BILL	DATE	PAGE(S)
H.R. 3567	Apr. 10, 1979	H2215-2217

ACTION Introduced by Mr. Hall of Texas

today, to tell a and Victor Yelistratov.

Batsheva a ratov's relatives live in m district and their deepest reunited as an entire fa erified that Victor, in no v ny information which is the State." Nor does Bat th of these individuals h emigration applications d time again. They have bee a year since 1972 and they y harrassed by the KGB a authorities. Since applying oviet Union, Victor was fir osition and now can only maintenance worker.

The Yelistra t they want to leave the S d they are helping others Union who have the sam are brave and strong an t be silent. The situation I shall not be silent, eith and write letters on their ey are free to come to th th of Virginia.●

SOFT DRINK INTERBRAND COMPETITION ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. HALL) is recognized for 5 minutes.

● Mr. HALL of Texas. Mr. Speaker, I am pleased today to join over 250 of my colleagues in introducing the Soft Drink Interbrand Competition Act. My colleagues, Messrs. MOLLOHAN, SHELBY, VANDER JAGT, BROYHILL, and CARLOS MOORHEAD, and I recently sent a dear colleague letter asking cosponsors to join us in introducing legislation designed to preserve this unique industry. For more than 75 years, independent local companies operating under territorial licenses granted by national syrup companies such as Coca-Cola, PepsiCo, 7-Up, and Dr. Pepper have manufactured, bottled, and distributed trademarked soft drink products. I am pleased to note that more than a majority of the House has agreed to cosponsor this vital legislation.

Exclusive territories are the core of the trademark licensing agreements described above. They define the geographical territory in which a bottler may manufacture and distribute trademarked soft drink products. In so doing, the bottler in his defined territory has been able to render service to both large and small retail outlets. I hasten to point out to my colleagues that an overwhelming majority of the 2,150 soft drink bottlers in this country are independently owned. They are not, as often thought, owned by the national syrup companies from which the bottlers purchase syrup. Seventy percent of these bottlers employ less than 50 employees and are thereby defined as small businesses under the definition promulgated by the Small Business Administration.

In 1971 the Federal Trade Commission (FTC) commenced litigation challenging the legality of the territorial provisions in the trademark licensing agreements described above. After hearing the testimony, the Administrative Law Judge before whom the cases were tried concluded in 195 findings of fact that these arrangements not only did not lessen competition but, in fact, promoted competition. This decision was appealed to the full Commission by complaint counsel for the FTC. In 1978 the FTC, in a 2-to-1 decision, reversed the Administrative Law Judge and stated that the absence of intrabrand competition, that is, between bottlers of the same product, resulting from the territorial arrangements was sufficient to find these agreements illegal regardless of their effect on interbrand competition, that is, between different soft drink products. However, the FTC did not find such territorial restrictions unlawful for returnable bottles. I should inform my colleagues that prior to the FTC ruling, every court which examined these soft drink licensing agreements upheld them. In 1920 a Federal district court, in *Coca-Cola Bottling Co.* v. *The Coca-Cola Co.*, 269 F. 796 (D. Del. 1920), upheld the legality of such arrangements. In two Federal court decisions, one involving a determination by the judge and the other following a jury trial, the legality of such territorial provisions was upheld. *Tomac, Inc.* v. *Coca-Cola Co.*, 418 F.Supp. 359 (C.D. Cal. 1976); *First Beverages, Inc.* v. *Royal Crown Cola Co.*, Civil Action No. CV-74-2896-MNL (C.D. Cal. 1976).

I believe that the antitrust laws should not be used to restructure an industry, especially where even the FTC admits a high level of interbrand competition exists. The FTC decision, if upheld, will totally restructure an industry in which the franchisees are, by and large, small family-owned businesses. These small bottlers will be swallowed up by large bottlers should territorial licenses be prohibited. In the long run, therefore, the FTC ruling would be anticompetitive. The industry will be transformed from many small businesses to a small number of regionalized units.

