

[STAFF WORKING DRAFT]

September 18, 2002

Purpose: To required the FTC to report to the Committee before allowing further mergers in certain industries.

**IN THE COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION—107TH Cong., 2D Sess.**

**S. 2946**, 107TH Congress, 2D Session

SEPTEMBER 19, 2002

INTENDED to be proposed by Mr. WYDEN

Viz:

1 At the appropriate place, insert the following:

2 **SEC. —. FTC REPORT TO COMMERCE, SCIENCE, AND**  
3 **TRANSPORTATION COMMITTEE BEFORE AL-**  
4 **LOWING FURTHER MERGERS IN CERTAIN IN-**  
5 **DUSTRIES.**

6 (a) FINDINGS.—The Congress finds the following:

7 (1) The Committee on Commerce, Science and  
8 Transportation held hearings on April 25, 2001, and  
9 July 17, 2002, at which evidence was presented that  
10 oil companies in highly concentrated markets en-  
11 gaged in activities that reduced supply of oil and  
12 gasoline, such as exporting crude oil and gasoline  
13 overseas at discounted prices and the Federal Trade  
14 Commission acknowledged that the it could not take

1 enforcement action against anti-competitive activities  
2 that reduce supply and raise prices without evidence  
3 of collusion.

4 (2) Since 1998, the Federal Trade Commission  
5 has allowed the following major oil industry mergers  
6 and acquisitions to proceed:

7 (A) Marathon and Ashland Oil.

8 (B) BP and Amoco.

9 (C) Exxon and Mobil.

10 (D) BP-Amoco acquired ARCO.

11 (E) Phillips Petroleum and Tosco.

12 (F) Chevron and Texaco.

13 (G) Phillips and Conoco.

14 (b) NO MORE MERGERS UNTIL REPORT.—Until the  
15 Federal Trade Commission transmits the report required  
16 by subsection (c) to the Senate Committee on Commerce,  
17 Science, and Transportation, the Commission, as the lead  
18 agency in reviewing industry mergers under the memo-  
19 randum of understanding between the Commission and  
20 the Department of Justice, shall oppose any proposed  
21 merger in any industry—

22 (1) in which there have been more than 5 merg-  
23 ers reviewed by the Federal Trade Commission in  
24 the consecutive 4-year period ending before the date  
25 of enactment of this Act;

1           (2) for which the Commission has initiated a  
2           “look-back” review of such mergers to determine if  
3           there were impacts on competition, including cumu-  
4           lative impacts from 2 or more mergers, that were  
5           not addressed by the Commission before the mergers  
6           were allowed to proceed;

7           (3) in which concentration has increased to the  
8           extent that it has resulted in the creation of highly  
9           concentrated markets or oligopolies in a majority of  
10          the States in which such industry operates; and

11          (4) for which the Commission is conducting  
12          regular monitoring of wholesale or retail prices  
13          charged in that industry in more than 1 market in  
14          the United States.

15          (c) REPORT TO COMMITTEE.—The Federal Trade  
16          Commission shall transmit a report to the Senate Com-  
17          mittee on Commerce, Science, and Transportation  
18          containing—

19                (1) information on its “look-back” review in  
20                any industry described in subsection (b);

21                (2) its findings on the impact of mergers de-  
22                scribed in subsection (b) on competition and prices;

23                (3) information on the relationship between in-  
24                creased concentration in any such industry and  
25                prices; and

1           (4) recommendations for how the impact on  
2           competition of such mergers can be better addressed  
3           and consumers can be better protected by imposing  
4           additional conditions on mergers or other appro-  
5           priate relief.

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