



October 30, 2026

California Law Revision Commission
Attn: Sharon Reilly, Executive Director
c/o Legislative Counsel Bureau
925 L Street, Suite 250
Sacramento, CA 95814

Re: California Law Revision Commission, Study B-750 (Antitrust Law), Memorandum 2026-39: Draft of Tentative Recommendation on 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 2026-39 and the attached Staff Draft Tentative Recommendation on Mergers and Acquisitions,² in advance of the Commission's October 30, 2026 meeting. CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms. The proposed merger provisions will likely have a significant impact on CCIA members and on the interstate provision of digital services. These comments supplement CCIA's August 11, 2026 submission on the Commission's earlier merger proposals.³

CCIA appreciates the Commission's careful consideration of California's merger laws and the opportunity to comment on Memorandum 2026-39. The updated October draft addresses concerns raised by CCIA in its August letter,⁴ including the "appreciable risk" alternative, the numerical concentration thresholds, and the separate provision requiring defendants to rebut the structural presumption by a preponderance of the evidence.⁵ However, proposed Section 16733 retains a separate monopoly or monopsony prong, a revised "reasonable probability" provision, the Philadelphia National Bank presumption, and a statutory instruction giving persuasive status to the 2023 Merger Guidelines.⁶ CCIA remains concerned about how these provisions would interact with established federal merger law and the resulting uncertainty for businesses and courts.

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 2026-39: Antitrust Study (Draft of Tentative Recommendation: Mergers and Acquisitions)* (Oct. 22, 2026), [available here](#) [hereinafter October Memorandum]. Citations to the attached Staff Draft Tentative Recommendation use its separately printed page numbers [hereinafter Draft Recommendation].

³ Computer & Communications Industry Association, *Comments on Memorandum 2026-29: Draft Language Options for Mergers and Acquisitions* (Aug. 11, 2026), [available here](#) [hereinafter August Letter].

⁴ August Letter, *supra* note 3, at 3–4.

⁵ California Law Revision Commission, *Memorandum 2026-29: Draft Language Options for Mergers and Acquisitions*, at 14–18 (July 24, 2026), [available here](#) [hereinafter July Memorandum]; October Memorandum, *supra* note 2, Draft Recommendation at 19–20 (proposed § 16733).

⁶ October Memorandum, *supra* note 2, Draft Recommendation at 19–20 (proposed § 16733(b)–(e)).

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.

I. The Commission should demonstrate the need for the proposed departures from federal merger law.

Memorandum 2026-39 acknowledges that California lacks a broad state merger statute and that its Attorney General can challenge mergers in federal court under Section 7 of the Clayton Act.⁷ California can seek injunctive relief under Section 16 of that Act, including divestiture where appropriate.⁸ For example, on April 17, 2026, a coalition of states led by California obtained a preliminary injunction in the Nexstar/Tegna litigation after the transaction had received federal approvals.⁹ Differences between state and federal enforcement decisions therefore do not, by themselves, establish that California needs a different substantive liability standard.

The staff identifies concerns about federal courts' treatment of evidentiary certainty and potential competition. Before departing from established federal merger law, the Commission should explain how the proposed provisions would address those concerns and assess whether the expected enforcement benefits outweigh the resulting costs and the risk of deterring procompetitive transactions.¹⁰

II. Departures from federal merger law could increase costs and uncertainty for businesses.

A state pursuing a federal merger challenge can obtain relief that includes divestiture.¹¹ Because proposed Section 16733 reaches acquisitions affecting commerce in any section of the state, a different California liability standard could affect the feasibility of a transaction involving businesses operating nationwide.¹² The Commission should assess the resulting costs of complying with different substantive standards, including uncertainty over transaction timing and whether a transaction can proceed. Any departure should be justified by concrete benefits sufficient to outweigh those costs.

⁷ October Memorandum, *supra* note 2, Draft Recommendation at 4–5.

⁸ 15 U.S.C. §§ 18, 26; *California v. American Stores Co.*, 495 U.S. 271, 278–81, 295–96 (1990) (holding that divestiture is available under Section 16 of the Clayton Act).

⁹ Press Release, Cal. Att'y Gen., *Attorney General Bonta Secures Critical Win in Nexstar/Tegna Merger Challenge, Court Orders Titans to Halt Merging* (Apr. 17, 2026), [available here](#); see also October Memorandum, *supra* note 2, Draft Recommendation at 12 n.76.

¹⁰ October Memorandum, *supra* note 2, Draft Recommendation at 13–14; see also August Letter, *supra* note 3, at 2–3.

¹¹ *American Stores*, 495 U.S. at 278–81, 295–96.