The harmful effects of the FTC decision on the soft drink industry may be explained as follows: Small independent bottlers will not be able to compete with large bottlers for large volume accounts. The result will be a soft drink industry with the largest bottlers supplying their products directly to chain store warehouse distribution systems. The volume and sale losses to small bottlers will force them out of business, or into becoming distribution arms for large bottlers, resulting in greater concentration. Because small accounts will generate little profit, the traditional system of local bottlers having routes serving large and small accounts will disappear. The large regionalized bottler will be unlikely to continue local, low volume deliveries, thereby reducing the availability of soft drinks and increasing the price to a large segment of the industry. Because the FTC decision allows only nonreturnables to be sold outside of the territories, this will accelerate the use of nonreturnable containers and intensify ecological and energy problems involved with these containers. The chain stores and food brokers and the large bottlers with which these stores and brokers will deal will move to exclusive use of one-way containers. This trend will be assured by a short-lived price war favoring such containers. The vague, ever-changing FTC claims of consumer savings are unfounded. Upward price trends will be caused by increased use of more expensive, nonreturnable containers, and price increases by small bottlers left with marginal accounts. Downward prices caused by price wars by large bottlers to gain volume accounts will be short-lived and are likely to benefit the chain stores and food brokers. As soon as a regional/warehousing structure in the industry is reached, there will be no intrabrand competition in price and de facto exclusive territories in nonreturnables will occur as a result of transportation costs. Chain stores market their own house brands below nationally known brands to insure sales; therefore, price savings to the consumer as a result of a price war will be limited to the willingness of the chain stores to reduce the price of national brands to a price competitive with their own house brands, an unlikely event.

The Soft Drink Interbrand Competition Act will simply clarify the circumstances under which vertical territorial license provisions are lawful. The bill specifically requires that there must be "substantial and effective competition with other products of the same general class." If such interbrand competition does not exist, exclusive territories judged individually, regionally or nationally could be found unlawful. Thus, the bill provides no exemption from the antitrust laws, but merely sets a standard to be followed by the FTC and the courts, following the Supreme Court's lead in the recent case of *Continental T.V.* v. *GTE Sylvania, Inc.*, 435 U.S. 36 (1977).

Competition in the soft dring industry has never been greater. There is no doubt of its intensity. Further, the industry competes not only in price, but also in flavors, brands, packaging, and diet or nondiet drinks. This competition has been a major factor in keeping consumer cost down. The average cost per ounce of cola in the 6½ ounce bottle in 1939 was .77 of 1 cent per ounce. The average cost today in the 16-ounce returnable bottle is .79 of 1 cent per ounce.

The FTC decision has been appealed to the U.S. Court of Appeals for the District of Columbia. However, congressional action is needed now. An unfavorable decision by the court of appeals (whose review powers are limited) and a refusal by the Supreme Court to hear the case would result in an immediate contest for the large accounts. Moreover, this litigation has continued for 8 years; should a remand be the decision of the U.S. Court of Appeals, the litigation could continue for many more years. Businessmen faced with a possible loss of their investment are understandably reluctant to risk any capital to replace or expand operations. This threat has prompted some small bottlers to sell out, thus increasing concentration in this small business industry. I do not believe the antitrust laws were intended by Congress to restructure an entire industry of small economic units with no predictable benefit to anyone. Public policy is the business of the Congress. These con-

tractual relationships are nearly a century old; their competitive aspects should be recognized by the Congress.

I would also inform my colleagues that identical legislation introduced in the Senate on March 8 by Senators Bayh and Cochran now has 77 cosponsors. The broad interest of this Congress in this issue is obvious. It is my hope that the House Judiciary Committee will hold hearings on the bill within the next few weeks. As I have noted, time is imperative, and the sponsorship of over half the House indicates the need for a discussion of this issue.

