



Substitute House Bill No. 5220

Public Act No. 10-176

AN ACT CONCERNING COMPETITION IN THE MOTOR FUEL INDUSTRY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective July 1, 2010*) (a) Any person conducting business in the motor fuel industry in this state that files merger, acquisition or any other information regarding market concentration in the motor fuel industry in this state with the Federal Trade Commission or the United States Department of Justice, in compliance with the Hart-Scott-Rodino Antitrust Improvements Act, 15 USC 18a, shall simultaneously file a copy of the same information with the Attorney General of this state. For purposes of this section, "motor fuel" shall have the same meaning as defined in section 14-327a of the general statutes and "person" shall have the same meaning as used in subsection (k) of section 1-1 of the general statutes.

(b) After reviewing information filed pursuant to subsection (a) of this section, the Attorney General may measure the market concentration and changes in market concentration in the motor fuel industry in this state due to such merger, acquisition or any other information. Such measurement shall include the use of the Herfindahl-Hirschman Index.

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(c) If the Herfindahl-Hirschman Index score determined pursuant to subsection (b) of this section is: (1) Between one thousand and one thousand eight hundred points and increases by more than one hundred points due to information disclosed pursuant to subsection (a) of this section, or (2) equal to or greater than one thousand eight hundred points and increases by more than fifty points due to information disclosed pursuant to subsection (a) of this section, the Attorney General may issue in writing and cause to be served upon any person, by subpoena duces tecum, a demand requiring such person to submit to him or her documentary material relevant to the scope of the Attorney General's investigation. For the purposes of this section, "documentary material" includes, but is not limited to, any information in a written, recorded or electronic form. In the event that the Federal Trade Commission or the United States Department of Justice utilize different Herfindahl-Hirshman Index scores than the specific scores cited in this subsection to measure market concentration and changes in market concentration in the motor fuel industry, the Attorney General shall utilize such different scores when determining if he or she will issue a written demand requiring the submission of documentary material pursuant to this subsection.

(d) Such demand shall (1) state the nature of the investigation, (2) describe the class or classes of documentary material to be reproduced with such definiteness and certainty as to be accurately identified, and (3) prescribe a date that allows a reasonable time to assemble such documentary material for compliance.

(e) (1) All documentary material furnished to the Attorney General, his or her deputy or any assistant attorney general designated by the Attorney General, pursuant to a demand issued under subsection (c) of this section, shall be held in the custody of the Attorney General, or the Attorney General's designee, and shall not be available to the public. Such documentary material shall be returned to the person furnishing

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such documentary material upon the termination of the Attorney General's investigation or final determination of any action or proceeding commenced thereunder.

(2) All documentary material or other information furnished voluntarily to the Attorney General, his or her deputy or any assistant attorney general designated by the Attorney General that relates to an investigation of the Attorney General pursuant to this section and the identity of the person furnishing such documentary material or other information shall be held in the custody of the Attorney General, or the Attorney General's designee, and shall not be available to the public. Such documentary material or other information shall be returned to the person furnishing such documentary material or other information upon the termination of the Attorney General's investigation or final determination of any action or proceeding commenced thereunder.

(f) No such demand shall require the submission of any documentary material, the contents of which would be privileged or precluded from disclosure if demanded in a grand jury investigation.

(g) The Attorney General, his or her deputy or any assistant attorney general designated by the Attorney General may, during the course of an investigation of any antitrust violations by any person, (1) issue in writing and cause to be served upon any person, by subpoena, a demand that such person appear before him or her and give testimony as to any matters relevant to the scope of the alleged violations. Such appearance shall be under oath and a written transcript made of the same, a copy of which shall be furnished to such person appearing and shall not be available for public disclosure; and (2) issue written interrogatories prescribing a return date that allows a reasonable time to respond, which responses shall be under oath and shall not be available for public disclosure.

