

THIRD SUPPLEMENT TO MEMORANDUM 2024-32

Antitrust Law: Status Update (Public Comment, Presentations, and Additional Material)

This supplement provides (1) public comments and slides from three of the panelists presenting at the Commission’s August 15, 2024 meeting, (2) an update from Dan Robbins on behalf of the Uniform Law Commission (ULC) on the ULC’s Draft Uniform Antitrust Pre-Merger Notification Act, and (3) additional materials. The updates from the ULC, comments, and slides are attached as Exhibits.

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PUBLIC COMMENT AND PRESENTATIONS

The staff has received a number of public comments relating to the Antitrust Study. The most recent comments are attached as Exhibits to this memorandum.

If the staff receives additional public comments, the comments will be provided in another supplemental memorandum.

Western States Petroleum Association

This comment was submitted by Roxane Polidora and Lee Brand from Pillsbury Winthrop Shaw Pittman LLP on behalf of the Western States Petroleum Association. According to its [website](#):

Western States Petroleum Association (WSPA) is a non-profit trade association that represents companies that account for the bulk of petroleum exploration, production, refining, transportation and marketing in the five western states of Arizona, California, Nevada, Oregon, and Washington.

...WSPA is dedicated to ensuring that Americans continue to have reliable access to petroleum and petroleum products through policies that are socially,

economically and environmentally responsible. We believe the best way to achieve this goal is through a better understanding of the relevant issues by government leaders, the media and the general public. Toward that end, WSPA works to disseminate accurate information on industry issues and to provide a forum for the exchange of ideas on petroleum matters.

This comment suggests the Commission request a supplemental expert report on the intersection of antitrust law with collaborations among competitors on environmental, social, and governance matters. Roxane Polidora and Lee Brand¹ will be panelists at the August 15, 2024 Commission meeting and also submitted slides in support of their presentation.

California Nurses Association/National Nurses United

These slides were submitted by Carmen Comsti, on behalf of the [California Nurses Association/National Nurses United](#). Carmen Comsti will be a panelist at the August 15, 2024 Commission meeting and her presentation relates to consolidation in the hospital industry.

International Center for Law & Economics

These slides were submitted by Geoffrey Manne on behalf of the [International Center for Law & Economics](#) (ICLE). Geoffrey Manne will be a panelist at the August 15, 2024 Commission meeting, and the presentation relates to competition and concentration.

According to ICLE's website, its "mission is to promote the use of law & economics methodologies to inform public policy debates."²

UPDATE FROM ULC: ANTITRUST PRE-MERGER NOTIFICATION ACT

The staff received the following email on August 12, 2024 from Dan Robbins, Immediate Past President and Commissioner of the ULC and Chair of the ULC's Study Commission on Antitrust, relating to its draft Uniform Act on Antitrust Pre-Merger Notification.

I write with an update on the Uniform Law Commission's (ULC) Antitrust Pre-merger Notification Act (the Act.)

On July 18, the American Bar Association's Antitrust Section wrote the ULC expressing its support for the Act. A copy of the letter in support is attached. The ABA's Antitrust Section is a strong and active section. The membership is balanced and includes many enforcers and company lawyers.

¹ Their biographies can be found in the [Second Supplement to Memorandum 24-32](#) at p. 16.

² <https://laweconcenter.org/about/>

The ULC is comprised of gubernatorial and legislative appointees from all the states. Each state has its own delegation and its own commission. In California, that commission is the California Commission on Uniform State Laws (CCUSL).

Each summer the ULC convenes all the states to its annual meeting to discuss and vote on each proposed uniform act. The ULC annual meeting occurred this summer in Boston. The Act was read over the course of several days during the legislative session. On July 19, the CCUSL met and unanimously approved the Act. On July 24, the states, including California, overwhelmingly approved the Act by a vote of 45-1. Only Alabama voted against the Act.

The approved Act now goes to the ULC legislative style committee, chaired by commissioner Diane Boyer-Vine of California. Once appropriately styled for the states, the Act will be sent out for enactment in the 2025 legislative cycle.

Dan Robbins provided the letter from the [American Bar Association](#) referenced above and the latest version of the Act, which are both attached as Exhibits. He will provide further public comment at the August 15, 2024 Commission meeting.

ADDITIONAL MATERIAL

Competition Law Journal

This submission is from the California Lawyers Association. The Spring 2023 edition of the Competition Law Journal speaks broadly to the Antitrust Study. According to its [website](#),

Competition is a semi-annual law journal published by the Antitrust and Unfair Competition Law Section. The journal includes scholarly and practice-oriented articles relating to current issues and developments in the areas of antitrust, unfair competition, and trade regulation. *Competition* invites articles from attorneys, judges, economists, academics, and others who have an interest in antitrust, unfair competition, and trade regulation issues. A free annual subscription is a benefit of Section membership.

The Spring 2023 edition is particularly relevant to the Antitrust Study. According to the Message from the Editor:

In [this](#) edition of *Competition*, we showcase articles from an impressive line-up of antitrust thought leaders who share their views on the topics the California Law Review Commission (CLRC) is currently studying. Broadly, the CLRC is evaluating whether the Cartwright Act should be revised: to outlaw monopolies by single companies; in the context of technology companies; or in any other fashion.

Respectfully submitted,

Sharon Reilly
Executive Director

Sarah Huchel
Staff Counsel