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Assessment of the Economic Costs of Imposing Abuse of Dominance Standards in New York State

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A flurry of legislative initiatives proposes to expand state-level antitrust legislation in the U.S., including in California, Colorado, Indiana, Maine, Minnesota, New York, and Texas. Most notably, the New York Twenty First Century Antitrust Act (hereafter the "New York Bill") would modify the current Donnelly Act that largely mirrors federal antitrust law. If enacted, the New York Bill would create a state-level antitrust regime that is stricter than the federal antitrust regime for companies operating in New York. The New York Bill's proposed changes in the likelihood of intervention may increase the risk of inhibiting efficient behavior that increases value for consumers. In 2024, we authored a white paper (hereafter, Garces, Zetenyi, Banternghansa (2024))[2] that examines the potential economic impacts of the New York Bill and similar legislation in New York and six other states.[3] This supplemental white paper updates our prior calculations using more recent data and extends our analysis to include an additional estimate for the loss in wage compensation associated with the Bill in New York State.

In Garces, Zetenyi, Banternghansa (2024), we developed a stylized model of a firm's decision to engage in certain business conducts based on the principle that a rational firm that identifies a commercial opportunity will proceed with that opportunity unless the expected costs outweigh the expected benefits of the opportunity. To make the model more tractable, we limited our analysis to procompetitive conduct that could potentially be deterred by the provisions of the New York Bill. We used data from the relevant academic literature to estimate the frequency of opportunities for procompetitive conduct, the distribution of expected incremental profits from procompetitive conduct, and the expected incremental costs of increased antitrust enforcement activity from the provisions of the New York Bill. We then used our model to estimate the rate of deterred procompetitive conduct—occurring when the incremental costs exceed the expected benefits as a result of the provisions of the New York Bill. We then used the estimated rate and state-level statistics to quantify state-level and national-level effects on GDP and employment.

2 Eliana Garces, Kristof Zetenyi, and Big Banternghansa, "Assessment of Economic Costs of Imposing Abuse of Dominance Standards at the State Level," *Computer & Communications Industry Association Research Center*, May 2024, https://ccianet.org/research/reports/assessment-economic-costs-imposing-abuse-dominance-standards-at-state-level/, accessed April 11, 2025.

3 Garces, Zetenyi, Banternghansa (2024) studied Senate Bill S6748. Since then, the bill was revised and reintroduced as Senate Bill S335 on January 8, 2025. "Senate Bill S335," *2025-2026 Legislative Sessions, The New York State Senate*, 2025-2026, https://legislation.nysenate.gov/pdf/bills/2025/S335, accessed April 11, 2025. See full text at https://legislation.nysenate.gov/pdf/bills/2025/S335. Senate Bill S335 removed prior language stating that evidence of pro-competitive effects shall not be a defense to abuse of dominance, but added several restraints that are presumed to be illegal, such as exclusive dealing. As such, we believe that our modeling assumptions from Garces, Zetenyi, Banternghansa (2024) continue to be relevant for Senate Bill S335.

In Garces, Zetenyi, Banternghansa (2024), we calculated that the New York Bill would lower GDP growth rate and lower employment growth rate by 1 pp and 0.6 pp, respectively, for New York State from 2016 to 2017. Then, using long-term economic projections for GDP and employment published by the CBO in 2023 and 2022 data from New York State, we compared the GDP and full-time-equivalent ("FTE") employment trajectories under the New York Bill relative to the GDP and FTE employment trajectories absent the Bill from 2023 to 2032. In this white paper, we update our previous calculations by using economic projections published by the CBO in 2025 and New York State-specific data from 2024 to compare the GDP and FTE employment trajectories under the New York Bill relative to the trajectories absent the Bill, for the period from 2026 to 2035.[4]

