FIRST SUPPLEMENT TO MEMORANDUM 2026-10

Antitrust Study: Single Firm Conduct
(Proposed Revision and Summary of Public Comments)

This memorandum presents a summary of the public comments included in Memorandum 2026-10[1] responsive to the Tentative Recommendation[2] and recommends a revision to proposed Section 16731(c) in response to some of the comments.

The Commission has welcomed and received over one hundred public comments throughout the Antitrust Law Study process representing a wide range of views.[3] The public comments received in response to the Tentative Recommendation circulated for public comment track comments previously considered by the Commission.

[1] Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website. 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. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

[2] Several commenters referred to the proposed statutes as numbered in the Tentative Recommendation, Bus. & Prof. Code §§ 16729 – 16731, pp. 23-25. For ease of reference, this memorandum refers to the proposed statues as renumbered in the Staff Draft Final Recommendation, Bus. & Prof. Code §§ 16730 – 16732. Memorandum 2026-10, EX 27-29.

[3] Antitrust Law Study webpage, Index of Public Comments.

PROPOSED REVISION

Proposed Section 16731(c)

In Memorandum 2026-10,[4] the staff indicated they were not recommending any changes to the proposed statutory language based on the public comments received in response to the tentative recommendation. However, after further consideration of the public comments[5] and consulting with the Commission's antitrust expert, the staff is recommending a revision to proposed Section 16731(c).

Section 16731 currently reads:

> **SEC. ___. Section ~~16729~~ 16731 is added to the Business and Professions Code, to read:**
>
> (a) It is unlawful for one or more persons to act, cause, take or direct measures, actions, or events:
>
> (1) In restraint of trade; or,
>
> (2) To monopolize or monopsonize, to attempt to monopolize or monopsonize, to maintain a monopoly or monopsony, or to combine or conspire with another person to monopolize or monopsonize in any part of trade or commerce.
>
> (b) As used in this section, "restraint of trade" shall include, but not be limited to, any actions, measures, or acts included or cognizable under Section 16720, whether directed, caused, or performed by one or more persons.
>
> (c) Anticompetitive effects in one market from the challenged conduct may not be offset by purported benefits in a separate market; and the harm to a person or persons from the challenged conduct may not be offset by purported benefits to another person or persons.

This language was suggested in an August 2025 comment from the International

[4] Memorandum 2026-10, p. 9.

[5] See Memorandum 2026-10, comments from Chamber of Progress, EX 51-52, Daniel Francis, EX 73-74, and Tech-Freedom, EX 107-109.

Brotherhood of Teamsters, Teamsters California, United Food and Commercial Workers, Western States Council, and California Federation of Labor Unions.[6] When presenting this language barring cross market balancing of harms and benefits, the staff advised it was unnecessary because it restates existing California case law on this issue.[7] The Commission, however, was persuaded by public comments that the additional language could add clarity because federal cases have created some confusion on this topic.[8]

In light of the public comments, the staff recommends Section 16731(c) be revised to more closely mirror existing California case law. This includes striking the use of "purported," which could be misread to undermine the existing standard of proof as to the certainty and nature of benefits that may be balanced against harm in the market. The proposed revisions are:

> **SEC. ___. Section ~~16729~~ 16731 is added to the Business and Professions Code, to read:**
>
> (a) It is unlawful for one or more persons to act, cause, take or direct measures, actions, or events:
>
> (1) In restraint of trade; or,
>
> (2) To monopolize or monopsonize, to attempt to monopolize or monopsonize, to maintain a monopoly or monopsony, or to combine or conspire with another person to monopolize or monopsonize in any part of trade or commerce.
>
> (b) As used in this section, "restraint of trade" shall include, but not be limited to, any actions, measures, or acts included or cognizable under Section 16720, whether directed, caused, or performed by one or more persons.
>
> (c) Anticompetitive effects and procompetitive justifications of the challenged conduct shall be evaluated within the same relevant market. ~~in one market from the challenged conduct may not be offset by purported benefits in a separate market; and the harm to a person or persons from the challenged conduct may not be offset by purported benefits to another person or persons.~~

The staff is also recommending a corresponding change to the Commission Comment pertaining to that subdivision:

> Subdivision (c) clarifies that anticompetitive effects may only be offset by benefits in the same market ~~and to the same persons originally affected by the anticompetitive conduct~~. *Marsh v. Anesthesia Services Medical Group, Inc.* (2011) 200 Cal.App.4th 480, 499.