Mr. Speaker, I include the text of the bill, together with an explanation thereof, to be printed in the RECORD as follows:

H.R. 3567

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

SECTION 1. This Act may be cited as the "Soft Drink Interbrand Competition Act."

SEC. 2. Nothing contained in any antitrust law shall render unlawful the inclusion and enforcement in any trademark licensing contract or agreement, pursuant to which the licensee engages in the manufacture (including manufacture by a sublicensee, agent, or subcontractor), distribution, and sale of a trademarked soft drink product, of provisions granting the licensee the sole and exclusive right to manufacture, distribute, and sell such product in a defined geographic area or limiting the licensee, directly or indirectly, to the manufacture, distribution, and sale of such product only for ultimate resale to consumers within a defined geographic area: Provided, that such product is in substantial and effective competition with other products of the same general class.

SEC. 3. The existence or enforcement of territorial provisions in a trademark licensing agreement for the manufacture, distribution and sale of a trademarked soft drink product prior to any final determination that such provisions are unlawful shall not be the basis for recovery under Section 4 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914.

SEC. 4. As used in this Act, the term "antitrust law" means the Act entitled "An Act to protect trade and commerce against un- Sherman Act), approved July 2, 1890, the Federal Trade Commission Act, approved September 26, 1914, and the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), approved October 15, 1914, and all amendments to such Acts and any other Acts *in pari materia.*

LIST OF COSPONSORS FOR THE HALL OF TEXAS "SOFT DRINK INTERBRAND COMPETITION ACT"

