

GIBSON DUNN



Antitrust & Competition Update

September 30, 2026

California Approves Single-Firm Conduct Legislation

Governor Newsom has signed into law a narrowed version of the COMPETE Act that gives California its first general prohibition on monopolization and monopsonization, enforceable only by public prosecutors.

On August 30, 2026, the Legislature passed an amended version of the COMPETE Act (Competition and Opportunity in Markets, for a Prosperous, Equitable and Transparent Economy), which enacts for the first time in California a counterpart to Section 2 of the federal Sherman Act, which prohibits monopolization, attempted monopolization and conspiracy to monopolize.^[1] As summarized in our January 15, 2025, March 25, 2025, June 23, 2025, December 23, 2025, and April 1, 2026 Client Alerts, the California Law Revision Commission (CLRC) has been studying changes to California's antitrust law since August 2022, and the COMPETE Act was introduced to codify the CLRC's single-firm conduct recommendation.^[2] The version the Legislature passed differs materially from the bill as introduced: the Legislature removed a proposed, novel prohibition on unilateral "restraint of trade" and enforcement is limited to the Attorney General and district attorneys, among other things.

On September 30, 2026, Governor Newsom signed the bill into law.^[3] The COMPETE Act will take effect on January 1, 2027.^[4] Gibson Dunn attorneys have been closely monitoring this legislation and are available to discuss the implications for your business and to assist with compliance planning in advance of the Act's effective date.

In a signing message issued with his approval of the bill, Governor Newsom endorsed the goal of targeting anticompetitive conduct that harms consumers, workers, and businesses, but cautioned against “dragging legitimate, superior business practices and products into the ambit of anti-competitive behavior.” Governor Newsom also noted that he expected the law to be applied “in ways that penalize clear wrongdoing, without creating needless uncertainty that risks harming legitimate businesses,” while acknowledging that courts “will necessarily grapple” with the bill’s terms and that “additional legislation may be required to clarify the appropriate standards.”^[5]

The Single-Firm Conduct Provision as Enacted

The COMPETE Act adds a new section to the California Business & Professions Code, §16731(a), which makes it “unlawful for every person to monopolize or monopsonize, attempt to monopolize or monopsonize, maintain a monopoly or monopsony, or combine or conspire with another person to monopolize or monopsonize any part of trade or commerce.”^[6] This is the first prohibition on single-firm conduct of general application in the history of the Cartwright Act, California’s long-serving antitrust statute.^[7] The operative language is similar to Section 2 of the federal Sherman Act, with the addition of an express prohibition on monopsonization.

The passed bill contains a series of limitations that did not appear in the CLRC’s initial recommendation:

- First, enforcement is limited to actions “initiated only by the Attorney General or a district attorney.”^[8] The bill also makes clear that private plaintiffs cannot co-opt the statute by bringing derivative claims under California’s Unfair Competition Law (Bus. & Prof. Code § 17200), specifying that “an alleged violation of this section shall not serve as a predicate violation under” that statute.^[9]
- Second, in adopting a prohibition on anticompetitive monopolization and monopsonization, the Legislature dropped language that would have targeted unilateral “restraints of trade”—a novel and undefined standard that had no analogue in other statutes prohibiting unilateral conduct. With it, the amended bill also eliminated language that sought to expressly displace Supreme Court precedent on refusals to deal, predatory pricing, and multi-sided platforms—each an attempt to roll back precedent the CLRC disfavored.
- Third, a plaintiff “shall be required to allege and, to prevail at trial, prove substantial market power, either through direct or indirect evidence.”^[10] Earlier versions of the bill advocated for a lower standard or omitted such a requirement altogether. The bill does not define “substantial market power,” but “monopoly power is commonly thought of as ‘substantial’ market power.”^[11]
- Fourth, courts adjudicating claims under the section “shall use the analytical framework and guidance of the California Supreme Court in the manner described in *In re Cipro Cases I & II* (2015) 61 Cal.4th 116, 146–147.”^[12] *Cipro* describes the California Supreme Court’s agreement with the United States Supreme Court that antitrust analysis proceeds along a continuum, in which the “circumstances, details, and logic” of a particular restraint dictate how a court should analyze it. The approach it references is in substance the rule of reason that federal courts have already applied to certain monopolization claims.^[13]

