

MEMORANDUM 2023-49

Antitrust Law: Status Report

This memorandum provides an update on the status of the Commission's study of antitrust law.¹ The latest developments are described below.

DECEMBER MEETING

Commissioners have expressed interest in hearing from the Uniform Law Commission (ULC), which is currently working on a draft of a uniform act on Antitrust Pre-Merger Notification. The draft is attached to this memorandum. The Reporter (drafter) for that project is Professor Daniel Crane of the University of Michigan Law School. Professor Crane has agreed to make a presentation on the ULC's proposal at the Commission's December 21, 2023, meeting. Daniel Robbins, who is the Chair of the ULC's Antitrust Drafting Committee, will introduce Professor Crane and make a few comments about the ULC. Brief biographies of the two speakers are attached to this memorandum.

PUBLIC COMMENT

At its June 22, 2023, meeting the Commission heard a presentation regarding European Competition Law by Professor Alison Jones. In connection with that discussion, the Chamber of Progress has submitted a letter to the Commission to read as further background on this topic. It is attached.

Respectfully submitted,

Sharon Reilly
Executive Director

¹ Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Most materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

DRAFT
FOR DISCUSSION ONLY

Antitrust Pre-Merger Notification Act

Uniform Law Commission

November 15, 2023 Draft



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By
National Conference of Commissioners on Uniform State Laws

This draft, including the proposed statutory language and any comments or reporter's notes, has not been reviewed or approved by the Uniform Law Commission or the drafting committee. It does not necessarily reflect the views of the Uniform Law Commission, its commissioners, the drafting committee, or the committee's members or reporter.

November 15, 2023

Antitrust Pre-Merger Notification Act

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Antitrust Pre-Merger Notification Act

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1 **Antitrust Pre-Merger Notification Act**

2 **Prefatory Note**

3 Since 1976, the federal Hart-Scott-Rodino Act (“HSR”), 15 U.S.C. Section 18a, has
4 required companies proposing to engage in most significant mergers or acquisitions to file a
5 notice with the two federal antitrust agencies—the Federal Trade Commission and the Justice
6 Department’s Antitrust Division—at least 30 days (or, in the case of acquisitions out of
7 bankruptcy or cash tender offers, 15 days) prior to closing. The HSR filing includes both a form
8 detailing information like the corporate structure of the parties, and additional documentary
9 material, such as presentations about the merger to the company’s board of directors. In 2023,
10 the Federal Trade Commission proposed new regulations increasing the amount of material
11 required to be submitted in the form and additional documentary material. As of this writing, the
12 regulations have not been finalized.

13
14 The HSR filing allows the federal antitrust agencies to scrutinize mergers before they are
15 consummated. Prior to HSR, the agencies often learned of a merger after it had already closed,
16 and then spent months or years investigating the transaction. If the agencies ultimately decided to
17 challenge the merger’s legality through a lawsuit, the only possible remedy was to unscramble a
18 deal often years after it had closed, and the businesses had become integrated. This was not an
19 optimal situation for the agencies, the businesses, or the public. HSR shifted most merger review
20 to the pre-merger phase, allowing earlier and more efficient engagement between the agencies
21 and the merger parties.

22
23 State Attorneys General (“AGs”) also have a legal right to challenge anticompetitive
24 mergers, both under the federal Clayton Act and their own state antitrust laws. States often play
25 an important role in merger investigations and challenges, either in parallel with the federal
26 agencies, or on their own. However, the AGs do not have access to the HSR filings. Further,
27 HSR’s strict confidentiality provisions prohibit the federal agencies from sharing HSR filings
28 with the AGs. Most AGs have the right to subpoena HSR filings under their state laws, but that
29 requires that they first become aware that an HSR filing of interest has been made, and then go
30 through a cumbersome and time-consuming process to issue a subpoena and wait for
31 compliance. In some cases, the merging parties voluntarily waive the HSR’s confidentiality
32 restrictions in order to allow AGs to obtain access to filing materials, however that process can
33 take some time to negotiate. As a result, by the time most AGs obtain access to HSR filings, the
34 federal agencies and parties are often far along in the process of investigation and negotiation.
35 This puts the AGs at a significant disadvantage in the process of merger review. It also creates
36 additional costs and uncertainties for the merging parties.

