

GIBSON DUNN



Antitrust & Competition Update

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2026 First Quarter Updates on California Legislative Antitrust Proposals

The California Law Revision Commission and California Legislature have moved forward with aggressive amendments to California state law on single firm conduct and mergers.

California Assembly Leader Introduces Bill Codifying Proposed CLRC Proposals on Single Firm Conduct

Assembly Majority Leader Cecilia Aguiar-Curry has introduced the COMPETE Act (Competition and Opportunity in Markets, for a Prosperous, Equitable and Transparent Economy).^[1] The bill would codify the California Law Revision Commission (CLRC)'s single-firm conduct proposals, discussed in our [June 23, 2025](#) and [December 23, 2025](#) Client Alerts, and recently finalized.^[2] As with the CLRC proposal, the COMPETE Act represents a potentially significant change to California's substantive antitrust framework.

The Scope of The COMPETE Act

The COMPETE Act would establish for the first time under California state antitrust law a prohibition on anticompetitive conduct by a single firm. California has never had a single-firm antitrust law of general application. The bill proposes to prohibit anticompetitive monopolization (similar to Section 2 of the federal Sherman Act) as well as "restraints of trade by one or more

firms”—an unprecedented and scarcely defined standard, as described in our [December 23, 2025](#) Client Alert.

The bill expressly provides that California state courts are not generally bound by federal antitrust case law (except when persuasive and consistent with California law) and expressly rejects certain requirements that have been recognized under federal law.^[3] For example, the bill would require that a firm's refusal to deal with rivals satisfy only a lower “competitive benefit” standard—rather than the “profit sacrifice” standard required by federal law. The bill also does not require a plaintiff to prove a defendant engaged in below-cost pricing, which is required for certain antitrust claims under federal antitrust law. As one other notable example, the bill directs that courts “may” (rather than “shall”) consider competition in multiple relevant markets when dealing with multi-sided platforms, and they similarly “may or may not” treat each platform side as a distinct market.

The COMPETE Act also breaks from federal law in declining to adopt an express requirement of monopoly power (or a dangerous probability of monopoly power). In a departure from the CLRC's prior proposal, however, the bill clarifies that violations require at least “market power”—a significantly lower threshold than what is required under federal law for single-firm conduct.

Taken together, the proposed COMPETE Act could present a stark departure from the predictable federal framework that has developed over more than a century of Sherman Act jurisprudence.

Implications for Businesses

The COMPETE Act is poised to create uncertainty for those who do business in California. Predictable rules that have emerged as a result of decades of economic and judicial thinking would be rejected in favor of indeterminate and untested standards. Businesses—including those that do not face scrutiny under federal law by dint of their non-dominant market positions—may be forced to litigate novel or otherwise long-rejected theories anew in California courts. Courts applying these untested frameworks may adopt decisions that depart from federal law, creating patchwork obligations for businesses that operate in multiple states.

California's antitrust laws already permit private enforcement, and the Cartwright Act provides for treble damages. The addition of a new single-firm conduct prohibition would expand the universe of potential state-law claims may increase businesses' exposure—and the number of cases they face—in California.

The COMPETE Act has not yet been voted on, and its final form—if adopted at all—may differ from the current proposal. Companies should track amendments, committee hearings, and floor debates to assess the bill's trajectory and identify opportunities for engagement. Companies and their trade associations should also consider direct engagement with legislators or participation in industry coalition efforts. Gibson Dunn attorneys are available to discuss how the COMPETE Act could affect your business and to assist with legislative engagement, compliance planning, and litigation strategy as this proposal moves through the California Legislature.

CLRC Presents Draft Language on Merger Reform

As detailed in our [June 23, 2025](#) Client Alert, the CLRC has been assessing options for new legislation to regulate mergers. In February, California enacted the California Uniform Antitrust Pre-Merger Notification Act, which requires certain Hart-Scott-Rodino (HSR) filers to submit a copy of their federal premerger notification materials to the California Attorney General.^[4] Separate from that statute, CLRC is working towards a California-specific standard to classify and prohibit anticompetitive mergers.

