

July 18, 1983

To Our Clients

Takeovers -- A public Interest Test for Big Deals

Representative Rodino has introduced a bill (attached) that would establish a public interest test for acquisitions that would result in the acquiror having more than \$5 billion in assets and more than 25,000 employees. We will follow the bill closely.

M. Lipton

Attachment

98TH CONGRESS  
1ST SESSION

# H. R. 3561

To modify the application of the Clayton Act to certain large acquisitions.

---

## IN THE HOUSE OF REPRESENTATIVES

JULY 13, 1983

Mr. RODRIGO (for himself and Mr. SEIBERLING) introduced the following bill;  
which was referred to the Committee on the Judiciary

---

## A BILL

To modify the application of the Clayton Act to certain large  
acquisitions.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That the Clayton Act (15 U.S.C. 12 et seq.) is amended by  
4 inserting after section 7A the following new section:  
5       "SEC. 7B. (a) The Assistant Attorney General or the  
6 Federal Trade Commission may extend the waiting period  
7 specified in subsection (b)(1) of section 7A (including any ex-  
8 tension of such period under subsection (e)(2) of such section)

1 for a period not to exceed sixty days if, as a result of the  
2 occurrence of the proposed acquisition to which such section  
3 applies—

4           “(1) the value of the assets held in the United  
5 States by the acquiring person would exceed  
6 \$5,000,000,000; and

7           “(2) the aggregate number of employees in the  
8 United States of the acquiring person and all the per-  
9 sons in which the acquiring person owns a controlling  
10 interest would exceed 25,000;

11 unless the divestiture requirements of subsection (b) are satis-  
12 fied.

13           “(b)(1) For purposes of subsection (a), the divestiture  
14 requirements of this subsection are satisfied if—

15           “(A) in the two-year period ending on the date  
16 the proposed acquisition is scheduled to be consummat-  
17 ed or is consummated, the acquiring person divests  
18 itself of the ownership or, by relinquishing voting secu-  
19 rities, the working control of assets—

20           “(i) held in the United States by the acquir-  
21 ing person, the issuer of such voting securities, or  
22 any entity in which such issuer owns a controlling  
23 interest; and

24           “(ii) having an aggregate value of not less  
25 than the assets held in the United States and of

1           which ownership or, by the obtaining of voting se-  
2           curities, working control will be acquired in the  
3           acquisition; and

4           “(B) such divestiture has not been relied upon to  
5           exclude any other acquisition from the operation of this  
6           section.

7           “(2)(A) Acquisitions of assets in the ordinary course of  
8           business and acquisitions of voting securities that do not  
9           confer on the acquiring person working control of the assets  
10          of the issuer of such securities shall be excluded for purposes  
11          of paragraph (1).

12          “(B) Acquisitions of assets held in the United States and  
13          valued in the aggregate at less than \$100,000,000 and acqui-  
14          sitions of voting securities that confer working control of the  
15          assets of the issuer of such securities which, together with all  
16          entities such issuer controls, holds in the United States total  
17          assets of less than \$100,000,000 shall be excluded for pur-  
18          poses of paragraph (1).

19          “(c) The Assistant Attorney General or the Federal  
20          Trade Commission may request additional information or  
21          documentary material pursuant to section 7A(e)(1) to deter-  
22          mine whether the divestiture requirements of subsection (b)  
23          are satisfied.

4

1       “(d)(1) No proposed acquisition with respect to which  
2 subsection (a) applies may be consummated if it is unlikely  
3 that such acquisition would serve the public interest.

4       “(2) If the Assistant Attorney General or the Federal  
5 Trade Commission determines that it is unlikely that a pro-  
6 posed acquisition with respect to which subsection (a) applies  
7 would, if consummated, serve the public interest, the Assist-  
8 ant Attorney General or the Federal Trade Commission shall  
9 so notify the parties to the proposed acquisition and shall  
10 seek appropriate relief. In determining whether it is unlikely  
11 that any acquisition would serve the public interest, the As-  
12 sistant Attorney General or the Federal Trade Commission,  
13 as the case may be, may consider the views of any person,  
14 including parties to the transaction, their employees, their  
15 customers, and interested agencies of Federal, State, and  
16 local governments on all relevant matters, including whether  
17 it is likely that the acquisition would—

18       “(A) maintain and promote existing or potential  
19 competition in the market for any good or service  
20 within the United States;

21       “(B) result in the effective and productive man-  
22 agement of corporate assets, the offering of new goods  
23 or services, the enhancement of the quality or reliabil-  
24 ity of existing goods or services, or the reduction in  
25 price of such goods or services;

1           “(C) unduly disrupt management or employees;  
2           and

3           “(D) in light of the probable benefits, result in ex-  
4           cessive fees and other transactional costs.

5           “(e) No person, other than the Attorney General or the  
6           Federal Trade Commission, may bring an action to enjoin or  
7           obtain any other relief for any violation of this section.”.

8           SEC. 2. (a) Section 7A of the Clayton Act is amended—

9           (1) in subsection (b)—

10           (A) in paragraph (1)(B) by inserting “of this  
11           section or subsection (a) of section 7B” before the  
12           period at the end thereof, and

13           (B) in paragraph (3) by inserting “and sec-  
14           tion 7B” after “this section”, and

15           (2) in subsection (g)(2) by inserting “of this sec-  
16           tion or subsection (a) of section 7B” after “extended  
17           under subsection (e)(2)” each place it appears.

18           (h) Section 16 of the Clayton Act is amended by insert-  
19           ing “, except as provided in section 7B(e),” after “That”.