

110TH CONGRESS
2D SESSION

H. R. 6074

To amend the Sherman Act to make oil-producing and exporting cartels illegal and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2008

Mr. KAGEN (for himself, Ms. HIRONO, Mr. HODES, Mr. JOHNSON of Georgia, Mr. ELLISON, Mr. CARSON, Mr. WILSON of Ohio, Mr. WALZ of Minnesota, Ms. SUTTON, Mr. WELCH of Vermont, Mr. BRALEY of Iowa, Mr. ARCURI, Mr. HALL of New York, and Mr. PATRICK J. MURPHY of Pennsylvania) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Sherman Act to make oil-producing and exporting cartels illegal and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Gas Price Relief for
5 Consumers Act of 2008”.

1 **TITLE I—AMENDMENT TO**
2 **SHERMAN ACT**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “No Oil Producing and
5 Exporting Cartels Act of 2008” or “NOPEC”.

6 **SEC. 102. SHERMAN ACT.**

7 The Sherman Act (15 U.S.C. 1 et seq.) is amended
8 by adding after section 7 the following:

9 “SEC. 7A. (a) It shall be illegal and a violation of
10 this Act for any foreign state, or any instrumentality or
11 agent of any foreign state, to act collectively or in com-
12 bination with any other foreign state, any instrumentality
13 or agent of any other foreign state, or any other person,
14 whether by cartel or any other association or form of co-
15 operation or joint action—

16 “(1) to limit the production or distribution of
17 oil, natural gas, or any other petroleum product;

18 “(2) to set or maintain the price of oil, natural
19 gas, or any petroleum product; or

20 “(3) to otherwise take any action in restraint of
21 trade for oil, natural gas, or any petroleum product;
22 when such action, combination, or collective action has a
23 direct, substantial, and reasonably foreseeable effect on
24 the market, supply, price, or distribution of oil, natural
25 gas, or other petroleum product in the United States.

1 “(b) A foreign state engaged in conduct in violation
2 of subsection (a) shall not be immune under the doctrine
3 of sovereign immunity from the jurisdiction or judgments
4 of the courts of the United States in any action brought
5 to enforce this section.

6 “(c) No court of the United States shall decline,
7 based on the act of state doctrine, to make a determina-
8 tion on the merits in an action brought under this section.

9 “(d) The Attorney General of the United States may
10 bring an action to enforce this section in any district court
11 of the United States as provided under the antitrust
12 laws.”.

13 **SEC. 103. SOVEREIGN IMMUNITY.**

14 Section 1605(a) of title 28, United States Code, is
15 amended—

16 (1) in paragraph (6) by striking “or” after the
17 semicolon;

18 (2) in paragraph (7) by striking the period and
19 inserting “; or”; and

20 (3) by adding at the end the following:

21 “(8) in which the action is brought under sec-
22 tion 7A of the Sherman Act.”.

1 **TITLE II—CREATION OF DE-**
2 **PARTMENT OF JUSTICE PE-**
3 **TROLEUM INDUSTRY ANTI-**
4 **TRUST TASK FORCE**

5 **SEC. 201. ESTABLISHMENT OF DEPARTMENT OF JUSTICE**
6 **PETROLEUM INDUSTRY ANTITRUST TASK**
7 **FORCE.**

8 (a) ESTABLISHMENT OF TASK FORCE.—The Attor-
9 ney General shall establish in the Department of Justice
10 a Petroleum Industry Antitrust Task Force (in this title
11 referred to as the “Task Force”).

12 (b) RESPONSIBILITIES OF TASK FORCE.—The Task
13 Force shall have the responsibility for—

14 (1) developing, coordinating, and facilitating
15 the implementation of the investigative and enforce-
16 ment policies of the Department of Justice related
17 to petroleum industry antitrust issues under Federal
18 law,

19 (2) consulting with, and requesting assistance
20 from, other Federal entities as may be appropriate,
21 and

22 (3) preparing and submitting to the Congress
23 an annual report that—

24 (A) describes all investigatory and enforce-
25 ment efforts of the Department of Justice re-

1 lated to petroleum industry antitrust issues,
2 and

3 (B) addresses the issues described in sub-
4 section (c).