1. Mollohan, Robert.
2. Shelby, Richard.
3. Vander Jagt, Guy.
4. Broyhill, James.
5. Moorhead, Carlos.
6. Abdnor, James.
7. Addabbo, Joseph.
8. Akaka, Daniel.
9. Albosta, Donald.
10. Alexander, Bill.
11. Ambros, Jerome.
12. Andrews, Ike F.
13. Andrews, Mark.
14. Anthony, Beryl.
15. Applegate, Douglas.
16. Archer, Bill.
17. Ashbrook, John.
18. Aspin, Les.
19. Atkinson, Eugene.
20. Badham, Robert.
21. Bafalis, L. A.
22. Bailey, Don.
23. Barnard, Doug.
24. Bevill, Tom.
25. Biaggi, Mario.
26. Blanchard, James.
27. Bonior, David.
28. Bonker, Don.
29. Bouquard, Marilyn.
30. Bowen, David.
31. Breaux, John B.
32. Brinkley, Jack.
33. Brodhead, William.
34. Brooks, Jack.
35. Brown, George.
36. Buchanan, John.
37. Burgener, Clair.
38. Butler, M. Caldwell.
39. Campbell, Carroll.
40. Carney, William.
41. Chappell, Bill.
42. Cheney, Richard.
43. Chisholm, Shirley.
44. Clausen, Don.
45. Clay, William.
46. Clinger, William.
47. Coelho, Tony.
48. Collins, James.
49. Conable, Barber.
50. Corcoran, Tom.
51. Coughlin, Lawrence.
52. Crane, Daniel.
53. Daniel, Robert.
54. AuCoin, Les.
55. Daschle, Thomas A.
56. Davis, Mendel J.
57. de la Garza, E.
58. Dellums, Ronald V.
59. Derrick, Butler.
60. Devine, Samuel L.
61. Dickinson, William.
62. Dicks, Norman.
63. Dixon, Julian C.
64. Dornan, Robert.
65. Dougherty, Charles.
66. Downey, Thomas.
67. Duncan, John J.
68. Edgar, Robert W.
69. Edwards, Jack.
70. Emery, David.
71. English, Glenn.
72. Ertel, Allen.
73. Evans, Billy Lee.
74. Evans, Thomas B.
75. Fazio, Vic.
76. Ferraro, Geraldine.
77. Fish, Hamilton.
78. Flippo, Ronnie.
79. Flood, Dan.
80. Florio, James.
81. Foley, Thomas.
82. Ford, William.
83. Forsythe, Edwin.
84. Fountain, L. H.
85. Fowler, Wyche.
86. Frenzel, Bill.
87. Fuqua, Don.
88. Garcia, Robert.
89. Gaydos, Joseph.
90. Gephardt, Robert.
91. Gibbons, Sam.
92. Gilman, Benjamin.
93. Gingrich, Newton.
94. Ginn, Bo.
95. Glickman, Dan.
96. Goodling, William.
97. Gradison, Willis.
98. Gramm, Phil.
99. Grassley, Charles.
100. Gray, William.
101. Grisham, Wayne.
102. Gudger, Lamar.
103. Guyer, Tennyson.
104. Hagedorn, Tom.
105. Hamilton, Lee.
106. Hance, Kent.
107. Hanley, James.
108. Harkin, Tom.
109. Hawkins, Augustus.
110. Hefner, W. G.
111. Hightower, Jack.
112. Hillis, Elwood.
113. Hinson, Jon H.
114. Holland, Ken.
115. Hollenbeck, Harold C.
116. Holt, Marjorie S.
117. Hopkins, Larry.
118. Horton, Frank.
119. Howard, James.
120. Hubbard, Carroll.
121. Huckaby, Jerry.
122. Hutto, Earl.
123. Hyde, Henry J.
124. Ichord, Richard.
125. Ireland, Andy.
126. Jeffries, James E.
127. Jenkins, Ed.
128. Jenrette, John.
129. Johnson, Harold.
130. Jones, Ed.
131. Jones, Walter.
132. Kazen, Abraham.
133. Kelly, Richard.
134. Kemp, Jack.
135. Kildee, Dale.
136. Kindness, Thomas.
137. Kramer, Ken.
138. LaFalce, John J.
139. Latta, Delbert.
140. Leach, Claude.
141. Leath, Marvin.
142. Lederer, Raymond.
143. Lee, Gary.
144. Lehman, William.
145. Leland, George.
146. Lent, Norman.
147. Levitas, Elliott.
148. Loeffler, Thomas.
149. Long, Gillis.
150. Lott, Trent.
151. Lowry, Michael.
152. Lujan, Manuel.
153. Lundine, Stanley.
154. Lungren, Dan.
155. McCloskey, Paul.
156. McCormack, Mike.
157. McDonald, Larry.
158. McEwen, Robert.
159. McHugh, Matthew.
160. McKay, Gunn.
161. McKinney, Stewart.
162. Madigan, Edward.
163. Marks, Marc.
164. Marlenee, Ron.
165. Marriott, Dan.
166. Martin, James.
167. Mathis, Dawson.
168. Mattox, Jim.
169. Mavroules, Nicholas.
170. Mazzoli, Romano.
171. Miller, Clarence.
172. Mitchell, Donald.
173. Moakley, Joe.
174. Montgomery, G. V.
175. Moore, W. Hensen.
176. Murphy, Austin.
177. Murphy, John.
178. Murphy, Morgan.
179. Murtha, John.
180. Myers, John.
181. Myers, Michael.
182. Nedzi, Lucien.
183. Nolan, Richard.
184. Nowak, Henry.
185. O'Brien, George.
186. Ottinger, Richard.
187. Patten, Ed.
188. Paul, Ron.
189. Pepper, Claude.
190. Perkins, Carl.
191. Peyser, Peter.
192. Pickle, J. J.
193. Price, Melvin.
194. Pursell, Carl.
195. Quillen, James.
196. Rahall, Nick.
197. Richmond, Frederick.
198. Rinaldo, Matthew.
199. Roberts, Ray.
200. Robinson, J. Kenneth.
201. Roe, Robert.
202. Rose, Charles.
203. Rudd, Eldon.

