Statement of the Honorable John Conyers, Jr. for the Hearing on "Occupational Licensing: Regulation and Competition" Before the Subcommittee on Regulatory Reform, Commercial and Antitrust Law

Tuesday, September 12, 2017, at 3:00 p.m.
2141 Rayburn House Office Building

The issue of occupational licensing presents a tension between two worthy public policy goals: the need to protect public health and safety, and the need to ensure free and fair competition leading to more choices, lower prices, and greater innovation opportunities for the benefit of consumers.

Occupational licensing – a form of regulation that requires persons to meet certain qualifications to practice a particular profession or trade – is typically the responsibility of licensing boards composed of members of the profession being regulated.

A licensing board is delegated authority by a state to create the criteria for entry into the regulated profession and for ensuring compliance with such criteria.

Given this inherent tension, we should keep the following factors in mind during today's hearing.

To begin with, occupational licensing can be a critical means to protect public health and safety.

Few would doubt the value of requiring doctors, nurses, pharmacists, and other health-related professionals to be regulated through a licensing regime.

Moreover, there is an obvious value to having members of the regulated profession participate in setting and enforcing regulations.

These individuals are in the best position to know what the proper standard of care should be for the profession, even with respect to trades such as beauticians and tattoo artists, which may not be health-related professions but where a person's physical safety is at risk if left totally unregulated.

Nonetheless, occupational licensing boards – if given too much unchecked power -- present a risk to consumers and to the public because such boards may abuse their authority to keep potential competitors out of the profession.

Where licensing boards are primarily composed of members of the regulated profession, there is an inherent temptation to use their power to protect incumbents from new entrants into the market for that profession's services.

Such abuse can lead to higher prices and fewer choices for consumers. And, it can impose unnecessarily burdensome obstacles for others seeking to enter a profession.

This concern is further compounded by the fact that state actors are entitled to immunity from federal antitrust law.

Whether a state licensing board is a "state actor" entitled to such immunity is determined on a case-by-case basis requiring application of an ambiguous legal standard turning on the issue of whether a state "actively supervises" such a board.

The question is whether this ambiguity necessitates a federal legislative response granting some level of antitrust immunity to state licensing boards outright or defining what constitutes "active supervision" by the state as well as limiting the scope of state licensing activity.

While it is right that Congress consider such measures, my overriding concern is to ensure that the scope of antitrust immunity is limited.

I have long opposed antitrust exemptions because only strong and broad antitrust enforcement can ensure full and fair competition to benefit consumers.

To that end, federal intervention in the area of occupational licensing should focus primarily on ensuring the broadest possible reach for federal antitrust law and should limit any immunity for state licensing boards to the minimum extent necessary to respect federalism and state sovereignty.

Beyond this concern, how a state chooses to regulate public health and safety should rightly be left to the state.

In closing, I look forward to hearing from our witnesses today as they discuss these important issues.