September 12, 2025

The Honorable Xochitl Carrion, Chair,
and Honorable Commissioners
California Law Revision Commission
c/o Legislative Counsel Bureau
925 L Street, Suite 275
Sacramento, CA 95814

Re: Antitrust Law – Study B-750 Support for Staff Recommendations

Dear Chair Carrion and Commissioners,

The undersigned signatories write in support of staff recommendations presented in Memorandum 2025-32, regarding incorporating a Misuse of Market Power provision into California's Cartwright Act. As a coalition, we have advocated for the California Law Revision Commission to advance recommendations that would strengthen California antitrust law by banning monopolization and dangerous mergers, in support of workers, small businesses and communities throughout the state. The staff analysis and recommendations outlined in the memorandum are thoughtful, thorough and well-researched, as has been the case with other staff recommendations presented during the Commission's study. The staff should be commended for its outstanding work during this process and guidance to this Commission and lawmakers considering whether and how to update and strengthen antitrust law in the state.

Strong, clear antitrust laws are crucial to making markets work. As coalition partners have stressed in prior letters supporting the Commission's study, there remains an urgent need to update California's antitrust laws, including through the addition of a Misuse of Market Power standard that would preserve and enhance fair markets for all Californians. As the largest "sub-national" economy in the world, California cannot rely solely on federal law or federal law enforcement to protect competition within its borders. This is particularly true today, as federal enforcement appears mired in philosophical chaos, and decades of judicial decisions importing the "consumer welfare standard" into existing law has prioritized consolidation of economic, social and political power over fairness, economic liberty, and broadly distributed economic benefits.

Memorandum 2025-32 includes recommendations and potential legislative text for a Misuse of Market Power standard incorporated in the Cartwright Act.[1] Simply put, the misuse of market power standard as described in 2025-32 would make clear that companies with significant power in an industry are prohibited from certain practices when those practices would harm, or threaten to harm, competition and the competitive process.[2] While staff's recommended Single Firm Conduct Option 2 alongside the Enhanced Purpose Statement, Statement Rejecting Federal Principles, and Statement Rejecting Federal Precedents, all of which ILSR supports, would introduce a strong monopolization standard into the Cartwright Act, we believe also recommending a Misuse of Market Power standard would add both clarity and enforceability to any monopolization standard, benefitting stakeholders in any antitrust action and better safeguarding taxpayers and residents in the state.[3]

Staff's proposed Single Firm Conduct Option 2, Enhanced Purpose Statement, Statement Rejecting Federal Principles and Statement Rejecting Federal Precedents offers a monopolization and attempted monopolization language that functionally improves upon the federal Sherman Act by incorporating a "restraint of trade" clause into claims of illegal monopolization. That clause is intended to prohibit actions, when taken by a monopolist or would-be monopolist, that restrain the freedom of trade and production to the detriment of competition. In its analysis of Single Firm Conduct Option 2 and the accompanying statements, staff correctly points out that "'restraints of trade' is intended to capture the broad range of anticompetitive conduct that may not fall within the currently restricted scope of federal law but is more broadly interpreted in state law for multiple actors."[4] Although several stakeholders have suggested that this concept lacks clarity and definition, the phrase "restraints of trade" is in fact a well-established legal concept under California law.

While we believe state judges are more than capable of both interpreting "restraints of trade" as established in California law, and using that language to differentiate the Cartwright Act from the federal Sherman Act, a Misuse of Market Power provision would dovetail with the recommended

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[1] "Massachusetts Again at the Forefront of Fighting Monopolies in the States," Ron Knox, ILSR, Aug 1, 2025

[2] As staff explains in Memorandum 2025-32, Misuse of Market Power is "based on the idea that conduct by parties with significantly more power than their rivals can have a disproportionate impact on the competitive process by leveraging their size to increase market share rather than by producing a better product or service."

[3] Option 2 in staff's Single Firm Conduct memorandum 2025-21 would add the following language to the Cartwright Act: "*Section 16720.1 is added to the Business and Professions Code, to read:*
(a) It is unlawful for one or more persons to act, cause, take or direct measures, actions, or events:
(1) In restraint of trade, or to attempt to restrain the free exercise of competition or the freedom of trade or production; or,
(2) To monopolize or monopsonize, to attempt to monopolize or monopsonize, to maintain a monopoly or monopsony, or to combine or conspire with another person to monopolize or monopsonize in any part of trade or commerce.
(b) As used in this section, "restraint of trade" shall include, but not be limited to, any actions, measures, or acts included or cognizable under Section 16720, whether directed, caused, or performed by one or more persons."

[4] CLRC Staff Memorandum 2025-21, p. 4

single firm conduct language and add an important layer of specificity and clarity to statute. By clearly defining which companies have market power and what specific kinds of conduct violate the law, a Misuse of Market Power standard would make government enforcement efforts against abuses of corporate power less costly and resource-intensive, and establish clear rules of the road for the private sector and legal practitioners.

Staff in 2025-32 offered two similar but separate options for potential Misuse of Market Power statutory language. Option 1 includes a non-exhaustive list of presumptively illegal practices for a company with substantial market power, and offers two ways to define that market power — via either market share or net annual sales/market capitalization. Option 2 largely mirrors Option 1, but instead defines those practices as illegal "if the purpose or effect of the conduct is likely to harm competition in more than a de minimis way." There are functional differences between these options, particularly regarding defenses available to companies accused of abusing their substantial market power. We believe Option 1 is the stronger legal standard; Option 2's requirement that plaintiffs prove conduct "is likely to harm competition in more than a de minimis way" may well hamper enforcement by injecting a more complex evidentiary standard into the law. By listing such presumptive illegal conduct and clear, bright-line ways to demonstrate market power, Option 1 would provide useful clarity to prosecutors, judges and the private sector alike. Not only would such clarity help streamline prosecution of anti-competitive corporate abuses, it would act as a strong deterrent for corporations with substantial market power, helping to prevent abuses and pushing markets toward deconcentration.

Therefore, we strongly encourage the Commission to adopt staff's proposed Misuse of Market Power Option 1 and to include that standard in its legislative recommendations.

Thank you again to both the Commissioners and staff for their continued outstanding work on this crucial study.

Sincerely,

Ron Knox
Senior Researcher and Policy Advocate
Institute for Local Self-Reliance

Democracy Policy Network
California Nurses Association
Economic Security California Action
Small Business Majority
UDW/AFSCME Local 3930
Writers Guild of America West
American Economic Liberties Project
End Poverty in California (EPIC)