



The American Antitrust Institute

July 12, 2013

Mayor Vincent G. Gray
1350 Pennsylvania Ave., NW
Washington, DC 20004

Dear Mr. Mayor,

The American Antitrust Institute¹ urges you to veto the District of Columbia “Large Retailer Accountability Act of 2013” recently passed by the D.C. Council. The bill can be found at <http://dcclims1.dccouncil.us/images/00001/20130122132700.pdf>

The bill, which would force Walmart and other large retailers — defined as any store that is at least 75,000 square feet and whose parent company has at least \$1 billion a year in revenue — to pay \$12.50 an hour to employees. Minimum wage in Washington is \$8.25. In the interest of consumers, competition, and the general public welfare, we recommend that the D.C. Council consider legislative language to achieve its purposes that is narrowly drawn to avoid unnecessary harm to competition.

Our comments follow the logic of comments submitted by the Federal Trade Commission concerning local government regulation of transportation services in Colorado. See <http://ftc.gov/os/2013/03/130703coloradopublicutilities.pdf>. The FTC recognized that local regulation which restricts competition may be appropriate when needed to provide a public benefit, such as protecting the public from significant harm. The FTC’s role is not to review local government’s judgment about the public need, nor is that our role. We do not intend to challenge the idea that it is a legitimate goal of the District of Columbia to protect the ability of citizens to earn a living wage. We are well aware of public concerns about the great market power of Walmart, including its reputation for paying low wages.²

We are also aware that local businesses have been working together to make a more attractive and vibrant "Downtown DC business improvement district." (See <http://www.downtowndc.org/>.) That is a laudable goal, but one that creates worries about whether the legislation is directed at Walmart with the goal of protecting local business.

¹ The American Antitrust Institute (AAI) is an independent, nonprofit education, research, and advocacy organization headquartered in the District of Columbia. Our website is www.antitrustinstitute.org. This communication was approved by our Board of Directors and may or may not reflect the views of the individual members of our Advisory Board.

² See Albert A. Foer, Mr. Magoo Visits Wal-Mart: Finding the Right Lens for Antitrust, 39 Conn. L. Rev. 1307 (2007).

The competition policy concern is that the legislative goal of securing fair wages should be accomplished in as narrow a way as possible, respecting the antitrust goal of preserving competition and a level competitive playing field. As the FTC said in its Colorado comments, "a restriction on competition should be narrowly crafted to minimize its anticompetitive impact."

The competitive impact of the legislation on Walmart and other large retailers occurs because of the particular amount of floor space Walmart will use for store operations, and the revenues of the parent company. Retailers that use slightly less floor space, or have parents with slightly less revenue, are in a different category, and may pay significantly lower wages. Of course, the legislation would affect all companies falling within the definition of large retailers, and those retailers are likely to react in the same way as Walmart and decline to enter into business in the District of Columbia, or eventually leave. Lack of new entry may deprive D.C. residents of the advantage of better service, lower prices, and the innovation-stimulating effect of competition.

Competition policy abhors the idea of an uphill playing field reserved for companies larger than a certain size, with downhill playing fields reserved for slightly (or dramatically) smaller companies. An exemption for large companies with union contracts raises similar questions about a two-tier system of pay requirements.

We therefore respectfully urge the Mayor to veto this legislation.

Sincerely,

A handwritten signature in black ink, reading "Albert A. Foer". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Albert A. Foer

President