

International Center for Law & Economics

April 7, 2026

Sen. Thomas Umberg, Chair
Sen. Roger Niello, Vice Chair
Senate Standing Committee on Judiciary
1021 O Street, Room 3240
P.O. Box 83720
Sacramento, CA 95814

RE: Letter of Caution Regarding SB 1074, the Blocking Anticompetitive Self-preferencing by Entrenched Dominant platforms (BASED) Act

Dear Chair Umberg, Vice Chair Niello, and Members of the Senate Judiciary Committee,

On behalf of the International Center for Law & Economics (ICLE), a nonprofit, nonpartisan research group focused on rigorous economic analysis of law and policy, we write to express concerns about SB 1074.

SB 1074 rests on a fundamental analytic error: it conflates harm to *specific competitors* with harm to consumers and the *competitive process*. The bill adopts a regulatory approach that risks privileging less efficient firms through rent-seeking—using regulation to secure advantages unavailable through market performance—rather than promoting consumer welfare.

Protecting Competition, Not Competitors

Antitrust law protects competition and consumers—not individual competitors. SB 1074 would prohibit certain platform operators from engaging in “self-preferencing,” a broad category that includes many forms of vertical integration that may advantage a firm’s own products or services.

Supporters of the bill argue that such restrictions will help startups and small businesses compete.¹ The economic literature does not support that claim.

When platforms integrate features—such as displaying maps in search results or highlighting fulfillment options—they may displace standalone competitors. This dynamic resembles a retailer allocating shelf space to its own private-label goods. Some rivals lose prominence as a result.

¹ Press Release, Sen. Scott Wiener, *Senator Wiener Announces Landmark Legislation to Crack Down on Big Tech’s Anticompetitive Behavior* (Mar. 18, 2026), <https://sd11.senate.ca.gov/news/senator-wiener-announces-landmark-legislation-crack-down-big-techs-anticompetitive-behavior>.

That outcome reflects competition, not necessarily exclusionary conduct.² Integrated features often reduce search costs, lower transaction risks, and improve user experience. Removing these features may benefit certain *competitors*, but only by eliminating options consumers prefer.

The Evidence on Vertical Integration

SB 1074 rests on the premise that self-preferencing and vertical integration are inherently anticompetitive. The empirical literature does not support that premise.

A comprehensive meta-analysis by Francine Lafontaine and Margaret Slade finds that profit-maximizing vertical-integration decisions are generally efficient and benefit consumers.³ More broadly, economic analysis distinguishes between exclusionary conduct—which requires durable market power, meaningful foreclosure, and evidence of consumer harm—and legitimate business practices that improve products.

Common forms of vertical integration eliminate double marginalization, strengthen quality control, reduce search costs, and enhance ecosystem security.⁴ The literature consistently emphasizes that the competitive effects of self-preferencing depend on context:

“self-preferencing by dual-role platforms is not necessarily detrimental..., [and t]he effectiveness of policy interventions... depends largely on the type of self-preferencing and the specific environment of the market in question.”⁵

“While none of the studies has documented harmful effects on platform users, there is mixed evidence on whether platform-owner entry is harmful for complementors.”⁶

“there does not seem to be a single prescription that policymakers can follow in regulating platform-owner entry.”⁷

² See *The Case for Self-Preferencing*, INT’L CTR. FOR L. & ECON. (last updated Apr. 25, 2024), <https://laweconcenter.org/spotlights/self-preferencing>.

³ Francine Lafontaine & Margaret Slade, *Vertical Integration and Firm Boundaries: The Evidence*, 45 J. ECON. LITERATURE 629 (2007) (“[O]verall a fairly clear empirical picture emerges. The data appear to be telling us that efficiency considerations overwhelm anticompetitive motives in most contexts. Furthermore, even when we limit attention to natural monopolies or tight oligopolies, the evidence of anticompetitive harm is not strong.”); see also Geoffrey A. Manne, Kristian Stout & Eric Fruits, *The Fatal Economic Flaws of the Contemporary Campaign Against Vertical Integration*, 68 KAN. L. REV. 923 (2020).