37
38 In response to these shortcomings, some states are considering legislation that would
39 create a state-specific pre-merger notification requirement. However, some of these proposals
40 would impose obligations additional to the HSR obligations on merging parties and potentially
41 move state antitrust review out of sync with federal antitrust review. For example, a proposed
42 bill in New York would have imposed a 60-day waiting period to close the deal, in contrast to
43 HSR’s 30-day waiting period. It also would have dramatically lowered the filing threshold by an
44 order of magnitude, which would have significantly increased the burden on both businesses and

1 the AG’s office. A similar bill was introduced in Maryland in 2023. The business community
2 has reacted with alarm to the prospect of burdensome and idiosyncratic state-specific pre-merger
3 notification provisions.
4

5 The Antitrust Pre-Merger Notification Act is intended to address the concerns of both the
6 AG and business communities by creating a simple, non-burdensome mechanism for AGs to
7 receive access to HSR filings at the same time as the federal agencies, and subject to the same
8 confidentiality obligations. Under the Act, covered entities—defined as natural persons who are
9 citizens of the state, or businesses having their principal place of business or at least a specified
10 threshold of annual revenues in the state—must provide their HSR filing (both the basic form
11 and the additional documentary material) to the AG contemporaneously with their federal filing.
12 The material filed with the AG is subject to essentially the same confidentiality protections as
13 applicable to the federal agencies, except that an AG that receives HSR materials may share
14 them with any other AG whose state has also adopted this Act. The anticipated effect is to
15 facilitate early information sharing and coordination among state AGs and the federal agencies,
16 subject to confidentiality obligations and without imposing any significant burden on either the
17 merging parties or the AGs. It is also anticipated that the AGs may facilitate information
18 exchange and coordination by establishing a secure central database or repository for HSR
19 filings accessible to AGs whose states have adopted this Act.
20

21 As of the time of this writing, there is a robust national debate concerning the past and
22 future of antitrust policy, including whether there should be a significant invigoration of anti-
23 merger enforcement. This proposal takes no side in that debate. By providing AGs earlier,
24 confidential access to HSR filings, it is not intended to suggest any view on the merits of the
25 mergers they may review or how they should wield their investigatory and litigation powers. Nor
26 is the goal of minimizing the burden on business meant to suggest any view on the optimal level
27 of merger activity or regulatory review of mergers. Rather, this act is animated by a spirit of
28 good government—of respecting the role of the States in the merger review process, of the need
29 for confidentiality, and of advancing the efficiency of the process for the benefit of all parties
30 involved.

1 **Antitrust Pre-Merger Notification Act**

2 **Section 1. Title**

3 This [act] may be cited as the Antitrust Pre-Merger Notification Act.

4 **Section 2. Definitions**

5 In this [act]:

6 (1) “Additional documentary material” means the additional documentary
7 material required to be filed with a Hart-Scott-Rodino form.

8 (2) “Electronic” means relating to technology having electrical, digital, magnetic,
9 wireless, optical, electromagnetic, or similar capabilities.

10 (3) “Filing threshold” means the minimum size of a transaction that:

11 (A) requires the transaction to be reported under the Hart-Scott-Rodino
12 Act, 15 U.S.C. Section 18a [, as amended]; and

13 (B) is in effect when a person files a pre-merger notification.

14 (4) “Hart-Scott-Rodino form” means the form required to be filed with a pre-
15 merger notification.

16 (5) “Person” means an individual, estate, business or nonprofit entity, government or
17 governmental subdivision, agency, or instrumentality, or other legal entity.

18 (6) “Pre-merger notification” means a notification filed with the Federal Trade
19 Commission and the United States Department of Justice Antitrust Division under the Hart-
20 Scott-Rodino Act, 15 U.S.C. Section 18a [, as amended].

21 (7) “State” means a state of the United States, the District of Columbia, Puerto
22 Rico, the United States Virgin Islands, or any other territory or possession subject to the
23 jurisdiction of the United States.

24 ***Legislative Note:*** *It is the intent of this act to incorporate future amendments to the cited federal*

1 *law in paragraphs (3) and (6). A state in which the constitution or other law does not permit*
2 *incorporation of future amendments when a federal statute is incorporated into state law should*
3 *omit the phrase “, as amended”. A state in which, in the absence of a legislative declaration,*
4 *future amendments are incorporated into state law also should omit the phrase.*

5
6 **Section 3. Filing Requirement**

7 (a) A person that files a pre-merger notification shall file contemporaneously a complete
8 electronic copy of the Hart-Scott-Rodino form with the Attorney General if either:

9 (1) the person is a citizen of this state or the person’s principal place of business is
10 in this state; or

11 (2) the annual net sales of the person in this state as stated on the last regularly
12 prepared annual statement of income and expense of that person were at least twenty (20)
13 percent of the filing threshold.

