



Office of The Attorney General
State of Connecticut

**TESTIMONY OF
ATTORNEY GENERAL GEORGE JEPSEN
BEFORE THE GENERAL LAW COMMITTEE
MARCH 5, 2013**

Good evening Senator Doyle, Representative Baram and members of the committee. I appreciate the opportunity to support SB 879, *An Act Concerning the Confidentiality of Information Obtained by the Attorney General During the Course of Antitrust Investigations*. I strongly support this proposal and urge the committee to report favorably upon it. This bill amends section 35-42 of the general statutes to permit my Office, under certain circumstances, to use information and materials obtained in antitrust investigations when taking the oral testimony of third-party witnesses during such investigations.

This change is necessary due to the Connecticut Supreme Court's decision in *Brown & Brown v. Blumenthal*, 297 Conn. 710 (2010). In that case, the Supreme Court held that the statutory language prohibiting "public" disclosure of such information precludes my Office from sharing such information with third party witnesses during investigatory depositions, which themselves are confidential under our antitrust laws.

This interpretation puts Connecticut law at odds with existing federal antitrust laws – the very laws upon which our own antitrust laws are based and with which the General Assembly has expressly declared our laws should be consistently interpreted. More importantly, the current prohibition limits my staff's ability to conduct a full and complete investigation, which is what the General Assembly mandates my Office to do prior to instituting a proceeding.

Antitrust investigations inherently involve the examination of complex – and often secret – business relationships and require review and analysis of tens of thousands of documents, communications and other information obtained from multiple parties with knowledge of the issues involved. Understanding the true import of critical documents and communications is the crux of reaching a reasoned determination of whether a violation has occurred. To fully grasp the context, meaning and intent of key documents and communications necessitates talking to witnesses with knowledge of the substance of that information. Under the Supreme Court's interpretation of section 35-42, however, my antitrust attorneys can only ask questions about these important documents, communications and information from the party that provided it to my office, regardless of whether a third party witness was a recipient of the document, took part in the communication or is otherwise familiar with it. To further illustrate the point, if my staff only obtained an email from the recipient of a communication but not the third party who happened to be the sender, then my staff could not confront the sender with their own email at a deposition.

In conducting antitrust investigations, my responsibility as Attorney General is to get it right when making decisions about whether to sue, settle or terminate investigations. My staff's inability to fully question certain witnesses with knowledge of the documents, communications and information has negated their ability to confront witnesses with probative evidence and, thus, interferes with a full vetting of the issues, raising the specter that these decisions may be made with less than optimal information; that is not in anyone's interest: the public or the subject of the investigation.

The amendment I propose to the Connecticut Antitrust Act reflects a compromise our Office reached last year with the CBIA and IAC, both of which continue to support the proposal. It poses no incremental burden on those parties providing such information to my office, whether compelled or obtained voluntarily. In fact, the amendment I propose is consistent with the prevailing law governing the U.S. Department of Justice's and the Federal Trade Commission's use of such information in the conduct of conspiracy and monopolization investigations.

Under this bill, the Attorney General or his designee will be permitted to use confidential information obtained during an investigation when obtaining oral testimony from a third party only if we reasonably determine that it is necessary in order to adduce evidence of a suspected antitrust violation and reasonably believe that the person providing oral testimony: (1) is an author or recipient of the confidential material, (2) has read the confidential material, or (3) is otherwise aware of the substance of the confidential material. The permissible use of confidential material in connection with the taking of oral testimony provided for under this proposal will not apply to investigations of proposed mergers or acquisitions. In addition, no copy or original of the confidential material described or shown to a person providing oral testimony may be retained by such person. Finally, while the amendment will allow my staff to disclose the confidential information to third parties if the enumerated criteria are met, the documents and information continue to retain their exemption from our Freedom of Information Act, thus ensuring that use of the material is only for their specific intended purpose: in furtherance of a lawful antitrust investigation.

Thank you once again for all of your efforts. I urge the Committee to act favorably on this bill and look forward to working with you on this important matter.