August 11, 2026

California Law Revision Commission
Attn: Sharon Reilly, Executive Director
c/o Legislative Counsel Bureau
925 L Street, Suite 275
Sacramento, CA 95814

Re: California Law Revision Commission, Study B-750 (Antitrust Law), Memorandum 2026-29: Draft Language Options for Mergers and Acquisitions

Dear Executive Director Reilly and Members of the California Law Revision Commission:

On behalf of the Computer & Communications Industry Association (CCIA),[1] I write in response to the published Memorandum 2026-29: Draft Language Options for Mergers and Acquisitions,[2] in advance of the Commission's August 17, 2026 meeting. CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms. The proposed merger regulations will likely have a significant impact on CCIA members and on the interstate provision of digital services.

CCIA appreciates the Commission's careful consideration of California's merger laws and the opportunity to comment on Memorandum 2026-29. While the Commission seeks to strengthen merger enforcement, the memorandum does not demonstrate that California's existing legal framework is inadequate. California already possesses robust authority to challenge anticompetitive mergers, including transactions that federal enforcers have declined to pursue.

The proposed recommendations would introduce significant departures from longstanding federal merger law. They would replace well-established liability standards with novel statutory language, incorporate agency guidance into statute, and adopt structural presumptions and burden-shifting provisions that would increase legal uncertainty and risk deterring procompetitive transactions. These changes would have practical consequences extending well beyond the state, while diminishing the predictability that decades of jurisprudence under Section 7 of the Clayton Act provides to courts, businesses, and enforcers.

Accordingly, CCIA respectfully urges the Commission to preserve substantial consistency with the federal merger framework and to decline the proposed amendments absent a demonstrated need to depart from existing law.

[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] California Law Revision Commission, *Memorandum 2026-29: Draft Language Options for Mergers and Acquisitions* (Jul. 24, 2026), https://clrc.ca.gov/pub/2026/MM26-29.pdf.

I. The memorandum does not demonstrate that California enforcers lack the authority to challenge potentially anticompetitive mergers.

Memorandum 2026-29 principally argues that California requires new merger enforcement tools because federal antitrust agencies may decline to challenge transactions that California would prefer to investigate.[3] But differences in enforcement priorities do not demonstrate a deficiency in California law. Ongoing enforcement actions by the California Attorney General suggest that the existing antitrust laws provide state enforcers with the necessary toolkit to challenge mergers that may risk harming competition in California, including where federal enforcers have declined to act.[4] Further, the proposed amendments are not appropriately tailored to address a demonstrated market failure or a lack of effective enforcement tools. The memorandum does not identify a business transaction affecting California that state enforcers were unable to reach, nor does it demonstrate that more antitrust enforcement,[5] founded on departures from federal law and judicial precedent, produces better outcomes overall. Absent such a showing, the proposals risk increasing regulatory costs and discouraging otherwise procompetitive transactions.

Before accepting proposals that would substantively diverge California law from established federal jurisprudence, the Commission should identify cases in which California courts were unable to prevent anticompetitive mergers because existing legal authority proved insufficient.

II. Departures from federal jurisprudence impose real costs on all business transactions regardless of size.

A state injunction or divestiture order can determine whether a nationwide transaction is abandoned or cleared; as a practical matter, the most restrictive applicable standard can therefore set the limit for the entire transaction. Because the draft language reaches acquisitions affecting commerce in any section of the state, a California-specific standard would function in practice as a national standard for any firm doing business in California, regardless of transaction size or jurisdictional nexus. This would likely result in higher compliance costs, greater difficulty pricing and timing transactions, and incentives to litigate in the forum offering the most favorable framework. Decades of jurisprudence developed from enforcement under Section 7 of the Clayton Act provide businesses, enforcers, and courts with a reliable and tested legal framework. An overly burdensome framework risks increasing legal uncertainty and unpredictability, and missing the procompetitive benefits of mergers that help

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[3] *Supra* n. 2, at 9, Fn. 48 ("Several large mergers in concentrated industries recently have been approved by the U.S Department of Justice prompting state attorneys general to initiate or conduct their own challenges to the mergers despite these federal approvals.").

[4] California possess independent authority to enforce its own antitrust laws and seek injunctive relief where competition is threatened. *See*, *e.g.*, Press Release, Cal. Att'y Gen., *Attorney General Bonta Files Lawsuit Seeking to Block $6.2 Billion Nexstar/Tegna Broadcasting Merger* (Mar. 18, 2026), https://www.oag.ca.gov/news/press-releases/attorney-general-bonta-files-lawsuit-seeking-block-62-billion-nexstartegna (coalition of eight state attorneys general, led by California, filed suit to block the transaction); Press Release, Cal. Att'y Gen., *Attorney General Bonta Secures Critical Win in Nexstar/Tegna Merger Challenge, Court Orders Titans to Halt Merging* (Apr. 18, 2026), https://oag.ca.gov/news/press-releases/attorney-general-bonta-secures-critical-win-nexstartegna-merger-challenge-court (preliminary injunction issued by the U.S. District Court for the Eastern District of California after the transaction received approval from the Federal Communications Commission and the U.S. Department of Justice); *see also supra* n. 2, at 9 n.48 (collecting recent state challenges to transactions cleared by federal enforcers).