14 (b) A person that files a Hart-Scott-Rodino form under Section 3(a)(1) shall include with
15 its filing a complete electronic copy of the additional documentary material.

16 (c) On request of the Attorney General, a person who is a citizen of another state or with
17 its principal place of business in another state that has filed a form under Section 3(a)(2) shall
18 provide a complete electronic copy of the additional documentary material to the Attorney
19 General not later than [seven] days after receipt of the request.

20
21 **Comment**

22 The goals of the filing requirement are (a) to ensure that the Hart-Scott-Rodino form and
23 the additional documentary material are filed with one state and (b) to provide notice through the
24 form alone to every state that might have a significant interest in the proposed merger. Paragraph
25 (a)(1) is directed to the first goal; paragraph (a)(2) to the second goal.

26
27 The Section uses well-established criteria to determine when a person has a filing
28 obligation in a state. Citizenship for natural persons and principal place of business for
29 corporations in paragraph (1) are well-understood concepts from federal diversity jurisdiction,
30 and annual net sales from income and expense statements is a widely utilized measure of

1 economic activity borrowed from the Hart-Scott-Rodino regulations. As noted in the definitions,
2 the filing threshold refers to the minimum size of transaction threshold for determining
3 reportability under the Hart-Scott-Rodino Act that the Federal Trade Commission adjusts
4 annually by rule pursuant to Section 7A(a)(2) of the Clayton Act, as amended by the Hart-Scott-
5 Rodino Act. For reference, in 2023 the minimum size of transaction threshold promulgated by
6 the FTC was \$111.4 million. Hence, for illustrative purposes, a party that made a Hart-Scott-
7 Rodino pre-merger notification in 2023 and did not have its principal place of business in a state
8 that adopted this Act would need to determine whether its 2022 annual net sales in the state were
9 at least 20% of \$111.4 million. If so, the party would be obligated to make a filing in the state
10 pursuant to Section (a)(2).
11

12 Section (b) obligates a person that has its principal place of business in a state to provide
13 both the HSR form and the additional documentary material to the state’s Attorney General
14 contemporaneously with the HSR filing. In other states where the party meets the annual net
15 sales threshold, the person need only provide the basic HSR form with their initial filing,
16 although the Attorney General may then request the additional documentary material under
17 Section (c). The reason for this structure is to prevent Attorneys General from being inundated
18 with voluminous additional documentary material that they have no interest in reviewing. To the
19 extent an Attorney General does not receive the additional documentary material with the initial
20 filing but is interested in reviewing that material sooner than the seven days allowed for a party
21 to submit that material upon request, the Attorney General may request that material from the
22 Attorney General of the party’s state of principal place of business under Section 6 (assuming
23 that that state has also passed this Act).
24

25 **Section 4. Fee Prohibition**

26 The Attorney General may not charge a fee under Section 3.

27 **Comment**

28 The spirit of this Act is to facilitate more timely and efficient state Attorney
29 General receipt of materials relating to potentially interesting mergers without imposing
30 significant additional burdens on the business community. Accordingly, Section 4 prohibits the
31 charging of fees for simply making available to Attorneys General information that the Attorney
32 General already could procure by subpoena, for which it could not charge the company a fee.
33 Although reviewing merger filings requires resources, this Act is not designed to impose
34 additional costs on Attorney General offices. To the contrary, by facilitating quick and efficient
35 receipt of HSR files, the Act will save the Attorneys General time and resources previously
36 consumed in bargaining with merging parties over HSR waivers or subpoenaing HSR files.
37 Further, the confidentiality provisions of this Act are designed to facilitate information sharing
38 and collaboration among the Attorneys General and the federal antitrust agencies, and among the
39 Attorneys General themselves. More efficient inter-agency collaboration should reduce
40 duplication of effort and allow existing resources to be deployed more efficiently on merger
41 review.
42

1 Separately from a filing fee, some state statutes permit the Attorney General to recovery
2 investigatory costs from investigation subjects in certain contexts. Section 4 is not meant to
3 affect the operation of those statutes. To the extent that an Attorney General seeks recovery of
4 investigation costs (as opposed to a filing fee) pursuant to a separate statute, Section 4 does not
5 bar such fee recovery.