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[6] Memorandum 2025-41, EX. 15.

[7] *Marsh v. Anesthesia Services Medical Group, Inc.* (2011) 200 Cal.App.4th 480, 499. "…the reasonableness of a restraint is evaluated based on its impact on competition as a whole within the relevant market."

[8] Video of Commission meeting in September 2025, 1:36:30-1:40:11; Memorandum 2024-15, pp. 9-20. See also *U.S. v. Google, LLC, (2025) ---F.Supp.--- (DC),* 2025 WL 2523010; *Epic Games, Inc. v. Apple, Inc.* (2023) 67 F.4th 946, 989 (U.S. Supreme Court "precedent on cross-market balancing is unclear.").

Would the Commission like to adopt these changes to the Final Recommendation?

PUBLIC COMMENTS

American Bar Association Antitrust Law Section

The American Bar Association Antitrust Law Section[9] did not take "a position on whether California should expand the scope of existing prohibitions on anticompetitive single-firm conduct," however suggested that the Commission "incorporate in any recommendation limiting principles to assist businesses and courts in distinguishing between lawful and unlawful single firm conduct."[10]

The Antitrust Law Section states:

> The absence of adequate limiting principles will present substantial challenges for enforcers and the judiciary, particularly generalist judges, particularly when applying the new statute to cases of first impression. It will also increase the risk of unintended or inconsistent legal outcomes. If the Commission has concluded that existing Section 2 [of the Sherman Act] limiting principles are overly restrictive, the Section respectfully suggests recalibrating the thresholds rather than abandoning them altogether.[11]

The Antitrust Law Section did not provide any examples of limiting principles.

American Economic Liberties Project, California Nurses Association, CAMEO Network, Consumer Federation of California, Democracy Policy Network, Economic Security California Action, End Poverty in California, Institute for Local Self Reliance, Public Good Law Center, Small Business Majority, Teamsters California, TechEquity Action, United Domestic Workers (UDW/AFSCME Local 3930), United Food and Commercial Workers Western States Council, Writers Guild of America West (AELP Coalition)

The AELP Coalition's comment encourages the Commission to approve the Tentative Recommendation without change. The AELP Coalition states:

> In particular, we applaud the Commission for arriving at a Tentative Recommendation that:

[9] These comments were submitted by the Antitrust Law Section of the ABA, and "have not been reviewed or approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association." Memorandum 2026-10, EX 47.

[10] Memorandum 2026-10, EX 49.

[11] Memorandum 2026-10, EX 50.

- Distinguishes California antitrust law from federal law, rejecting proposals that would have thwarted reform by importing federal jurisprudence that has fostered an environment of under-enforcement and exacerbated the costs of under-deterrence;

- Nevertheless draws on existing language and best practices under federal and state antitrust law, rather than creating a wholly new standard that would risk uncertainty for businesses and potentially chill growth and innovation;

- Recognizes the unique evidence of anticompetitive conduct by large digital platform companies in the technology industry, without creating an industry-specific approach to antitrust scrutiny;

- Recognizes that unilateral restraints of trade can occur where a single firm possesses market power comparable to multi-firm restraints of trade, reflecting a longstanding holding of the United States Supreme Court in Copperweld v. Indep. Tube Corp., 467 U.S. 752 (1984);

- Expressly prohibits illegal monopsony power, reflecting the universal understanding that illegal concentrations of corporate power also harm wages, working conditions, and job mobility;