5 (c) ISSUES TO BE EXAMINED BY TASK FORCE.—The
6 Task Force shall examine all issues related to the applica-
7 tion of Federal antitrust laws to the market for petroleum
8 and petroleum products, including the following:

9 (1) The existence and effects of any price
10 gouging in sales of gasoline.

11 (2) The existence and effects of any inter-
12 national oil cartels.

13 (3) The existence and effects of any collusive
14 behavior in controlling or restricting petroleum refin-
15 ery capacity.

16 (4) The existence and effects of any anti-
17 competitive price discrimination by petroleum refin-
18 ers or other wholesalers of gasoline to retail sellers
19 of gasoline.

20 (5) The existence and effects of any unilateral
21 actions, by refiners or other wholesalers of petroleum
22 products, in the nature of withholding supply or oth-
23 erwise refusing to sell petroleum products in order
24 to inflate the price of such products above competi-
25 tive levels.

1 (6) The existence and effects of any anti-
2 competitive manipulation in futures markets or other
3 trading exchanges relating to petroleum or petro-
4 leum products.

5 (7) The existence and effects of any other anti-
6 competitive market manipulation activities involving
7 petroleum or petroleum products.

8 (8) Any other anticompetitive behavior that im-
9 pacts the price or supply of petroleum or petroleum
10 products.

11 (9) The advisability of revising the merger
12 guidelines to appropriately take into account par-
13 ticular aspects of the petroleum and petroleum prod-
14 ucts marketplace.

15 (10) The advisability of amending the antitrust
16 laws in light of any competitive problems in the pe-
17 troleum and petroleum products marketplace de-
18 scribed in paragraphs (1)–(8) that cannot currently
19 be effectively addressed under such laws.

20 (d) DIRECTOR OF TASK FORCE.—The Attorney Gen-
21 eral shall appoint a director to head the Task Force.

22 (e) INITIAL REPORT.—The 1st report required by
23 subsection (b)(2) shall be submitted to the Congress not
24 later than December 31, 2008.

1 **TITLE III—STUDY BY THE GOV-**
2 **ERNMENT ACCOUNTABILITY**
3 **OFFICE**

4 **SEC. 301. STUDY BY THE GOVERNMENT ACCOUNTABILITY**
5 **OFFICE.**

6 (a) STUDY.—Not later than 180 days after the date
7 of the enactment of this Act, the Comptroller General of
8 the United States shall conduct a study evaluating the ef-
9 fects of mergers addressed in covered merger consent de-
10 crees on competition in the markets involved, including the
11 effectiveness of divestitures required under those consent
12 decrees in preserving competition in those markets.

13 (b) REPORT.—Not later than one year after the date
14 of the enactment of this Act, the Comptroller General shall
15 submit a report to Congress and the Department of Jus-
16 tice regarding the findings of the study conducted under
17 subsection (b).

18 (c) ATTORNEY GENERAL CONSIDERATION.—Upon
19 receipt of the report described in subsection (b), the Attor-
20 ney General shall refer the report to the Task Force estab-
21 lished under section 201, which shall consider whether any
22 further enforcement action is warranted to protect or re-
23 store competition in any market affected by a transaction
24 to which any covered merger consent decree relates.

1 (d) DEFINITION.—In this section, the term “covered
2 merger consent decree” means a consent decree entered
3 in the 10-year period ending on the date of the enactment
4 of this Act, in an enforcement action brought under sec-
5 tion 7 of the Clayton Act against a person engaged in the
6 business of exploring for, producing, refining, processing,
7 storing, distributing, or marketing petroleum or petroleum
8 products.

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