6
7 **Section 5. Confidentiality**

8 (a) Except as provided in subsection (c) and Section 7, the Attorney General may not
9 make public or disclose:

10 (1) a Hart-Scott-Rodino form filed under Section 3;

11 (2) the additional documentary material filed or provided under Section 3;

12 (3) information that the form or the additional documentary material were filed
13 with or provided to the Attorney General; and

14 (4) the merger proposed in the form.

15 (b) The information in subsection (a) is exempt from disclosure under [cite to state's
16 freedom of information act.]

17 (c) The Attorney General may disclose the information listed in subsection (a) in an
18 administrative proceeding or judicial action when the proposed merger is relevant to the
19 proceeding or action, subject to any protective order entered by a court, judicial officer, or
20 agency.

21 (d) This [act] does not reduce any other confidentiality or information security obligation
22 of the Attorney General imposed by other law.

23 **Legislative Note:** *A state should examine its freedom of information act to ensure that no conflict*
24 *exists with the exception to disclosure in subsection (a) and may need to amend its freedom of*
25 *information act to align it with the exception in subsection (a).*

26
27 **Comment**

28 Confidentiality is highly important for this Act and the entire HSR filing process. The
29 HSR materials contain confidential and valuable information. Improper disclosure could

1 jeopardize the transaction and harm competition, but in addition it could pose securities law
2 problems and allow unfair competition, or even facilitate collusion. These protections mirror
3 protections that are imposed on the federal agencies which also receive the information.
4

5 This Section ensures that Attorneys General use the HSR materials only for legitimate
6 investigatory and law enforcement purposes, and do not disclose any HSR material except for
7 those permissible purposes. The fact that an HSR filing has been made is included in the covered
8 confidentiality obligations. In other words, an Attorney General may not disclose even the fact
9 that two parties are proposing to merge (other than in an administrative proceeding or judicial
10 action) if that information has become known only through compliance with this Act. Section 5
11 is not meant to prevent Attorneys General from publicly disclosing information that is already in
12 the public domain.
13

14 **Section 6. Reciprocity**

15 (a) The Attorney General may disclose a Hart-Scott-Rodino form and additional
16 documentary material filed under Section 3 to the attorney general of any other state that enacts
17 this [act], including the confidentiality provisions of the [act].

18 (b) A Hart-Scott-Rodino form and additional documentary material received by the
19 attorney general of another state that is disclosed to the Attorney General of this state under a
20 substantially similar law is subject to the same confidentiality protections as if filed with the
21 Attorney General of this state under Section 3.

22 (c) Prior to making a disclosure of a Hart-Scott-Rodino form or additional documentary
23 material to the attorney general of another state under subsection (a), the Attorney General of this
24 state shall give notice of the disclosure to the person that filed the pre-merger notification.

25 **Comment**

26 This Section does not require the Hart-Scott-Rodino form or additional documentary
27 material to be delivered individually to each attorney general. An attorney general, or the
28 attorneys general collectively, may establish a secure central electronic database of the materials
29 that can be shared only with attorneys general entitled to receive the materials. The establishment
30 of a secure central database would not conflict with the confidentiality provisions of this act.
31

32 **Section 7. Civil Penalty**

33 The Attorney General may impose on a person that fails to comply with Section 3 a civil

1 penalty of not more than \$[10,000] per day of non-compliance.

2 **Comment**

3 The sanctions provision is intended to incentivize compliance with the statute. A \$10,000
4 per day fine is intended to serve as a limit rather than an automatic penalty. In determining
5 whether any fine should be levied and its amount, the Attorney General in the first instance, and
6 then any reviewing court, should consider factors such as: (1) whether the non-compliance was
7 intentional, negligent, accidental, or excusable; (2) whether the non-compliance materially
8 impaired the Attorney General’s ability to engage in merger review; and (3) whether other States
9 have, or are likely to, impose sanctions for violations of their States’ laws with respect to the
10 same transaction. The provision for monetary sanctions is not meant to prevent a court of
11 competent jurisdiction from ordering such equitable relief as the court may deem appropriate.

12
13 **Section 8. Uniformity of Application and Construction**

14 In applying and construing this uniform act, a court shall consider the promotion of
15 uniformity of the law among jurisdictions that enact it.