⁴ See, e.g., Michael Salinger, *Self-Preferencing*, in THE GLOBAL ANTITRUST INSTITUTE REPORT ON THE DIGITAL ECONOMY 329, 333 (Joshua D. Wright & Douglas H. Ginsburg eds., 2020), <https://gaidigitalreport.com/2020/08/25/self-preferencing>; Geoffrey A. Manne, *Against the Vertical Discrimination Presumption*, CONCURRENCES, No. 2 (May 2020).

⁵ Yuta Kittaka, Susumu Sato & Yusuke Zennyō, *Self-Preferencing by Platforms: A Literature Review*, 66 JAPAN & THE WORLD ECON. 101191, 8 (2023).

⁶ Feng Zhu, *Friends or Foes? Examining Platform Owners’ Entry into Complementors’ Spaces*, 28 J. ECON. & MGMT. STRAT. 23, 27 (2019).

⁷ *Id.*

Empirical studies of digital platforms reinforce these findings. Zhuoxin Li and Ashish Agarwal find that Facebook’s integration of Instagram increased demand across photography applications.⁸ Jens Foerderer, Thomas Kude, Sunil Mithas, and Armin Heinzl find that Google’s entry into Android photography apps increased user attention, benefiting independent developers.⁹

Evidence from e-commerce points in the same direction. In a field experiment, Chiara Farronato, Andrey Fradkin, and Alexander MacKay simulate the removal of Amazon private-label products.¹⁰ Consumer surplus falls by 5.5%, driven largely by reduced product variety. Efforts to adjust rankings or visibility produce no offsetting gains.

Theoretical work aligns with these results. Yusuke Zenryo finds that restrictions on platform integration can discourage marketplace expansion, increase commissions, and raise prices for both consumers and third-party sellers.¹¹

Taken together, this evidence does not support a categorical presumption against self-preferencing. It instead underscores the need for context-specific analysis.

A Presumption Against Integration Risks Overenforcement

SB 1074 adopts a blanket presumption that covered conduct is unlawful unless a platform can prove otherwise. It requires firms to show that challenged conduct is “narrowly tailored, nonpretextual, and reasonably necessary” to achieve a procompetitive objective.

This burden-shifting framework increases the risk of overenforcement. Even conduct that enhances welfare may be deterred if firms face uncertain and costly litigation. The presumption of illegality also creates incentives for opportunistic claims by competitors.

The result is not just legal uncertainty, but predictable changes in firm behavior.

Incentives to Reduce Product Quality and Innovation

Faced with elevated litigation risk, firms will adjust their conduct. Platforms are likely to avoid integrating features, scale back quality-assurance mechanisms, and limit closed-ecosystem security controls to reduce exposure.

⁸ Zhuoxin Li & Ashish Agarwal, *Platform Integration and Demand Spillovers in Complementary Markets: Evidence from Facebook’s Integration of Instagram*, 63 MGMT. SCI. 3438 (2017).

⁹ Jens Foerderer, Thomas Kude, Sunil Mithas & Armin Heinzl, *Does Platform Owner’s Entry Crowd Out Innovation? Evidence from Google Photos*, 29 INFO. SYS. RES. 444 (2018).

¹⁰ Chiara Farronato, Andrey Fradkin & Alexander MacKay, *Vertical Integration and Consumer Choice: Evidence from a Field Experiment* (Working Paper, Mar. 2026), <https://alexandermackay.org/files/Vertical%20Integration%20and%20Consumer%20Choice%20-%20Evidence%20from%20a%20Field%20Experiment.pdf>.

¹¹ Yusuke Zenryo, *Platform Encroachment and Own-Content Bias*, 70 J. INDUS. ECON. 684, 705 (2022).

Over time, curated and reliable systems may give way to more open—but less managed—environments. Yet consumers often prefer platforms that reduce the risks of interacting with unknown third parties.

By discouraging integration and product improvement, SB 1074 risks degrading service quality and reducing consumer welfare.