[5] *Supra* n. 2, at 18 ("[S]ubstituting a lesser standard could also make it easier to prove cases, freeing resources toward pursuing additional cases.").

foster innovation and competition in relevant and adjacent markets.[6] Any new proposal should be justified by a concrete benefit sufficient to outweigh the loss of that legal certainty.

CCIA also urges the Commission to avoid separating the existing Clayton Section 7 "tend to create a monopoly" language into a standalone prong.[7] Retaining language closely aligned with Section 7 allows California courts to continue drawing on well-developed federal jurisprudence, whereas separating the prohibitions invites an independent state construction of the incipiency standard untethered from that body of decisions.

III. Both proposed formulations of the liability standard would replace a familiar standard with one whose contours must be established through litigation.

CCIA opposes adopting either the "appreciable risk" standard or the "reasonable probability" standard.[8] Enacting either formulation as California statutory text would displace the standard businesses and courts have applied for decades. The reasonable probability option is drafted as an instruction to courts about the degree of certainty they may require rather than as a restatement of the prohibition, so its practical effect on merger litigation would have to be worked out case by case. The appreciable risk option goes further, revising both the likelihood and the degree of competitive harm the statute reaches.

Technology companies seek to operate in clear, fair, and principle-based regulatory environments.[9] Adopting a new, untested standard diverging from federal jurisprudence would significantly increase legal uncertainty for California businesses and risk discouraging procompetitive acquisitions and reducing investment incentives, heavily impacting dynamic, high-technology industries.[10] In highly dynamic digital markets, acquisitions are an important mechanism for scaling new technologies, acquiring complementary capabilities, and commercializing innovation.[11] Empirical research finds that political and regulatory uncertainty attributed to heightened levels of enforcement negatively impacts merger and acquisition

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[6] Mert Demirer & Omer Karaduman, *Do Mergers and Acquisitions Improve Efficiency: Evidence from Power Plants* (2022), at 2, https://www.ftc.gov/system/files/ftc_gov/pdf/demirerkaraduman.pdf ("A major challenge in analyzing the efficiency effects of mergers is distinguishing true efficiency gains from other factors, such as changes in market power, buyer power, and product quality.").

[7] *Supra* n. 2, at 11.

[8] *Supra* n. 2, at 16.

[9] See, e.g., Christian M. Dippon & Matthew D. Hoell, A Quantitative Evaluation: The Economic Costs of Structural Separation, Line of Business Restrictions, and Common Carrier Regulation of Online Platforms and Marketplaces, CCIA Research Center (Mar. 18, 2022), https://research.ccianet.org/reports/economic-costs-regulation-online-platforms-marketplaces/#main-content; Engine & the CCIA Research Center, Tools to Compete Lower Costs, More Resources, and the Symbiosis of the Tech Ecosystem (Jan. 25, 2023), https://research.ccianet.org/reports/tools-to-compete/#main-content.

[10] OECD, *Merger Control in Dynamic Markets*, OECD Competition Committee Roundtable (2020), at 7, https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/03/merger-control-in-dynamic-markets_a8bf4a0a/d3752037-en.pdf; *see also* Damien Geradin, *The Perils of Antitrust Proliferation: The Globalization of Antitrust and the Risks of Overregulation of Competitive Behavior*, Chicago Journal of Int'l Law, (Jun. 1, 2009), at 206, https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1305&context=cjil.

[11] Berger et al., *Acquisitions and Their Effect on Start-Up Innovation: Stifling or Scaling?*, OECD Science, Technology and Industry Working Paper No. 2025/10 (2025), at 29 https://www.oecd.org/en/publications/acquisitions-and-their-effect-on-start-up-innovation_b4efd3ab-en.html (evidence indicating that startup acquisitions are often driven by innovation motives).

activity at both the macroeconomic and firm levels.[12] In uncertain regulatory environments, firms tend to delay or avoid largely irreversible transactions.[13]

IV. Merger guidelines are enforcement guidance, and statutory incorporation would give them a role they were not designed to serve.