16 **Section 9. Effective Date and Applicability**

17 This [act] takes effect on [insert date] and applies only to a pre-merger notification filed
18 after the effective date of this [act].

BIOGRAPHIES OF PRESENTERS

Daniel Robbins

Dan Robbins, Senior Vice President and Associate General Counsel of the Motion Picture Association (MPA), served as the immediate past President of the Uniform Law Commission (ULC) and is currently Chair of the ULC's Antitrust Drafting Committee.

Mr. Robbins was first appointed to the ULC from California in 2007. He served as Chair of the California Uniform Law Commission from 2013 to 2015. As a California uniform law commissioner, he has served on numerous committees, including the drafting committees on the Uniform Division of Income for Tax Purposes Act, the Uniform Choice of Courts Agreements Convention Implementation Act and the Uniform Fiduciary Access to Digital Assets Act. He previously served as the ULC's Secretary and Chair of the Scope and Program Committee of the ULC, the committee which recommends the study and drafting projects which the ULC should undertake. Most recently, he chaired the Executive Committee, which is the governing body of the ULC and is responsible for implementing policies adopted by the Commission at its meetings.

Based in the MPA's Los Angeles office, Dan is responsible for the association's global competition and anti-corruption compliance and legal technology issues, and he chairs the movie rating appeals board. Dan also serves as the MPA's regional general counsel for Latin America and is deeply involved in the association's work in China. He is a widely recognized antitrust expert. He helped the MPA studios create the joint venture that launched the DVD in 1996 and helped form MovieLabs, an MPA member company R&D joint venture, where he has served as general counsel since 2005.

Before joining the MPA, Robbins worked at the law firms of Graham & James LLP and Pepper Hamilton LLP, where he specialized in antitrust and intellectual property matters. In 2016 he was elected to the American Law Institute. He earned a B.A. in economics from Vanderbilt University, where he was elected to Phi Beta Kappa, and his J.D. from the UCLA School of Law, where he earned an American Jurisprudence Award for his study of the Uniform Commercial Code.

Professor Daniel Crane

Daniel Crane is the Richard W. Pogue Professor of Law at the University of Michigan. He served as the associate dean for faculty and research from 2013 to 2016. He teaches Contracts, Antitrust, Antitrust and Intellectual Property, and Legislation and Regulation.

Crane previously was a professor of law at Yeshiva University's Benjamin N. Cardozo

School of Law and a visiting professor at New York University School of Law and the University of Chicago Law School. In spring 2009, he taught antitrust law on a Fulbright Scholarship at the Universidade Católica Portuguesa in Lisbon.

Crane's work has appeared in the *University of Chicago Law Review*, the *California Law Review*, the *Michigan Law Review*, the *Georgetown Law Journal*, and the *Cornell Law Review*, among other journals. He is the author of several books on antitrust law, including *Antitrust* (Aspen, 2014), *The Making of Competition Policy: Legal and Economic Sources* (Oxford University Press, 2013), and *The Institutional Structure of Antitrust Enforcement* (Oxford University Press, 2011).

He earned a BA from Wheaton College and J.D. from the University of Chicago. He served as a clerk to the US District Court for the Southern District of Florida, the Hon. Kenneth L. Ryskamp.



November 20, 2023

Dr. David Carrillo, Chairperson
California Law Revision Commission
c/o UC Davis School of Law
400 Mrak Hall Drive
Davis, CA 95616

Re: California Law Revision Commission - Study B-750 (Antitrust Law)

Dear Chairperson Carrillo and Members of the Commission:

I am writing today on behalf of Chamber of Progress, a center-left tech industry association that supports federal and state policies that seek to build a fairer, more inclusive country in which all Americans benefit from technological leaps. Thank you for your ongoing examination of possible reforms to California's antitrust law, which is essential to protecting consumers from harm.

At the Commission's June 22nd meeting, you heard a [presentation](#) from Professor Alison Jones about European competition law. Prior to the release of the gatekeeper list, U.S. officials voiced concerns about Europe specifically targeting U.S. tech companies.

The EU's list of gatekeepers includes six companies; Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft. The list validates concerns raised by U.S. officials regarding the targeting of U.S. tech companies, with five out of the six gatekeepers based in the U.S.. Furthermore, Alphabet, Apple, and Meta are headquartered in California and as such, the EU's recent designation is likely to impact Californians.

In May 2021, Financial Times [reported](#) comments from European Parliament Member Andreas Schwab suggesting that the DMA should exclusively target the five largest U.S. firms.

