



Adopted

**Spring Meeting
March 14-16, 2005
Washington, D.C.**

**RESOLUTION
PRINCIPLES OF STATE ANTITRUST ENFORCEMENT**

WHEREAS, the antitrust laws are intended to promote a competitive marketplace, benefit all the citizens of the several states, and advance robust innovation; and

WHEREAS, our nation's Attorneys General, as chief law officers of their states, are the primary enforcers of the states' antitrust laws; and

WHEREAS, state Attorneys General represent their states and the citizens of their states in federal antitrust litigation; and

Principles of Federalism

WHEREAS, erosion of state sovereignty is inimical to the basic principles of federalism that inhere in our Constitution; and

WHEREAS, the federal antitrust laws were enacted by Congress with the intent that those laws complement rather than supplant state antitrust laws; and

WHEREAS, this Congressional intent, has been reaffirmed many times, including in the seminal case of *California v. ARC America Corp.*; and

Federal-State Cooperation

WHEREAS, state Attorneys General work closely with the two federal antitrust enforcement agencies, the United States Department of Justice Antitrust Division and the Federal Trade Commission; and

WHEREAS, the increasing level of cooperation between state Attorneys General and the federal antitrust agencies has been mandated by Congress and has been memorialized in several important Protocols concerning coordination of merger investigations, sharing information, and state prosecution of criminal antitrust offenses; and

Indirect Purchaser Statutes

WHEREAS, state statutes providing for recovery for antitrust injury by purchasers have been in existence since the nineteenth century; and

WHEREAS, approximately 75% of all purchases by local governments and state agencies are made through “indirect” distribution channels; and

WHEREAS, in 1977 the Supreme Court of the United States in *Illinois Brick Co. v. Illinois* limited recovery to “direct” purchasers only for antitrust injuries pursued under much of federal antitrust law; and

WHEREAS, in *California v. ARC America Corp.* the Supreme Court of the United States rejected the claim that state statutes providing for recovery by “indirect” purchasers in antitrust cases were preempted by federal law; and

WHEREAS, “indirect” purchaser recovery helps deter anticompetitive behavior; and

Merger Review and Enforcement

WHEREAS, the Attorneys General have jurisdiction to enforce antitrust provisions relevant to mergers and acquisitions, and have frequently done so; and

WHEREAS, in *California v. American Stores*, the Supreme Court held that States can obtain divestiture in merger cases; and

WHEREAS, in merger cases, the effects of consolidation in national mergers are more often felt locally than nationally and state Attorneys General are at least as knowledgeable about those effects as are the federal antitrust agencies; and

WHEREAS, State Attorneys General have often worked efficiently and productively with the federal agencies to investigate potentially anticompetitive mergers; and

Antitrust Exemptions

WHEREAS, the National Association of Attorneys General has consistently opposed legislation that weakens antitrust standards for specific industries because there is no evidence that any such exemptions would either promote competition or serve the public interest;

NOW, THEREFORE, BE IT RESOLVED THAT THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL:

- 1) Opposes federal preemption of any state antitrust statutes, including indirect purchaser

statutes, or other limitation of state antitrust authority, as such preemption or limitation would impair enforcement of the antitrust laws, harm consumers, and harm free competition;

2) Opposes establishing weakened antitrust standards for specific industries as such weakened standards would affirmatively harm consumers, and as there has been no demonstration that such weakened standards would in any way benefit competition; and

3) Supports continuing and increased cooperation between the state Attorneys General and the Antitrust Division of the Department of Justice and the Federal Trade Commission, as such cooperation is wholly consistent with bedrock principles of federalism, and because such cooperation affirmatively promotes free competition and the interests of the citizens of each of the several states.