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January 9, 2024

Senator Chip Curry, Chair

Representative Tiffany Roberts, Chair

Members of the Innovation, Development, Economic Advancement and Business Committee

**RE: Testimony in OPPOSITION to LD 1815, An Act to Protect Maine's Consumers by Establishing an Abuse of Dominance Right of Action and Requiring Notification of Mergers**

Dear Senator Curry, Representative Roberts and members of the IDEA Committee:

My name is Curtis Picard and I am the President and CEO of the Retail Association of Maine. I am a resident of Topsham. We have more than 350 members statewide and represent retailers of all sizes. Maine's retailers employ more than 85,000 Mainers. I am here today to testify with strong opposition to LD 1815. I appreciate the opportunity to address the committee today, sharing my insights and concerns regarding the proposed "abuse of dominance" legislation.

LD 1815 is really two bills in one. The first part of the bill deals with notification of mergers, with additional provisions that would increase the civil penalties from \$100,000 to \$250,000. Our understanding is that the Uniform Law Commission (ULC) is already examining the notification of merger issue, and they are expected to complete their work this summer. The ULC is a non-profit organization consisting of commissioners appointed by each U.S. state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Established in 1892, the ULC's primary mission is to promote uniformity in state laws across the United States by drafting and proposing model legislation for adoption by the individual states. The aim is to encourage states to enact uniform laws, thereby promoting consistency and predictability in legal matters across state lines. Maine would be wise to let the ULC process play out, and not enact something prematurely.

However, our primary focus is the second part of the bill, Chapter 201-B, Abuse of Dominance.

When LD 1815 was printed last year, we weren't quite sure what the bill did, and given the number of bills the legislature considered last year, we appreciate the extra time to dive into

this bill more deeply. This was certainly a topic we had never seen before, but we have quickly learned that this is a piece of legislation drafted by a Washington, DC based special interest group, and they have been dropping it in various states hoping for a state to enact it. It is essentially European Union style anti-trust legislation that doesn't quite work at the state level. It would allow any person to sue a business for an 'abuse of dominance' in a market, and will threaten businesses of every size in every industry in every corner of the state with uncertainty and litigation. To date, no state has enacted 'abuse of dominance' legislation, and Maine should join the list in defeating it.

The first question that comes to mind is what problem specific to Maine is this legislation attempting to fix? The way we read the legislation is not only is it not going to fix a problem that doesn't exist, it will bring a chilling level of litigation to Maine's businesses including many of our small businesses.

The bill, as drafted, targets any business with a dominant market position in the conduct of any business, trade or commerce. That means a seller that may have a share of 60% or more of a market, or a buyer with 50% or more. How a market is defined is not clear. Maine is a rural state that relies on small businesses. Many of those small businesses fill a critical need in a rural market. It is not hard to think of a local corner store, gas station, independent grocer, independent pharmacy, plumber, electrician, and dozens of other businesses that have a strong niche in so many of our rural communities. In fact, the first piece of evidence that helps establish '*dominant position*' is the '*unilateral power of a person to set prices, terms, conditions or standards*'. What business does not set their prices, or work standards?

Additionally, Section 6 establishes that the presumption of abuse of a dominant position is established by conduct that limits the ability or incentive of one or more actual or potential competitors. Section 1120-K, Subsection 6, A would apply to any business of any size. Section B imposes additional requirements on businesses that have 50 or more employees, and \$25 million in sales.

Maine has a proud history of innovative businesses that have established a significant position in local, regional, national and international markets. It is not hard to list products like wild Maine blueberries, the world-class drumsticks made in Newport, baseball bats made in Shirley used by Home Run Derby winner Pete Alonso, the COVID nasal swabs made in Pittsfield and Guilford, or stadium seats made in Berwick. This is just a small sample of successful Maine businesses that have succeed, and dominated, certain markets.

Moreover, imposing stringent regulations on dominant players may deter investments in research and development. The fear of legal repercussions could divert resources away from innovation, hindering the development of groundbreaking technologies and products that have the potential to significantly improve Maine and society at large.

Additionally, it is important to consider the legislation's potential impact on economic growth. Dominant firms contribute significantly to economic expansion by creating jobs, investing in infrastructure, and generating substantial tax revenues. The proposed regulations, by curbing the growth of these entities, may unintentionally undermine economic stability and deprive our communities of the positive externalities associated with thriving businesses.

Fundamental to a free-market system is the idea that success should be rewarded rather than penalized. The proposed legislation, by punishing companies for achieving market leadership through fair competition, appears to contradict this principle. Instead of restricting successful firms, a more effective approach would be to focus on policies that encourage healthy competition, ensuring that businesses rise or fall based on their ability to meet consumer demands efficiently.

Companies should have the flexibility to make strategic decisions that align with their interests and those of their customers. Overly restrictive regulations that curtail this autonomy could impair the ability of businesses to adapt to market conditions and make decisions that drive long-term success.

Certainly, this is not the first time we've seen novel legislation dropped in Maine by a special interest group, and I know it won't be the last. However, in my nearly two decades of work with the Retail Association of Maine, I am not sure I have seen a proposal that is as aggressively anti-business as this one is. I strongly urge the committee to unanimously reject LD 1815.

Thank you for the opportunity to share our concerns with you.

Sincerely,

Curtis Picard, CAE, President and CEO