

ANTHONY G. BROWN
Attorney General

CANDACE MCCLAREN LANHAM
Chief of Staff

CAROLYN QUATTROCKI
Deputy Attorney General



SCHONETTE J. WALKER
Chief
Antitrust Division

GARY HONICK
Deputy Chief
Antitrust Division

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
ANTITRUST DIVISION

(410) 576-6470

WRITER'S DIRECT DIAL NO. 410-576-6473

February 27, 2023

TO: The Honorable C.T. Wilson
Chair, Economic Matters Committee

FROM: Schonette J. Walker
Chief, Antitrust Division, Office of the Attorney General

RE: HB 776 – Commercial Law – Maryland Antitrust Act – Premerger
Notification Requirement and Remedies (**Support with Sponsor
Amendments**)

The Office of the Attorney General's Antitrust Division supports House Bill 776, but offers two perfecting Sponsor amendments and two general Sponsor amendments for consideration. This Bill would require parties to certain mergers and acquisitions with an impact on Maryland markets to notify the Office of the Attorney General – which is the State agency that enforces the antitrust laws—before consummating a transaction valued above \$10 million. In addition, the Bill would clarify that the remedy of restitution as delineated in the Maryland Antitrust Act includes disgorgement.

The marketplace works best to provide the widest array of goods and services at the best prices when there are many buyers and many sellers. Concentrated, or uncompetitive markets where there are too few sellers or too few buyers in competition with each other can bring about significant consumer harm. A market with too few sellers may lead to the exertion of monopoly power, which could lead to higher prices for goods and services, lower output and compromised quality. On the flip side, a market with too few buyers can be just as harmful. Think, for example, of power buyers who can pay suppliers less than competitive prices for goods or services or large employers or groups of employers who, by their size and breadth, can exert monopsony power and dictate less than competitive wages for sectors of the economy. The

This bill letter is a statement of the Office of Attorney General's policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us

200 Saint Paul Place ❖ Baltimore, Maryland 21202-2021
Telephone (410) 576-6300 ❖ D.C. Metro (301) 470-7534
Telephone for Deaf (410) 576-6372

antitrust laws that focus on mergers and acquisitions seek to address these potential issues in their incipency, before they become full blown problems.

In order for Maryland's antitrust enforcer to address possibly anti-competitive mergers or acquisitions before they become problematic, the enforcer must first be aware of them. Currently, however, there is no systematic mechanism where firms that plan to merge provide any information about the transaction to the Maryland antitrust authorities. If a transaction is above \$111 million, the federal agencies will review the deal. Below that threshold, the transaction evades antitrust scrutiny. This is currently a gap in antitrust enforcement that should be filled at the state level.

This matters because unchecked consolidation can harm Marylanders. For example, a Johns Hopkins University study showed that because of consolidation, 81 percent of Baltimore's local deposits were held by just 6 of the area's largest banks; from 2007-2016 lending to small businesses by these banks had fallen by nearly one third.¹

Maryland consumers and Maryland businesses deserve better. House Bill 776 seeks to fill in the gap between large mergers that are subject to federal antitrust scrutiny and smaller deals that, without state review, would fall through the cracks. The Bill is not burdensome. It merely seeks to have parties who are involved in proposed mergers or acquisitions valued above \$10 million, inform the Attorney General's Office thirty (30) days before closing the deal. The Bill only requires information about the assets being transferred and the anticipated closing date and only applies to mergers and acquisitions that currently fall under the Antitrust Division's jurisdiction as outlined in §11-202; the purpose of the Maryland Antitrust Act is to complement the body of federal laws governing, generally, restraints of trade. Certain agricultural and securities transactions are exempted from antitrust scrutiny under current law, and this would not change. This pre-merger notification will give Attorney General staff, who have antitrust expertise, the opportunity to review potential tie-ups for antitrust concerns before the deals are completed. Although mergers can be reviewed and even challenged after the fact, it is often nearly impossible to "unscramble the eggs" and restore competition where it has been reduced by a merger. The Bill also gives the business community confidence that their transactions do not raise antitrust concerns and that they are not entering into potentially anticompetitive transactions in violation of the Maryland Antitrust Act.

Support of this legislation is in line with the goals and principles of the Attorney General's Office to promote competition and the fair operation of markets, which will benefit all

¹ Tim Curtis, *Report: Small business lending in Baltimore down*, Johns Hopkins 21 Century Cities Initiative, Aug. 1, 2018, available online at <https://21cc.jhu.edu/report-small-business-lending-in-baltimore-down/> (last visited Feb. 20, 2023).

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Marylanders. I respectfully request the Economic Matters Committee adopt the below amendments and favorably report HB 776.

Amendment No. 1: On page 1, line 4, strike “who has acquired” and insert “WHO PLANS TO ACQUIRE” in its stead;

Amendment No. 2: On page 2, line 19, strike “(D)” and insert “(E)” in its stead;

Amendment No. 3: On page 2, line 26, strike “\$8,000,000” and insert “\$10,000,000” in its stead;

Amendment No. 4: On page 3, line 11, strike “60” and insert “30” in its stead.

cc: Committee Members

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