



March 30, 2026

The Honorable Richard Simpson
Chairperson
California Law Revision Commission
c/o Legislative Counsel Bureau
925 L Street, Suite 275
Sacramento, California 95814

RE: Follow-Up Comments on Memorandum 2026-14 (Draft Language Options for Mergers and Acquisitions)

Dear Chairperson Simpson and Members of the Commission,

We at the Association for Competitive Technology (ACT) appreciate the opportunity to submit this Statement for the Record to the California Law Revision Commission regarding Memorandum 2026-14 on Draft Language Options for Mergers and Acquisitions.¹ This letter serves to reiterate and expand upon the verbal comments provided by ACT at the Commission's March 20, 2026, meeting. ACT is a global trade association representing the small business software application developers and connected device companies that are driving the \$6.1 trillion global app economy. Our members rely on predictable, evidence-based merger enforcement to raise capital, scale their innovations, and compete in the marketplace.

While ACT strongly supports effective competition enforcement aimed at protecting consumers, we are deeply concerned with the revised draft language options presented in Memorandum 2026-14. We oppose any California-specific merger standard that departs from the well-established federal framework that currently allows pro-competitive technology mergers to proceed.

Acquisition is a Core Pathway for Startup Success and Innovation

For the startups and small businesses we represent, acquisition is not a failure of competition. It is often the most realistic and pro-consumer path to success. Initial public offerings are costly, risky, and inaccessible to most small firms. Recent market data underscores this reality: initial public offerings accounted for only 3.8 percent of all U.S. venture-backed exits between 2023 and 2025, while mergers and acquisitions dominated,

¹ <https://clrc.ca.gov/pub/2026/MM26-14.pdf>.

accounting for 73.7 percent of those exits.² Acquisition allows innovative products and services to reach scale quickly by combining them with complementary resources, technical expertise, and distribution networks.

Crucially, even for firms not actively seeking an acquisition, closing down or severely restricting acquisition prospects negatively impacts their enterprise value. This directly affects a startup's ability to negotiate with potential investors. Founders maintain leverage when investors know the company has value on the open market. A merger policy that undermines this pathway risks reducing startup formation, deterring early-stage investment, and ultimately weakening long-run competition.³

Strict Structural Presumptions Risk Punishing Pro-Competitive Innovation

ACT is particularly concerned that Options Two and Three would codify market share and concentration thresholds into California law, moving away from an effects-based framework toward one that relies too heavily on structural presumptions. As legal and economic scholars have repeatedly noted, market share and concentration measures can be poor proxies for competitive dynamics in innovation-driven markets.⁴ Furthermore, codifying specific enforcement thresholds into statute is a drastic step. Federal merger guidelines have been revised numerous times since 1968 precisely because markets and economic understanding evolve.⁵ Locking any single iteration into permanent California law is a blunt and disproportionate response.

Consider a practical hypothetical. A small startup develops a novel artificial intelligence algorithm that drastically improves medical imaging diagnostics. However, the startup lacks the massive server infrastructure, the regulatory compliance teams, and the distribution networks required to deploy the technology in hospitals. Being acquired by a larger health technology company allows that life-saving innovation to reach scale quickly and benefit patients.

Under the strict structural presumptions proposed in Options Two and Three, this acquisition could be presumed illegal simply because the acquiring company holds a significant market share in health software. Furthermore, the strict rebuttal standard in Option Three would improperly marginalize the massive efficiencies of such a deal. The proposed language requires merging parties to prove that procompetitive benefits occur

² Perkins Coie, "10 Ways to Exit Your Startup" (August 19, 2025), citing PitchBook data indicating IPOs accounted for 3.8% and M&A for 73.7% of U.S. venture-backed exits between 2023 and 2025.

<https://perkinscoie.com/insights/blog/10-ways-exit-your-startup>

³ Mercatus Center, George Mason University, "Prioritizing Innovation in Antitrust Merger Analysis" (August 15, 2024). <https://www.mercatus.org/research/policy-briefs/prioritizing-innovation-antitrust-merger-analysis>.

⁴ See J. Gregory Sidak & David J. Teece, "Dynamic Competition in Antitrust Law," 5 J. Competition L. & Econ. 581 (2009). <https://www.criterioneconomics.com/docs/dynamic-comp1.pdf>.