In addition to updating our prior calculations using more recent data, we also calculate two new metrics to quantify the economic impacts of the New York Bill: loss in wage compensation and average lost wage per worker in New York. A firm's wage compensation is the total amount of labor compensation it pays to its employees. For example, if a firm employs 10 employees and each earns $100K per year, then the firm's wage compensation is $1 million per year. While loss in employment (measured in FTE) reflects how likely a firm will reduce its workforce due to overdeterrence of procompetitive behavior associated with the New York Bill, loss in wage compensation reflects the reduction in number of employed workers (measured in FTE) and the reduction in average annual wage. For example, a firm may reduce its wage compensation by a) lowering the number of people it employs (measured in FTE); b) lowering the average wage paid to its employees; or c) lowering both. To the extent that a firm reduces the average annual wage it pays to its employees due to overdeterrence of procompetitive behavior associated with the New York Bill while keeping the number of people it employs (measured in FTE) relatively constant, this loss would be reflected in wage compensation but not in FTE employment.

To estimate the loss in wage compensation in New York State from 2026 to 2035, we first calculate that the New York Bill would lower wage

4 "Budget and Economic Data," *Congressional Budget Office*, https://www.cbo.gov/data/budget-economic-data, accessed April 29, 2025 ("Economic Projections, Jan 2025"); "GDP by State," *Bureau of Economic Analysis*, https://www.bea.gov/data/gdp/gdp-state, accessed April 29, 2025 ("SAGDP1 State annual gross domestic product (GDP) summary"); "Table Data - All Employees: Total Nonfarm in New York," *Federal Reserve Bank of St. Louis*, https://fred.stlouisfed.org/data/NYNA, accessed April 29, 2025. We have also updated some of the state-specific reporting using more recent data on industries. See **Table 1** for more details.

compensation growth rate by 0.7 pp from 2016 to 2017.[5] Then, using the annual growth rate of US total compensation projected by CBO, we compare the wage compensation trajectory under the New York Bill to the wage compensation trajectory absent the Bill. We also calculate average lost wage per worker in New York as the ratio of the loss in wage compensation and the number of workers who would have been employed in New York each year absent the bill.

Below, we summarize our estimated cost of the proposed law in New York State on GDP, FTE employment, wage compensation, and average lost wage per worker in New York.

5 We obtain wage compensation in New York State from the Federal Reserve Economic Data. See "Table Data - Total Wages and Salaries in New York," *Federal Reserve Bank of St. Louis*, https://fred.stlouisfed.org/data/NYWTOT, accessed April 29, 2025.

New York: Economic Cost of the New York Twenty First Century Antitrust Act

Estimated cost of the proposed law in New York

GDP loss: -1.0% in 2026 ($24 billion)

Jobs loss: -0.6% in 2026 (61 thousand FTE)
Wage Compensation loss: -0.7% in 2026 ($7 billion)
Average Lost wage per worker in New York: $692 in 2026

By 2035, this represents a loss of GDP of $318 billion, 615 thousand jobs, and $96 billion in wage compensation – an average lost wage per worker in New York of $9,283

How?

- Large financial firms adopt less efficient commercial strategies to sell portfolios of products.
- Large and medium sized health providers are dissuaded from developing partnerships for innovation in the supply of health services.
- Successful local players in the hospitality sector refrain from building attractive portfolio offerings.
- Successful online e-commerce sites do not implement strategies that help develop business or brands.
- Large wholesalers are prevented from improving supply chain efficiencies through acquisitions.
- Innovative start-ups have a lower likelihood to exit through acquisitions and receive less investment.

New York State has long been a **center for innovation, trade, and finance**, contributing significantly to the US economy. As of year-end 2024, with a GDP of approximately $2.3 trillion, New York is the third-largest state in the US and accounts for 7.9% of the overall US GDP.[6] With the exception of 2020, when the COVID-19 pandemic caused a downturn, New York's GDP

6 "GDP by State," *Bureau of Economic Analysis*, https://www.bea.gov/data/gdp/gdp-state, accessed April 29, 2025 ("Table 1. Gross Domestic Product by State and Region: Level and Percent Change from Preceding Period").

has grown consistently each year over the past decade with an average annual growth rate of 4.9%.[7]

