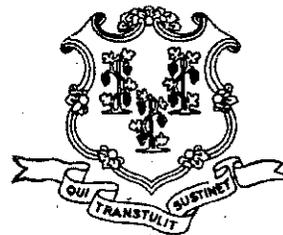


# Department of Consumer Protection



## Testimony of William M. Rubenstein Commissioner of Consumer Protection

General Law Committee Public Hearing  
March 5, 2013

SB 879, "An Act Concerning the Confidentiality of Information Obtained by the Attorney General During the Course of Antitrust Investigations"

Senator Doyle, Representative Baram, Senator Witkos, Representative Carter and distinguished members of the General Law Committee, I am William Rubenstein, Commissioner of Consumer Protection. Thank you for allowing me the opportunity to offer testimony in support of Senate Bill 879, "An Act Concerning the Confidentiality of Information Obtained by the Attorney General during the Course of Antitrust Investigations."

As you know, the Department of Consumer Protection (DCP) through administration of the "unfair methods of competition" portion of the Connecticut Unfair Trade Practices Act (CUTPA) has overlapping jurisdiction with the Attorney General regarding violations of the antitrust law, just as the Federal Trade Commission (FTC) has similar overlapping jurisdiction with the United States Department of Justice (USDOJ). To avoid the expenditure of duplicative resources, however, DCP often defers to the Attorney General as the primary enforcer of the state's antitrust laws. DCP, therefore, has a keen interest in assuring that the Attorney General is not unduly hampered in his ability to investigate potential antitrust violations.

Beyond my perspective as the Commissioner of Consumer Protection, I bring additional insight to this issue. Nearly half of my 30-year legal career has been spent as a governmental enforcer of federal and state antitrust laws, both as an attorney at the FTC and as a Connecticut Assistant Attorney General assigned to the Antitrust and Consumer Protection Department. The other half of my legal career was spent in the private sector, where a large part of my practice involved representing respondents in federal and state antitrust investigations. Indeed, I represented Brown & Brown, Inc. in the legal case in which the Connecticut Supreme Court determined the extent of the confidentiality provisions for information provided to the Attorney General in response to subpoenas under the state antitrust act. *Brown & Brown, Inc. v. Blumenthal*, 297 Conn. 710 (2010). So, I bring to this discussion experience in both governmental investigatory needs and the legitimate need for protection of private commercial information by businesses.

Senate Bill 879 addresses a problem in our antitrust statute that unduly hampers the Attorney General's investigatory need. When the portion of our state antitrust statute that authorizes the Attorney General to use subpoenas to investigate potential antitrust violations was passed in 1971, it was directly modeled on the federal Antitrust Civil Process Act. In 1976, however, the federal Antitrust Civil Process Act was amended to permit the USDOJ to use subpoenaed material during the course of depositions of third parties. The Connecticut Antitrust Act, however, was never similarly amended. In the *Brown & Brown v. Blumenthal* case, the Connecticut Supreme Court held that because Connecticut did not amend the Connecticut Antitrust Act as the federal Antitrust Civil Process Act had been amended, the Attorney General could not disclose subpoenaed material to third parties during the course of investigatory depositions in any circumstances.

The proposed bill addresses that federal/state anomaly. It is narrowly tailored to permit the limited use of investigatory material during the course of an investigatory deposition. It contains safeguards to limit any third party disclosures to circumstances where the disclosure would not be likely to impart confidential information not already known to that third party. Thus, the bill, as drafted, strikes a careful balance between the investigatory needs of the Attorney General and the confidentiality needs of respondents

to protect commercially sensitive information. Antitrust investigation respondents have experienced this precise balance in the course of federal antitrust investigations for almost 40 years without any meaningful diminution in the confidentiality protection of respondents. This bill will not alter any of the other strict confidentiality provisions of the Connecticut Antitrust Act as set forth in the *Brown & Brown v. Blumenthal* decision.

Because Senate Bill 879 will enhance the Attorney General's ability to detect antitrust violations without unduly diminishing the confidentiality rights of respondents, I ask for your support in advancing this important legislation.

