
The COMPETE Act: California's Hostile Takeover

TL;DR

Background: California [Assembly Bill 1776](#), known as the COMPETE Act, would amend the state's Cartwright Act by regulating single-firm conduct. It expands the definition of an illegal trust to include actions by "one or more persons" that monopolize a market and directs courts to reject federal antitrust standards. The bill eliminates the need to prove market-power thresholds and relaxes requirements for establishing predatory pricing.

But... Disconnecting California antitrust law from the federal error-cost framework could harm consumers and chill innovation. U.S. antitrust policy aims to avoid false positives—mistakenly condemning lawful, competitive conduct. Such judicial errors can deter firms from lowering prices or improving products. By making it easier for plaintiffs to prevail, AB 1776 risks penalizing conduct that benefits consumers.

Moreover... This expansion of liability would likely impose significant economic costs. An [analysis](#) by the Computer and Communications Industry Association estimates that AB 1776 could reduce California's gross domestic product by \$1 trillion and eliminate 1.6 million jobs over 10 years. Such a regulatory environment would likely drive businesses away.

KEY TAKEAWAYS

When Caution Gives Way to Overreach

For decades, federal courts have applied an "error-cost" framework in antitrust cases, recognizing that markets often self-correct. False positives—when courts punish lawful conduct—cause lasting harm by deterring investment and innovation. Federal courts therefore require strong evidence before intervening. AB 1776 would abandon that discipline.

The bill directs courts to interpret the law liberally and allows plaintiffs to prevail without showing defined

market power. It treats traditional indicators of market power as optional, without offering clear substitutes.

In a public [comment](#), ICLE warns that removing these safeguards would skew enforcement toward costly false positives and leave liability to the subjective judgments of courts and juries.

Cheap Prices, Expensive Mistakes

Predatory pricing occurs when a firm prices below cost to drive rivals from the market.

In [Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.](#), the U.S. Supreme Court set a demanding standard: plaintiffs must show below-cost pricing and a dangerous probability of recoupment through later monopoly pricing. The Court cautioned that punishing low prices without likely recoupment would deter the price competition antitrust law seeks to protect.

If recoupment is unlikely, low prices benefit consumers. AB 1776 would eliminate this requirement and other limiting principles. As then-Judge Stephen Breyer [explained](#), "the consequence of a mistake... is to penalize a procompetitive price cut." Without clear limits, firms may raise prices to avoid liability—the opposite of sound antitrust policy.

Don't Look at the Other Side

Much of the digital economy relies on multi-sided platforms. Credit-card networks serve cardholders, merchants, and banks. Social-media platforms serve users, advertisers, and content creators.

In [Ohio v. American Express Co.](#), the U.S. Supreme Court held that courts must evaluate both sides of a platform to assess competitive effects. Drawing on work by [Richard Schmalensee & David Evans](#) and [Benjamin Klein, Andres Lerner, Kevin Murphy, & Lacey Plache](#), the Court emphasized that both sides matter.

AB 1776 would render such analysis unnecessary. It bars courts from weighing harms in one market against benefits in another, even when they are economically linked.

As Herbert Hovenkamp [observes](#), this is “like doing cost-benefit analysis by looking only at costs.” A platform could face liability for raising advertising prices to fund free consumer services, without any consideration of consumer benefits.

No Clear Limits, No Clear Law

AB 1776 does not merely relax federal standards—it rejects them. The bill repeatedly cites established doctrines, only to disclaim them as nonbinding.

It emphasizes that the Cartwright Act is “broader in range and deeper in reach” than the Sherman Act and treats federal precedent as persuasive, at most. At the same time, it removes core limiting principles—like market-power thresholds, recoupment requirements, and structured liability tests—all without replacing them.

This pattern extends to other doctrines. In [Aspen Skiing Co. v. Aspen Highlands Skiing Corp.](#), the U.S. Supreme Court set a narrow standard for imposing a duty to deal, describing it as “at or near the outer boundary” of liability. AB 1776 instead treats traditional factors—such as terminating a prior course of dealing—as optional evidence.

The result is a regime with fewer rules and more discretion, increasing uncertainty for businesses and investors.

The Monopsony Mirage

AB 1776 would also target “monopsonization,” or excessive buyer-side power.

The bill focuses on firms as dominant buyers of labor. While antitrust law can address wage suppression, measuring labor-market power is notoriously difficult. Labor markets have unclear boundaries, and economists disagree on how to assess wage-setting power.

ICLE scholars [note](#) there is no consensus on the proper framework for labor monopsony. Writing unsettled theories into law would likely invite speculative litigation and complicate compensation practices.

When Everyone Is Protected, No One Is

AB 1776 opens with a sweeping statement of purpose. It aims to protect “free and fair competition,” “all trade participants,” and even an “environment” conducive to democratic, political, and social institutions.

This departs from the U.S. Supreme Court’s principle in [Brown Shoe Co. v. United States](#) that antitrust law protects “competition, not competitors.” By attempting to protect everyone, the bill obscures necessary tradeoffs.

The result is a standard that risks condemning conduct that benefits consumers, without clear guidance on how to balance competing interests.

When Punishment Loses Its Sting

Companies comply with antitrust law not only to avoid penalties, but also to protect their reputations. In a *Houston Law Review* article, Murat C. Mungan and John M. Yun [describe](#) how overbroad enforcement can weaken this signal—the “stigma dilution effect.”

Under the consumer-welfare standard, a violation clearly signals consumer harm. AB 1776 blurs that signal by treating pro-consumer conduct—such as lower prices or better products—as potential violations.

When violations become too broadly defined, a guilty verdict loses meaning. Paradoxically, that loss of stigma could encourage, rather than deter, the conduct the law targets.

For further analysis, see ICLE’s comments to the California Law Revision Commission Study of Antitrust Law, “[Against the ‘Europeanization’ of California’s Antitrust Law](#)” and the *Truth on the Market* post “[California Dreamin’ or an Antitrust Nightmare?](#)” by Daniel J. Gilman.

CONTACT US



Eric Fruits
Director, Economic Research
efruits@laweconcenter.org



Daniel J. Gilman
Senior Scholar
dgilman@laweconcenter.org

