



## **COST DRIVER**

April 7, 2026

The Honorable Scott Wiener  
California State Senate  
1021 O Street, Suite 8620  
Sacramento, CA 95814

**SUBJECT: SB 1074 (WIENER) BASED ACT: OPPOSE/COST DRIVER**

Dear Senator Wiener:

The California Chamber of Commerce and the coalition listed below is **OPPOSED** to your **SB 1074 (Wiener)** as a **COST DRIVER**, as it is a confusing attempt to legislate the design of technology platforms that would fundamentally reshape global commerce on the internet as we know it. Although we strongly disagreed with their ultimate findings, this proposal was so extreme that even the California Law Review Commission (CLRC) unanimously rejected it, saying that singling out California's successful technology firms for targeted and unique antitrust treatment was poorly conceived. It is also far more invasive than the failed federal legislative proposals that were opposed by leading California legislators and the destructive European Digital Markets Act (DMA), on which SB 1074 is modelled. If adopted, it would prohibit business practices that are ubiquitous across many industries and impose duties on covered platforms to cooperate with their competitors in ways that will undermine their incentives to compete for market share by reducing prices for consumers.

If enacted, the bill will sow confusion, spur years of costly private litigation, and chill investment in the development of platforms that meet the demands of California consumers and small business, undermining California's role as a cradle of global technology leadership. Investments that could be directed to the continued evolution and improvement of products and services will instead be diverted to the likely high costs of compliance and litigation – cost increases that will ultimately be borne by all California consumers.

### **SB 1074 IS A MORE EXTREME VERSION OF FAILED FEDERAL BILLS THAT CALIFORNIA CONGRESSMEMBERS OPPOSED**

SB 1074 is an effort to resuscitate the American Innovation and Choice Act (AICOA), a federal bill that failed in Congress in 2022 and was opposed by prominent California Congressional leaders concerned about its effect on California's economy and global technological leadership. Like AICOA, SB 1074 seeks to single out a small group of technology firms based on their current stock prices and business models. However, its impact – and the opposition - are much broader than just the companies it purports to go after. It would make it presumptively unlawful for a firm with at least \$1 trillion in market capitalization that owns a platform with over 100 million monthly users to "prefer" its own products or services on the platform or limit interoperability or certain platform access features for users.

While SB 1074 is crafted to suggest that the law only prohibits conduct that could disadvantage users or rivals, in fact the provisions impose extensive affirmative obligations that dictate product design choices and force successful platforms to share valuable assets and intellectual property with rivals.

For similar reasons, the House companion bill of AICOA drew pointed and valid criticisms from the California delegation. For example, Representative Zoe Lofgren observed: “Many platform products, services, and useful integrations would presumptively be ‘unlawful’...platforms will bear the burden of disproving...that they did not ‘harm the competitive process’ – a vague standard that would require months or years of litigation before it can ever be won as an affirmative defense.” (Press Release, June 23, 2001.) Similarly, in an Op-ed published on May 10, 2022, Rep. Eric Swallwell stated:

My district lies in the San Francisco Bay Area, where thousands of my constituents make and support the tech applications consumers use day in and day out. These innovations, as well as people’s jobs, families and livelihoods, are always top of mind when I review any federal legislation. Likewise, California employs robust privacy, data security, and antitrust laws. I cannot in good conscience support federal antitrust legislation that would weaken those carefully crafted laws...Unfortunately, the antitrust bills being considered in both the House and Senate include antitrust reforms that would have unintended cybersecurity consequences. These issues were recently reinforced by numerous national security experts. (Op-Ed May 10, 2022.)

Senator Alex Padilla also criticized AICOA, expressing his concern that it could “be a gift to bad actors seeking to prevent platforms from blocking business users that peddle hate speech or imagine election disinformation.” (Los Angeles Times, Feb. 1, 2022.)

But the BASED Act takes a bad bill and makes it worse. AICOA would have been enforceable only by federal and state public prosecutors. It did not include a private right of action. The BASED Act would allow any person or entity with standing to bring an action under the Cartwright Act to file a claim, including class actions. A defendant would be subject to the same fees and penalties as a Cartwright Act violation, including treble damages, and those remedies would be cumulative on top of any remedies for violations of other California laws.

AICOA also required that a plaintiff alleging a so-called “self-preferencing” violation show material competitive harm to meet their burden. The BASED Act does not require any comparable showing. It creates a **presumption** that so-called self-preferencing or other vaguely enumerated product design or platform access choices are unlawful. To rebut that presumption, a covered platform would be required to prove that its design and platform access choices were “reasonably necessary” to achieve a procompetitive purpose **and** that the procompetitive justifications and actual effects **clearly outweigh** the competitive harm in the same market. The presumption that design and platform access choices are unlawful, with the high bar for an affirmative defense, would make it difficult for a covered platform to prevail on even common-sense grounds that were expressly allowed in the AICOA, such as compliance with state or federal law, or protection of user privacy and data security. This is especially true due to the requirement of harm and benefit occurring “in the same market,” as a restriction on business users may be necessary to protect consumers, but these could be seen as different markets.

SB 1074 would also serve as a disincentive for companies to continue to try to grow their workforce and economic activity. If a company was coming close to the arbitrary thresholds outlined in the bill, it may stop competing and innovating as vigorously, so as to not be subject to the complex web of compliance and legal liability that the bill would require.