- Codifies the prevailing standard under federal and state antitrust law against "cross-market balancing," or the trading of anticompetitive harms in one market for theoretical benefits in a separate market, which otherwise threatens the administrability of antitrust with boundless judicial discretion to grant "get out of jail free" cards to illegal monopolists;

- Preserves core limiting principles, like the substantial foreclosure test for prohibiting exclusive dealing, contrary to remarks of some commenters who have mistakenly represented that small firms without market power to unreasonably restrain trade might become targets of litigation; and

- Provides extensive judicial guidance to provide clarity to courts and enhance the reach of California antitrust law to stem conduct like predatory pricing and anticompetitive refusals to deal, which frequently appear across markets but have been rendered all-but-impossible to enforce against. [emphasis in original] [12]

[12] Memorandum 2026-10, EX 91-92.

ASM Games

ASM Games requests the Commission reconsider its Tentative Recommendation, believing it will be bad for small businesses. It states:

> Such legislation may be well-intended, but I believe it will make it harder for millions of California small businesses — including mine — to leverage the digital tools we need to grow, compete with bigger businesses, and succeed in today's economy. (Footnote omitted).[13]

ASM Games is concerned that the Tentative Recommendation could limit the ability of small business to access and integrate "tools that integrate analytics and data, pricing, and fulfillment options"[14] that help them compete on a level playing field with large game-makers.

Bay Area Council (BAC)

BAC writes in opposition to the Tentative Recommendation, expressing concerns that it "would, if adopted, produce real-world harm for consumers and businesses."[15]

> The proposed departure from the federal Sherman Act creates significant legal uncertainty for high-growth companies. The proposal to lower market share thresholds to establish dominance ignores the reality of dynamic tech markets where market share can shift rapidly due to innovation rather than exclusionary conduct.
>
> Proposed changes would prevent courts from considering benefits in one market to offset harms in another. For innovation companies, integrated platforms often provide free or subsidized services to consumers funded by different revenue streams. Prohibiting this balancing threatens the very business models that have lowered costs for millions of Californians.
>
> Further, allowing direct evidence of market power to bypass traditional market definition increases the risk of "false positives," where pro-competitive, aggressive competition is mischaracterized as predatory.[16]

California Chamber of Commerce (CalChamber)

CalChamber does not believe any changes are necessary to California's antitrust laws and disagrees with the Commission's process and its Tentative Recommendation, stating:

> In addition to the structural problems with the process leading up to the

[13] Memorandum 2026-10, EX 70.
[14] Memorandum 2026-10, EX 70.
[15] Memorandum 2026-10, EX 88.
[16] Memorandum 2026-10, EX 89.

> Recommendation, the Recommendation is not narrowly tailored to rein in defined anticompetitive conduct, but instead is so novel, undefined and broad that it may chill and impinge competition at every level of the California economy.[17]

CalChamber reiterated its concern that the Commission has not provided evidence that there is a need for California to create its own single firm conduct law, stating:

> …there is no study or analysis suggesting that California consumers and businesses are suffering from reduced competition, higher prices, inferior products and services or lessened innovation because California does not have its own single-firm conduct provision.[18]

CalChamber also expressed concern that the Commission, in its view, has not considered the effects and costs of the Tentative Recommendation, stating:

> Stifling pro-competitive conduct can harm consumers and the overall economy in the same manner as anticompetitive conduct, meaning there is no reasonable basis to ignore the chilling effects of new regulation. That is why it is imperative to utilize a cost-benefit analysis to determine whether the Recommendation is – on balance – likely to improve economic performance and efficiency at a cost that State and its citizens are willing to bear. This work also has not been done.[19]

CalChamber also believes that the "restraint of trade language[20] … will cause great uncertainty, will increase costs, will increase litigation and is likely to result in conflicting results in the courts."[21] CalChamber further expressed that the tentative recommendation "may outlaw common business practices that are generally viewed by courts and economists as pro-competitive and good for consumers."[22]

California Life Sciences (CLS)

