CLRC Antitrust Reform Initiatives

The California Law Revision Commission is developing proposals to modernize the state's antitrust laws following the passage of ACR 95 in 2022. In the June 26, 2025, meeting, the Commission's work centered on three areas, Single Firm Conduct (SFC), Mergers & Acquisitions (M&A), and Misuse of Market Power (MMP), with an emphasis on crafting California-specific standards that better address modern market realities. The CLRC is also considering legislative findings to clarify interpretive goals, ensuring California law can diverge from restrictive federal precedents to protect competition, workers, and innovation.

1. Single Firm Conduct (SFC)

Proposed Standard: The CLRC favors a new statutory rule prohibiting any firm with "substantial market power" from engaging in conduct that results in an unreasonable restraint of trade. This would create a flexible "rule of reason" framework targeting a range of monopolistic behaviors while providing clearer enforcement authority under state law. Importantly, the proposal is intended to move beyond federal limitations set by cases like Verizon v. Trinko and Ohio v. American Express, which narrowed liability for refusals to deal and two-sided market abuses. California's law would explicitly not be bound by these precedents, allowing courts to consider harms to innovation, labor (e.g. monopsony power), and nascent competition, not just consumer prices.

Interpretive Independence: Many Commissioners support a legislative declaration that California antitrust law is independent of federal law, to be interpreted with a broad pro-competitive intent. This would instruct courts that federal case law (such as Trinko, Amex, or Brooke Group) is not controlling in interpreting California's statutes. The aim is to ensure California can protect a wider array of interests, including fair competition for workers and small competitors, even if federal enforcement remains limited.

Open Questions: The Commission is still debating how to define "substantial market power" in the statute. Options include specifying a market share threshold or listing factors (like control of a key platform, network effects, or high switching costs) to guide courts. There is also discussion about whether to enumerate examples of prohibited conduct versus relying on a general standard that courts would flesh out over time.

2. Mergers & Acquisitions (M&A)

Appreciable Risk Standard: To strengthen merger enforcement, the CLRC's leading proposal would prohibit mergers that pose an "appreciable risk" of substantially lessening competition or tending to create a monopoly. This forward-looking standard shifts focus to ex ante risk: allowing enforcers to block mergers before consumers or workers suffer harm, rather than requiring after-the-fact proof. It responds to concerns that many anti-competitive acquisitions (such as roll-ups of small firms or tech "killer acquisitions") escape federal review under current law.

Structural Presumptions & Burden Shifting: The Commission discussed codifying presumptions against certain mergers, drawing on the Philadelphia National Bank presumption that mergers resulting in high market shares are prima facie unlawful. While no final consensus was reached on specific thresholds, there is interest in shifting the burden of proof to merging parties in highly concentrated markets. For example, a merger resulting in over 30% market share could be presumed illegal unless the parties show otherwise.

Broader Competitive Effects: Commissioners emphasized that merger review should account for labor and innovation impacts alongside traditional price effects. The emerging consensus is that harms like reduced worker bargaining power or stifled innovation are to be given equal footing with consumer price increases when evaluating a merger. This could be codified to ensure courts consider effects on employees and entrepreneurs (e.g. start-up elimination) in addition to consumers.

State-Level Merger Oversight: Considering gaps in federal enforcement, the CLRC is also evaluating a state pre-merger notification regime. One idea is to require merging parties to notify the California Attorney General for transactions meeting certain state-specific criteria (for instance, deals over $50 million or involving a company with significant California operations). Such a regime would alert state enforcers to mergers that might fly under the federal radar (e.g. below federal Hart-Scott-Rodino thresholds). This proposal remains under consideration and dovetails with pending legislation (see SB 25 below)

3. Misuse of Market Power (MMP)

Concept and Scope: The MMP category is a novel concept the CLRC introduced to address tactics by dominant firms that may not squarely fall under current antitrust rules. Examples include bundling products to undercut rivals, loyalty or exclusivity programs that lock in customers, refusing to interoperate with competitors' systems, or other exclusionary practices by firms with market power. These practices can entrench dominance yet may evade traditional definitions of monopolization.

Rebuttable Presumptions: One approach under consideration would create rebuttable presumptions that certain conduct by a firm with substantial market power is anticompetitive. For instance, if a company with >30% market share engages in exclusive dealing or predatory pricing, the burden would shift to the company to show the behavior is not harmful. Commissioners are debating whether bright-line presumptions (like a 30% market share trigger) are economically sound and legally sustainable.

Separate Statute or Not: There is discussion about whether a distinct MMP statute is necessary. Some Commissioners feel these issues might be better handled by broader SFC law, rather than creating a new category. They worry that listing specific forbidden acts could inadvertently narrow the law or create loopholes. Others believe that guidance on known abusive tactics (bundling, loyalty discounts, etc.) would help deter conduct that often escapes today's enforcement.

Stakeholder Reaction

The reform effort has drawn extensive public comment, reflecting high stakes for various industries and interest groups. Over 40 stakeholders, from tech companies to labor unions, including the California Retailers Association, have weighed in.

