CCIA Analysis – June 2026

# The COMPETE Act's Amendments Worsen Its Flaws

AB 1776 (COMPETE Act), as amended, would expose businesses to significant legal uncertainty by allowing courts to reject the consumer welfare-oriented economic and legal principles founded in several decades of U.S. antitrust precedent. The latest amendments to AB 1776 further increase these concerns and risk undermining competition, investment, and innovation in California's economy. A new analysis estimates the amended AB 1776 is likely to cost California $760 billion in lost growth and 1.2 million jobs over ten years.[1]

## A Likely Unconstitutional Double Standard for Businesses Operating in California

By exempting certain California-based small and medium-sized businesses (SMEs) from the bill's new monopolization provisions, Sec. 16731(e) creates a two-tiered system that disadvantages out-of-state businesses operating in California, which reduces regulatory predictability and risks stifling investment and competition. By favoring California-based firms over similarly situated businesses from other states, the carveout raises serious constitutional concerns regarding interstate commerce and discriminatory treatment of out-of-state economic actors.[2]

## Moving California Away from Evidence-Based Antitrust Enforcement

Amendments to AB 1776 (Secs. 16730(d) and 16732) create a broader and less predictable liability regime by allowing courts to selectively disregard evidence-based antitrust enforcement, underscoring the bill's shift toward an industrial-policy approach to competition law and policy.

Sec. 16731(e) grants special treatment to favored categories of firms based on their size, revenue, and geographic status, which bear little relationship to market power or competitive effects. This exemption resembles the growing European trend of incorporating industrial-policy objectives, such as SME protection and broader competitiveness goals, into competition policy. Experience in Europe demonstrates the associated tradeoffs: increased regulatory complexity, greater reliance on carveouts and exceptions, and pressure to balance competition objectives against other policy goals.[3]

Exemptions based on firm status can produce unintended consequences that ultimately undermine competition, investment, and innovation. By protecting competitors rather than competition, this bill risks picking winners and losers by potentially shielding conduct that harms competition, simply because a firm falls below an arbitrary threshold. Such exemptions can also discourage businesses approaching regulatory thresholds from further expansion, hiring, and investment.

## Risking California's Economic Growth

The latest amendments to AB 1776 increase the bill's legal uncertainty, raise constitutional concerns, and move the state further away from evidence-based antitrust law and policy. AB 1776, as amended, risks discouraging investment, innovation, and competition in California.

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[1] CCIA, *Amended California Bill AB 1776 Still Costs $760 Billion and 1.2 Million Jobs Over a Decade* (Jun. 9, 2026), https://ccianet.org/articles/amended-california-bill-ab-1776-still-costs-760-billion-and-1-2-million-jobs-over-a-decade/.

[2] *See, e.g., Granholm v. Heald*, 544 U.S. 460 (2005) (invalidating state laws that favored in-state economic interests over out-of-state competitors); *Toomer v. Witsell*, 334 U.S. 385 (1948) (holding that states may not discriminate against citizens of other states in pursuing common occupations absent substantial justification); and *Healy v. Beer Institute*, 491 U.S. 324 (1989) (recognizing constitutional limits on state laws that regulate interstate commerce beyond state borders).

[3] European Commission, *The Draghi report: A competitiveness strategy for Europe (Part A)* (Sep. 9, 2024), at 8 https://commission.europa.eu/topics/competitiveness/draghi-report_en ("[I]nnovative companies that want to scale up in Europe are hindered at every stage by inconsistent and restrictive regulations.").