The state's economic landscape is composed of a diverse range of industries, with a specialization in finance, insurance, healthcare, wholesale, and technology. As shown in **Table 1**, financial services and insurance related industries dominate economic activity in New York State. Wall Street, renowned as the global financial hub, hosts globally prominent financial institutions, including the world's largest stock exchanges (the New York and the NASDAQ),[8] leading retail and investment banks (Bank of America, J.P. Morgan Chase, Goldman Sachs, and Morgan Stanley),[9] insurance companies (AIG and MetLife),[10] and asset management firms (BlackRock and Blackstone).[11] New York also acts as a pivotal trade hub and hosts prominent wholesalers, major apparel brands and pharmaceutical firms. In addition, New York boasts a large presence of legal and professional services firms such as the "big four" accounting firms[12] and numerous "big law" firms.[13]

7 "Interactive Data Tables," *U.S. Bureau of Economic Analysis, Regional Data: GDP and Personal Income*, https://apps.bea.gov/itable/?ReqID=70&step=1, accessed April 10, 2025.

8 Amali Vinupriyadharshini and Xavir Mahimairaj, "A Comparative Study on Financial Technology Used in Stock Exchanges – Nse, Nyse, Nasdaq, Jpx and Sse," *International Journal of Research in Advent Technology (IJRAT) Special Issue*, 2019, available at http://www.ijrat.org/downloads/Conference_Proceedings/ICFTWF-19/paper-1.pdf, ("This article studies the financial technology of National stock exchange (NSE) India, New York Stock Exchange (NYSE), National Association of Securities Dealer's Automated Quotation (NASDAQ) USA, Japan Exchange Group (JPX) and Shanghai Stock Exchange (SSE) China. These exchanges are the largest in the world based on their market capitalization and NSE"s fintech is compared with them.").

9 Mark Kendall, "101 Best & Most Active New York Investment Banks," *Investor Available*, 2021, https://investoravailable.com/101-best-most-active-new-york-investment-banks/, accessed July 11, 2023, Kevin Payne and Emily Batdorf, "Best Banks in New York for July 2023," *Forbes*, July 5, 2023, https://www.forbes.com/advisor/banking/best-banks-in-new-york/, accessed July 11, 2023

10 Mark Rosanes, "The Largest Insurance Companies in the Us - Based on Market Cap," *Insurance Business America*, March 08, 2023, https://www.insurancebusinessmag.com/us/guides/the-largest-insurance-companies-in-the-us--based-on-market-cap-438805.aspx, accessed July 11, 2023

11 Ty Haqqi, "25 Biggest New York Companies and Stocks," *Yahoo*, January 9, 2023, https://www.yahoo.com/now/25-biggest-york-companies-stocks-205929793.html, accessed July 11, 2023

12 "The Rise, Fall and Re-Emergence of the Big 4 in Law," *Thomson Reuters*, 2014, https://blogs.thomsonreuters.com/answerson/wp-content/uploads/sites/3/2014/04/infographic-re-emergence-big-4-accounting-firms-law.pdf, accessed July 11, 2023, "The IPA 500," *INSIDE Public Accounting*, https://insidepublicaccounting.com/top-firms/ipa-500/, accessed July 11, 2023; "The IPA 500," *INSIDE Public Accounting*, https://insidepublicaccounting.com/top-firms/ipa-500/, accessed July 11, 2023

13 "New York Legal Market," *Georgetown Law*, https://www.law.georgetown.edu/your-life-career/career-exploration-professional-development/for-jd-students/explore-legal-careers/legal-markets/new-york-legal-market/, accessed July 11, 2023, ("New York is the largest legal market by headcount in the country.").

Table 1: Top 5 Industries in New York State (by revenue)[14]

Industry	Firm Count	Employment	Revenues ($ Billions)	Share by Firm Size Small	Medium	Large
Insurance Carriers	418	84,636	$158.45	59%	9%	32%
Securities and Commodity Contracts Intermediation and Brokerage	998	80,887	$108.20	85%	7%	9%
Depository Credit Intermediation	606	141,469	$91.43	62%	19%	19%
Other Financial Investment Activities	4,572	97,014	$85.80	93%	3%	4%
General Medical and Surgical Hospitals	100	428,759	$78.14	5%	16%	79%
Total	**456,272**	**7,887,280**	**$2,582**	**97%**	**2%**	**1%**

