



**Statement of Catherine A. Jackson  
Chief, Public Integrity Section - Public Advocacy Division  
Office of Attorney General for the District of Columbia**

**Before the**

**Committee on the Judiciary and Public Safety  
The Honorable Charles Allen, Chairperson**

**Public Hearing**

**on**

**Bill 23-300, the “Antitrust Remedies Amendment Act of 2019”**

**June 24, 2019**

**10:30 am**

**Room 123**

**John A. Wilson Building**

**1350 Pennsylvania Avenue, NW**

**Washington, District of Columbia 20004**

Greetings Chairman Allen, Councilmembers, staff, and residents. I am Catherine A. Jackson, Chief of the Public Integrity Section in the Public Advocacy Division at the Office of the Attorney General (“OAG”). I am pleased to appear on behalf of Attorney General Karl A. Racine to testify in favor of Bill 23-300, the “Antitrust Remedies Amendment Act of 2019.” Attorney General Racine cares deeply about ensuring District residents are not harmed by anticompetitive conduct in the District, and that which impacts District residents, and he is committed to policing anticompetitive activity under the District’s Antitrust Act. This bill seeks to amend the Antitrust Act to authorize the Attorney General to seek civil penalties when OAG brings an antitrust lawsuit, and to expand the remedies provided by the Act.

The Public Integrity Section of OAG investigates and civilly litigates antitrust and competition issues in the District of Columbia. The District’s Antitrust Act protects District residents, agencies, and businesses from anticompetitive practices such as price-fixing, market allocation, and monopolization that occur at least partly within the District. These kind of practices may result in inflated prices for products and services used by District residents, decreased supply or quality of these products or services, or the loss of innovation and competitive opportunity in the District’s markets. Bill 23-300 will improve OAG’s ability to enforce the District’s antitrust law, by providing that companies or individuals that violate it will be subject to civil penalties and effective remedies.

The inclusion of civil penalties in state antitrust statutes is widespread; the District is one of only 9 jurisdictions that currently does not have a civil penalty provision. Accordingly, we are

seeking to add the civil penalty provisions to the Antitrust Act in order to strengthen OAG's enforcement authority and bring it into line with other states' authority. Authorizing OAG to seek civil penalties will assist us in justifying the enforcement costs of bringing antitrust cases. Antitrust investigations and litigations are very resource intensive, involving voluminous data, documents, and witnesses, and relying heavily on expert economic work. The ability to recover meaningful penalties in addition to other damages and costs enhances OAG's enforcement resources across the board. The inclusion of civil penalties also increases OAG's ability to engage in antitrust litigation that involves serious violations of antitrust law, but may result in only injunctive relief or very low damages. Finally, the proposed civil penalties provide another tool for the District to deter antitrust violations before they occur, by the existence of a monetary penalty for all violations of D.C. Code 28-4507.

The amount of the penalties in the requested amendment also are consistent with those imposed by similar jurisdictions. The Bill provides for civil penalties of up to \$50,000 per violation for individuals, and up to \$500,000 for corporations and other organizational entities. Antitrust penalties against individuals are relatively rare, but penalties against corporations are common and are typically sought in antitrust actions by state Attorneys General. Increasingly, states are recovering specific amounts identified as civil penalty payments in litigation and settlements. An antitrust violation, for purposes of calculating a civil penalty, generally is considered to be the anticompetitive agreement or action that gives rise to the harm, so there will be only one violation per case.

Attached to this written testimony is a chart prepared by OAG that identifies the relevant statute, penalty provisions, and penalty amounts throughout the country. The following are some examples from smaller-population States that shows that OAG's requested amendment is consistent with similarly-situated jurisdictions authority:

- Vermont: In 2016, Vermont increased its maximum penalties from \$10,000 to \$100,000.00 for an individual or \$1,000,000.00 for any other person.
- Nebraska: In 2016, Nebraska increased its maximum penalty from \$25,000 to \$500,000.
- Utah: In 1991, Utah adopted maximum statutory penalties of \$100,000 for an individual and \$500,000 for a business entity.
- Connecticut: In 2009, Connecticut amended its state antitrust statutes to adopt maximum statutory penalties of \$100,000 for an individual and \$1 million for a business entity.

The Bill also expands the civil remedies available for violations of the Antitrust Act in two ways. First, the Bill provides for recovery of treble damages when OAG litigates on behalf of District government agencies. The current Act provides only for recovery of single damages when the District of Columbia is injured in "its business or property." D.C. Code § 28-4507(a). However, the Act does provide for recovery of treble damages in litigation by private parties, or by OAG as *parens patriae* on behalf of District consumers. D.C. Code §§ 28-4507(b), 28-4508(a). Harmonizing these two provisions will result in consistent remedies for violations of the Act, greater recoveries for District agencies that have been injured by antitrust violations, and provide an enhanced deterrent against violating the Antitrust Act.

Second, the Bill amends the Antitrust Act to explicitly include disgorgement within the injunctive or equitable relief remedies of D.C. Code § 28-4507(a). Disgorgement is an equitable remedy, separate from damages, that requires violators to pay their ill-gotten gains to the District. Disgorgement focuses on the benefits that the defendants improperly obtained, due to violating the law, rather than on quantifying specific injury to the District. A disgorgement remedy provides additional flexibility to OAG in obtaining remedies that are equitable and proportional to the facts of the case, and will be particularly effective in antitrust cases that may involve expert costs in excess of potential damages. The addition of an explicit disgorgement remedy strengthens OAG's ability to ensure that antitrust cases are resolved equitably, and in the public interest.

OAG urges the Council to approve Bill 23-300, and we look forward to working with the Committee on Public Safety and Justice to ensure this amendment is enacted to enable OAG to more effectively pursue antitrust cases. This concludes my testimony, and I am happy to answer any questions.