CLS submitted comments in December 2025 and in January 2026. In its December 2025 comments, CLS raised the following concerns about the Tentative Recommendation:

- The proposed language defines "restraint of trade" expansively and imposes liability for actions "cognizable" under existing law without requiring proof of market power, anticompetitive intent, or market effects. Life sciences research depends on partnerships between biotech, academic institutions, diagnostics companies, and manufacturers. These collaborations frequently involve coordinated conduct, exclusive arrangements, data-sharing, and resource pooling that could be

[17] Memorandum 2026-10, EX 53.
[18] Memorandum 2026-10, EX 53.
[19] Memorandum 2026-10, EX 54.
[20] This refers to proposed Bus. & Prof. Code § 16731. Memorandum 2026-10, EX 18.
[21] Memorandum 2026-10, EX 54.
[22] Memorandum 2026-10, EX 54.

misconstrued as restraints under the proposed framework.[23]

- The proposal's prohibition on considering pro-competitive benefits in adjacent or complementary markets represents a significant departure from established antitrust principles… Such a rigid approach would discourage efficiency-enhancing behavior, increase operational and administrative costs, and ultimately limit patient access to lifesaving and life-improving therapies.[24]

- The proposal would further allow courts to find market power or anticompetitive conduct without first defining the relevant market whenever "direct evidence" is available. This change is especially concerning for the life sciences industry, where market structures are uniquely shaped by federal regulatory frameworks, scientific progress, and the specialized nature of treating complex or rare conditions… Firms could face allegations of market power or anticompetitive behavior simply because of scientific success, rather than any unfair or exclusionary tactic. This uncertainty may deter investment in high-risk research and development in areas of critical unmet need, to the detriment of patients who rely on continued biomedical innovation.[25]

The proposal lists several factors that courts may not require to establish exclusionary conduct, removing many guardrails that prevent false positives in antitrust enforcement. Common life sciences practices such as volume-based discounts, differentiated contracting, promotional pricing, and adjusting distributor relationships could be challenged as exclusionary even when economically justified. As a result, pharmaceutical manufacturers, diagnostics firms, and device companies may face litigation simply for offering discounts, altering long-standing distribution pathways, or withdrawing from inefficient arrangements.[26]

The January 2026 CLS comment echoes these concerns:

> Specifically, we believe the addition of Sections [16730, 16731, and 16732][27] to the Business and Professions Code will create significant legal uncertainty and risk unintended consequences for research and development, biomanufacturing, supply-chain stability, and the collaborative partnerships that underpin scientific innovation and public health.
>
> As drafted, the Commission's recommendation would substantially expand single-firm antitrust liability, disrupting California's second largest sector, which consistently delivers lifesaving treatments to patients, drives significant economic value to the state, and thousands of high-quality jobs for Californians.[28]

[23] Memorandum 2026-10, EX 129.
[24] Memorandum 2026-10, EX 130.
[25] Memorandum 2026-10, EX 130-131.
[26] Memorandum 2026-10, EX 131.
[27] See *supra* n. 2.
[28] Memorandum 2026-10, EX 56.

Chamber of Progress

Chamber of Progress urges the Commission to "reconsider its Tentative Recommendation on single-firm conduct and remove Section [16731] subdivision (c)'s late-prohibition on considering cross-market effects,"[29] and believes the judicial guidance provisions are imbalanced.

The Chamber of Progress believes including this proposed Section 16731(c)[30] will "worsen the risk of narrow, artificial market definition and economically unrealistic outcomes:"[31]

