

Publications

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California Expands Antitrust Law, Increasing Exposure for Companies with Market Power

Key Updates

- California enacted the COMPETE Act on Sept. 30, expanding the Cartwright Act to cover certain monopolization and monopsonization conduct while limiting enforcement of the new provision to the California attorney general and district attorneys.

Why It Matters

- The COMPETE Act gives California prosecutors a new enforcement tool for single-firm conduct that historically fell outside the Cartwright Act's focus on agreements and coordinated activity, potentially exposing businesses with significant market positions to scrutiny over unilateral practices that may not violate federal antitrust law.

Next Steps

- Businesses with significant market positions or operations in California should assess pricing, distribution, exclusivity and other unilateral practices that could exclude competitors while monitoring early enforcement actions and case law for guidance on how courts apply the new standard.

On Sept. 30, California Gov. Gavin Newsom signed Assembly Bill 1776 — known as the Competition and Opportunity in Markets for a Prosperous, Equitable and Transparent Economy, or COMPETE, Act — significantly expanding California's Cartwright Act to reach monopolization and other conduct undertaken by a single firm. The Cartwright Act had principally targeted agreements and coordinated conduct involving two or more parties. AB 1776, however, creates a new state-law cause of action directed at monopolization and monopsonization, including independent anticompetitive conduct by a company. The new law takes effect Jan. 1, 2027.

A New Prohibition on Single-Firm Conduct

Unlike Section 2 of the Sherman Act, the Cartwright Act generally had required concerted

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conduct between two or more parties. The COMPETE Act disallows certain unilateral conduct where the government proves the defendant possess “substantial market power,” a term the statute leaves undefined.

Although earlier versions of AB 1776 would have created substantially broader potential exposure, including a private right of action, the final legislation is narrower. Only the California Attorney General or a district attorney may initiate an action under the law as enacted. An alleged violation also generally cannot be used by a private plaintiff as a predicate violation under California’s Unfair Competition Law.

California Law May Develop Independently of Federal Antitrust Law

AB 1776 also addresses how California courts should interpret the Cartwright Act as amended by the COMPETE Act. The statute declares that interpretations of federal antitrust law are “at most instructive” when construing California law, noting that the California law is intended to reach conduct not prohibited by federal law. The new statute separately instructs courts to liberally interpret California antitrust laws to promote free and fair competition and remain mindful of California’s policy favoring effective deterrence of antitrust violations.

California courts will therefore be required to develop the contours of the new provision against both California precedent and the legislature’s express direction regarding federal authority.

What’s Next

The absence of a private right of action significantly limits the litigation exposure contemplated by earlier versions of the bill, but the statute as enacted nevertheless gives the California Attorney General and district attorneys a new enforcement tool directed at unilateral conduct by firms with substantial market power. Governor Newsom described the measure as creating new authority for those prosecutors to combat monopolistic behavior. Other states are considering similar legislation as Oregon, Washington, Nevada and New York, which joined with California in May to signal their joint efforts to expand antitrust enforcement.[1]

Businesses with significant market positions or operations in California should consider whether existing pricing practices, distribution, exclusivity arrangements or other unilateral competitive practices with a potential to exclude competitors from the marketplace could attract scrutiny under the new California standard. Because the statute requires substantial market power but leaves several substantive questions to future judicial development, it will be important to keep an eye on early enforcement actions to provide guidance regarding the practical differences between California and federal monopolization law.

Polsinelli will continue to monitor implementation and enforcement of the COMPETE Act. If you have questions regarding how the new law may affect your business, contact Polsinelli’s Antitrust team.

[1] <https://www.atg.wa.gov/news/news-releases/feds-pull-back-corporate-oversight-state-ags-warn-enforcement-gaps>