SECOND SUPPLEMENT TO MEMORANDUM 2026-14

Antitrust Law: Status Update (Mergers Public Comment)

This supplement presents a public comment received by the Commission related to Memorandum 2026-14.[1] The public comment is attached as an Exhibit to this supplement.

As with prior memoranda, a brief description of each commentator is linked below.

American Economic Liberties Project, *California Nurses Association*, *CAMEO Network*, *Economic Security California Action*, *End Poverty in California*, *The Greenlining Institute*, *Rise Economy*, *Small Business Majority*, *United Domestic Workers (UDW/AFSCME Local 3930)*, *United Food and Commercial Workers Western States Council (UFCW)*

This comment was submitted by Ron Knox, Senior Researcher and Policy Advocate for the Institute for Local Self-Reliance (ILSR) and cosigned by the entities listed above (ILSR Coalition). According to its website, "The Institute for Local Self-Reliance has a vision of thriving, diverse, equitable communities. To reach this vision, we build local power and fight corporate control."[2]

PUBLIC COMMENT

The ILSR Coalition writes in support of the recommendations included in the American Economic Project Coalition letter from November 24, 2025,[3] which supported elements of Options Two, Three, and Four and recommended additional changes. The ILSR Coalition further reiterates support for the following amendments:

1. Create a rebuttable presumption that a merger is illegal where there is a history of serial acquisitions, or "roll-ups," in the same or adjacent markets; and

[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 (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. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

[2] https://ilsr.org/about/

[3] Fourth Supplement to Memorandum 2025-42.

2. Create a rebuttable presumption of illegality for acquisitions by presumptively dominant firms (i.e., those with a market cap greater than $600 billion).

In particular, we support a prohibition on mergers where the effect may be to create an "*appreciable risk*" of violating the law, as described in Option 4. The appreciable risk standard is neither new nor novel. As CLRC staff and the Anti-Monopoly Coalition have detailed, enforcers and courts have long used an appreciable risk standard when considering whether to prohibit a merger. Although this standard has been called different names at different times, the idea is simple, clear, and reflects the reality of corporate concentration: Any merger that gives rise to corporate concentration and may risk harming competition should be banned.

Respectfully submitted,

Sarah Huchel
Chief Deputy Director

Sharon Reilly
Executive Director

March 17, 2026

The Honorable Richard Simpson, Chair
and Honorable Commissioners
California Law Revision Commission
c/o Legislative Counsel Bureau
925 L Street, Suite 275
Sacramento, CA 95814

Re: Antitrust Law – Study B-750 Support for Staff Recommendations

Dear Chair Simpson and Commissioners,

Since the passage of the federal Clayton Act in 1914, antimerger policy in the United States has been animated by the need to protect and support healthy, diverse markets that include small and independent businesses. “Congress was desirous of preventing the formation of further oligopolies with their attendant adverse effects upon local control of industry and upon small business,” the U.S. Supreme Court found when examining the legislative history of the Clayton Act and its crucial 1950 amendment.[1]

However, our federal antitrust agencies’ unwillingness to enforce our antimerger laws for much of the past 50 years has led to dangerously concentrated industries throughout the American economy. The prevailing Chicago School of antitrust and economics, and the rejection of traditional concerns around industrial concentration, has allowed a small number of corporations to assume an extraordinary degree of economic and political control, often through unchecked

[1] *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962)

corporate mergers.[2] This trend has devastated independent businesses in America. Between 1982 and 2017, the share of U.S. business revenue going to firms with fewer than 100 employees plunged, falling from 40 percent to 23 percent.[3] As experts advising the CLRC have explained in detail, many California industries reflect the national trend toward corporate concentration.[4]

ILSR applauds the passage of SB 25, which created a requirement that certain mergers are reported to the Attorney General for review. Pre-merger notification is an important step toward allowing California enforcers to police potentially dangerous corporate concentration within the state, pre-merger notification remains insufficient without a strong, state-based antimerger law that would give enforcers the correct tools to prevent corporate dealmaking that threatens workers, small businesses, consumers and business competition.