> Subdivision (c) misunderstands how modern markets operate, especially digital ones that are prone to "made for litigation" market definitions. In the Google search case, the relevant market was "general search engines," but some of the most aggressive proposed remedies would have decimated competition in browser markets and in syndicated search results markets, harming consumers and rivals alike. The **court appropriately refused to adopt those remedies in part because the collateral damage could not be reasonably considered an outcome that was good for competition.**
>
> Similar dynamics exist across industries. A case about "e-commerce platforms" will likely implicate logistics providers, payment processors, and shipping networks that depend on integrated services. A case about app distribution will raise real questions about device competition and mobile security. Digital and nascent markets are deeply interconnected by design and in practice.
>
> In all of those scenarios, courts need the freedom to look at **reality**: if a proposed antitrust remedy or outcome will cause serious consumer harm or wipe out competition in inextricably related and complementary markets, judges should be permitted to take that into account. However, subdivision [(c)], as written, would bar them from doing so. [emphasis in original][32]

The Chamber of Progress also believes that the "judicial guidance provisions are structurally one-sided:"

> …we respectfully urge the Commission to reconsider the tentative recommendation. At a minimum, the Commission should avoid codifying one-sided "nonrequirements" as statutory text and should adopt clearer, disciplined limiting principles that preserve the ability to separate exclusionary conduct from vigorous competition on the merits. As drafted, the Recommendation would expand liability while increasing uncertainty, likely chilling investment, integration, and innovation in dynamic markets central to California's economy.[33]

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[29] Memorandum 2026-10, EX 51.
[30] Memorandum 2026-10, pp. 7-8.
[31] Memorandum 2026-10, EX 51.
[32] Memorandum 2026-10, EX 51-52.
[33] Memorandum 2026-10, EX 52.

Connected Commerce Council (3C)

3C's urges the Commission to reconsider its Tentative Recommendation because 3C believes it will hurt small businesses. 3C states:

> … we believe the Commission has failed to realize how America's leading digital platforms enable small businesses to compete with firms many times their size, and fails to understand how blanket application of a law designed to prevent collusion between firms will criminalize standard business practices, particularly the integration of tools and services by digital platforms that has benefited millions of small businesses. There are better ways to address actual anti-competitive practices that harm consumers and small businesses, as many other states and the federal government have done. Only through carefully considered, narrowly targeted legislation can California truly lead on this issue in a way that will not harm small businesses. (citations omitted).[34]

Professor Daniel Francis

Professor Daniel Francis supports "the Commission's effort to introduce a monopolization offense into state law, and to do so without creating separate rules for uncertain sets of 'technology' businesses or "dominant" firms."[35] However, the comment raises notes the following "serious concerns:"

- I would not create a new offense of "unilateral restraint of trade." It is not at all clear what such a provision would cover—I think the Tentative Recommendation is entirely mistaken when it says that the meaning will be reasonably clear to courts and businesses—and it threatens to swallow the new monopolization offense.

- I would not create a new stand-alone offense of "maintenance of monopoly" as such, without limiting the offense to *harmful* means of monopoly maintenance. Just like the acquisition of a new monopoly, the maintenance of an existing one may result *either* from harmful conduct *or from beneficial conduct* (*e.g.*, product improvement or cost reduction). Banning or deterring beneficial conduct that maintains a monopoly—as the current proposal facially does—would be a catastrophically anti-consumer act. Moreover, as the harmful maintenance of monopoly is embraced by the concept of "monopolization," as that term is understood in antitrust, there is no need at all for a separate provision of this kind.

- I would not include a prohibition against inter-*personal* effects balancing. Whatever one's views about cross-*market* effects balancing, a rule against inter-personal effects balancing within a single market

[34] Memorandum 2026-10, EX 68.
[35] Memorandum 2026-10, EX 73.

would be absurdly demanding. If taken seriously, it would give persons in unique circumstances, or with esoteric preferences, a complete veto over practices and transactions that would generate significant overall benefits for consumers, workers, or others. I am not aware of any mainstream scholarly advocacy for, or defense of, such a "no person harmed" standard—a measure that recalls the notoriously demanding Pareto standard—for antitrust liability[36] or indeed any other policy purpose, and it would be a serious mistake for California to adopt one.