### **SB 1074 IMPOSES A WIDE-RANGING DUTY TO DEAL ON COVERED PLATFORMS THAT WILL UNDERMINE COMPETITION AND HAVE SEVERE UNINTENDED CONSEQUENCES**

To comply with the bill’s prohibitions and avoid liability, covered platforms will be under a mandate to cooperate with their rivals. That, in turn, will necessitate continuing and detailed collaboration, effectively forcing covered platforms to interact and negotiate terms of cooperation and dealing that, absent SB 1074, involve the kind of conduct that could otherwise raise collusion concerns under other provisions of the Cartwright Act.

Rather than competing, rivals will weaponize the bill's provisions to make wide-ranging demands of covered platforms. Given the very low pleading and evidentiary burdens imposed on plaintiffs under the bill, even weak claims of violation will give rise to the risk of coerced settlements. Settling private suits (threatened or commenced) by rivals would be especially difficult, because it would require agreements on terms of dealing including prices, access, and duration of cooperation that are not specified by the bill. Different rivals might negotiate different terms that favor some, but disfavor others. Government enforcers, and courts, may have to scrutinize those settlements leading to additional litigation over the settlements themselves. And contrary to the goals of the bill, it is more likely to entrench than foster entry and competition among platforms that might otherwise have an incentive to offer the kind of alternative business models the bill tries to force through legislative fiat.

This was precisely the concern that led the U.S. Supreme Court in *Trinko* to limit the circumstances under which the antitrust laws should impose forced sharing of technology and a duty to deal between rival firms. Doing so encourages rivals to cooperate rather than compete and undermines both firms' incentive to innovate.

### **THE BILL INCLUDES MANY VAGUE TERMS THAT WILL INVITE YEARS OF COSTLY LITIGATION AND ULTIMATELY HAVE TO BE INTERPRETED BY COURTS**

SB 1074 suffers from some of the very weaknesses that led Congress to reject AICOA. Many of its terms are vague, imprecise, and subject to varying interpretations. For example, what will distinguish a covered platform's legitimate use of technology to prioritize search results – a necessity for any search engine – from an unlawful effort to “manipulate” those results? SB 1074, §16851(a)(1). What does it mean to “exploit transaction data”? SB 1074, §16851(a)(2). What constitutes differential treatment implemented through “integration depth” or “technical access conditions”? SB 1074, §16850(h). How will covered platforms and courts determine whether a business user is being favored, and why should it be unlawful to do so because of “the profit margin returned to the covered platform?” SB 1074, §16851(a)(3). What else would a rational business do?

Similarly, what is a covered platform required to do – and at what cost – to ensure it does not “restrict, impede, or unreasonably delay a business user from interoperating with the same platform features, operating systems, or hardware available to the covered provider's own lines of business?” SB 1074, §16851(b)(1). In addition to being vague, this provision could be read to mandate the creation of new systems and the disclosure of intellectual property without any specified cost to a rival. Services that are currently free to small businesses may now only come at a cost. As the Ninth Circuit recently held, mandated access does not mean at “no cost.” *Epic Games, Inc. v. Apple Inc.*, 161 F.4th 1162, 1185 (9th Cir. 2025).

The bill thus runs contrary to decades of California Supreme Court precedent that cautioned against reliance on untethered terms in legislation that regulates economic activity. *Cf. Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal 4th 163, 185 (1999) (“An undefined standard of what is ‘unfair’ fails to give businesses adequate guidelines as to what conduct may be challenged and thus enjoined and may sanction arbitrary or unpredictable decisions about what is fair or unfair. In some cases, it may even lead to the enjoining of *pro*competitive conduct and thereby undermine consumer protection, the primary purpose of the antitrust laws.”).

### **ENFORCEMENT OF THE BILL WILL LEAD TO INCONSISTENT AND INCOMPATIBLE STANDARDS OF BEHAVIOR THAT WILL HARM COMPETITION AND CONSUMERS**

Under SB 1074, government enforcers and private parties may threaten to bring suit, and sue, with varying agendas and demands for changes in the conduct of covered platforms. Different courts may make different findings as to liability and could order different, inconsistent, and incompatible remedies. The devil will be in the remedial details – different courts may reach different conclusions as to how best to eliminate the prohibited practices which may not be easy or obvious. In the end, covered platforms will be regulated by the courts, not the text of the bill.

It is also difficult to see how the bill's mandates will work in practice. In contrast to AICOA, which would have created nationwide mandates, the bill purports to regulate only conduct within California. But as a practical matter, that will leave covered platforms with two choices, both of which will depend heavily on technical feasibility, efficiency, and cost. They can design systems that operate solely within California or allow California to dictate national design, which is not only a technical problem, but could also be a

constitutional defect in SB 1074. If differing products and services are designed, SB 1074's principal effect will be to create a distinct set of rules for California and Californians. How well will mobile devices and laptops of Californians function when they travel outside the state? What will be the impact on the many tourists who visit California each year? Confusion will abound.

## CONCLUSION

SB 1074 seeks to impose a static set of assumptions on the entire internet ecosystem. It is more likely to entrench current businesses and business models than promote innovation and competition. It also elevates the interests of current competitors above the interests of users, consumers, and the future of dynamic competition. Such a dramatic departure from current law is also unnecessary to protect California consumers and business from genuine unfair practices. California's Unfair Competition Law already regulates the type of alleged self-preferencing that the Bill aims at, as we saw in the *Epic v. Apple* case. Therefore, we must strongly **OPPOSE** your **SB 1074 (Wiener)** as a **COST DRIVER**.

Sincerely,



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