



---

# Time to Reset: The Case for Updating California's Antitrust Law for a Vibrant, Inclusive, and Competitive State Economy

*This is a summary of the report by Economic Security California: **Updating California's Antitrust Law to Promote a Vibrant, Inclusive, and Competitive State Economy**, available at [economicsecurityproject.org](https://economicsecurityproject.org).*

California stands at a crossroads. Our economy, once a beacon of innovation and opportunity, is increasingly dominated by unchecked corporate power that prioritizes profits over people. Corporate giants, through monopolies and collusion, raise prices and limit choices for consumers, exploit workers, stifle small businesses and entrepreneurs, and undermine the ability of communities of color to build wealth. This unprecedented exercise of power not only threatens a healthy, flourishing, and dynamic economy, it also overpowers and erodes the democratic institutions that we all rely on — and which should hold them accountable. This is not the California we want — or deserve.

To achieve an economy that works for all of us, we need a new framework. Below we make the case for strategic antitrust reform in California and highlight key aspects of that vision.

## The Problem: Corporate Concentration Enriches the Wealthy and Powerful Few and Harms Everyone Else

Corporate concentration has ushered in a new Gilded Age in America: the dazzling wealth of a few masks the harsh reality faced by the many. And perhaps nowhere is this more evident than in California, where the tech boom of the nineties raced ahead of outdated antitrust laws and enforcement mechanisms unprepared to confront the twin challenges of rapidly concentrating power and novelty. Big Tech enjoyed the fertile ground resulting from decades of lax attention to corporate concentration and staunch adherence to “hands off the market” neoliberalism. But while Big Tech may have been the splashiest of industries taking advantage of the conditions, it was not alone; the “Bigs” of every industry experienced unprecedented concentration — and became what they are today — during this same time.

*Today, across every key sector of California's economy, from technology to healthcare, from entertainment to agriculture, widespread and enduring corporate concentration has led to a brittle economy unable to meet the demands of unprecedented market power and still protect workers and consumers. Antitrust laws, designed 100 years ago and weakened over decades of jurisprudence dominated by unfettered free market ideology, have failed to keep pace with the challenges, allowing a new reality to take hold. The obstacles in the way of changing course are ingrained and formidable.*

The damage of corporate concentration has been pervasive:

- **As consumers**, people pay higher prices, have fewer choices, and little recourse to buy elsewhere when faced with abusive practices like junk fees or discriminatory pricing;

- **As workers**, people get paid less, work in degraded or unsafe environments, and have few options to switch jobs to avoid exploitative conditions like training repayment agreements, no-poach restrictions, and misclassification;
- **As small business owners and entrepreneurs**, people struggle to compete with dominant firms that control supply chains and sales platforms, engage in self-preferential treatment, collude to set prices, and block market entry; and,
- **As members of communities of color**, people bear the brunt of anticompetitive practices, from predatory lending and fewer worker protections to healthcare consolidation that drives up costs in predominantly Black and Brown neighborhoods.

These outcomes are not inevitable. They are the result of a system that allows corporations to amass power, entrench dominance and enjoy the spoils, paying little mind to the broad-based prosperity that a fair economy delivers. It's time to reset.

## The Solution: A Modern Antitrust Framework for California

To build an economy that works for everyone, California must embrace a robust antitrust framework grounded in the belief that competitive, fair, and functioning markets are fundamental to core American values like choice, agency, stability, and freedom. We propose the following reforms:

### 1. Strengthen our Antitrust Statute to Address Anticompetitive Conduct by a Single Firm

Currently, California's antitrust statute, the Cartwright Act, does not address anticompetitive conduct by a single firm. This leaves a large range of corporate behavior which leads to monopolies and entrenched dominance out of reach of robust enforcement under California law. While federal law (the Sherman Act) can be used to enforce against conduct by a single firm, decades of federal jurisprudence has weakened its ability to address a range of common harmful behaviors by dominant firms. California should establish a state-specific standard for single-firm conduct, and, importantly, improve upon the federal standard in the following critical ways:

- **Establish a new single-firm conduct standard grounded in misuse of market power**, and drawing from the "unfairness" standard in Section 5 of FTC, prohibits conduct by firms with market dominance that exploits consumers, workers, and other trading partners. The standard should set clear rules that treat harmful business tactics by dominant firms as illegal by default, such as "catch and kill" (big corporations buying smaller ones just to shut them down), exclusive agreements (forcing customers to buy only from their company), and "tying" (forcing customers to agree to buy additional products in order to get the one they actually want); and,
- **Make the law specific enough that firms know what conduct is allowed and what isn't.** That includes codifying single-firm conduct that has historically been deemed illegal per se, because it lacks any sufficient business justification. And in cases where the conduct's harms must be balanced against potential benefits (i.e., rule of reason balancing), we should look at the benefits only in the same market, not other markets unrelated to the harm. That is, single-firm conduct that undermines competitors in one line of commerce should not be excused simply because the firm claims it drives efficiencies in a different market.

