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Maryland Antitrust Act-Premerger Notification Requirement and Remedies (Senate Bill 657/House Bill 776)

- SB 657/HB 776 would require parties to mergers and acquisitions valued at above \$8M to notify the OAG 60 days *before consummating* the transaction.
- SB 657/HB 776 is analogous to the federal Hart-Scott-Rodino Act which provides an opportunity for the federal antitrust agencies to review large mergers and acquisitions—currently those just over \$111 million—to ensure they are not anticompetitive.
- SB 657/HB 776 would provide the Attorney General an opportunity to review and challenge if appropriate, proposed mergers and acquisitions that have the potential to impact Marylanders but fall below the federal merger review threshold.
- Challenging an anticompetitive merger or acquisition *after consummation* is very expensive and difficult—and “unscrambling the eggs” can be extremely challenging—this bill alleviates these difficulties and expenses by providing the Attorney General notice of planned mergers and acquisitions *before consummation*.
- Without premerger notification, the State antitrust authority is unaware that potentially anticompetitive mergers or acquisitions are being undertaken.
- In the last few years there have been a number of mergers or acquisitions in Maryland, in areas like energy, medical cannabis, pharmaceuticals and technology that have fallen below the federal threshold and have escaped review.
- We need to look at these mergers before they happen, to evaluate the impact on competition in their respective markets in Maryland.
- To initiate review after a merger is closed presents significant complexities that would be avoided if we had notice in advance.
- SB 657/HB 776 would also clarify that the remedy of restitution delineated in the Maryland Antitrust Act includes disgorgement.