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Legislative Update

California's COMPETE Act: Single-Firm Conduct Will Face Antitrust Scrutiny Under California Law in 2027

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Last week, California Gov. Gavin Newsom signed [A.B. 1776, the Competition and Opportunity in Markets for a Prosperous, Equitable and Transparent Economy Act \(COMPETE Act\)](#), into law, presenting yet another regulatory risk to navigate for businesses operating in California.¹ Effective Jan. 1, 2027, the COMPETE Act amends California's primary antitrust statute, the Cartwright Act, Cal. Bus. & Prof. Code §§ 16720 *et seq.*, to permit state and local prosecutors to file lawsuits challenging an individual company's anticompetitive conduct, including monopolizing or monopsonizing any part of trade or commerce.² While the COMPETE Act does not empower private antitrust plaintiffs to challenge single-firm conduct, it significantly augments the litigation risk for businesses operating in a state known to be amongst the leaders, if not the leader, in pursuing antitrust enforcement measures.

The COMPETE Act Brings a Significant Change in Antitrust Scrutiny and Risk to California

The COMPETE Act amends California's century-old antitrust statute, the Cartwright Act, to include three new sections: 16730, 16731 and 16732. Whereas the Cartwright Act currently covers only coordinated behavior by multiple actors,³ once the COMPETE Act comes into effect on Jan. 1, 2027, a single business that attains substantial market power may be subject to litigation, and potential liability, for actual or attempted monopolization or monopsonization.

Section 16730 reaffirms that the Cartwright Act is "broader in range and deeper in reach" than federal antitrust law (principally the Sherman Act),⁴ and that "interpretations of federal antitrust law are at most instructive when construing California's antitrust laws."⁵ Additionally, and importantly for businesses that may face antitrust scrutiny under the COMPETE Act, Section 16730 explicitly affirms that, "as referenced in *In re Cipro Cases I & II* (2015) 61 Cal.4th 116, 148, a business may lawfully obtain and maintain market power or monopoly power through the superiority of its products, services, or business acumen."⁶

Meanwhile, Section 16731 delivers the core substantive changes of the Act. It expressly prohibits monopolizing, monopsonizing, attempting to monopolize, attempting to monopsonize, maintaining a monopoly, maintaining a monopsony, or combining or conspiring with another person to monopolize or monopsonize any part of trade or commerce, and specifies that any action pursuant to this section "may be initiated only by the Attorney General or a district attorney."⁷ Section 16731 clarifies that all such suits should be filed as complex cases in California courts;⁸ that in all such suits, the government has the burden to allege and prove substantial market power, either through direct or indirect evidence;⁹ and that claims asserted under this section are to be analyzed under the burden-shifting framework set forth by

the California Supreme Court in *In re Cipro Cases I & II*, which requires consideration of procompetitive justifications for the at-issue conduct.¹⁰

Importantly, Section 16731 provides four specific exemptions from liability. First, Section 16731 provides a liability exclusion for small businesses, defined to include any “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.”¹¹ Second, Section 16731 exempts “[a]ny exclusive franchise, contract, license, or permit that is granted and supervised by a local, state, or federal governmental agency.”¹² Third, Section 16731 expressly does not cover “[c]onduct required or authorized pursuant to state or federal law that is granted and supervised by a local, state, or federal governmental agency.”¹³ Finally, Section 16731 “does not impose any liability on a person or entity for conduct within the scope of authority granted by one or more such exclusive franchises, contracts, licenses, or permits.”¹⁴

Section 16731 also provides a key clarification regarding California’s broad Unfair Competition Law (UCL), Cal. Bus. & Prof. Code §§ 17200 *et seq.* Pursuant to the COMPETE Act, “[e]xcept in an action brought by the Attorney General or a district attorney pursuant to this section, an alleged violation of this section shall **not** serve as a predicate violation under Chapter 5 (commencing with Section 17200).”¹⁵ The inclusion of this language clarifies that the COMPETE Act was not intended to and does not provide an additional avenue for private civil litigation under the UCL.

The final new section added to the Cartwright Act, Section 16732, instructs that “[c]ourts shall 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,” and cites a 2010 California Supreme Court decision.¹⁶ Thus, while the COMPETE Act has left the contours of the statute to be shaded by the courts, Section 16732’s mandate seems to endorse liberal enforcement efforts. That language is not easily reconciled with Gov. Newsom’s Signing Message for A.B. 1776, which cautioned against “set[ting] the bar too low [by] dragging legitimate, superior business practices and products into the ambit of anti-competitive behavior.”¹⁷

Why It Matters

As a result of Gov. Newsom signing the COMPETE Act into law, come 2027, prosecutors in California are now empowered to pursue antitrust enforcement efforts against unilateral conduct by a single business, without the requirement of a prefatory agreement. Because the COMPETE Act does not specifically define what “exclusionary conduct” it prohibits, state and local prosecutors will have broad discretion to pursue potentially novel unilateral-conduct theories that expand beyond Sherman Act precedent, including in labor markets.

When the COMPETE Act comes into effect, federal enforcement may portend separate state enforcement. In the past decade, California officials have regularly joined the U.S. Department of Justice (DOJ) in federal Sherman Act actions to pursue single-firm conduct. The COMPETE Act opens the door for the California attorney general and district attorneys to bring parallel actions in state court.

