

September 15, 2026

The Honorable Gavin Newsom
Governor of California
State Capitol
Sacramento, California 95814

RE: AB 1776 (Aguiar-Curry) COMPETE Act – Veto Request

Dear Governor Newsom,

The Association for Competitive Technology (ACT) respectfully urges you to veto AB 1776.

We appreciate the Legislature’s work to narrow the bill as it has moved through the legislative process. Amendments removed the private right of action by providing that an action under the new Section 16731 may be initiated only by the Attorney General or a district attorney.¹ The final amendments also removed the provision requiring procompetitive justifications to be evaluated within the same relevant market as the conduct alleged to be unlawful. These are meaningful improvements that address significant concerns with the prior version of the bill. Nevertheless, the central substantive concerns outlined in our June 22 coalition letter, attached as Appendix A, remain.

AB 1776 would still create uncertainty by moving California antitrust law away from established guideposts that businesses and courts have long used to assess potential liability associated with competitive conduct. The bill expressly provides that interpretations of federal antitrust law are “at most instructive” when construing California’s antitrust laws. Although recent amendments removed other language restricting courts’ reliance on federal precedent, the bill continues to invite the development of a distinct California framework without giving businesses clear rules for distinguishing unlawful exclusion from vigorous competition.

¹ AB 1776, proposed Cal. Bus. & Prof. Code § 16731(f).

The Bill Continues to Create Uncertainty for the Innovation Ecosystem

Although AB 1776 may be framed as targeting large companies, its practical effects would reach the broader innovation ecosystem. Small-business developers, startups, and emerging technology companies rely on larger firms for cloud infrastructure, digital marketplaces, payment systems, app stores, security, distribution, and customer trust. These integrated services help smaller firms reach users, reduce overhead, and compete at scale.²

Removing the specific authorization for a private right of action reduces the direct litigation risk created by the prior version of the bill. But it does nothing to prevent the development of common law causes of action based on the broad new forms of liability enforced by state officials under the legislation. Likewise, it fails to eliminate the downstream consequences for smaller firms if uncertainty around California’s new substantive standards discourages larger businesses from investing in, integrating, or offering the tools and services smaller companies leverage to build a vibrant digital economy. AB 1776 would still make common and beneficial practices more difficult to evaluate by creating a new state-law framework.

Nor do the bill’s remaining standards provide businesses with sufficiently clear guidance. The requirement that the government prove “substantial market power” is an important limiting principle, but market-power analysis remains a fact-intensive litigation standard rather than a practical safe harbor businesses can use when making fast decisions in dynamic markets. The bill also directs courts to apply the analytical framework and guidance of *In re Cipro Cases I & II* and separately instructs courts to “liberally interpret” California antitrust laws while remaining mindful that California favors “maximizing” effective deterrence of antitrust violations. Together, these provisions leave significant uncertainty over how ordinary competitive conduct will ultimately be evaluated.

California already has substantial antitrust enforcement tools. California should not adopt a broader state framework that increases uncertainty and departs from established

² ACT, *Security and Trust from an App Maker’s Point of View* (Nov. 2021), <https://actonline.org/wp-content/uploads/App-Association-Security-and-Trust-from-an-App-Makers-Point-of-View-November-2021.pdf>.

precedent. The Legislature's removal of the private right of action and same-market limitation represent meaningful improvements, but they do not resolve the uncertainty created by the bill's new substantive framework.

For these reasons, ACT respectfully urges you to veto AB 1776.

Sincerely,

A handwritten signature in black ink, appearing to read "Graham Dufault", written in a cursive style.

Graham Dufault

General Counsel

Association for Competitive Technology

Appendix A

June 22, 2026

The Honorable Thomas Umberg
Chair, Senate Judiciary Committee
California State Senate
Sacramento, California 95814

The Honorable Roger Niello
Vice Chair, Senate Judiciary Committee
California State Senate
Sacramento, California 95814

Re: AB 1776 COMPETE Act – Oppose

We, the undersigned organizations, write to **urge you to oppose AB 1776**. The bill would create a broad California-specific antitrust framework for a wide range of business conduct, without giving businesses clear rules for how everyday decisions will be judged.

That uncertainty would affect businesses of all sizes, including startups, small developers, and growth-stage firms that rely on predictable rules to compete. These companies often win customers by building better products, lowering prices, integrating services, forming partnerships, and experimenting with new business models. For example, a small developer building a new productivity tool on top of an existing mobile platform or cloud infrastructure relies on that ecosystem's distribution, payments, and security features to reach users and scale.¹ These integrated products and services are critical inputs for startups and smaller competitors in dynamic industries. AB 1776 would tie up these services in a new, complex liability regime untethered from antitrust law, unnecessarily raising input costs for competitors and consumers.

