

## MEMORANDUM IN OPPOSITION

A.1812A (Dinowitz)/S.933A (Gianaris)

AN ACT to amend the general business law, in relation to actions or practices that establish or maintain a monopoly, monopsony or restraint of trade, and in relation to authorizing a class action lawsuit in the state anti-trust law

The Greater Binghamton Chamber of Commerce represents nearly 800 small and large businesses and their employees. The mission of the Chamber is to serve as the premier resource for business development in Greater Binghamton.

According to the sponsors of the bill, this legislation intends to support competition by providing measures to hold “Powerful corporations, particularly Big Tech” accountable for engaging in monopolistic practices. Unfortunately, this bill has many unintended consequences as the legislation is not restricted to large companies but to **any business** that can “set prices, terms, conditions or standards” which includes small and medium sized businesses like grocery stores and dairy farms. We believe that as written, this bill will inevitably pit big business against small business due to the vague definitions of “abuse of dominance” and “market size” as well as the creation of a state pre-merger notification requirement, and authorization of private class action suits.

While there are several components of this legislation that are very concerning to the business community, we will focus on the definitions of abuse of dominance, market size, and the state’s pre-merger notification requirement. First, the abuse of dominance standard suggests that businesses having a *presumptive* dominance of between 30-40% would be in violation of antitrust and subject to various penalties including fines, legal fees, and criminal sanctions. This means that innovative businesses releasing one-of-a-kind products and services could technically violate antitrust and be considered 100% market dominant. The size of a market is also ill-defined, which would allow competitor businesses and predatory trial attorneys to file suits against small businesses that have strong positions locally, leaving it up to the government and courts to determine the size of the market.

In addition, this legislation creates an onerous process and duplicative mandates by requiring companies to participate in a state pre-merger notification requirement system that would notify the State Attorney General of transactions worth \$9 million or more and implements a waiting period of 60 days. There is already a pre-merger notification process on the federal level through the FTC that would require an investigation of transactions \$90 million or more, and the waiting period is only 30 days. No other state in the nation has a state pre-merger notification requirement and no other country in the world requires more than a 30-day waiting period. As such, we believe that bureaucratic processes like this will only scare away potential capital and put a hold on transactions far longer than necessary, thus creating a huge burden on our local business community.

For the above reasons, the Greater Binghamton Chamber of Commerce opposes this legislation.