Key Takeaways

Given DOJ, FTC and state attorney general attention to competition, including investigations of several global companies headquartered in California, the **enactment of the COMPETE Act marks a significant regulatory change**. Businesses operating in California must evaluate new exposure and prepare to mitigate parallel state and federal risk in a climate of heightened antitrust enforcement. The discretion afforded to prosecutors to challenge alleged exclusionary conduct, without the limitations imposed by Sherman Act jurisprudence, presents a palpable litigation risk.

California state courts pose unique challenges for defendants. Procedural differences between federal and California courts may make the state forum more challenging for defendants. For example, because the federal *Twombly/Iqbal* “plausibility” standard does not apply in California state courts, as underscored by the 2026 Cartwright Act amendments that eased pleading requirements for coordinated conduct actions below the federal level, antitrust claims asserted in state court have a lower pleading threshold to clear than in federal court.¹⁸ While the COMPETE Act does not contain an express pleading standard, its instruction that judges shall interpret the law liberally in favor of maximizing deterrence may make it easier for plaintiffs to move past the pleading stage and into discovery.¹⁹ In addition, California’s procedural rules allow plaintiffs to propound discovery requests more quickly²⁰ and issue time-consuming form interrogatories.²¹ Trials in state court are different too. While federal jury rules require unanimous verdicts,²² California verdicts may be rendered by only three-fourths of a jury, increasing liability risk for defendants.²³ Businesses faced with enforcement actions in and after 2027 will therefore need to reckon with these structural differences while navigating the substantive ground broken by the COMPETE Act.

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¹ AB 1776 (COMPETE Act), https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202520260AB1776 (last visited Oct. 6, 2026).

² AB 1776 (COMPETE Act), https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202520260AB1776 (last visited Oct. 6, 2026).

³ Cal. Bus. & Prof. Code §§ 16720-16729.

⁴ Cal. Bus. & Prof. Code § 16730(c) (quoting and citing *Cianci v. Super. Ct. (Poppingo)*, 40 Cal. 3d 903, 920 (1985)).

⁵ Cal. Bus. & Prof. Code § 16730(d) (quoting and citing *Aryeh v. Cabon Bus. Solutions, Inc.*, 55 Cal. 4th 1185, 1195 (2013)).

⁶ Cal. Bus. & Prof. Code § 16730(e).

⁷ Cal. Bus. & Prof. Code § 16731(a), (f)(1).

⁸ Cal. Bus. & Prof. Code § 16731(h).

⁹ Cal. Bus. & Prof. Code § 16731(c).

¹⁰ Cal. Bus. & Prof. Code § 16731(d); see also *In re Cipro Cases I & II*, 61 Cal. 4th 116, 148, 156 (2015) (acknowledging that “a business may permissibly develop monopoly power, i.e., ‘the power to control prices or exclude competition,’ through the superiority of its product or business acumen,” and instructing courts to “weigh ... anticompetitive effects against the possible justifications” after a plaintiff has made out a prima facie case) (citation omitted).

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- ¹¹ Cal. Bus. & Prof. Code § 16731(d).
- ¹² Cal. Bus. & Prof. Code § 16731(e)(1)(A).
- ¹³ Cal. Bus. & Prof. Code § 16731(e)(1)(B).
- ¹⁴ Cal. Bus. & Prof. Code § 16731(e)(2).
- ¹⁵ Cal. Bus. & Prof. Code § 16731(f)(2) (emphasis added).
- ¹⁶ Cal. Bus. & Prof. Code § 16732 (citing *Clayworth v. Pfizer, Inc.*, 49 Cal. 4th 758 (2010)).
- ¹⁷ See Gov. Newsom signs historic law to stop big business from shutting out competition, cuts red tape to speed up business permitting, Gov. Gavin Newsom, Sept. 30, 2026, [available at Governor Newsom signs historic law to stop big business from shutting out competition, cuts red tape to speed up business permitting | Governor of California](#) (last visited Oct. 5, 2026).
- ¹⁸ Under the unlawful agreement provisions of the Cartwright Act, plaintiffs must only demonstrate that an agreement to restrain trade is plausible and need not “allege facts tending to exclude the possibility of independent action.” Cal. Bus. & Prof. Code § 16756.1. In contrast, parallel claims brought under Section 1 of the Sherman Act cannot simply recite facts that are consistent with either independent action or concerted agreement; federal plaintiffs must instead plead facts showing that an unlawful agreement exists, not that it is merely possible. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007).
- ¹⁹ Cal. Bus. & Prof. Code § 16732.
- ²⁰ California plaintiffs may propound interrogatories, request production and request admissions 10 days after the service of summons on, or the appearance of, a defendant. Cal. Civ. Proc. Code §§ 2030.020(b), 2031.020(b), and 2033.020(b). California lacks a state equivalent to the Fed. R. Civ. P. 26(f) requirement that parties confer before discovery begins.
- ²¹ Cal. Civ. Proc. Code § 2030.030(a)(2); see, e.g., Form Interrogatory No. 15.1.
- ²² Fed. R. Civ. P. 48(b).
- ²³ Cal. Const., art. I, § 16.