AB 1776 Moves Away from Established Antitrust Guideposts

AB 1776 would create uncertainty by moving California antitrust law away from established guideposts that businesses and courts have long used to assess competitive conduct. The bill would instruct courts that federal antitrust interpretations are persuasive only and not controlling when applying California antitrust law. It also provides that a Section 16731 claim may not be dismissed or rejected based on the Sherman Act or cases decided under it unless the court also determines that the result is consistent with California law. That language would invite disputes at the beginning of cases over whether federal precedent applies, how much weight it deserves, and whether a federal rule is sufficiently consistent with the new California framework. The result would be more uncertainty and pressure on businesses to settle even weak claims. AB 1776 leaves courts and businesses without clear direction about how to distinguish unlawful exclusion from vigorous competition.

The Bill Would Undermine the Ecosystems Small Businesses Depend On

Although AB 1776 may be framed as targeting large companies, its practical effects would reach the broader innovation ecosystem. Small-business developers, startups, and emerging

¹ ACT, "Security and Trust from an App Maker's Point of View" (November 2021), <https://actonline.org/wp-content/uploads/App-Association-Security-and-Trust-from-an-App-Makers-Point-of-View-November-2021.pdf>; ACT, Amicus Brief in *Epic Games, Inc. v. Apple Inc.* (9th Cir., June 30, 2025), <https://actonline.org/wp-content/uploads/App-Association-Amicus-Brief-Apple-v.-Epic-Ninth-Circuit-FILED-COPY.pdf>.

technology companies rely on larger platforms for cloud infrastructure, digital marketplaces, payment systems, app stores, security, distribution, and customer trust. These integrated services help smaller firms reach users, reduce overhead, and compete at scale.²

That relationship is symbiotic.³ App stores and online marketplaces succeed when small developers and independent sellers participate in their ecosystems, because those businesses expand product choice and create value for consumers. That gives platforms strong incentives to maintain trusted, useful marketplaces that attract both businesses and customers.

For example, app developers benefit when marketplaces remove copycat apps, screen for scams, and maintain basic trust and safety standards. Independent sellers similarly benefit when online retail marketplaces provide fulfillment tools, payments, fraud prevention, product reviews, search, and customer service functions that would be costly to build on their own. These services help consumers trust small and lesser-known businesses.

AB 1776 would make these common and beneficial practices easier to challenge.⁴ By creating a new state-law framework and limiting how courts evaluate procompetitive justifications, the bill risks discouraging the very curation, integration, and marketplace management that small businesses depend on. It could also lead courts to misread ordinary platform economics as anticompetitive conduct.

The Same-Market Limitation is a Poor Fit for Modern Innovation Markets

AB 1776's same-market limitation is particularly problematic. The bill provides that anticompetitive effects and procompetitive justifications of challenged conduct must be evaluated within the same relevant market. In modern markets, especially digital, platform, and multisided markets, costs and benefits often appear across different products, services, or user groups. A court should be able to consider the full competitive context, including how a challenged practice affects consumers, business users, suppliers, developers, and innovation incentives.

Companies compete in many ways that benefit consumers and small businesses. They discount prices. They bundle complementary products. They integrate features. They design distribution systems. They enter exclusive or selective partnerships. They manage marketplaces for quality, safety, and trust. They differentiate commercial terms based on cost, risk, use case, or customer need.

These practices can be anticompetitive in some circumstances, but they are often procompetitive. They can lower prices, improve quality, prevent fraud, expand access, and make it easier for new entrants to reach customers. Antitrust law should assess those practices based on evidence and economic effects. A same-market balancing rule risks excluding important procompetitive justifications simply because the benefits of a practice appear in a

² ACT, "Security and Trust from an App Maker's Point of View" (November 2021), <https://actonline.org/wp-content/uploads/App-Association-Security-and-Trust-from-an-App-Makers-Point-of-View-November-2021.pdf>; Developers Alliance, "Comments on Competition in the Mobile App Ecosystem" (NTIA-2022-0001, May 23, 2022), https://downloads.regulations.gov/NTIA-2022-0001-0135/attachment_1.pdf.

³ ACT, Amicus Brief in *Epic Games, Inc. v. Apple Inc.* (9th Cir., June 30, 2025), <https://actonline.org/wp-content/uploads/App-Association-Amicus-Brief-Apple-v.-Epic-Ninth-Circuit-FILED-COPY.pdf> (describing the symbiotic relationship between small developers and platform ecosystems).

⁴ See ACT, "Antitrust at a Crossroads: Protecting Innovation in the AI Era" (June 12, 2025), <https://actonline.org/wp-content/uploads/Antitrust-at-a-Crossroads-Protecting-Innovation-in-the-Age-of-AI-June-12-2025.pdf> (policymakers should "avoid antitrust claims that seek to outlaw conduct based on speculative harms").

related product, service, or user group rather than in the same narrowly defined market where alleged harm is asserted.