The 2023 Merger Guidelines describe the federal agencies' analytical framework and enforcement priorities, and they work as a "non-binding statement" that provides transparency into agency deliberations exercising discretion over which transactions to pursue.[14] As the memorandum notes, federal merger guidelines are periodically updated by the federal agencies.[15] Revisability is a feature of the Merger Guidelines, allowing agencies to respond to developments in economics, judicial decisions, and enforcement experience. A statute that designates one dated guidance document as persuasive authority, or that transposes Herfindahl-Hirschman Index (HHI) thresholds into statutory presumptions, fixes a single iteration in place and cannot follow subsequent revisions or interpretations.[16]

Federal antitrust law has long established that the burden of proving the alleged anticompetitive effects of the merger rests upon the plaintiff.[17] The structural presumption under *Philadelphia National Bank* shifts the burden of proof to the defendant that meets the threshold, who would then need to rebut this presumption before the plaintiffs provide additional evidence of anticompetitive effect.[18] However, the proposal would require the defendant not only to prove it does not meet PNB's thresholds, but also to show that the transaction is not likely to substantially lessen competition and that the market concentration is not anticompetitive. Instead of simply having to rebut a presumption, the full burden of proof to show the future competitive effects of the proposed merger would fall on the defendant, going against decades of federal antitrust jurisprudence.

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[12] Susan E. Woodward, CCIA Research Center, *Antitrust Enforcement Over-deters Acquisitions, Squeezing Smaller Startups and Venture Capital Investors* (Jan. 24, 2025), https://ccianet.org/research/reports/antitrust-enforcement-over-deters-acquisitions-squeezing-smaller-startups-and-venture-capital-investors/.

[13] Alice Bonaime, Huseyin Gulen & Mihai Ion, *Does Policy Uncertainty Affect Mergers and Acquisitions?*, 129 J. Fin. Econ. 531 (2018), https://doi.org/10.1016/j.jfineco.2018.05.007 ("[W]e identify a significant negative relation between policy uncertainty and acquisition likelihood, which implies that the effect of policy uncertainty on M&A activity is distinct from the effect of more general economic conditions.").

[14] U.S. Dep't of Just., *2023 Merger Guidelines* (Dec. 18, 2023), https://www.justice.gov/atr/2023-merger-guidelines (describing the Guidelines as a non-binding statement).

[15] *Supra* n. 2, at 13.

[16] Supra n. 2, at 14. (presenting the provisions as subdivisions (X) and (XX)); id. at EX 3 (same provisions designated (d) and (e)). The concentration triggers mirror the guidance in Guideline 1 of the 2023 Merger Guidelines, under which a presumption applies where a transaction results in a post-merger HHI above 1,800 together with an increase exceeding 100 points, or a share above thirty percent together with an increase exceeding 100 points. See U.S. Dep't of Justice & Fed. Trade Comm'n, Merger Guidelines § 2.1, at 5-6 (Dec. 18, 2023); supra n. 2, at 14 n.76. CCIA has previously expressed concern about reliance on structural presumptions and concentration thresholds with limited attention to efficiencies. See CCIA, CCIA Offers Comments on FTC and DOJ's Draft Merger Guidelines (Sept. 2023), https://ccianet.org/news/2023/09/ccia-offers-comments-on-ftc-and-dojs-draft-merger-guidelines/.

[17] Federal courts applying Section 7 after *United States v. General Dynamics Corp.*, 415 U.S. 486 (1974), have described the rebuttal burden as a "showing" rather than a "clear showing." Under Section 7, a plaintiff's showing of undue concentration shifts to the defendant only the burden of producing rebuttal evidence; the ultimate burden of persuasion remains with the plaintiff throughout. *See United States v. Baker Hughes Inc.*, 908 F.2d 981, 991 (D.C. Cir. 1990) (citing *United States v. Marine Bancorporation*, 418 U.S. 602, 631 (1974), and *United States v. Citizens & Southern Nat'l Bank*, 422 U.S. 86, 120 (1975)).

[18] *Compare supra* n. 2, at 10 (subdivision (c), deeming a qualifying transaction to lessen competition substantially "in the absence of evidence clearly showing that the merger is not likely to have such anticompetitive effects," language drawn from *United States v. Philadelphia National Bank*, 374 U.S. 321, 363 (1963)), *with id.* at 14-15 (requiring a defendant to demonstrate by a preponderance of the evidence the absence of likely anticompetitive effects, or that such effects are de minimis and clearly outweighed by cognizable procompetitive benefits in the same relevant market).

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For these reasons, CCIA respectfully urges the Commission to preserve a merger framework that remains substantially consistent with federal law, and to decline to adopt the proposed changes to the liability standard or to incorporate the 2023 Merger Guidelines and their concentration thresholds into California statute. Departure from the federal Clayton Act and the introduction of new, untested legal standards would increase legal unpredictability and discourage otherwise procompetitive and beneficial business transactions.

We appreciate the opportunity to provide input, and we acknowledge the Commission's continued effort to analyze the state's best approach to antitrust regulation.

Sincerely,

Aodhan Downey
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Computer & Communications Industry Association