

## COMMITTEE AMENDMENT

[STAFF WORKING DRAFT]

December 14, 2009

Purpose: To expand section 214.

### IN THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION—111TH Cong., 1ST Sess.

**S. ———**, 111TH Congress, 1ST Session

DECEMBER 17, 2009

INTENDED to be proposed by Ms. KLOBUCHAR

Viz:

1 On page 24, between lines 7 and 8, insert the fol-  
2 lowing:

3 (b) MERGERS AND ACQUISITIONS OF RAILROADS.—

4 The sixth undesignated paragraph of section 7 of the Clay-  
5 ton Act (15 U.S.C. 18) is amended to read as follows:

6 “Nothing contained in this section shall apply to  
7 transactions duly consummated pursuant to authority  
8 given by the Secretary of Transportation, Federal Power  
9 Commission, Surface Transportation Board (except for  
10 transactions described in section 11321 of title 49, United  
11 States Code), the Securities and Exchange Commission in  
12 the exercise of its jurisdiction under section 10 (of the  
13 Public Utility Holding Company Act of 1935), the United  
14 States Maritime Commission, or the Secretary of Agri-

1 culture under any statutory provision vesting such power  
2 in the Commission, Board, or Secretary.”.

3 (c) TERMINATION OF EXEMPTIONS IN TITLE 49.—

4 (1) IN GENERAL.—Section 10706 is amended—

5 (A) in subsection (a)—

6 (i) in paragraph (2)(A), by striking “,  
7 and the Sherman Act (15 U.S.C. 1 et  
8 seq.),” and all that follows through “or  
9 carrying out the agreement” in the third  
10 sentence;

11 (ii) in paragraph (4)—

12 (I) by striking the second sen-  
13 tence; and

14 (II) by striking “However, the”  
15 in the third sentence and inserting  
16 “The”; and

17 (iii) in paragraph (5)(A), by striking  
18 “, and the antitrust laws set forth in para-  
19 graph (2) of this subsection do not apply  
20 to parties and other persons with respect  
21 to making or carrying out the agreement”;  
22 and

23 (B) by striking subsection (e) and insert-  
24 ing the following:

25 “(e) APPLICATION OF ANTITRUST LAWS.—

1           “(1) IN GENERAL.—Nothing in this section ex-  
2           empts a proposed agreement described in subsection  
3           (a) from the application of the Sherman Act (15  
4           U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12, 14  
5           et seq.), the Federal Trade Commission Act (15  
6           U.S.C. 41 et seq.), section 73 or 74 of the Wilson  
7           Tariff Act (15 U.S.C. 8 and 9), or the Act of June  
8           19, 1936 (15 U.S.C. 13, 13a, 13b, 21a).

9           “(2) ANTITRUST ANALYSIS TO CONSIDER IM-  
10          PACT.—In reviewing any such proposed agreement  
11          for the purpose of any provision of law described in  
12          paragraph (1), the Board shall take into account,  
13          among any other considerations, the impact of the  
14          proposed agreement on shippers, on consumers, and  
15          on affected communities.”.

16          (2) COMBINATIONS.—Section 11321 is amend-  
17          ed—

18                 (A) in subsection (a)—

19                         (i) by striking “The authority” in the  
20                         first sentence and inserting “Except as  
21                         provided in sections 4 (15 U.S.C. 15), 4C  
22                         (15 U.S.C. 15c), section 15 (15 U.S.C.  
23                         25), and section 16 (15 U.S.C. 26) of the  
24                         Clayton Act (15 U.S.C. 21(a)), the author-  
25                         ity”; and

1 (ii) by striking “is exempt from the  
2 antitrust laws and from all other law,” in  
3 the third sentence and inserting “is exempt  
4 from all other law (except the antitrust  
5 laws referred to in subsection (c)),”; and  
6 (B) by adding at the end the following:

7 “(c) APPLICATION OF ANTITRUST LAWS.—

8 “(1) IN GENERAL.—Nothing in this section ex-  
9 empts a transaction described in subsection (a) from  
10 the application of the Sherman Act (15 U.S.C. 1 et  
11 seq.), the Clayton Act (15 U.S.C. 12, 14 et seq.),  
12 the Federal Trade Commission Act (15 U.S.C. 41 et  
13 seq.), section 73 or 74 of the Wilson Tariff Act (15  
14 U.S.C. 8-9), or the Act of June 19, 1936 (15 U.S.C.  
15 13, 13a, 13b, 21a). The preceding sentence shall not  
16 apply to any transaction relating to the pooling of  
17 railroad cars approved by the Surface Transpor-  
18 tation Board or its predecessor agency pursuant to  
19 section 11322 of title 49, United States Code.

20 “(2) ANTITRUST ANALYSIS TO CONSIDER IM-  
21 PACT.—In reviewing any such transaction for the  
22 purpose of any provision of law described in para-  
23 graph (1), the Board shall take into account, among  
24 any other considerations, the impact of the trans-  
25 action on shippers and on affected communities.”.

1 On page 24, line 8, strike “(b)” and insert “(d)”.

2 On page 63, strike lines 14 through 16 and insert  
3 the following:

4 (b) SECTION 214.—

5 (1) IN GENERAL.—Subject to the provisions of  
6 paragraph (2), the amendments made by section 214  
7 shall take effect on the date of enactment of this  
8 Act.

9 (2) CONDITIONS.—

10 (A) PREVIOUS CONDUCT.—A civil action  
11 under section 4, 15, or 16 of the Clayton Act  
12 (15 U.S.C. 15, 25, 26) or complaint under sec-  
13 tion 5 of the Federal Trade Commission Act  
14 (15 U.S.C. 45) may not be filed with respect to  
15 any conduct or activity that occurred prior to  
16 the date of enactment of this Act that was pre-  
17 viously exempted from the antitrust laws as de-  
18 fined in section 1 of the Clayton Act (15 U.S.C.  
19 12) by orders of the Interstate Commerce Com-  
20 mission or the Surface Transportation Board  
21 issued pursuant to law.

22 (B) GRACE PERIOD.—A civil action or  
23 complaint described in subparagraph (A) may  
24 not be filed earlier than 180 days after the date  
25 of enactment of this Act with respect to any

1           previously exempted conduct or activity or pre-  
2           viously exempted agreement that is continued  
3           subsequent to the date of enactment of this Act.

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