



January 10, 2022

Oppose S. 933A: Denies Consumers Benefits of Competition, Hurts Small Businesses, Unnecessary Given A.G.'s Cases Against Big Tech

Senator Kevin Thomas
Chair
Consumer Protection Committee
New York State Senate

Dear Chair Thomas and members of the committee,

The Chamber of Progress urges your committee to **oppose S. 933A**, a bill that will hurt consumers who benefit from businesses competing for their loyalty; hurt small businesses; impose European legal standards in New York; and is unnecessary given law enforcement's existing authority.

S. 933A would discourage the kind of competition that benefits consumers. New York State laws have long incentivized businesses to build better products that delight consumers — even at the expense of incumbent companies' sales. By encouraging competition, existing laws have paved the way for innovation and new creative business ideas that provide more products, services, and resources to consumers. If S. 933A becomes law, it will create a domino effect, stagnating business and slowing technological advancements by instilling into companies the fear that they may outperform companies within the industry and be hit with a fine or lawsuit. S. 933A could make product improvements punishable, if they caused consumers to “unfairly” prefer one brand or company over another.

S. 933A would hurt small, local New York businesses – beyond the tech industry. There are about 2.2 million small businesses in the state of New York, all in varied industries.¹ Under the bill, the Attorney General would be able to deem any company with at least 40 percent of its market “dominant.” This would put small businesses in narrow markets at risk of being considered “dominant” and action can be brought against them.

To use a food analogy, officials could sue Carvel for “dominating” the arbitrary “Westchester ice cream market” because of their popular two for one sundaes on Wednesdays — which directly competes with Cold Stone Creamery. Putting a small business in the line of fire would be detrimental, and could potentially put them out of business due to legal fees.

S. 933A would make New York the only state to embrace European antitrust legal standards – even though Europe's economy has stagnated while New York has innovated. S. 933A will allow lawsuits to be filed against companies for the smallest act of marketing and competition, such as providing bundle deals and holiday discounts. This standard has enabled European officials to

¹How Many Small Businesses are in New York?, Foreign USA (Dec. 2021)
<https://foreignusa.com/small-businesses-in-new-york/>

bring suits against companies for merely competing. If New York passes S. 933A, it will set a terrible precedent by letting the government meddle when a company fairly outperforms another.

Finally, law enforcement already has ample tools in its tool box, deeming this legislation unnecessary. In 2019 the Attorney General's office filed two major antitrust lawsuits against Facebook and Google, using its authority under *existing* competition laws. Law enforcement already has ample tools in its toolbox.

If reform is needed, a federal reform approach makes more sense. Everyone agrees we need strong enforcement of antitrust laws to protect consumers and competition. A federal reform approach makes far more sense than diverging state policies, which could disadvantage New York in competing against other states. Senator Amy Klobuchar has introduced an antitrust reform bill with many ideas worth debating.²

We ask that your committee oppose S. 933A. It will deny consumers of choices, hurt small businesses, and is unnecessary due to laws already in place. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'M Williams', with a long horizontal flourish extending to the right.

Montana Williams
Director of State & Local Public Policy

² *Senator Klobuchar Introduces Sweeping Bill to Promote Competition and Improve Antitrust Enforcement*, United States Senator Amy Klobuchar, (Jan. 2021)
<https://www.klobuchar.senate.gov/public/index.cfm/2021/2/senator-klobuchar-introduces-sweeping-bill-to-promote-competition-and-improve-antitrust-enforcement>