⁵ U.S. Department of Justice & Federal Trade Commission, "2023 Merger Guidelines" (noting previous issuances and revisions in 1968, 1982, 1984, 1992, 1997, 2010, and 2020).

<https://www.justice.gov/atr/2023-merger-guidelines>.

in the exact same relevant market as the alleged harm and only considers efficiencies if the anticompetitive effects are deemed *de minimis*.

Small app developers and connected device companies rarely build products that fit neatly into a single market. Their innovations touch multiple markets simultaneously, operating as multi-sided platforms that coordinate demands across distinct groups of users.⁶ A rebuttal standard that only counts benefits in one narrow market, while ignoring transformative benefits everywhere else, punishes exactly the kind of cross-market innovation our members specialize in. The restrictive treatment of efficiencies in merger review has been widely criticized for depriving consumers of lower costs and improved products by preventing procompetitive mergers.⁷

The Unique Risks in the Artificial Intelligence Era

The risks of these proposals are especially acute in the artificial intelligence era. Artificial intelligence requires immense computational resources and capital. In 2025, venture capital investments in artificial intelligence firms globally made up over half of all venture capital investment.⁸ The next generation of artificial intelligence innovation will come from startups partnering with, or being acquired by, larger firms that can provide the necessary infrastructure. If California makes these acquisitions presumptively illegal based on rigid structural shortcuts, the state risks choking off the very ecosystem that makes California the global leader in artificial intelligence.

Novel Standards and Purpose Statements Create Unprecedented Uncertainty

Option Four is especially troubling. Replacing the established Clayton Act standard with an untested prohibition on mergers that create an "appreciable risk" of lessening competition introduces unprecedented uncertainty. This novel standard has never been adopted by any jurisdiction. Former federal antitrust economists have warned that an "appreciable risk" standard represents the smallest risk that might be deemed sufficient, raising serious concerns about over-enforcement.⁹ That kind of uncertainty chills the very exit opportunities that drive early-stage investment and startup formation in California.

Finally, the proposed Purpose Statement, which invites courts to disregard federal case law, would sever California from decades of precedent that provides predictability to the market. A divergent California merger law would lead to a patchwork of state-level regulations, increasing compliance costs and delaying transactions critical to business

⁶ David S. Evans, "The Antitrust Economics of Multi-Sided Platform Markets," Yale Journal on Regulation (2003). https://gai.gmu.edu/wp-content/uploads/sites/27/2021/05/Session-13_Evans-Platforms.pdf.

⁷ See, e.g., White & Case, "The Inefficient Treatment of the Efficiencies Defense" (November 30, 2023). <https://www.whitecase.com/insight-our-thinking/inefficient-treatment-efficiencies-defense>.

⁸ OECD, "Venture Capital Investments in Artificial Intelligence Through 2025" (February 17, 2026). https://www.oecd.org/content/dam/oecd/en/publications/reports/2026/02/venture-capital-investments-in-artificial-intelligence-through-2025_3bcb227f/a13752f5-en.pdf.

⁹ Gregory J. Werden, Comments on Draft Merger Guidelines (2023). https://downloads.regulations.gov/FTC-2023-0043-0624/attachment_1.pdf.

growth.¹⁰ A patchwork of state laws creates significant uncertainty for developers and deployers, especially small businesses that lack the resources of larger competitors.

Conclusion

ACT urges the Commission to reject these divergent standards. The Commission should continue relying on the established federal legal framework, which already empowers the California Attorney General to independently challenge anticompetitive mergers. We stand ready to work with the Commission to support responsible competition enforcement that protects consumers while ensuring that small business innovators can continue to compete and contribute to California's technological leadership.

Thank you for your consideration.

Respectfully submitted,



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¹⁰ Eric J. Stock, "State Antitrust Enforcement in the National Economy: Promoting More Democratic and Effective Outcomes Through State Reliance on Federal Law," *Antitrust Magazine*, Vol. 39, Issue 2, Spring 2025. <https://www.americanbar.org/content/dam/aba/publications/antitrust/magazine/2025/vol-39-issue-2/state-antitrust-enforcement.pdf>.