## 2. Expand and Enhance Merger Oversight to Protect Competition

Consolidation has reached alarming levels across our economy, from healthcare to technology to grocery stores to media. This resulting concentration of market power in too few hands chokes out competition, limits consumer choice, and undermines workers' ability to seek out better employment options. Federal enforcement has been insufficient, both due to a lack of vigor and to the inability to monitor – much less litigate– every problematic merger, especially those that result in extreme consolidation locally without triggering concerns at a national-level. This underscores the need for California to enact its own merger and acquisitions laws that empower the Attorney General to block harmful deals at home, particularly those that impact local economies.

To prevent harmful consolidation, especially in local and regional markets, California should:

- Establish a state-level pre-merger notification system (that applies to all market sectors) to give the Attorney General the opportunity to evaluate whether a proposed merger contributes to consolidation in a market, considers the impact on consumers and workers, and allows for timely action to intervene;
- Set clear merger thresholds (e.g., a percentage of allowable market share post-merger) to protect competition and prevent monopoly formation; and,
- Increase transparency in merger reviews to ensure accountability.

## 3. Ensure Workers Can Freely Exercise Their Power in Employment Markets

Workers are the producers, innovators — and customers — that move money, products, and services through the economy, yet employer monopsony power has severely limited workers' options and ability to make decisions about what to do with their labor. A trapped, exploited labor force just exacerbates corporate power accumulation. To fix this imbalance and ensure workers have real choice when it comes to their employment, California should:

- Prohibit practices that restrict the ability of workers to move between jobs, such as training repayment agreements (TRAPs), no-poach provisions, and other practices;
- Include labor market impact assessments in merger reviews to prevent wage suppression and job losses;
- Prohibit use of tech that controls, monitors, or surveils workers in the workplace and/or off hours;
- Prohibit the use of algorithmic tools that facilitate collusion on wages or automate decisions about hiring, firing, and other conditions of employment; and,
- Strengthen legal protections for gig and contract workers who, by virtue of their non-employee status, have fewer options to challenge unfair employment practices.

## 4. Foster Fair Markets and Safeguard Consumer Power

The central tenet of a free market is that competition — the striving of competitors to win customers with better prices or superior products — benefits us all. But that's only true when there is real competition. In highly concentrated markets, that promise breaks down, and consumers pay the price. When one grocery chain owns all the stores, and one healthcare conglomerate employs all the providers, and all the landlords use a software algorithm to collude on rent prices, then people have no real choice about where to take their business. Consumers deserve transparency, options, and fair pricing in every marketplace. To ensure competition and consumer rights, California should:

- Put an end to the new era of discriminatory pricing — algorithmic price fixing (collusion), surveillance pricing, price gouging, and junk fees — that raise prices and reduce choice;
- Prevent large sellers and digital platforms from manipulating prices or controlling how products are sold, like setting minimum prices for resellers; and,
- Expand legal options for consumers to challenge anti-competitive behavior, such as by limiting forced arbitration.

## **5. Clarify that Existing Laws Apply to Digital and Algorithmic Market Practices**

The advent of digital technology presents a unique challenge in that corporations can engage in traditionally illegal behavior — like collusion and self-preferencing — but hide it behind technology, making it much more difficult to detect and stop. Artificial intelligence (AI) only exacerbates the problem. The drafters of existing antitrust laws could not have contemplated the challenge that AI presents. Courts are struggling to play catch-up to an industry that has raced ahead, amassed wealth and power, and then balked at any attempt to hold it accountable for its conduct. Our existing framework should apply, and the law should make it crystal clear: new technology doesn't give companies a free pass to pull the same old tricks. It was illegal before; it's still illegal now.

## **The Path Forward: Building a Fairer Economy for All**

The reforms outlined in this document are not just policy changes, they are also a commitment to our shared vision of a robust, flourishing, and fair economy. Unchecked corporate concentration has reshaped California's economy in ways that do not serve us, and disproportionately harm some — workers, small businesses, and communities of color — most of all.

Addressing these challenges requires big thinking and bold action. But the rewards are equally compelling: a dynamic, innovative economy that delivers broad-based prosperity for us all to enjoy.

California has the opportunity to lead the nation in building an economy that serves everyone, not just the powerful few. Together, we can create a future where economic power is shared, opportunity is abundant, and democracy thrives.