¹² October Memorandum, *supra* note 2, Draft Recommendation at 19 (proposed § 16733(a)–(b)); August Letter, *supra* note 3, at 2–3 (explaining CCIA's concerns about the effects of divergent state standards).

CCIA reiterates its recommendation against separating the Clayton Act’s “tend to create a monopoly” language into a standalone prong.¹³ Proposed Section 16733(a)–(b) retains that separation and expressly includes monopsony. Retaining language closely aligned with Section 7 allows California courts to draw on established federal merger decisions. CCIA is concerned that separating the prohibitions could invite an independent state interpretation of the incipency standard and leave unclear how the two prongs would differ in application.¹⁴

The staff now recommends relying on Section 16730, enacted through AB 1776, which becomes operative on January 1, 2027, rather than adding a separate merger purpose statement.¹⁵ That provision describes federal antitrust interpretations as, at most, instructive when construing California law.¹⁶ The Commission should explain how Section 16730’s treatment of federal precedent would operate alongside Section 16733(e)’s instruction to harmonize the statute with the 2023 Merger Guidelines, and how courts should apply federal decisions interpreting language drawn from the Clayton Act.

III. The revised reasonable probability provision could create uncertainty about the governing standard.

CCIA welcomes the omission of the “appreciable risk” alternative.¹⁷ However, CCIA continues to oppose codifying “reasonable probability” as a separate statutory instruction. Proposed Section 16733(c) characterizes reasonable probability as the “standard of proof for determining the certainty of possible anticompetitive effects” and cites *Brown Shoe*.¹⁸ Federal merger law already requires a reasonable probability that a merger will substantially lessen competition, as the Ninth Circuit reaffirmed in *FTC v. Microsoft* in 2025.¹⁹ The concern is that the proposed formulation could blur the distinction between the likelihood of future competitive harm and the plaintiff’s burden of proving its case. The Commission should omit subdivision (c), preserve the established substantive standard, and confirm that the ultimate burden of persuasion remains with the plaintiff.²⁰

¹³ August Letter, *supra* note 3, at 3.

¹⁴ October Memorandum, *supra* note 2, Draft Recommendation at 15–16, 19 (proposed § 16733(a)–(b)); *see also* August Letter, *supra* note 3, at 3 (opposing separation of the prohibitions and identifying the resulting interpretive concerns).

¹⁵ October Memorandum, *supra* note 2, at 1–2 (discussing 2026 Cal. Stat. ch. 826 (AB 1776) and the January 1, 2027 operative date of Section 16730).

¹⁶ October Memorandum, *supra* note 2, at 2 (reproducing Section 16730(d)); Draft Recommendation at 19 (proposed § 16733(e)).

¹⁷ July Memorandum, *supra* note 5, at 16–18; October Memorandum, *supra* note 2, Draft Recommendation at 19 (proposed § 16733(a)–(c)).

¹⁸ October Memorandum, *supra* note 2, at 3; Draft Recommendation at 19 (proposed § 16733(c)); *see also* August Letter, *supra* note 3, at 3 (opposing codification of the reasonable probability formulation as California statutory text).

¹⁹ *Brown Shoe Co. v. United States*, 370 U.S. 294, 323, 325 (1962); *FTC v. Microsoft Corp.*, 136 F.4th 954, 964 (9th Cir. 2025).

²⁰ *St. Alphonsus Medical Center–Nampa Inc. v. St. Luke’s Health System, Ltd.*, 778 F.3d 775, 783 (9th Cir. 2015); *United States v. Baker Hughes Inc.*, 908 F.2d 981, 982–83, 990–91 (D.C. Cir. 1990).

Empirical research finds that political and regulatory uncertainty is negatively associated with merger and acquisition activity at both the macroeconomic and firm levels.²¹ The OECD also emphasizes that mergers can have both adverse competitive effects and short- and long-term efficiencies, requiring assessment case by case.²² CCIA therefore urges the Commission to assess each transaction’s likely competitive effects, including innovation and merger-specific benefits.

