# THIRD 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 below.

*Chamber of Progress*

This comment was submitted by Robert Singleton, the Senior Director of Policy and Public Affairs, California and US West for Chamber of Progress. According to its website:[2]

> Chamber of Progress is a tech industry coalition devoted to a progressive society, economy, workforce, and consumer climate. We back public policies that will build a fairer, more inclusive world in which all people benefit from technological leaps.

*California Life Sciences*

This comment was submitted by Sam Chung, the Vice President of State Government Relations for California Life Sciences. According to its website, California Life Sciences is "California's leading life sciences advocacy organization, driving progress through policy, connection, and community."[3]

[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://progresschamber.org/.

[3] https://www.califesciences.org/about-us/.

## PUBLIC COMMENT

Chamber of Progress writes:

> … I respectfully urge the Commission not to recommend the merger approaches set out in Memorandum 2026-14. Although the memorandum narrows the field, each reworked option would still move California away from a workable, evidence-based merger framework and toward a duplicative, uncertain, and overdeterrent state regime. California should not become the first state to adopt a general merger statute that layers new substantive standards, presumptions, and litigation risk on top of existing federal merger law.
>
> The concern is especially acute in California, where mergers and acquisitions are not merely financial events but an essential part of the state's innovation ecosystem. Startups, investors, and growing firms depend on acquisition pathways to finance risk-taking, scale new products, and recycle capital into the next generation of companies. A merger policy that makes ordinary transactions harder, slower, and riskier will not only deter harmful deals but also beneficial ones, reducing investment and weakening the state's competitive position.[4]

California Life Sciences writes:

> … California's global leadership in life sciences depends on a regulatory environment that is stable, predictable, and attuned to the realities of research-driven markets. The draft M&A options before the Commission, taken individually or in combination, would lower the threshold for merger challenges, impose rigid structural presumptions untethered from competitive reality, and depart from the established federal standards that companies and investors currently rely upon to make long-term decisions. The cumulative effect would be a California merger enforcement regime that diverges from federal law on multiple fronts simultaneously — leaving life sciences companies without a reliable basis for assessing transactional risk and, ultimately, discouraging the investment and collaboration that drive innovation.[5]

Respectfully submitted,

Sarah Huchel
Chief Deputy Director

Sharon Reilly
Executive Director

[4] EX 1.
[5] EX 7.

CHAMBER OF PROGRESS

Mar 20, 2026

**The Honorable Xochitl Carrion**
Chair, California Law Revision Commission
295 L Street, Suite 275
Sacramento, CA 95814

**Re: Antitrust Law – Draft Language on Merger Provisions (Memoranda 2026-14)**

Dear Chair Carrion and Members of the Commission:

On behalf of Chamber of Progress, a center-left tech industry association supporting inclusive innovation, I respectfully urge the Commission not to recommend the merger approaches set out in Memorandum 2026-14. Although the memorandum narrows the field, each reworked option would still move California away from a workable, evidence-based merger framework and toward a duplicative, uncertain, and overdeterrent state regime. California should not become the first state to adopt a general merger statute that layers new substantive standards, presumptions, and litigation risk on top of existing federal merger law.

The concern is especially acute in California, where mergers and acquisitions are not merely financial events but an essential part of the state's innovation ecosystem. Startups, investors, and growing firms depend on acquisition pathways to finance risk-taking, scale new products, and recycle capital into the next generation of companies. A merger policy that makes ordinary transactions harder, slower, and riskier will not only deter harmful deals but also beneficial ones, reducing investment and weakening the state's competitive position.

## California's Role in the Innovation Economy Depends on Exit Opportunities

California is the cradle of innovation in the U.S. in no small part because it supports a healthy ecosystem of venture capital, risk-taking, and exit opportunities. California startups capture roughly **60% of U.S. venture funding**[1], and **acquisitions account for the overwhelming majority of startup exits**. That is not incidental to California's success; it is one of the structural conditions that make that success possible. Mergers offer a "fail-safe" for founders and liquidity for venture capitalists, fueling a cycle that encourages entrepreneurship.

[1] Dan Primack, California Easily Maintains Its Startup Crown, Axios (Jan. 26, 2026), https://www.axios.com/2026/01/26/california-startups-venture-capital.

By making mergers harder, slower, or riskier through new state-level hurdles, the Commission's proposals would inadvertently undermine the very incentives that have helped California produce world-leading firms in AI, e-commerce, and digital services. This isn't theoretical - firms like Google, Meta, and Amazon have each supported thousands of smaller California-based businesses through partnerships, acquisitions, and investments.

**Codifying Philadelphia National Bank Would Entrench an Outdated Structural Presumption**

Option 3, as revised, would effectively import the structural logic of *United States v. Philadelphia National Bank* into California law by treating concentration metrics and a 30 percent market-share threshold as presumptive evidence of illegality. That decision, made in the pre-digital 1960s, does not adequately account for the dynamics of platform markets, network effects, and the nonlinear growth trajectories of modern tech firms. Worse yet, it presumed that any combination resulting in a 30% market share was anti-competitive.

