CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

The U.S. Chamber of Commerce opposes S. 1787, the "State Antitrust Enforcement Venue Act of 2021," as currently drafted.

S. 1787 could force antitrust defendants into simultaneously defending against private litigants, the federal government, and 50 different states in dozens of different courtrooms around the country. This new litigation framework could lead to large settlements over even unmeritorious claims. We are also concerned about the application of this legislation to currently pending actions, including those that the federal courts have already transferred under the existing multidistrict litigation (MDL) system. The legislation would take the already problematic MDL system and make it even more challenging.

This bill also ignores the substantial similarities that often exist between private parties bringing antitrust actions and certain types of antitrust cases brought by state attorneys general (AGs). State parens patriae antitrust actions seeking monetary damages are akin to private class action lawsuits seeking monetary awards. This is particularly acute when states employ private, outside contingency fee counsel who are incentivized to maximize profits from litigation, rather than to protect consumers or competition.

S. 1787 could be improved in several ways to alleviate potential litigation inefficiencies and burdens. For example, the legislation could be amended to allow antitrust actions brought by state AGs to be consolidated when they are seeking damage awards. Alternatively, the legislation could at least allow for such consolidation when state AGs retain outside contingency fee counsel to bring the case. The bill could also allow for a separate "government MDL" track for antitrust litigation filed by states and the federal government. Amending the legislation in these ways would help lower the chances of defendants facing duplicative suits, reduced judicial efficiency, and a lack of coordination.

Finally, another important improvement would make clear that the legislation's changes to MDL consolidation apply prospectively only or at least do not impact cases that the federal courts have already consolidated in the federal MDL process. This would prevent the enormous and immediate disruption of thousands of ongoing MDL proceedings at various stages of litigation.

Sincerely,

Neil L. Bradley

cc: Members of the Senate Committee on the Judiciary