(h) In the event any person fails to comply with the provisions of

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subsection (a) of this section or subsections (c) to (g), inclusive, of this section, (1) the Attorney General, his or her deputy or any assistant attorney general designated by the Attorney General may apply to the superior court for the judicial district of Hartford for compliance, which court may, upon notice to such person, issue an order requiring such compliance, which shall be served upon such person; and (2) the Attorney General, his or her deputy or any assistant attorney general designated by the Attorney General may also apply to the superior court for the judicial district of Hartford for an order, which court may, after notice to such person and hearing thereon, issue an order requiring the payment of civil penalties to the state in an amount not to exceed two thousand dollars.

(i) The Attorney General shall cooperate with officials of the federal government and the several states, including, but not limited to, the sharing and disclosure of information and evidence obtained under the purview of this section.

(j) Service of subpoenas ad testificandum, subpoenas duces tecum, notices of deposition and written interrogatories, as provided in this section, may be made by: (1) Personal service or service at the usual place of abode; or (2) registered or certified mail, return receipt requested, a duly executed copy thereof addressed to the person to be served at such person's principal place of business in this state or, if such person has no principal place of business in this state, at such person's principal office or such person's residence.

Sec. 2. Section 42-234 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) As used in this section:

(1) "Energy resource" shall include, but not be limited to, middle distillate, residual fuel oil, motor gasoline, propane, aviation gasoline

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and aviation turbine fuel, natural gas, electricity, coal and coal products, wood fuels and any other resource yielding energy;

(2) "Seller" shall include, but not be limited to, a supplier, wholesaler, distributor or retailer involved in the sale or distribution in this state of an energy resource;

(3) "Abnormal market disruption" refers to any stress to an energy resource market resulting from weather conditions, acts of nature, failure or shortage of a source of energy, strike, civil disorder, war, national or local emergency, oil spill or other extraordinary adverse circumstance;

(4) "Margin" means, for each grade of product sold, the percentage calculated by the following formula: One hundred multiplied by a fraction, the numerator of which is the difference between the sales price per gallon and the product price per gallon and the denominator of which is the product price per gallon. For purposes of this subdivision, "product price per gallon" includes all applicable taxes;

(5) "Notice" means a posting made by the Attorney General pursuant to subsection (d) of this section announcing the inception and end date of any abnormal market disruption or the reasonable anticipation of any imminent abnormal market disruption.

(b) No seller during any period of abnormal market disruption or during any period in which an imminent abnormal market disruption is reasonably anticipated shall sell or offer to sell an energy resource for an amount that represents an unconscionably excessive price.

(c) Evidence that (1) the amount charged represents a gross disparity between the price of an energy resource that was the subject of the transaction and the price at which such energy resource was sold or offered for sale by the seller in the usual course of business immediately prior to (A) the onset of an abnormal market disruption,

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or (B) any period in which an imminent abnormal market disruption is reasonably anticipated, and (2) the amount charged by the seller was not attributable to additional costs incurred by the seller in connection with the sale of such product, shall constitute prima facie evidence that a price is unconscionably excessive.

(d) The Attorney General shall post a notice on the home page of the Internet web site of the office of the Attorney General announcing the inception and end date of any abnormal market disruption or the reasonable anticipation of any imminent abnormal market disruption.

(e) Notwithstanding the provisions of subsections (b) and (c) of this section, it shall not be a violation of this section if a seller sells or offers to sell motor gasoline during an abnormal market disruption or any period in which an imminent abnormal market disruption is reasonably anticipated if the seller's average margin for such motor gasoline during the longer of the following: (1) Any such period of abnormal market disruption or imminent abnormal market disruption, or (2) thirty days following the date notice was provided by the Attorney General pursuant to subsection (d) of this section, is not greater than such seller's maximum margin on the sale of such motor gasoline during the ninety-day period prior to the onset of the abnormal market disruption or period in which an imminent abnormal market disruption is reasonably anticipated.

[[d]] (f) This section shall not be construed to limit the ability of the Commissioner of Consumer Protection or the courts to establish certain acts or practices as unfair or unconscionable in the absence of abnormal market disruptions.

Approved June 9, 2010