- I would not include a number of the proposed items of "judicial guidance," particularly those items that would eliminate basic doctrinal rules or tools for analyzing familiar categories of conduct (e.g., pricing and refusal to deal) without offering a superior and reasonably clear framework to replace them. These practices raise tricky problems of monopolization doctrine that cannot be solved by simply sweeping away existing doctrine and hoping that California courts—grappling with such practices and with monopolization law for the first time—will spontaneously come up with a better rule to fill the resulting void. Doing so seems certain to result in terrible confusion for courts and litigants, and unlikely to yield rules that optimally serve consumers."[37]

Information Technology & Innovation Foundation (ITIF)

ITIF's comment expresses concerns about proposed Section 16731(a)(1), which prohibits acts "in restraint of trade,"[38] because it is overbroad.[39]

ITIF also objects to proposed Section 16731(c),[40] stating that "it deviates from Section 2 of the Sherman Act by expressly and categorically precluding consideration of out-of-market efficiencies."[41]

In addition, ITIF raises concerns about proposed Section 16730, stating that it would:

> …open the door to an unadministrable enforcement regime whereby courts consider political concerns when evaluating the legality of single firm conduct, and ultimately stifle procompetitive behavior on the grounds that it results in some purported offsetting adverse political consequences.[42]

Finally, ITIF is concerned that proposed Section 16732 would "problematically require courts to apply fundamentally different standards for evaluating unilateral conduct under

[36] Memorandum 2026-10, EX 81, fn. 11.
[37] Memorandum 2026-10, EX 73-74.
[38] Memorandum 2026-10, EX 18.
[39] Memorandum 2026-10, EX 62.
[40] This subdivision states "Anticompetitive effects in one market from the challenged conduct may not be offset by purported benefits in a separate market; and the harm to a person or persons from the 41 challenged conduct may not be offset by purported benefits to another person or persons." Memorandum 2026-10, EX 28.
[41] Memorandum 2026-10, EX 62.
[42] Memorandum 2026-10, EX 63.

the Cartwright Act and the Sherman Act."[43]

The comment concludes:

> While it is true that state antitrust regimes may go beyond the scope of federal antitrust law, that does not justify the radical departure from the Sherman Act contemplated by the Recommendation in terms of the principles, standards, and rules that should define sound antitrust enforcement at all levels of government. In particular, by creating single firm conduct liability for firms untethered to monopoly (or monopsony) power, sanctioning fairness and political objectives as part of the purpose of antitrust enforcement, and banning courts from applying a variety of tests that ensure only conduct that harms the competitive process is condemned, the Recommendation risks creating a highly unadministrable antitrust enforcement system in California that would significantly stifle procompetitive behavior that benefits consumers.[44]

Tech Freedom

Tech Freedom objects to the Tentative Recommendation, stating that federal law adequately protects competition[45] and it "would be a significant step backwards in distinguishing anticompetitive conduct from competitively neutral or competitively beneficial conduct."[46]

Tech Freedom states that proposed Section 16731 "can be read to limit the rights of firms without any appreciable market power, to decide independently, with whom it will deal,"[47] and asserts:

> **This is a significant expansion of antitrust law, and directly inconsistent with federal law.** Even if a litigated claim fails, the adoption of a single-firm restraint of trade prohibition will lead to substantial litigation over independent decision not to deal with another firm.[48] [Emphasis in original]

Tech Freedom states that Section 16729(c) may "prevent a court's consideration of intramarket efficiencies in its analysis of single-firm conduct unless the defendant can show that every person potentially affected by the defendant's conduct is better off."[49]

Tech Freedom also objects to the judicial guidance proposed by proposed Section 16732,[50] and among other things, urges the Commission to "abandon its draft judicial guidance with respect to market definition and competitive effects analysis in multi-sided

[43] Memorandum 2026-10, EX 64.
[44] Memorandum 2026-10, EX 66.
[45] Memorandum 2026-10, EX 98, 100-102.
[46] Memorandum 2026-10, EX 100.
[47] Memorandum 2026-10, EX 24.
[48] Memorandum 2026-10, EX 106.
[49] Memorandum 2026-10, EX 105.
[50] Memorandum 2026-10, EX 25.

