

August 11, 2026

The Honorable Sabrina Cervantes
Chair, Senate Appropriations Committee
California State Senate
1021 O Street, Suite 7330
Sacramento, California 95814

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

Dear Chair Cervantes and Members of the Committee,

The Association for Competitive Technology (ACT) respectfully urges the Senate Appropriations Committee to **hold AB 1776**.

We appreciate the Senate Judiciary Committee’s work to narrow the bill. Nevertheless, the central concerns outlined in our June 22 coalition letter, attached as Appendix A, remain.

Most importantly for this Committee, AB 1776 carries significant and unresolved fiscal costs. The California Department of Finance opposes the bill because it “results in significant new state costs not included in the 2026 Budget Act.” The Department reports that the State Attorney General could face unknown but potentially significant costs to investigate and prosecute single-firm monopolization cases and warns that increased antitrust litigation could add to trial-court backlogs and create additional pressure on the General Fund.¹

Those costs should be considered alongside the litigation incentives the bill would create. AB 1776 would expand Cartwright Act liability to single-firm conduct while the Act already allows private plaintiffs, including indirect purchasers, to seek treble damages (three times the amount of actual damages) and attorneys’ fees. The amended bill also continues to

¹ California Department of Finance, *Bill Analysis: AB 1776* (Aug. 3, 2026) (Position: Oppose).

require procompetitive justifications to be evaluated within the same relevant market and directs courts to “liberally interpret” California antitrust law while remaining mindful that California favors “maximizing” deterrence. These provisions create uncertainty around ordinary competitive conduct and increase the risk of costly litigation.

The small-business exemption does not eliminate the consequences for startups and small technology companies. Small developers leverage cloud infrastructure, digital marketplaces, payments, security, distribution, and customer trust provided by larger firms. As we explained in our prior letter, uncertainty that raises the cost of providing or discourages investment in those services ultimately flows downstream to the smaller firms that utilize them.²

The economic consequences warrant further scrutiny as well. Recent analysis estimates that, even after the Senate amendments, AB 1776 could impose substantial costs on California’s economy and reduce state tax receipts associated with startup exits.³ Whatever the precise magnitude of those estimates, the Department of Finance’s own analysis confirms that the bill creates real fiscal exposure that has not been resolved. California should not undertake a major expansion of antitrust liability without a demonstrated need and a careful assessment of its fiscal and economic consequences. ACT respectfully urges the Committee to hold AB 1776.

Sincerely,

A handwritten signature in black ink, appearing to read "Graham Dufault", with a stylized, cursive script.

Graham Dufault
General Counsel

Association for Competitive Technology

² ACT et al., *Coalition Letter in Opposition to AB 1776* (June 22, 2026), at 1-3, attached as Appendix A.

³ Trevor Wagener, CCIA, *Amended AB 1776 Would Still Cost California \$670 Billion and Risk a Fiscal Squeeze Caused by Reduced Startup Values* (Aug. 7, 2026) (estimating, among other effects, \$4.3-\$8.6 billion in reduced California tax revenues over ten years under illustrative startup-exit scenarios).

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
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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)