

## 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

Senator Curry, Representative Roberts, and honorable members of the Innovation, Development, Economic Advancement and Business Committee:

My name is Geoff Baur. I am a resident of Portland and am the Vice President of Tax and Governmental Affairs at IDEXX Laboratories, Inc. I am submitting this testimony on behalf of our company against LD 1815. Although IDEXX is a global company, its roots trace to Portland’s waterfront where five employees began our company’s journey in 1983. Forty years later, IDEXX’s connection to the state of Maine remains strong. Our global headquarters is in Westbrook and our more than 3,000 Maine based employees reside throughout Maine’s communities. As a provider of veterinary diagnostic tools, we also serve countless Maine based veterinarians and pet owners—providing both with the diagnostic solutions they need to enhance the health and well-being of their companion animals.

Since our company’s founding, we have continuously innovated, improved our company’s efficiency, and refined our offerings to the benefit of Maine consumers. Unfortunately, LD 1815 threatens our ability to continue that legacy. Generally, we are concerned with the establishment of an additional regulatory framework that may differ from well-established federal principles. These federal principles have long protected consumers throughout the U.S. while providing consistency and predictability to businesses. Adding a Maine framework in addition to existing federal law will increase costs and complexity for the entire Maine business community and will likely have far-reaching and unpredictable consequences. Specifically, we are concerned that LD 1815 will prevent us from offering our customers the most innovative products at the lowest prices, ultimately eliminating valuable options for the consumers we serve. Several of our many concerns are outlined below.

**First, LD 1815 labels contracts, terms, and offers that Maine consumers value and benefit as “anticompetitive” regardless of whether they benefit consumers.** The bill specifically eliminates “evidence of procompetitive effects” as a justification for offering steep discounts or selling multiple products together in a single contract. Maine customers value—and even negotiate strenuously—for those contract terms. Federal agencies responsible for enforcement of federal anti-trust laws acknowledge the procompetitive benefits of these offerings. The Federal Trade Commission’s website, for example, specifically notes how several terms and offerings of the type LD 1815 identifies as establishing a presumption of “abuse of a dominant position” may actually benefit competition.

- **Re Exclusive Dealing:** “Exclusive contracts can benefit competition in the market by ensuring supply sources or sales outlets, reducing contracting costs, or creating dealer loyalty.” <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/single-firm-conduct/exclusive-supply-or-purchase-agreements>
- **Re Refusals to Deal:** “In general, any business — even a monopolist — may choose its business partners. . . . In general, a firm has no duty to deal with its competitors. In fact, imposing obligations on a firm to do business with its rivals is at odds with other antitrust rules that discourage agreements

among competitors that may unreasonably restrict competition.” <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/single-firm-conduct/refusal-deal>

- **Re Predatory Pricing:** “Can prices ever be ‘too low?’ The short answer is yes, but not very often. Generally, low prices benefit consumers. . . . A firm’s independent decision to reduce prices to a level below its own costs does not necessarily injure competition, and, in fact, may simply reflect particularly vigorous competition.” <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/single-firm-conduct/predatory-or-below-cost-pricing>
- **Re Tying:** “The law on tying is changing. . . . Cases turn on particular factual settings, but the general rule is that tying products raises antitrust questions when it restricts competition *without providing benefits to consumers.*” <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/single-firm-conduct/tying-sale-two-products>

But the day after this bill goes into effect, Maine companies may be forced to withdraw contracts or terms that could violate LD 1815 because the bill would make Maine customers’ preferences irrelevant to, and explicitly rejected from, the consumer protection analysis.

**Second, Maine would be saddling its growing companies with overly restrictive regulations that will harm their ability to compete on even footing with large national, or even multinational, competitors.** IDEXX is a Maine success story because of its continued innovation and its substantial investment in Maine communities—a story IDEXX’s larger, multinational competitors cannot tell. Those giants may not have similarly invested in Maine, yet LD 1815 only hinders IDEXX’s ability to market and sell its products in Maine. It does not similarly restrain larger companies that have no ties to our state.

**Third, LD 1815 would prohibit large Maine companies from entering into non-compete agreements, notwithstanding the benefits non-compete agreements offer both employers and employees.** Existing Maine law recognizes that non-compete provisions can be reasonable “to protect (a) an employer’s trade secrets; (b) an employer’s confidential information that does not qualify as a trade secret; or (c) the employer’s goodwill.” 26 M.R.S. § 599-A(2). Nowhere does LD 1815 explain why this is no longer true, or why larger Maine companies should be treated differently from smaller companies. IDEXX—like many other Maine companies—has built its success over decades of investment and innovation that has been supported in part by the security provided by reasonable, narrowly tailored non-compete agreements. Yet LD 1815 would strip successful Maine companies like IDEXX of that continued protection, undermining the ability of large Maine companies to continue their innovation and investment.

**Finally, LD 1815 delegates much responsibility to the Maine Attorney General—which would require significant resources for the Maine Attorney General to administer.** To devote insufficient resources to that effort would only exacerbate the uncertain business environment within which Maine companies would operate in if LD 1815 were to pass, creating a chilling effect for Maine businesses.


LD 1815 calls for the Maine Attorney General to promulgate rules that (1) determine the process for premerger notification and approvals; (2) determine how markets will be evaluated, to determine whether a company is dominant; and (3) define what conduct should be presumed to abuse a dominant position. All

three of those undertakings would require significant resources to execute. For context, the United States Department of Justice (DOJ) and Federal Trade Commission (FTC) recently released 51-pages of updated Merger Guidelines, which they described as “the culmination of a nearly two-year process of public engagement.” DOJ and FTC update those Guidelines every several years, meaning their endeavor requires an ongoing commitment to ensure the rules account for “modern market realities, advances in economics and law, and the lived experiences of a diverse array of market participants.” And even that massive undertaking only covered a subset of the topics that the Maine Attorney General would be responsible for overseeing.

As such, IDEXX respectfully opposes LD 1815 because we believe the bill will undermine consumer choice, lead to less innovation and higher prices, and come at significant cost to the state, Maine businesses and their employees, and Maine consumers.

Thank you, and we appreciate the committee’s continued diligence in this complex area.

Sincerely,



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