While federal enforcement of the Clayton Act has fluctuated in recent years, the first year of the second Trump administration makes the need for a California-specific merger control regime clear. Corporate consolidation has rapidly accelerated under the second Trump administration; Around 30 deals worth more than $10 billion were announced in 2025, around twice as many as the previous year, and consolidation by value increased around 40 percent overall in the administration's first year.[5] Settlements of potentially anticompetitive mergers are also up significantly, as corporate, Trump-affiliated lobbyists have gained unprecedented influence over decisionmaking at the federal antitrust agencies.[6]

California Attorney General Rob Bonta has been active in opposing deals when the federal antitrust agencies allowed a potentially anticompetitive merger, or appear likely to do so.[7] However, because California has no existing state-specific merger statute, the state is forced to challenge deals in federal court, where conflicting and sometimes difficult federal precedent constrains otherwise appropriate antimerger enforcement. By recommending a strong merger law, the Commission can take significant steps towards giving the state the power to use its own courts and law to prevent harmful mergers that impact California small businesses, workers, and communities.

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[2] See generally, Stacy Mitchell and Ron Knox, "Rolling Back Corporate Concentration: How New Federal Antimerger Guidelines Can Restore Competition and Build Local Power," ILSR report, June 2022; CLRC Memorandum 2024-24, "Expert Report: Mergers and Acquisitions (finding that, "This narrowing of enforcement has coincided with substantial increases in market concentration, the rise of dominant firms, and unusually high profit rates in the economy.")

[3] U.S. Census Bureau, "1982 Economic Census" and "2017 Economic Census."

[4] CLRC Memorandum 2024-14, "Expert Report: Concentration in California," March 28, 2024

[5] Dave Michaels and Ben Glickman, "Corporate Dealmaking Is Getting Bigger and Bolder Under Trump," Wall Street Journal, Nov 26, 2025

[6] David Dayen,"Real Talk About Lobbyists Buying the Justice Department," The American Prospect, Feb 16, 2026

[7] See, for example, "Attorney General Bonta Secures Court Decision Allowing States to Participate in Evaluation of Allegedly Corrupt HPE/Juniper Merger," California Attorney General press release, Nov 18, 2025

The undersigned organizations continue to fully support the coalition recommendations included in the AELP Coalition letter to the Commission published as public comment on December 1, 2025.[8] The undersigned organizations continue to support adopting elements of Options Two, Three and Four as set forth in Memorandum 2025-31.This includes recommending legislation that enshrines in California law the authority and guidance of the 2023 Federal Merger Guidelines, empowering the Attorney General to rely on simple, clear measurements of market structure and concentration when reviewing and challenging potentially anticompetitive mergers.[9] The Commission should also recommend legislation that enshrines in law the United States Supreme Court precedent established in *United States v. Philadelphia National Bank*, 374 U.S. 321 (1963), which prohibits mergers "that may produce a firm controlling an undue percentage share of the relevant market" are illegal "in the absence of evidence clearly showing the merger is not likely to have such anticompetitive effects."

The undersigned organizations also reiterate our support for the recommendations in the AELP Coalition letter that Options 2, 3, and 4 can be strengthened in the following ways:

1. Create a rebuttable presumption that a merger is illegal where there is a history of serial acquisitions, or "roll-ups," in the same or adjacent markets; and
2. Create a rebuttable presumption of illegality for acquisitions by presumptively dominant firms (i.e., those with a market cap greater than $600 billion);

In particular, we support a prohibition on mergers where the effect may be to create an "*appreciable risk*" of violating the law, as described in Option 4. The appreciable risk standard is neither new nor novel. As CLRC staff and the Anti-Monopoly Coalition[10] have detailed, enforcers and courts have long used an appreciable risk standard when considering whether to prohibit a merger. Although this standard has been called different names at different times, the idea is simple, clear, and reflects the reality of corporate concentration: Any merger that gives rise to corporate concentration and may risk harming competition should be banned.

Adding these elements to the CLRC's eventual recommendations will strengthen the enforceability and predictability of the law, and will give California needed tools to prevent anticompetitive serial acquisitions and private equity roll-ups within the state.

Thank you again to both the Commissioners and staff for their continued outstanding work on this crucial study.

Sincerely,

Ron Knox

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[8] Fourth Supplement to Memorandum 2025-42

[9] 2023 Merger Guidelines ("the Agencies may use evidence about market shares and market concentration as part of their analysis. These structural measures can provide insight into the market power of firms as well as into the extent to which they compete.")

[10] See Fourth Supplement to Memorandum 2025-42, Cal. Law Revision Comm. (Dec. 1, 2025), accessible online: https://clrc.ca.gov/pub/2025/MM25-42s4.pdf

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