204. Sawyer, Harold.
205. Sebelius, Keith.
206. Sensenbrenner, F.
207. Sharp, Philip R.
208. Shumway, Norman.
209. Shuster, Bud.
210. Slack, John.
211. Solomon, Gerald.
212. Spellman, Gladys.
213. Spence, Floyd.
214. Stangeland, Arlan.
215. Steed, Tom.
216. Stenholm, Charles.
217. Stockman, Louis.
218. Stratton, Sam.
219. Stump, Bob.
220. Symms, Steven.
221. Synar, Michael.
222. Tauke, Thomas.
223. Taylor, Gene.
224. Traxler, Bob.
225. Treen, David.
226. Trible, Paul.
227. Van Deerlin, Lionel.
228. Vento, Bruce.
229. Volkmer, Harold.
230. Walker, Robert.
231. Watkins, Wes
232. Weaver, James.
233. White, Richard.
234. Whitehurst, G.
235. Whitley, Charles.
236. Whittaker, Robert.
237. Whitten, Jamie.
238. Williams, Lyle.
239. Wilson, Bob.
240. Wilson, Charles.
241. Wilson, Charles H.
242. Winn, Larry.
243. Wolff, Lester.
244. Wright, Jim.
245. Wyatt, Joe.
246. Wylie, Chalmers.
247. Yatron, Gus.
248. Young, Don.
249. Young, Robert.
250. Zeferetti, Leo.
251. Panetta, Leon.
252. Ritter, Donald.
253. Rostenkowski, Dan.
254. Fascell, Dante.
255. Rousselot, John.
256. Boner, William.
257. Snyder, Gene.
258. Hammerschmidt, John.
259. Coleman, Tom.

EXPLANATION OF THE SOFT DRINK INTERBRAND COMPETITION BILL

The purpose of the bill is to remedy fundamental defects in the conduct of the proceedings of the Federal Trade Commission in the recent Coca-Cola and PepsiCo cases where the Commission ignored the extensive evidence in the record of the intense interbrand competition among rival soft drink products and the significance of the territorial arrangements used in the industry in promoting such competition.

Thus, Section 2 of the bill provides that exclusive territorial licenses to manufacture, distribute, and sell trademarked soft drink products not be held unlawful under any antitrust law if the soft drink products subject to such arrangements are in "substantial and effective competition" with rival products. The words "substantial and effective" are intended to be flexible, but it is the intent of the legislation that if vigorous interbrand competition is found to exist, the fact that competition among manufacturers of the same soft drink product (i.e., intrabrand competition) has been foreclosed will not preclude the application of the bill. Some of the factors to be taken into account in determining whether or not substantial and effective competition exists include: the number of brands, types and flavors of competing products available in a licensee's territory; the number and strength of sellers of competing products; the degree of service competition among vendors; evidence of the intensity of price competition; ease of entry into the market; the persistence of inefficiency and waste; the failure of output levels to respond to consumer demands; and failure to introduce more efficient methods and processes. The soft drink industry is prepared to have its practices tested under such a standard.

Section 3 of the bill is intended to eliminate the possibility of treble damage actions as a result of the inclusion of territorial provisions in a soft drink licensing agreement prior to any final determination that such provisions are unlawful. Territorial provisions have been utilized in the soft drink industry for more than 75 years on the clear understanding that they were legally permissible. Such arrangements were held lawful by federal courts as early as 1920 and as recently as 1976. Moreover, the legality of such arrangements was not challenged by the federal government until 1971, after the industry practice had been openly engaged in for decades. Thus, persons utilizing such arrangements before a ruling that they are unlawful should not be subject to treble damage exposure. If, however, particular territorial arrangements are found to be unlawful because of the absence of substantial and effective competition, Section 3 would not bar treble damage suits in the event such arrangements are continued after a final determination of their illegality.

Section 4 of the bill defines the term "antitrust law" as used in the bill. It includes the Sherman Act, the Federal Trade Commission Act, the Clayton Act, and all amendments to such acts, together with any other acts which have historically been considered to be antitrust laws.