Locking in the *Philadelphia National Bank* standard and existing Merger Guideline thresholds would freeze arbitrary numerical cutoffs into law, even though federal doctrine has deliberately remained more adaptable, allowing enforcers and courts to condemn lower-share mergers in some cases and permit higher-share mergers in others, depending on the facts. Applying this precedent rigidly at the state level would ignore decades of federal evolution in merger analysis, including the shift to analyzing actual market harm rather than simple concentration metrics. Rather than revisiting *Philadelphia National Bank* to inform new state legislation, California should defer to modern, economics-based standards used by bipartisan Administrations prior to January 2021.

**"Appreciable Risk" and "More Than De Minimis" Are Not Administrable Standards**

Option Four, as revised, is the most troubling of all. Replacing the Clayton Act's familiar standard with an "appreciable risk of lessening competition more than a de minimis amount" would create a novel, expansive, and vague rule untethered from settled merger jurisprudence. The memorandum expressly acknowledges that this change is intended to lower the burden of proof and make it easier to stop mergers. But making it easier to block deals also makes it easier to block beneficial deals, invites speculative claims, and creates substantial uncertainty for businesses, investors, and courts alike. California should not serve as a testing ground for an unbounded standard that no mature merger regime has adopted.

The proposed purpose statement would amplify these problems rather than solve them. Telling courts to liberally construe California antitrust law, to maximize deterrence, and

to treat federal law as merely persuasive would ensure years of uncertainty in a field where predictability is essential.

**The Better Path Is Enforcement Capacity, Not Statutory Overreach**

We share the Commission's goals of protecting consumers and promoting fair competition. But rather than adding layers of new law, California should invest in better enforcement capacity under existing frameworks. The Cartwright Act and federal antitrust laws already offer robust tools. To the extent that anything is lacking, it is in resourcing, not in statutory reach.

We welcome continued dialogue as the Commission completes its important work.

Sincerely,

Robert Singleton
Senior Director of Policy and Public Affairs, California and US West

March 19, 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: Memorandum 2026-14: Draft Language Options for Mergers and Acquisitions**

Dear Chairperson Simpson and Honorable Commissioners,

On behalf of California Life Sciences (CLS), which represents over 1,300 pharmaceutical, biotechnology, medical technology, and academic research institutions across the state, we submit this letter to express major concerns with Staff Memorandum 2026-14 and its Draft Language Options regarding California's Mergers and Acquisitions (M&A) laws because they continue to present existential risks to the life sciences industry and to the broader California innovation economy.

As we noted in our previous letter responding to Memorandum 2025-31, the life sciences sector is foundationally dependent on M&A as a mechanism for translating early-stage scientific discoveries into patient therapies. More than 90% of California's life sciences companies employ fewer than ten people, operate without profit, and depend on M&A as a critical exit and scaling pathway. The high-risk, capital-intensive nature of drug and device development—where a single treatment can take over a decade and billions of dollars to bring to market with success rates below 10%—demands predictable and stable legal standards. We are concerned that the revised draft options, taken individually or in combination, still fall short of that standard.

**Revised Option Two: Philadelphia National Bank Standard**

Memorandum 2026-14 revises Option Two to incorporate the suggestion from Professors Lande Newman and former FTC Commissioner Slaughter that the "tend to create a monopoly" prong of the Clayton Act be separated into a distinct subsection. Putting this section of the Clayton Act into its own subsection may appear trivial but it has practical consequences that concern us. By giving the "tend to create a monopoly or monopsony" prong its own independent operative subdivision (subsection (b)), the revised Option Two effectively lowers the threshold for merger challenges. A merger could now be challenged under subsection (b) without any showing that competition would be "substantially" lessened—the longstanding federal standard.
In life sciences markets, which are frequently narrow and concentrated by scientific and regulatory design, particularly in rare disease and orphan drug indications, this separation creates meaningful risk that procompetitive combinations will be swept within the statute's

reach. This possibility will deter procompetitive M&A, increase unpredictability in enforcement, and encourage frivolous litigation given the lowered standard for an M&A challenge.

**Combined Options Two and Three: Philadelphia National Bank and Federal Merger Guidelines**

The combined Options Two and Three retain our core objections to the structural presumption framework first raised in our July 2025 letter. Codifying the Herfindahl-Hirschman Index (HHI) thresholds drawn from the 2023 Merger Guidelines—specifically, a post-merger HHI above 1,800 with a delta greater than 100, or a market share above 30% with a delta greater than 100—into binding California law creates a structural presumption of illegality that does not account for the distinctive characteristics of life sciences markets.

