



June 3, 2024

The Honorable Al Stirpe
Chair
Assembly Committee on Economic Development,
Job Creation, Commerce, and Industry
Room 846, Legislative Office Building
198 State Street
Albany, NY 12248

Dear Chair Stirpe and members of the committee,

On behalf of Chamber of Progress, a tech industry association supporting public policies to build a more inclusive country in which all people benefit from technological leaps, **we respectfully urge you to oppose A.10323.**

This bill would hurt businesses beyond the tech industry, including small, local New York businesses.

There are about 2.2 million small businesses in the state of New York, across varied industries.¹ Under this bill's "indirect evidence" approach, a seller with at least 40% market share, or a buyer with at least a 30% market share, is presumed "dominant." This would put small businesses in narrow markets at risk of being considered "dominant," and subject to action being brought against them. Putting a small business on the hook would be detrimental and could potentially put them out of business.

Additionally, to use an analogy, officials could sue Macy's, a legendary New York retailer, for "dominating" the retail industry and be forced to carry merchandise from the New Jersey chain Bamberger. This would hurt tried-and-true New York businesses that have established themselves as market leaders by offering consumers the best product.

This bill discourages 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

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

competition, existing laws have paved the way for innovation and new creative business ideas that provide consumers more products, services, and resources. If A.10323 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. A.10323 could make product improvements punishable, if they caused consumers to “unfairly” prefer one brand or company over another.

The shift in antitrust standards ignores consumers.

Our antitrust laws have long incentivized businesses to build better products that benefit consumers — even at the expense of incumbent companies. By encouraging competition, antitrust laws have paved the way for unprecedented innovation and new consumer services.

Shifting from the established “consumer welfare” standard to an “abuse of dominance” standard ignores the consumers’ needs and instead focuses on aiding competitors in an industry. Further, by establishing arbitrary standards for market dominance, A.10323 may potentially impact consumers by degrading products consumers widely benefit from.

The bill language is overly broad and vague.

Under Section 2(c)(6) of this bill, “any restraint that the attorney general... determines poses a substantial risk of harming competition that is not already presumed illegal” may be presumed illegal. The term “any” is overly broad and vague, which may lead to confusion about what is considered a restraint.

For these reasons we respectfully urge you to **oppose A.10323**.

Chamber of Progress welcomes further discussion of the concerns outlined in this letter. Please do not hesitate to contact Brianna January, Government Relations Director for Northeast Region, at brianna@progresschamber.org or (443) 758-3920.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brianna January', written in a cursive style.

Brianna January
Director, State & Local Government Relations
Northeast Region
Chamber of Progress