- Fifth, the prohibition on single-firm conduct does not apply to “any small business, meaning an independently owned and operated business, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees and average annual gross receipts of ten million dollars (\$10,000,000) or less over the three years before the filing of the complaint.”[\[14\]](#)
- Sixth, government-granted and supervised conduct is excluded. The Act provides that it does not prevent, limit, or prohibit “[a]ny exclusive franchise, contract, license, or permit that is granted and supervised by a local, state, or federal governmental agency” or “[c]onduct required or authorized pursuant to state or federal law that is granted and supervised by a local, state, or federal governmental agency,” and that no liability attaches for conduct “within the scope of authority granted by” such instruments.[\[15\]](#)

Findings, Declarations, and Rules of Construction

The amended version of the COMPETE Act more closely parallels federal law than its predecessors, but continues to state that the Cartwright Act is “broader in range and deeper in reach” than the federal Sherman Act and lists respects in which California courts may have recognized departures from federal law, including “lower actionable market shares,”[\[16\]](#) a proximate cause test for standing and antitrust injury, indirect purchaser recovery, a “structured rule of reason analysis,” and “differing burdens of proof.”[\[17\]](#) The Act provides that “[i]nterpretations of federal antitrust laws are at most instructive when construing California’s antitrust laws, as they are not modeled on federal antitrust statutes”[\[18\]](#) and directs courts to “liberally interpret California’s antitrust laws to best promote free and fair competition and be mindful that California favors ‘maximizing’ effective deterrence of antitrust violations.”[\[19\]](#)

At the same time, the Legislature has added a new proviso that “affirms” that a business “may lawfully obtain and maintain market power or monopoly power through the superiority of its products, services, or business acumen.”[\[20\]](#) And the amendments also struck a proposed finding that California “agrees with” federal enforcers’ 2023 Merger Guidelines, a controversial update to longstanding federal antitrust enforcement policy (covered in our December 21, 2023 Client Alert).

Takeaways

The new law represents a far more constrained—yet still significant—change in state antitrust law. While courts will need to grapple with the new legislation, businesses operating in California should pay particular attention to the following issues:

Enforcement risk is narrower but concentrated in public enforcers. Limiting actions to the Attorney General and district attorneys removes the specter of private treble damages and class action exposure that earlier versions presented. What remains is enforcement discretion held by the Attorney General and by district attorneys across 58 counties, all applying an untested standard. And the Attorney General reportedly has stated that the state’s “very aggressive” approach to antitrust enforcement will continue.[\[21\]](#)

Section 2 elements without Section 2 case law. While the language of the bill now parallels Section 2 of the Sherman Act, the new law tells courts that federal interpretations are “at most instructive,” to construe the antitrust laws “liberally,” and directs them to seek guidance from a rule-of-reason framework drawn from a decision about an agreement rather than unilateral conduct. The elements a public enforcer must prove are familiar ones. The open question is how much weight California courts will give federal doctrine at the margins, particularly in areas such as refusals to deal and predatory pricing, where the Legislature removed language that would have displaced federal precedent without affirmatively endorsing it. Businesses operating in multiple states should confirm that their compliance practices account for these considerations.

The market power threshold should track federal law. A public enforcer must plead and prove “substantial market power.” Federal courts have long used that phrase to describe monopoly power, and there is a strong argument that the two requirements are the same. The Governor’s signing message supports that reading, further emphasizing that substantial market power is a necessary but not sufficient condition of liability.^[22] The Act’s separate reference to “lower actionable market shares” does not point the other way: the authority cited for it concerns the share of a market that must be foreclosed in an exclusive dealing case, not the share required to establish monopoly power. Companies should note, however, that the small business exception is drawn narrowly, and that claims resting on foreclosure, such as exclusive dealing claims, may be measured against a lower threshold in California than in federal court.