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. They are a nonbinding statement of agency enforcement policy.²³ Although the October draft omits the numerical concentration thresholds, proposed Section 16733(e) still directs courts to consider the 2023 Guidelines persuasive and to harmonize them with the statute.²⁴ That instruction singles out one edition of guidance that federal agencies periodically revise.²⁵ CCIA recommends removing the instruction and allowing courts to assess agency guidance according to its persuasive value and consistency with governing law, without giving one edition of agency guidance special statutory status.²⁶

The October draft also omits the separate rebuttal provision that would have required defendants to establish, by a preponderance of the evidence, either no likely anticompetitive effects or de minimis effects clearly outweighed by specified benefits.²⁷ However, proposed Section 16733(d) retains the requirement of evidence “clearly showing” that a qualifying merger is unlikely to have anticompetitive effects.²⁸ Baker Hughes explains why requiring a “clear” showing can overstate the defendant’s rebuttal burden. Under the federal framework, the defendant must produce sufficient rebuttal evidence, while the ultimate burden of persuasion remains with the plaintiff. Codifying the “clearly showing” formulation without that distinction risks imposing a more demanding rebuttal requirement.²⁹

If the Commission retains the structural presumption in Section 16733(d), CCIA recommends replacing the phrase “in the absence of evidence clearly showing that the merger is not likely to

²¹ Alice Bonaime, Huseyin Gulen & Mihai Ion, *Does Policy Uncertainty Affect Mergers and Acquisitions?*, 129 J. Fin. Econ. 531, 531 (2018), [DOI](#) (examining political and regulatory uncertainty generally).

²² OECD, *Merger Control in Dynamic Markets* 8 (2020), [available here](#) (explaining that mergers’ long-term effects on consumer welfare are ambiguous and require assessment case by case).

²³ 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).

²⁴ October Memorandum, *supra* note 2, Draft Recommendation at 19 (proposed § 16733(e)).

²⁵ October Memorandum, *supra* note 2, Draft Recommendation at 17 (noting periodic revisions to federal merger guidelines); *id.* at 19 (specifying the 2023 edition in proposed § 16733(e)).

²⁶ See August Letter, *supra* note 3, at 4 (opposing statutory designation of a particular edition of federal merger guidelines).

²⁷ July Memorandum, *supra* note 5, at 14–15 (proposed subdivisions (X) and (XX)); October Memorandum, *supra* note 2, Draft Recommendation at 19–20 (proposed § 16733).

²⁸ October Memorandum, *supra* note 2, Draft Recommendation at 19 (proposed § 16733(d)).

²⁹ *Baker Hughes*, 908 F.2d at 982–83, 990–91; *St. Alphonsus*, 778 F.3d at 783; see also August Letter, *supra* note 3, at 4 n.17 (distinguishing the defendant’s burden of producing rebuttal evidence from the plaintiff’s ultimate burden of persuasion).



have such anticompetitive effects” with “unless the defendant rebuts the presumption by producing evidence that the acquisition is unlikely to substantially lessen competition or that the concentration evidence does not accurately predict its probable competitive effects.” CCIA also recommends adding the following sentence immediately afterward: “The ultimate burden of persuasion that the acquisition violates this section remains with the plaintiff.”³⁰

V. The Commission should address private enforcement and remedies.

The October Memorandum notes that AB 1776 limits enforcement of the new single firm conduct provision to the Attorney General and district attorneys, but does not recommend a comparable limitation for mergers.³¹ Section 16750(a) allows persons injured in their business or property by a Cartwright Act violation to seek treble damages, injunctive relief, and attorneys’ fees.³² As warned by opponents of AB 1776 during the consideration of the bill, expanded liability, private suits, and treble damages could increase litigation costs and chill procompetitive conduct.³³ The Commission should evaluate whether an enforcement limitation or other safeguards are warranted for the proposed merger provision and seek public comment on the applicable standing requirements, antitrust injury, and remedies.

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For these reasons, CCIA respectfully urges the Commission to preserve a merger framework substantially consistent with federal law, decline the proposed statutory changes to the liability standard, and remove the provision giving the 2023 Merger Guidelines special statutory status. If the Commission proceeds with the proposed merger provision, it should preserve the plaintiff’s ultimate burden of persuasion, clarify the evidence sufficient to rebut the structural presumption, and address the scope of private enforcement and remedies.

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
State Policy Manager, West Region
Computer & Communications Industry Association

³⁰ See *Baker Hughes*, 908 F.2d at 982–83, 990–91; *St. Alphonsus*, 778 F.3d at 783, 788; see also August Letter, *supra* note 3, at 4 n.17 (distinguishing the defendant’s burden of producing rebuttal evidence from the plaintiff’s ultimate burden of persuasion).

³¹ October Memorandum, *supra* note 2, at 3 (discussing the limitation adopted in 2026 Cal. Stat. ch. 826, § 2 (AB 1776)).

³² Cal. Bus. & Prof. Code § 16750(a) (statutory text).

³³ California Chamber of Commerce et al., *AB 1776 (Aguiar-Curry) Compete Act: Oppose/Cost Driver*, letter to Assemblymember Cecilia Aguiar-Curry (Mar. 31, 2026), at PDF p. 3 (discussing private litigation, treble damages, and deterrence of procompetitive conduct; CCIA listed among signatories at PDF p. 6), [available here](#).