“Let's focus first on the biggest problems, on the biggest bottlenecks. Let's go down the line — one, two, three, four, five — and maybe six with Alibaba,” he said to the Financial Times.

“But let’s not start with number 7 to include a European gatekeeper just to please [US president Joe] Biden,” he added.”¹

His comments raised concerns regarding regulatory cooperation between the U.S. and Europe. In June 2021, Financial Times [reported](#) that the National Security Council (NSC), an arm of the White House, expressed concerns to the EU delegation in the U.S. Capitol about the DMA.

The NSC wrote:

“Comments and approaches such as this...send a message that **the [European] Commission is not interested in engaging with the United States in good faith to address these common challenges in a way that serves our shared interests.**”²

U.S. Secretary of Commerce, Gina Raimondo, voiced similar concerns in late 2021. Reuters [reported](#) on her remarks citing her statement that the U.S. has, "serious concerns that these proposals will **disproportionately impact U.S.-based tech firms.**"³

In January 2022, Politico [reported](#) that the U.S. was pressuring the EU to revise criteria to determine which companies were gatekeepers under the DMA. The U.S. expressed concern that the DMA targeted U.S. tech companies specifically.⁴

"We think it is important that regulatory efforts on either side of the Atlantic do not create unintended adverse consequences, such as inadvertent cybersecurity risks or harms to technological innovation" ... "We have also been clear that we oppose efforts specifically designed to target only U.S. companies where similarly situated non-U.S. companies would not be covered."⁵

In February 2022, several members of Congress wrote a [letter](#) to President Biden expressing concerns about the EU deliberately targeting U.S. companies as gatekeepers under the DMA. They wrote that the DMA,

¹ Espinozza, Javier, "EU should focus on top 5 tech companies, says leading MEP", Financial Times, May 30, 2021. <https://www.ft.com/content/49f3d7f2-30d5-4336-87ad-eea0ee0ecc7b>

² Espinoza, Javier and Politi, James, "US warns EU against anti-American tech policy". Financial Times, June 15, 2021. <https://www.ft.com/content/2036d7e9-daa2-445d-8f88-6fcee745a259>

³ Bartz, Diane, "Big Tech critics ask Raimondo for meeting after critique of European proposals", Reuters, Dec. 22, 2021. <https://www.reuters.com/technology/big-tech-critics-ask-raimondo-meeting-after-critique-european-proposals-2021-12-22/>

⁴ Stolton, Samuel, "US pushes to change EU's digital gatekeeper rules", *Politico Pro*, January 31, 2022. <https://www.politico.eu/article/us-government-in-bid-to-change-eu-digital-markets-act/>

⁵ Ibid

“unfairly targets American workers by deeming certain U.S. technology companies as “gatekeepers” based on deliberately discriminatory and subjective thresholds.”⁶

Furthermore, the letter expressed concerns over the intent of the DMA:

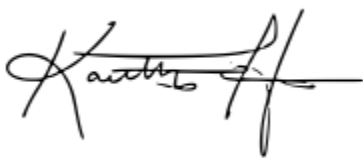
“In its current form, the DMA would only apply to American companies with large numbers of American workers. This de facto discrimination against U.S. firms and workers is unfortunately by design. As European leaders have made clear, the DMA as currently drafted is driven not by concerns regarding appropriate market share, but by a desire to restrict American companies’ access in Europe in order to prop up European companies. In fact, the lead negotiator of the DMA stated that its size thresholds were intentionally set so they would not apply to European firms.”⁷

Moreover, signatories of the letter indicated major concerns regarding the lack of foreign non-U.S. firms affected by the legislation. They wrote:

“it also alarms us that the DMA would not apply to Chinese, Russian, or other foreign firms. These include tech firms such as Alibaba, Huawei, Baidu, and Tencent, which already operate at a competitive advantage as they are supported by the Chinese government and benefit from a protected market of over 1.3 billion consumers in China.”⁸

I hope this information is helpful to the Commission as it continues to examine potential revisions to California’s antitrust statutes. Thank you for considering our letter.

Respectfully,



Kaitlyn Harger, PhD
Senior Economist
Chamber of Progress

⁶ Letter to President Biden, Feb. 23, 2022.

https://delbene.house.gov/uploadedfiles/eu_digital_markets_act_letter.pdf

⁷ Ibid

⁸ Ibid