



April 8, 2024

Senate Judiciary Committee
1021 O Street, Room 3240
Sacramento, CA 95814

RE: SB 1154, “California Preventing Algorithmic Collusion Act of 2024” (Oppose)

Dear Chair Umberg and Members of the Senate Judiciary Committee:

On behalf of the Computer & Communications Industry Association (CCIA) I write in respectful opposition to SB 1154, the “California Preventing Algorithmic Collusion Act of 2024.” CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.¹ Proposed regulations on the interstate provision of digital services therefore can have a significant impact on CCIA members.

Pricing algorithms are designed to automate the pricing process and leverage data for better decision-making. Such algorithms are widely used across a variety of businesses in various industries allowing for the optimization of prices analyzing factors such as cost, demand, and competitor pricing. These algorithms adjust pricing in real-time in response to market conditions. This automation results in businesses being able to save money, as manually managing pricing and inventory can be extremely costly and time consuming.

In many cases this dynamic pricing also results in consumers receiving lower and more competitive prices for various goods and services. For example, price comparison tools and dynamic pricing can help consumers find the best deals at any given time, saving them time and effort in searching for bargains. In addition, personalized pricing can lead to targeted discounts for consumers, allowing them to access better deals.

It is worth noting that a near-identical measure to SB 1154 was introduced at the federal level, and the bill has yet to receive a hearing.² We encourage California lawmakers to similarly resist advancing an unnecessary and harmful measure, and appreciate the opportunity to further expand on our concerns with this legislation.

The concerns raised under SB 1154 are already addressed under existing law.

While there are potential concerns associated with pricing algorithms, these are already addressed under existing state and federal antitrust law – collusion is illegal under existing law, and California’s Unfair Competition Law addresses pricing discrimination on commodities and

¹ For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.ccianet.org/members>.

² See S.3686 – 118th Congress (2023-2024), <https://www.congress.gov/bill/118th-congress/senate-bill/3686/all-actions>.

services. Additionally, existing antitrust law prohibits competitors from colluding through third parties to set prices by improperly using sensitive information from rival competitors. It is also worth noting that this activity is considered illegal under existing law regardless of whether firms use an algorithm. There are existing tools to detect and stop illicit collusion.

The prohibitions under SB 1154 would negatively impact a wide range of businesses and industries.

SB 1154 would prohibit the use or distribution of any pricing algorithm that uses, incorporates or was trained with nonpublic competitor data. This would impact a wide range of businesses and industries. As previously stated, pricing algorithms carry many potential benefits for consumers and also allow businesses to more economically set prices in response to changes in supply and demand by avoiding manual pricing mechanisms.

For example, e-commerce and brick-and-mortar retailers employ pricing algorithms to offer lower prices to consumers tied to inventory levels and pricing across other businesses. Realtors also use pricing algorithms to assist their clients in setting competitive and reasonable listing prices when they choose to sell their home. Banks and other financial lenders similarly rely on such automated mechanisms to inform the setting rates and fees for services. Many travel services, including airlines, hotels, and cruise lines adjust prices based on a variety of factors such as demand and seasonality. Utilities use pricing algorithms to help reduce overall energy usage while also providing lower prices to consumers.

It is worth noting that this a non-exhaustive set of examples of businesses and industries that would be impacted under SB 1154. Therefore, if this legislation was enacted, there would be far-reaching consequences given that the bill appears to assume that this broad swath of conduct is presumptively illegal.

SB 1154's vague and confusing terms are likely to chill price competition.

Several terms included in SB 1154 are likely to result in significant confusion for covered businesses. For example, the definition of “nonpublic competitor data” appears to extend beyond what is traditionally understood as truly “nonpublic” information. Under the current definition, a person could be held liable for a violation under SB 1154 if the attorney general subsequently concludes that the data used was not “widely available” or “easily accessible”. CCIA requests further clarification regarding what would satisfy those terms. Without additional clarity SB 1154 does not allow for a clear understanding of what data would be prohibited for use in training a pricing algorithm and would render it extremely difficult to avoid potential violations.

Due to the vague terms and, therefore, confusing compliance obligations, it is likely that SB 1154 would chill price competition for California consumers. Rather than face the risk of enforcement and fines of up to \$10,000 per day, businesses would be incentivized to severely restrict their use of pricing algorithms. This would significantly limit the potential benefits realized by businesses and consumers alike across the myriad aforementioned industries where pricing algorithms are frequently employed.



* * * * *

We appreciate your consideration of these comments and stand ready to provide additional information as California lawmakers consider this legislation.

Respectfully submitted,

A handwritten signature in cursive script that reads "Khara Boender".

Khara Boender
State Policy Director
Computer & Communications Industry Association

CC: Senator Melissa Hurtado
Suite 7310, State Capitol
1021 O Street
Sacramento, CA 95814