

**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.R. 3826  
OFFERED BY MR. ROY OF TEXAS**

Page 1, strike line 4 and all that follows through the amendment to the title on page 15, and insert the following:

**1 SEC. 2. MERGER PRESUMPTIONS.**

2 Section 7 of the Clayton Act (15 U.S.C. 18), as  
3 amended by section 106 of this Act, is amended—

4 (1) by striking all that proceeds “person en-  
5 gaged in commerce” and inserting the following:

6 **“SEC. 7. ACQUISITION BY ONE CORPORATION OF STOCK OF  
7 ANOTHER.**

8 “(a) IN GENERAL.—No”;

9 (2) by striking “No person shall acquire,” and  
10 inserting the following:

11 “(b) ACQUISITION OF PERSONS ENGAGED IN COM-  
12 MERCE.—No person shall acquire”;

13 (3) by striking “This section shall not apply”  
14 and inserting the following:

15 “(d) NOT LESSENING COMPETITION.—This section  
16 shall not apply”;

1 (4) by striking “Nor shall anything herein” and  
2 inserting the following:

3 “(e) COMMON CARRIERS.—Nor shall anything here-  
4 in”;

5 (5) by striking “Nothing contained in this sec-  
6 tion shall be held” and inserting the following:

7 “(f) HOLD HARMLESS.—Nothing contained in this  
8 section shall be held”;

9 (6) by striking “Nothing contained in this sec-  
10 tion shall apply to transactions” and inserting the  
11 following:

12 “(g) CERTAIN TRANSACTIONS.—Nothing contained  
13 in this section shall apply to transactions”; and

14 (7) by inserting after subsection (b), as so des-  
15 ignated by this section, the following:

16 “(c) ACTIONS BY UNITED STATES.—

17 “(1) IN GENERAL.—The United States may ini-  
18 tiate a proceeding to enjoin a transaction prohibited  
19 by this section.

20 “(2) REBUTTABLE PRESUMPTIONS.—

21 “(A) IN GENERAL.—In a proceeding initi-  
22 ated by the United States to enjoin a trans-  
23 action prohibited by this section, it shall be pre-  
24 sumed that the effect of a transaction may be

1 substantially to lessen competition, or to tend to  
2 create a monopoly, if—

3 “(i) the United States shows by a pre-  
4 ponderance of the evidence that, as a re-  
5 sult of the transaction, the combined firm  
6 would be able meaningfully to increase  
7 prices or reduce output, innovation, or  
8 quality in a market; or

9 “(ii)(I) the transaction would combine  
10 persons that compete, would compete, or  
11 would attempt to compete against each  
12 other, absent the transaction; and

13 “(II) the combined firm would have a  
14 post-transaction share of the market  
15 that—

16 “(aa) is greater than 33 percent;  
17 or

18 “(bb) if the acquiring person is  
19 owned or controlled by a foreign gov-  
20 ernment, is greater than 5 percent.

21 “(B) REBUTTAL.—A defendant may rebut  
22 a presumption under clause (i) or (ii) of sub-  
23 paragraph (A) only if the defendant dem-  
24 onstrates by a preponderance of the evidence  
25 that—

1                   “(i) the combined parties post-trans-  
2                   action would not be able to exercise market  
3                   power; or

4                   “(ii) the anticompetitive effects of the  
5                   transaction—

6                                 “(I) are insubstantial; or

7                                 “(II) are clearly outweighed by  
8                   the procompetitive benefits of the  
9                   transaction in the relevant market.

10                   “(C) RULE OF CONSTRUCTION.—The pre-  
11                   sumptions under clauses (i) and (ii) of subpara-  
12                   graph (A) shall not limit any other presumption  
13                   courts have created or used or may create or  
14                   use in resolving cases under this section.”.

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