Labor and monopsony are express targets. The COMPETE Act also makes competition for workers a stated purpose of the Cartwright Act, with monopsonization—where a single buyer has dominant control over the demand for specific goods or services—prohibited on the same terms as monopolization. Multi-employer no-poach, non-solicitation, and wage-fixing agreements were already reachable as combinations under the Cartwright Act. The practical addition is a cause of action against a single employer alleged to have acquired or maintained substantial buyer-side power in a labor market, or to have attempted to do so, through exclusionary conduct.

The compliance window is short. The Act’s provisions take effect on January 1, 2027, leaving a limited period for review. Gibson Dunn lawyers are available to advise on how the new provisions will apply to specific business practices, to review compliance policies against the new standard, and to address any other questions regarding the issues discussed in this update.

^[1] AB 1776 (COMPETE Act), https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202520260AB1776; Cal. L. Revision Comm’n, Antitrust Law: Single Firm Conduct (Mar. 30, 2026), <https://clrc.ca.gov/pub/Printed-Reports/Pub249-B750.pdf>. Under federal law, Section 2 has been construed to prohibit monopsonization and attempted monopsonization as well as monopolization, though the prohibition is not express as it is in AB 1776.

^[2] AB 1776 (COMPETE Act), https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202520260AB1776; Cal. L. Revision Comm’n, Antitrust Law: Single Firm Conduct (Mar. 30, 2026),

<https://clrc.ca.gov/pub/Printed-Reports/Pub249-B750.pdf>.

[3] AB 1776; Letter from Governor Gavin Newsom to the Members of the California State Assembly (Sept. 30, 2026) (signing message for AB 1776) (“Signing Message”), <https://www.gov.ca.gov/wp-content/uploads/2026/09/SIGN-msg-AB-1776.pdf>.

[4] Cal. Const. art. IV, § 8(c).

[5] Signing Message.

[6] AB 1776, § 16731(a).

[7] *Id.* at §§ 16700–16770.

[8] *Id.* at § 16731(f)(1).

[9] *Id.* at § 16731(f)(2).

[10] *Id.* at § 16731(c). This subdivision was designated § 16731(d) before the August 27, 2026 amendments renumbered it.

[11] *Reazin v. Blue Cross and Blue Shield of Kansas*, 899 F. 2d 951, 967 (10th Cir. 1990) (citing *Areeda & Turner*, Antitrust Law, ¶ 801 (1978)).

[12] *Id.* at § 16731(b).

[13] See, e.g., *FTC v. Qualcomm Inc.*, 969 F.3d 974, 991 (9th Cir. 2020); *Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946, 983 (9th Cir. 2023).

[14] *Id.* at § 16731(d).

[15] *Id.*

[16] The Act cites *Fisherman’s Wharf Bay Cruise Corp. v. Superior Court* (2003) 114 Cal.App.4th 309 for this proposition, but that decision addresses market foreclosure rather than market share. The court held that written exclusive dealing contracts foreclosing 20 percent of the relevant market could, in light of other market factors, be substantial enough to defeat summary adjudication under Business and Professions Code section 16720; the defendant there controlled roughly two-thirds of the relevant market. *Id.* at pp. 335–339. The reference to “lower actionable market shares” is best read to address the degree of foreclosure required in exclusive dealing and comparable cases, not the market share required to establish monopoly or substantial market power.

[17] *Id.* at § 16730(c).

[18] *Id.* at § 16730(d).

[19] *Id.* at § 16732.

[\[20\]](#) *Id.* at § 16730(e).

[\[21\]](#) Transcript of Interview with California Attorney General Rob Bonta, Capital Forum (July 6, 2023), <https://thecapitolforum.com/resource/transcript-of-interview-with-california-attorney-general-rob-bonta/>.

[\[22\]](#) Signing Message.

The following Gibson Dunn lawyers prepared this update: Rachel Brass, Cynthia Richman, Daniel Swanson, Caeli Higney, Julian Kleinbrodt, and Sarah Roberts.

Gibson Dunn lawyers are closely monitoring these developments and are available to discuss the implications. For further details, see our previous Client Alerts and related resources on the firm's Antitrust and Competition page [here](#).

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 practice group:

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