

Key Vote Alert

September 27, 2022

To the Members of the U.S. House of Representatives:

The U.S. Chamber of Commerce strongly opposes in its current form H.R. 3843, the “Merger Filing Fee Modernization Act of 2022,” because it would stymie legitimate business transactions across sectors and industries, create needless new bureaucracy, and spur unwarranted litigation. **The Chamber will consider including votes related to this legislation in our “How They Voted” scorecard.**

The egregious provisions of the bill include:

- **Venue.** While no longer retroactive as it was in previous drafts of the bill, the Multi District Litigation (MDL) provisions could force firms into simultaneously defending against private litigants, the federal government, and various states in dozens of different courtrooms around the country. The Administrative Office of the United States Courts indicates that such legislation could harm MDL participants more generally by harming judicial efficiency and administration and hamper coordination of state and federal enforcement actions with MDLs. Moreover, these problems would be compounded when states employ private, outside contingency fee attorneys to maximize profits through litigation, rather than to protect consumers or competition.
- **Transparency and Fees.** Only a handful of the thousands of mergers filed each year present potential competition concerns. Yet, the agencies have refused to meet the statutory deadlines for process and accountability under the Hart-Scott-Rodino (HSR) Act. Rather, regulators issue notice letters to firms that essentially dare companies to close mergers at the risk of future action. It is unacceptable to engage in abusive procedural gimmicks. Congress should not raise merger fees while the agencies are currently engaging in process violations.
- **Foreign Subsidy Notification Provision.** Despite efforts to improve the subsidy notification provisions, they remain un-administrable. The legislation provides no clear definition as to what constitutes a subsidy, there is no definition as to what qualifies as a “country of concern,” and the disclosure of subsidies has zero bearing on merger review and the merger standard under the law. Subsidies involved in how a deal is financed are not a concern under the antitrust laws, and concerns tied to subsidies the merging parties have received will not result in the government successfully blocking the merger as a remedy to predatory pricing concerns.

The Chamber urges you to oppose this legislation.

Sincerely,



Evan Jenkins
Senior Vice President
U.S. Chamber of Commerce



U.S. Chamber of Commerce
Government Affairs

1615 H Street NW
Washington, DC 20062-2000
Hill_Letters@uschamber.com