As we have noted previously, markets for rare diseases, orphan drugs, and emerging cell and gene therapies are small by nature. For example, a company developing one of the only two approved treatments for a rare pediatric neurological disorder will necessarily produce a high HHI in that indication. Acquisitions in such markets, which often serve to consolidate scientific expertise, eliminate redundant development costs, and accelerate commercialization, could also easily trigger the presumption in subsection (d) even when the transaction is unambiguously procompetitive. The memorandum itself acknowledges that codifying HHI thresholds risks "caus[ing] courts to lose sight of the underlying competitive issues." We agree and believe this concern is especially acute in the life sciences context.

We also remain concerned about the rebuttal standard in subsection (e), which requires defendants to show by a preponderance of evidence that "any potential anticompetitive effects are clearly outweighed by the cognizable procompetitive benefits of the transaction in the same relevant market." The "same relevant market" limitation is particularly problematic for the life sciences industry. Many mergers produce benefits—including accelerated pipeline development, shared manufacturing infrastructure, and cross-indication platform synergies—that materialize across multiple markets over long time horizons. Requiring that benefits be demonstrated in the same market, at the time of the transaction, effectively forecloses the kind of dynamic efficiency justifications that are central to how M&A creates value in our industry.

**Combined Options Two, Three, and Four: Appreciable Risk Standard**

Our concerns regarding the "appreciable risk" standard in Option Four, as revised in Memorandum 2026-14, remain substantially unchanged from our prior submission. The revised text replaces the Clayton Act's "may be substantially to lessen competition" standard with a prohibition on mergers whose effect "may be to create an appreciable risk of lessening competition more than a de minimis amount." The Commission's memorandum acknowledges that opponents of this standard view it as "a new and untested legal standard" and that there is "no caselaw history for courts to draw upon." We believe this acknowledgment warrants

substantial caution. Terms such as “appreciable risk” and “more than a de minimis amount” lack clear definition and would create significant uncertainty for companies and investors.

In the life sciences sector, where early-stage firms frequently rely on acquisition as a primary exit pathway, predictability is essential. Venture capital and strategic investors evaluate regulatory risk closely. If merger review standards become subjective or indeterminate, capital will shift elsewhere. This uncertainty also disproportionately impacts small biotechnology startups whose business models often depend on partnering with or being acquired by larger firms capable of funding late-stage trials and commercialization. Without confidence in a stable merger framework, investment in early-stage innovation will decline—ultimately slowing the development of therapies for patients.

Our concerns with this option are compounded by the fact that it combines the untested “appreciable risk” standard with the HHI-based structural presumptions from Option Three and the lowering of the threshold for M&A challenge from Option Two. Altogether, this option would create a materially more aggressive enforcement regime, while introducing unprecedented legal standards, and rigid thresholds to define anticompetitive conduct that do not reflect reality in many life science markets.

**Purpose Statement**

Memorandum 2026-14 proposes adapting the purpose statement already approved for the Single Firm Conduct recommendation to apply to the merger statute as well. Subsection (d) of the proposed purpose statement explicitly states that “[f]ederal case law on the subject of this article is not binding on California courts.” While we understand this provision is intended to preserve California’s flexibility, we are concerned it will function in practice as an invitation to state courts to disregard the substantial body of federal merger jurisprudence that currently provides predictability to market participants. The ability of businesses to plan around established precedents is not a technicality, it is the practical foundation of any workable regulatory system.

California already possesses a robust and layered set of enforcement tools that provide meaningful oversight of mergers and acquisitions without the risks introduced by novel state-level standards. The Attorney General may enforce Section 7 of the Clayton Act directly in federal court, and large transactions are independently subject to mandatory pre-merger notification and review under the Hart-Scott-Rodino (HSR) Antitrust Improvements Act. Critically, under recently chaptered SB 25 (Umberg)—the California Uniform Antitrust Premerger Notification Act—the Attorney General will gain direct access to all HSR federal filings for transactions involving companies with principal operations in California or with annual net California sales representing at least 20% of the applicable filing threshold. This means that beginning January 1, 2027, the AG will have early, comprehensive visibility into covered

transactions at the same time as federal regulators, enabling coordinated and timely state-level review without duplicating or displacing the federal framework.

In conclusion, California's global leadership in life sciences depends on a regulatory environment that is stable, predictable, and attuned to the realities of research-driven markets. The draft M&A options before the Commission, taken individually or in combination, would lower the threshold for merger challenges, impose rigid structural presumptions untethered from competitive reality, and depart from the established federal standards that companies and investors currently rely upon to make long-term decisions. The cumulative effect would be a California merger enforcement regime that diverges from federal law on multiple fronts simultaneously — leaving life sciences companies without a reliable basis for assessing transactional risk and, ultimately, discouraging the investment and collaboration that drive innovation.

California's life sciences industry has flourished precisely because the state has historically balanced vigorous competition policy with meaningful recognition of the unique economics of scientific innovation. We urge the Commission to preserve that balance in any final recommendation. We appreciate the opportunity to provide these comments, and please do not hesitate to contact me at schung@califesciences.org with any questions.

Sincerely,

Sam Chung
Vice President, State Government Relations
California Life Sciences