platform markets."[51]

The comment concludes by stating:

> We believe the Commission's Recommendations are not well considered. If adopted, they create a substantial divergence between federal and state law. They reject fixed rules that seem well-suited for certain conduct because they are administrable and understandable by courts and businesses: (i) a requirement for a below-cost price and ability to recoup in predatory pricing cases (where recoupment is, in practice, simply an analysis of the presence of factors impeding entry or expansion, and not a quantitative calculation); (ii) respecting the business realities in defining a market in the case of a multi-sided platform that intermediates simultaneous transactions; and (iii) limiting, to a substantial extent, any requirement that a firm deal with another and on what terms it must deal.[52]

Bay Area Council, California Building Industry Association, California Chamber of Commerce, California Life Sciences, Chamber of Progress, Civil Justice Association of California, Los Angeles County Business Federation, San Mateo County Economic Development Association, San Jose Chamber of Commerce (Coalition Comment)

This Coalition Comment was submitted in advance of the Commission's December 2025 meeting in response to the Draft Tentative Recommendation.[53] The Coalition Comment expressed the following concerns:

> We believe these proposals will cause significant harm to California's economic foundations and undermine California's innovation infrastructure at a time when global competitors are aggressively working to pull talent, investment, and emerging industries away from the state.[54]

The comment also asserts the Draft Tentative Recommendation (1) penalizes success rather than harmful conduct, (2) prohibits everyday, pro-consumer business practices, (3) disregards effective existing law, (4) threatens California's investment climate and start-up ecosystem, and (5) "would destabilize the interconnected ecosystem that has made California the global hub of innovation and entrepreneurialism."[55]

In conclusion, the Coalition Comment urges the Commission to:

> … reconsider and refrain from advancing proposals that would weaken the very principles of competition they seek to protect. California's innovative economy depends on a clear, predictable, evidence-based antitrust framework that focuses on

[51] Memorandum 2026-10, EX 112.
[52] Memorandum 2026-10, EX 125.
[53] Memorandum 2025-52, EX. 19.
[54] Memorandum 2026-10, EX 126.
[55] Memorandum 2026-10, EX 127.

actual consumer harm, not arbitrary thresholds, presumptions, or regulatory overreach.[56]

U.S. Chamber of Commerce

The U.S. Chamber of Commerce expresses concerns about the Tentative Recommendation, stating:

> While we appreciate the CLRC's transparency and support robust antitrust enforcement as a means to protect competition, we write to flag several concerns: (1) despite years of hearings, the CLRC has failed to identify any potentially anticompetitive conduct that cannot be challenged under state and/or federal law; (2) by untethering California's antitrust law from federal law, the state would damage California's business climate and harm its workers and consumers by becoming a national outlier; and (3) by endorsing the most recent version of the federal merger guidelines, California would ossify its laws and forego the benefits of new antitrust learning.[57]

The comment concludes as follows:

> …we urge California to maintain its current legal framework, to enforce existing laws vigorously, and to maintain the forty-year national and interstate bipartisan antitrust consensus, one that has produced unprecedented growth and innovation for California and its consumers.[58]

Y Combinator (YC)

YC's is in strong support of the Commission's Tentative Recommendation, stating:

> We believe this reform is crucial to ensure open, competitive markets in California. YC's institutional mission is to spawn innovation and new businesses, a goal that depends on robust antitrust enforcement to prevent dominant firms from foreclosing opportunities for nascent competitors. In our experience, current law too often fails to prevent exclusionary abuses by entrenched companies, allowing startups to serve as "canaries in the coal mine"—the first to be harmed by anticompetitive conduct that ultimately harms consumers and the economy.[59]

YC's comment further observes:

> Founded in 2005, Y Combinator pioneered the modern startup accelerator model and has since funded thousands of companies now collectively valued in the hundreds of billions of dollars. Many of our alumni—such as Airbnb, Stripe, Reddit, and Instacart—have become industry leaders. This track record gives YC a broad view of the startup ecosystem and the competitive challenges new companies

[56] Memorandum 2026-10, EX 128.
[57] Memorandum 2026-10, EX 32.
[58] Memorandum 2026-10, EX 34.
[59] Memorandum 2026-10, EX 35.

face.