Arbitrary Thresholds and Departure from Neutral Principles

SB 1074 applies only to firms that meet specific thresholds, including \$1 trillion in market capitalization and 100 million U.S. monthly active users. These criteria target a small number of firms without grounding in neutral legal principles.

This approach subjects identical conduct to different legal standards based solely on firm size and invites strategic behavior.

The California Law Revision Commission reached a different conclusion after a multi-year review. It found that exclusionary conduct can arise in any industry and advised that any reform should apply across sectors.¹² It also declined to recommend abuse-of-dominance provisions, citing concerns about vague and arbitrary thresholds.¹³

SB 1074 departs from that guidance and adopts the type of industry-specific approach the Commission rejected.

Data-Portability Mandates and Risks to Privacy and Security

SB 1074 would require expanded data portability and limit platforms' ability to restrict third-party access. Although framed as promoting competition, these provisions introduce significant tradeoffs.

Data-sharing and interoperability mandates increase technical complexity, require costly redesign, and create new security vulnerabilities.¹⁴ In multi-sided platform environments, firms design systems to balance functionality, trust, and safety. Forced data sharing can disrupt those systems.

¹² Cal. L. Revision Comm'n, *Antitrust Law: Single Firm Conduct*, Tentative Recommendation No. B-750 (Dec. 2025), <https://clrc.ca.gov/pub/Misc-Report/TR-B750.pdf> ("The Commission concluded that exclusionary practices by dominant companies in every industry have the capacity to harm competition, so any new law should not single out individual sectors but apply to all.")

¹³ *Id.* ("The Commission received numerous public comments opposing adoption of an abuse-of-dominance provision in California law. The Commission declined to craft separate rules for dominant firms, citing concerns about vague and potentially arbitrary thresholds for substantial market power, the use of differing conduct standards, and prior unsuccessful efforts in the United States to adopt this approach.")

¹⁴ See, e.g., Mikołaj Barczentewicz, *GDPR Reform: What Should It Achieve*, EU TECH REG (Apr. 1, 2025), <https://eutechreg.com/p/gdpr-reform-what-should-it-achieve> (noting that the General Data Protection Regulation (GDPR) in Europe and various state privacy laws in the United States create obligations that may conflict with mandated data-sharing or access requirements).

These requirements may push platforms toward more open architectures. But curated ecosystems often exist to screen participants, prevent abuse, and enforce quality standards. Mandated access can weaken those safeguards by requiring interaction with third parties whose reliability cannot be assured.

These risks are not theoretical. The Cambridge Analytica incident arose from broad third-party access to platform data—an arrangement similar to what these provisions would require.¹⁵

More broadly, these rules reflect a regulatory mismatch. Policies designed for simpler markets do not map cleanly onto complex digital ecosystems, where data, security, and product design are tightly integrated.

By requiring platforms to expose internal systems and data, SB 1074 risks reducing product quality, increasing security vulnerabilities, and weakening consumer trust.

Respectfully submitted,

Geoffrey A. Manne, President and Founder

Ian Adams, Executive Director

Dirk Auer, Director of Competition Policy

Eric Fruits, Director of Economic Research

International Center for Law & Economics

¹⁵ See, e.g., Kristian Stout & Ben Sperry, *Comments of the International Center for Law & Economics re: Proposed Rule 15 CSR 60-19.020 Prohibition on Restricting Choice of Content Moderator*, INT'L CTR. FOR L. & ECON. (July 14, 2025), <https://laweconcenter.org/wp-content/uploads/2025/07/ICLE-MO-Moderator-Choice-Rule.pdf> (noting that Missouri's proposed rule would "create systematic privacy and security vulnerabilities by mandating an architecture functionally identical to systems that enabled major data breaches, including Cambridge Analytica. The requirement for broad API access to third-party moderators multiplies attack surfaces, ignores the 'other people's data' problem—where individual user choices expose nonconsenting network connections to unknown third parties—and fragments responsibility for protecting vulnerable populations across an ecosystem of unvetted entities").