Our findings suggest that the implementation of the bill in New York State would likely result in a **loss of state GDP of 1%**, **a loss in FTE employment of 0.6%**, and **a loss in wage compensation of 0.7%**, representing **an average lost wage per worker in New York of 0.7%** in 2026. The economic cost for New York State would be $24 billion in the first year and $318 billion ten years later, resulting in **a loss in 61 thousand FTE jobs** in the first year and **615 thousand FTE jobs** ten years later, and a **loss in wage compensation of $7 billion** in the first year and **$96 billion** ten years later, representing an **average lost wage per worker in New York of $692** in the first year and **$9,283** ten years later.

Table 2: Economic Costs of Implementation of the New York Bill
New York State

Year	GDP Loss ($ billion)	FTE Loss (Thousands)	Wage Compensation Loss ($ billion)	Average Lost Wage Per Worker in New York ($)
2026	24	61	7	692
2035	318	615	96	9,283

We find that large firms will likely be most impacted by the implementation of the New York Bill. Large firms may more easily come under scrutiny particularly if they specialize in specific services, products, or distribution channels where they gain a certain prominence.

14 **Note**: This table shows the top five NAICS 4-digit industries in New York State ranked by industry revenue in 2017. Revenue is based on 2017 SUSB data. Firm count, firm size, employment, and share are based on 2021 SUSB data. **Sources**: "2017 Statistics of U.S. Businesses (SUSB) Data," *United States Census Bureau*, March 2023, https://www.census.gov/data/datasets/2020/econ/susb/2020-susb.html, accessed July 14, 2023; "2021 Statistics of U.S. Businesses (SUSB) Data," *United States Census Bureau*, December 2023, https://www.census.gov/data/datasets/2021/econ/susb/2021-susb.html, accessed April 11, 2025.

Given the extensive presence of large firms in New York State as shown in **Table 1** above, we expect that of the top five industries, Insurance Carriers, Depository Credit Intermediation, and General Medical and Surgical Hospitals to be particularly affected by the proposed legislation. **Large firms may come under scrutiny for commercial practices** such as bundling some of their financial services or establishing demand expanding distribution deals. More broadly, for 69 industries in New York State, large firms represent over 10% of all firms in the industry.

In addition, we find that small and medium businesses will likely also be negatively impacted by the implementation of the New York Bill. These businesses may come under scrutiny as soon as they gain local relevance or if they acquire a high degree of specialization. This is more likely to happen in innovative services, processes, and products.

Enforcing against practices that support product line innovations, investment in intangibles, and intellectual property may **deprive successful small and medium firms from particularly efficient paths of growth**.

For example, New York State is the home of some successful fashion brands such as Rag & Bone or the Tapestry house of brands that includes Kate Spade New York, Coach, and Stuart Weitzman.[15] Numerous e-commerce businesses aspire to enable the same level of success and brand recognition with sophisticated and sometimes exclusive distribution practices. These commercial strategies may be deterred due to regulatory risk.

The implementation of the New York Bill will likely inhibit acquisitions and lower incentives to invest in start-ups and small firms developing new technologies. This is particularly significant in a state like New York that is a hub for startup development. The result is a **reduction in venture capital investment** if acquisition becomes a less likely exit strategy.[16]

15 Ben Widdicombe, "How Did Fashion's Rag & Bone Take the Steady Route to Success?," *Observer*, July 15, 2015, https://observer.com/2015/07/how-did-fashions-rag-and-bone-take-the-steady-route-to-success/, accessed July 11, 2023, "Our Brands," *Tapestry*, https://www.tapestry.com/our-brands/, accessed July 11, 2023

16 George Ford, Randolph Beard, and Michael Stern, "Innovation, Exit, and Restrictions on Tech Mergers and Acquisitions," *Phoenix Center Policy Bulletin* Vol. 50 2021, p. 1 ("[W]e find that statutory restrictions on acquisitions by the large platforms adversely affect investments in innovations and alter the innovator-investor exit strategy, incentivizing innovators to transfer their innovations to dominant firms in even earlier stages to avoid antitrust scrutiny.").

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