> We see firsthand how startups are often the first to detect and suffer from incipient anticompetitive conduct. When an entrenched firm engages in exclusionary or predatory tactics, it is young companies on the frontier of innovation that feel the effects before such behavior makes headlines or attracts government scrutiny.[60]

The comment provides several examples of why YC believes reform is necessary to protect startups:

- **Self-Preferencing:** Even when an incumbent lacks a 50% market share, its gatekeeper position can enable severe discrimination against rivals. For instance, internal communications revealed that Apple manually boosted its own "Files" app above Dropbox in App Store search results, causing Dropbox's app not even to appear on the first page when users searched "Dropbox." Apple claims this was a mistake, but only corrected it after a partner's CEO complained. This kind of platform self-preferencing—a dominant firm favoring its own downstream service—can sabotage even well-established startups.

- **API and Access Discrimination:** YC portfolio companies have been thwarted by dominant firms denying them access to essential inputs. In one case, a YC startup developing cutting-edge fraud detection technology (capable of identifying deepfake phone scams) was refused critical API access by a dominant platform, forcing the startup to abandon its original product. Without the ability to interoperate with the incumbent's system, the startup could not bring its innovation to market. As Mr. Tan recounted, "even the brightest entrepreneurs cannot secure funding, and innovative solutions never reach the public" when key interfaces are closed off. Such refusals to deal prevent new services from ever reaching consumers—a loss of innovation and choice that traditional price-centric analyses would miss entirely.

- **Gatekeeping and Lack of Interoperability:** Dominant platforms often leverage control over ecosystems to exclude nascent competitors. YC startup Beeper offers a vivid example. Beeper created an interoperable messaging client aiming to let users unify conversations across iMessage, WhatsApp, and other services. This promised to "break down the green vs. blue bubble divide" in messaging and give consumers more choice. But Apple's closed iMessage system effectively shut Beeper out: by refusing to allow interoperability or access to iMessage for third-party apps, Apple foreclosed a startup's innovative product. The harm here is two-fold—consumers lost a novel solution that could have improved their messaging experience, and the startup's business was stifled by the platform's gatekeeping.

[60] Memorandum 2026-10, EX 35-36.

This occurred despite Apple's iOS not being a literal monopoly in global smartphone share. It demonstrates that exclusionary conduct by a firm with substantial market power—even if not an absolute monopoly—can seriously undermine competition. California's courts have long recognized this principle. In *Fisherman's Wharf Bay Cruise v. Superior Court*, a 20% market foreclosure was held sufficient to state an exclusive-dealing claim under the Cartwright Act. In practice, YC companies have faced exclusion long before an incumbent grows to 50% share, which is why bright- which is why bright-line market share tests should not be the sole trigger for antitrust concern.

- **"Kill Zones" and Foreclosed Investment:** Beyond individual incidents, we observe broader "kill zones" around certain dominant firms. These are areas in which startups and their investors avoid competing, for fear that the entrenched firm will instantly copy, crush, or cut off any upstart in its domain. For example, Google's dominance in search and search advertising has deterred venture investment in search-related startups for over a decade. In an amicus brief in U.S. v. Google, YC explained that Google's power created a "kill zone" that "stunted the U.S. startup ecosystem"—venture firms (including YC itself) hesitated to fund new search or AI companies because Google could quickly quash them. The result, as YC wrote, is an innovation landscape "artificially stunted and stagnant" in areas around the monopolist. [citations omitted][61]**Does the Commission have any questions about the comments above?**

Respectfully submitted,

Sharon Reilly
Executive Director

Sarah Huchel
Chief Deputy Director

[61] Memorandum 2026-10, EX 36-37.