That concern is not theoretical. Many software and digital firms operate in multisided environments where costs and benefits are distributed across different products, services, or user groups. A commission, platform rule, product design choice, or integrated service may impose marginal costs in one market while generating offsetting benefits in another. For example, a fee on in-app transactions can help fund fraud prevention, payment processing, developer tools, privacy protections, and marketplace review functions that lower barriers to entry and expand access for small firms. In this arrangement, commissions paid by some larger, higher-revenue developers help support marketplace services that benefit all developers. That includes both developers that pay commissions and the far larger group of developers whose apps do not pay a commission. Thus, the stores' fee structures benefit competition overall, even if some of the largest developers pay more than the smallest. A legal framework that limits courts' ability to weigh those broader competitive realities is a poor fit for how modern technology markets work.

Replacing Predictability with Legal Uncertainty

AB 1776 would make it harder for businesses to compete by replacing familiar guideposts with a more open-ended, litigation-driven standard. The bill reaches conduct by "one or more persons" involving unreasonable restraints, monopolization, monopsonization, attempts, maintenance, combinations, and conspiracies. By combining concepts that were developed for different types of antitrust claims and legal situations into one new state-law framework, the bill creates uncertainty over how courts will judge ordinary commercial conduct.

The bill's reliance on concepts such as reasonableness, market power, and structured balancing does not solve the problem. These are litigation standards courts apply after conduct has been challenged, not practical compliance rules that businesses can follow in real time. They often require fact-intensive analysis, discovery, expert testimony, and case-specific judgments about market definition, competitive effects, business justifications, and alternatives. A market-power requirement may sound like a limiting principle, but it does not provide a practical safe harbor for businesses trying to make fast decisions in dynamic markets.

The Measurable Cost of "Regulate First" in AI and Emerging Tech

This concern is especially acute in artificial intelligence and other emerging technology markets. California is home not only to large platform providers, but also to smaller firms building AI-enabled applications in healthcare, education, agriculture, productivity, and other sectors. Those firms depend on access to tools, infrastructure, and commercial relationships that support rapid iteration and deployment. A legal framework that injects uncertainty into platform conduct, integration, distribution, and product design risks slowing the very innovation ecosystem California seeks to lead.

This concern is playing out right now in global markets. We have seen the results of this "regulate first" approach in Europe. Recent survey data shows that broad, *ex-ante* digital regulations in the EU and UK have created a widening transatlantic opportunity gap.⁵ Six in 10 EU/UK small tech companies report delayed access to frontier AI models, costing affected

⁵ ACT, "The Hidden Cost of AI Regulations for EU and UK Startups and SMEs" (October 2025), survey conducted by TechnoMetrica, <https://actonline.org/the-hidden-cost-of-ai-regulations-a-survey-of-eu-uk-and-u-s-companies/>; Developers Alliance, "Analysis Finds Europe's Precautionary Tech Regulations Stunt Innovation, Economic Growth" (March 5, 2026), <https://devalliance.org/news/analysis-finds-europes-precautionary-tech-regulations-stunt-innovation-economic-growth>.

firms an average of \$186,000 to \$528,000 annually in lost revenue and forgone savings. Nearly 60 percent of EU/UK developers report launch delays due to regulatory burdens. California cannot lead the world in AI innovation while simultaneously importing a regulatory philosophy that has demonstrably stalled startup growth, delayed product launches, and punished risk-taking elsewhere.

California already has substantial antitrust enforcement tools. California should not adopt a broader state framework that increases uncertainty, departs from established precedent, and limits consideration of procompetitive benefits.

Conclusion

We strongly urge you to reject AB 1776 and similar proposals that would replace predictable competition rules with a vague, California-specific liability framework that businesses will not be able to navigate.

Sincerely,

Graham Dufault, General Counsel
Association for Competitive Technology (ACT)

John Peluso, Policy Analyst, Plymouth Institute for Free Enterprise
Advancing American Freedom

Natalie Madeira Cofield, President and CEO
Association for Enterprise Opportunity (AEO)

Koustubh "K.J." Bagchi, Vice President of U.S. Policy and Government Relations
Chamber of Progress

Ashley Baker, Executive Director
The Committee for Justice

Jessica Melugin, Director, Center for Technology & Innovation; Antitrust & Competition
Fellow
Competitive Enterprise Institute (CEI); Innovators Network (IN)

Rob Retzlaff, Executive Director
Connected Commerce Council

Yael Ossowski, Deputy Director
Consumer Choice Center

Tom Schatz, President
Council for Citizens Against Government Waste

Jake Ward, Co-Founder and Chairman
Developers Alliance

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Paul F. Steidler, Senior Fellow
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Josh Withrow, Fellow, Tech and Innovation Policy
R Street Institute

Karen Kerrigan, President and CEO
Small Business & Entrepreneurship Council (SBE Council)

Morten C. Skroejer, Vice President, Competition and Trade Policy
Software & Information Industry Association (SIIA)