied by the findings of the Attorney General.

(d) The Attorney General shall approve any joint research and development venture if he finds that—

(1) participation in the joint research and development venture is open to all domestic firms and domestic subsidiaries of foreign firms to the extent provided in subsection (g);

(2) the results of joint research and development ventures will be made available to all firms in the industry on reasonable and nondiscriminatory terms whether such firms are members or not;

(3) the joint research and development venture will not lessen existing or potential competition between firms to such an extent as to foreclose the existing or potential competitors from participating in such market;

(4) any restraints associated with the joint research and development venture—

(A) are necessary to the lawful main purpose of the agreement to form the joint research and development venture;

(B) have a scope and duration no greater than is necessary to achieve that purpose; and

(C) are not part of an overall pattern of restrictable agreements that have unwarranted anticompetitive effects; and

(5) the joint research and development venture does not violate the provisions of the Federal Trade Commission Act.

(e) The Attorney General may approve any joint research and development venture even if individual firm research or competitive smaller joint research and development ventures are feasible.

(f)(1) The Attorney General may at any time withdraw approval of all or any part of the joint program by giving to such applicants a written copy of the findings and a notice of the withdrawal or modification of such previous approval.

(2) Such withdrawal is reviewable by the Court of Appeals for the District of Columbia.

(g) The Attorney General may approve a joint research and development venture even if it does not provide access to participation to domestic subsidiaries of foreign firms if it is found that that nation does not provide access to participation in joint research and development efforts to United States firms operating in that nation equivalent to such access provided domestic firms in such nation.

SEC. 5. No act or failure to act pursuant to and within the scope of any joint program for research and development which has been approved by the Attorney General shall be construed to be within the prohibitions of sections 1 and 2 of the Sherman Act, section 7 of the Clayton Act, and the provisions of the Federal Trade Commission Act. Upon notice of withdrawal of the approval of the Attorney General, the provisions of this section shall not apply to any subsequent act or failure to act pursuant to such program.