



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

February 7, 2022

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Charles E Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Amy Klobuchar
Chair
Subcommittee on Competition Policy,
Antitrust, and Consumer Rights
United States Senate
Washington, D.C. 20510

The Honorable Michael S. Lee
Ranking Member
Subcommittee on Competition Policy,
Antitrust, and Consumer Rights
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin, Ranking Member Grassley, Chair Klobuchar, and Ranking Member Lee:

I write to express my support for the State Antitrust Enforcement Venue Act of 2021, which would better enable state attorneys general to maintain antitrust cases in venues that they select.¹ If passed, this bill would equip state enforcers to litigate antitrust lawsuits with greater speed and efficiency and would entitle them to rights that federal enforcers already enjoy. State attorneys general have long played a critical and complementary role in enforcing the antitrust laws, and I support this legislative effort to better enable them to prosecute cases and pursue relief without undue delay or distraction.

The 1968 Multi-District Litigation Act created the Judicial Panel on Multi-District Litigation and authorized the panel to transfer federal civil actions to a single federal district court for coordinated or consolidated pretrial proceedings.² Under the statute, the panel may exercise this power when cases involve “one or more common questions of fact” and when the panel determines that the transfer “will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.”³ The statute recognized, however, the importance of permitting government sovereigns greater autonomy in litigating cases in the

¹ S. 1787, 117th Cong. (2021).

² 28 U.S.C. § 1407.

³ 28 U.S.C. § 1407(a).

public interest, and the statute therefore specifically exempted from this process actions “in which the United States is a complainant arising under the antitrust laws.”⁴

By contrast, the statute does not exempt antitrust actions brought by state governments. As a result, defendants can seek to get state antitrust lawsuits transferred and consolidated under the statute, where state cases may be joined with private lawsuits and be subject to delays. The amendments in the State Antitrust Enforcement Venue Act of 2021 would extend the exemption for antitrust actions brought by the United States to those brought by a state, allowing states to regain greater control over the venue in which their antitrust cases are litigated.

I agree that the rationale for exempting federal enforcers from multi-district transfers applies equally to state enforcers.⁵ Both state and federal antitrust enforcement actions serve a public interest, and therefore should not be consolidated—at a defendant’s behest—with private antitrust actions that may serve narrower interests.⁶

By enabling state attorneys general to combat anticompetitive practices with greater efficiency, this legislation would promote fair competition, widespread prosperity, and a dynamic economy.

Sincerely,



Lina M. Khan
Chair, Federal Trade Commission

Identical letter sent to:

The Honorable Jerrold Nadler, Chairman, House Committee on the Judiciary

The Honorable Jim Jordan, Ranking Member, House Committee on the Judiciary

The Honorable David Cicilline, Chair, House Subcommittee on Antitrust, Commercial, and Administrative Law

The Honorable Ken Buck, Ranking Member, House Subcommittee on Antitrust, Commercial, and Administrative Law

⁴ 28 U.S.C. § 1407(g). *Cf. Minnesota Mining & Mfg. Co. v. New Jersey Wood Finishing Co.*, 381 U.S. 311, 321-22 (1965) (finding that an FTC enforcement action was “instituted by the United States” for purposes of tolling the statute of limitations for private plaintiff antitrust damages action under the Clayton Act).

⁵ See Letter from Sens. Klobuchar and Lee and Reps. Buck and Cicilline regarding State Antitrust Enforcement Venue Act of 2021 (July 28, 2021).

⁶ Letter from Karl A. Racine, D.C. Atty Gen., et al. regarding Support for the State Antitrust Enforcement Venue Act of 2021 (June 18, 2021).