Following consideration of public comments on prior merger control proposals, CLRC directed its staff to present revised options for draft legislation. The staff presented several options in a March 10, 2026 memorandum.^[5] Any of these proposals may introduce aggressive and far-reaching changes to existing competition law—making California law significantly broader, and more restrictive of acquisitions, than federal law. At the federal level, Section 7 of the Clayton Act prohibits mergers whose effects “may be substantially to lessen competition, or to tend to create a monopoly.”^[6] While merger challenges can already be brought by the California Attorney General under certain state laws^[7] and under federal law, the CLRC is considering new state-level legislation because “California currently lacks a broad, state-level merger statute and can only review mergers under its own laws for a few specific industries.”^[8]

The CLRC staff has currently proposed three options:

- **Option 1:** This option “largely tracks the Clayton Act’s basic standards”, but it would expand on federal law by also expressly prohibiting mergers that tend to create a *monopsony*, while removing analogous federal exemptions, such as those for common carriers.^[9] This option also adopts federal case precedent that is not expressly codified in the Clayton Act. Namely, it would (1) add a presumption that mergers which would result in a “a firm controlling an undue percentage share of the relevant market”—likely at or around 30%—and “a significant increase in the concentration of firms in that market” are inherently anticompetitive and (2) recognize the 2023 Federal Merger Guidelines as “persuasive authority” in interpreting the statute.^[10]
- **Option 2:** This option incorporates and expands on Option 1 by codifying specific language from the 2023 Federal Merger Guidelines and adding instruction on rebutting presumptions of unlawfulness.^[11] Option 2 presumes a merger to be unlawful if it would result in a market with a Herfindahl-Hirschman Index (HHI) greater than 1,800 or more and a change in HHI greater than 100 points or a market share greater than 30% for the merged company.^[12] A defendant may rebut this presumption “by demonstrating by a preponderance of the evidence that there are no likely anticompetitive effects of the transaction or that the anticompetitive effects are de minimis and that any potential anticompetitive effects are clearly outweighed by the cognizable procompetitive benefits of the transaction in the same relevant market.”^[13] Staff concedes that some may argue that this rebuttal standard “is too high a bar and not reflective of current law”, and because the Merger Guidelines are not law at the federal level and are prone to updates, by codifying a specific version of federal guidance into state legislation, California risks falling out of step with federal practices.^[14]
- **Option 3:** This option incorporates and expands on Option 2 by changing the Clayton Act’s first prong that prohibits mergers whose effect “may be substantially to lessen competition” to those whose effect “may be to create an appreciable risk of lessening

competition more than a de minimis amount.”^[15] The practical effect would be to reduce the burden of proof required to prove the illegality of a merger.

^[1] AB 1776 (COMPETE Act), https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202520260AB1776

^[2] Cal L. Revision Comm’n, Antitrust Law: Single Firm Conduct (Mar. 30, 2026) <https://clrc.ca.gov/pub/Printed-Reports/Pub249-B750.pdf>.

^[3] *Id.*

^[4] For more information on the California Uniform Antitrust Pre-Merger Notification Act, please refer to our [February 11, 2026](#) Client Alert.

^[5] Memorandum 2026-14, *Draft Language Options for Mergers and Acquisitions and Additional Public Comment*, Cal. L. Revision Comm’n (Mar. 10, 2025) [henceforth “March Merger Options Memo”], <https://clrc.ca.gov/pub/2026/MM26-14.pdf>.

^[6] 15 U.S.C. § 18.

^[7] See Corp. Code §§ 5914 – 5926 (nonprofit health facilities), §§ 14700 – 14707 (retail grocery firms and retail drug firms), and Health & Safety Code §§ 127507 – 12507.6 (health care).

^[8] March Merger Options Memo at 1-2.

^[9] March Merger Options Memo at 3-5.

^[10] *Id.* at 4.

^[11] *Id.* at 5-9.

^[12] *Id.* at 5-6.

^[13] *Id.* at 6.

^[14] *Id.* at 9.

^[15] *Id.* at 10-13.

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Gibson Dunn lawyers are available to assist in addressing any questions you may have regarding the issues discussed in this update. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm's Antitrust & Competition, Mergers & Acquisitions, or Private Equity practice groups:

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