From: George Uberti
To: DFPI Regulations
Subject: PRO 2/20 Notice of proposed Rulemaking: debt collection regulation license application and requirements
Date: Sunday, April 25, 2021 8:12:42 AM

My name is George Uberti. I'm a California resident and consumer advocate. I thank the DFPI for the opportunity to comment on these regulations.

My comments here make reference to specific sections of the proposed regulations. However they also share an overarching concern for the high risk of anti-trust violations incipient in the regulatory procedure for licensing debt collection here.

Regarding section 1850.7(a)(1)(A) concerning the use of fictitious business names in debt collection activity. The primary effect of fictitious business name usage is to conceal ownership and control of business operations, the direct consequence of which is market concentration. Concentration in the debt collection market is damaging to consumers and may invite costly intercession in DFPI and licensee activity from federal anti-trust enforcement agencies such as the DOJ and FTC. The potential for damaging exercise of market power by licensees empowered to unlawfully concentrate their marketshare through the use of fictitious business names greatly outweighs any potential efficiencies created by the use of those names which would bear little chance of having their benefits passed along to consumers. I respectfully ask the DFPI to amend this section to bar any applicants or their associates or owners be they direct or indirectly in any kind of financial control of the applicant from using ficititous business names in connection with debt collection activities in the state of California.

Regarding section 1850.7(a)(1)(C)(5),(6),(9), concerning the indirect ownership and control of applicants, trustees with financial interests in debt collection activities, and others with management and controlling interest in debt collection activities who may also be engaged in other debt collection or financial settlement services. The need for anti-trust analysis and enforcement related to the potential for conflicting economic interests and consolidated market control here is significant.

I'd like to call the case of United States v. Visa U.S.A. Inc., 183 F. Supp. 2d 613(S.D.N.Y. 2001) to the DFPI's attention here. In this case a federal district court in New York found that governance rules permitting members of two credit card companies to sit on the board of directors of each other's companies resulted in adverse economic effects which were unlawful under 15 USC section 1, and the court issued an injunction mandating the separation of these boards of directors and the aboloition of the rules and practices permitting the potential for exclusionary business practices created by this indirect common control.

This decision reaffirms the provisions of the Revised Horizontal Merger Guidelines (RHMG) used by the US DOJ which have long stipulated that partial acquisitions are subject to anti-trust analysis and jurisdiction regardless of whether or not such acquisitions result in a minority control position. The RHMG clarify that federal anti-trust authorities consider the relevant anti-trust question in minority position control to concerns whther a firm has the ability to merely influence anticompetitive conduct of entity in which they hold that position. Where such ability to influence anticompetitive conduct exists adverse economic effects are demonstrated and courts are justified in ordering injunctive cessation to the relevant market relationships.

I respectfully request that the DFPI amend these sections to require that all direct and indirect ownership, financial control, trustee and managerial interests and responsibilities named in these sections comply with the provisions of the anti-trust laws, 15 USC section 18 in particular, banning any person from directly or indirectly acquirng the whole or any part of the share capital or assets of any one or more persons engaged in any activity affecting commerce in any section of the country where the effect of such acquisitions or their use by the voting or granting of proxies would be to substantially lessen competition or otherwise restrain commerce.

Further, in regards to 1850.7(a)(1)(C)(13) I respectfully request that the DFPI amend this section to require the policies and procedures applicants must file demonstrating how they will comply with the Debt Collection Licesnsing act and other rules and acts related to consumer protection to include the demonstration of how applicants will comply with the anti-trust laws of title 15, particularly the provisions of 15 USC section 18 which bans acquisitions, both partial and complete, which produce merely the potential for anticompetitive conduct in their incipiency before the firms participating in those acquisitions demonstrate any behavior which actually damages consumers. The policies and procedures demonstrating compliance with the anti-trust laws here must demonstrate how the provisions of:

1850.7(a)(1)(C)(10) requiring applicants to disclose other businesses and products required to be accepted or purchased by consumers in connection with debt collection activities do not consitute unlawful tying arrangements under 15 USC section 2, which holds that where sellers may use their market position to leverage consumers into the purchase of services in another product market, on terms which would not persist in an unfettered market an unlawful tying arrangement exists and courts may award consumer damages and order sellers to divest their holdings in the tied product market. See: United States v. Microsoft Corp., 253 F. 3d 34(D.C. Cir 2001).

The policies and procedures demonstrating compliance with the anti-trust laws under 1850.7(a)(1)(C)(13) should also include how the supplemental information required under:

1850.7(a)(1)(C)(15) concerning the total dollar amount collected from consumers and the total dollar amount generated by California debtor accounts reflects the relevant marketshare of applicants in the California debt collection market such that a reasonable projection of potentially unlawful market concentration can be presented and avoided.

In regards to 1850.7(a)(1)(C)(18) which requires applicants to file an attestation with the DFPI regarding the applicant's intention to comply with various debt collection acts and regulations, I respectfully request that the DFPI amend this section to include the anti-trust laws of Title 15 in the laws concerning consumer protection to which applicants must attest their intentions to comply with.

Lastly in regards to 1850.7(a)(1)(C)(6)(c) concerning the investigative background report which applicants are required to file for any individual named on a Form MU1 for whom an MU2 has been filled who is not residing in the US or who has not resided in the US for the past ten years I respectfully request that the DFPI amend this section to require applicants to pay for this investigative report but to pay such fees either to the DFPI directly or to the Secretary of State directly and to have such investigative background reports conducted by a state agency. The potential for conflicts of interest in the filing of these reports is too great to

permit applicants to investigate themselves or to directly contract for their own investigation, particularly as those investigations concern international entities whose information would be especially difficult to corroborate by any intelligence apparatus without the resources available at the governement level. Certainly applicants should bare this cost, but they cannot bare this responsibility at the same time without damaging the benefit of the work.

Thank you for the important work that you do. I plan to submit further comments on these regulations, but I have broken my emails up by subject matter for the DFPI'S convenience.

Sincerely
George Uberti