

**CANDACE McLAREN LANHAM**  
*Chief Deputy Attorney General*

**CAROLYN A. QUATTROCKI**  
*Deputy Attorney General*

**LEONARD J. HOWIE III**  
*Deputy Attorney General*

**CHRISTIAN E. BARRERA**  
*Chief Operating Officer*

**ZENITA WICKHAM HURLEY**  
*Chief, Equity, Policy, and Engagement*

**PETER V. BERNS**  
*General Counsel*



**ANTHONY G. BROWN**  
*Attorney General*

**SCHONETTE J. WALKER**  
*Chief*  
Antitrust Division

**GARY HONICK**  
*Deputy Chief*  
Antitrust Division

(410) 576-6470

STATE OF MARYLAND  
**OFFICE OF THE ATTORNEY GENERAL**  
ANTITRUST DIVISION

March 25, 2024

TO: The Honorable Senator Pamela Beidle  
Chair, Finance Committee

FROM: Schonette J. Walker  
Chief, Antitrust Division, Office of the Attorney General

RE: HB 1182 – Commercial Law – Maryland Antitrust Act – Enforcement Remedies (**Support**)

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The Office of the Attorney General’s Antitrust Division supports House Bill 1182. This Bill would clarify that the remedy of restitution as delineated in the Maryland Antitrust Act includes disgorgement.

Maryland courts have long held that a key element of a restitution claim is forcing a wrongdoer to disgorge or give up benefits it would be unjust for them to keep.<sup>1</sup> One important objective of restitution is to eliminate profit from wrongdoing. The primary purpose of restitution, therefore, is not necessarily to fully compensate plaintiffs, but to do equity. In *Linton*, an important Consumer Protection Act case, the Court of Appeals (now the Maryland Supreme Court), discussed that restitution compels the full disgorgement of profits by a wrongdoer, not only because that is the moral outcome, but also because any lesser requirement would inadequately deter future unlawful behavior.<sup>2</sup> Like the Consumer Protection Act discussed in the cases noted, the Maryland Antitrust Act contains a statutory provision that provides for restitution. Also like the Consumer Protection Act, the Maryland Antitrust Act does not define

<sup>1</sup> *Consumer Protection v. Consumer Pub.*, 304 Md. 731, 776 (1985).

<sup>2</sup> *Linton v. Consumer Protection Division*, 467 Md. 502, 519-520 (2020).

the word “restitution” nor does it mention the word disgorgement. Although case law has filled in this void for the Consumer Protection Act, there has not been similar case law development with respect to the Antitrust Act.

In Antitrust case law, we have seen that where a remedy is not identified in the statute, it has been deemed unavailable to the Attorney General.<sup>3</sup> Clarifying that the current restitution provision in the Maryland Antitrust Act encompasses disgorgement will make clear that those found to have violated the Maryland Antitrust Act may be required by a court to disgorge benefits obtained by their wrongdoing, because retaining those benefits would be unjust.

Support of this legislation is in line with the goals and principles of the Attorney General’s Office to vigorously enforce Maryland’s competition laws and pursue all available remedies to promote, for the benefit of all Marylanders, the fair operation of Maryland markets. I respectfully request the Finance Committee favorably report HB 1182.

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<sup>3</sup> See e.g. *State v. Jonathan Logan, Inc.*, 301 Md. 63, 482 A.2d 1(1984) (where the MATA did not explicitly list restitution as an available equitable remedy, it was not available to the Attorney General). The legislature added restitution to language of the Act in 1993--1993 Maryland Laws Ch. 632 (S.B. 196).