Support for Stronger Enforcement: Several labor and public interest groups back the CLRC's direction. For example, some unions urged California to codify stricter merger rules and address excessive consolidation in media and streaming markets. Healthcare unions submitted evidence that hospital mergers and nursing home roll-ups have led to lower wages, short-staffing, and service cutbacks, harming workers and patients. Academic experts and antitrust advocacy nonprofits also applauded the CLRC's bold approach, seeing California as a leader to "reverse federal retrenchment" in antitrust policy.

Business and Defense Concerns: Major business groups caution against overreach. Industry coalitions warned that presumptions against common practices like bundling or loyalty discounts could chill pro-competitive behavior and punish efficient business models. Some legal scholars and corporate counsel have expressed concern that if California's standards diverge too far from federal law, it could create legal uncertainty and spur costly litigation for companies operating nationally. They urge careful calibration so that the new laws target truly anticompetitive conduct without creating undue compliance burdens.

Next Steps

The CLRC anticipates drafting statutory recommendations by late 2025, with a final Commission vote and submission to the Legislature by early 2026. Over Summer 2025, staff will be revising the leading options (SFC Option Two, M&A Option Four, see linked report above, etc.) and redrafting the legislative intent language on interpretive standards. By Fall 2025, the Commission aims to resolve open questions such as whether to merge the MMP concept into SFC and how to define "substantial market power." Pending California Antitrust Legislation (2025-26)

Several antitrust-related bills are moving through the California Legislature in 2025. The following is a summary of five key pending bills, including their title/focus, authorship, purpose, main provisions, and context (with comparisons to federal law where relevant). All these bills are currently in their respective Appropriations Committees and will be heard in late August. Providing they pass, they will then have to pass their respective House by mid-September, which marks the end of this year's legislative action.

SB 763 Conspiracy Against Trade: Punishment; Senator Melissa Hurtado (D – Bakersfield)

SB 763 is designed to increase the penalties for violating California's antitrust law, the Cartwright Act, to deter corporate wrongdoing. The premise is that current fines are so low that large companies treat them as a "cost of doing business." By sharpening the financial and criminal consequences, the bill aims to dissuade price-fixing, bid-rigging, and other conspiracies that harm consumers and workers.

Key Changes to Law:

- **Higher Corporate Fines:** Increases the maximum criminal fine for a corporate violator from $1 million to $6 million. Initially, the bill raised this to $100 million, a 100-fold increase that would align with the federal Sherman Act. Due to heavy opposition, this was lowered. The author argues that this huge jump reflects that many large firms' illegal gains far exceed $1 million, so fines must be higher to truly punish and deter.
- **Higher Individual Penalties:** Increases the criminal fine for an individual from $250,000 to $1 million, and extends the possible prison term to 2, 3, or 5 years (up from the current 1, 2, or 3 years). This means executives involved in cartels could face up to five years in state prison and significantly higher fines.
- **New Civil Penalty:** Authorizes the Attorney General or District Attorneys to seek an additional civil penalty up to $1 million per violation.

Federal Comparison: California's antitrust penalties have not been updated in decades. The addition of civil penalties is something federal law doesn't explicitly have in cartel cases (federal antitrust is primarily criminal + treble damages in civil suits), so SB 763 would give California unique dual avenues of punishment.

Status: Passed the Assembly Judiciary Committee and advanced to the Assembly Appropriations Committee where it will be heard when the Legislature returns from summer recess in August. It is worth noting that Assemblymember Blanca Pacheco, who is on the committee as well on the Commission, did not take a position on the bill. The Attorney General has been a strong proponent of this change, arguing it will "ensure violating antitrust laws comes with real consequences, not just a slap on the wrist".

[SB 25 – Uniform Antitrust Premerger Notification Act; Senator Thomas Umberg (D – Santa Ana)]

SB 25 establishes a state-level premerger notification requirement, analogous to the federal Hart-Scott-Rodino (HSR) process, to ensure California's Attorney General is informed of large mergers affecting the state. The goal is to ensure California regulators are informed of major transactions, but the proposal has raised concerns among businesses about duplicative filing burdens, potential delays, and the risk of inconsistent state-level scrutiny alongside federal merger reviews.

Key Points:

- **Copy of Federal Filing to CA AG:** Any person who is required to file an HSR notification federally must simultaneously file a copy of that notification with the California Attorney General, if the person either has its principal place of business in California or meets a California economic nexus (specifically, having annual net sales in California of at least 20% of the HSR size-of-transaction threshold). This means large companies headquartered in California, or firms with significant sales in California, will need to send HSR filings to the state as well.
- **Additional Documents:** The AG may request not only the HSR form but also all "additional documentary material" submitted to the FTC/DOJ (such as competitive impact analyses). Essentially, California will get the same information as federal antitrust agencies receive. Penalties for Non-Compliance: If an entity fails to file the required notice with California, the AG may impose a civil penalty of up to $10,000 per day for noncompliance.
- **Effective Date:** The Act would apply to any HSR notifications filed on or after January 1, 2026.
- **Other States:** The bill would allow the AG to submit this information to other state AGs who have passed a similar law.

Comparison: Federal HSR law already requires merger filings to FTC/DOJ for large transactions (current threshold $126.4 million). SB 25 does not lower the threshold or create a separate trigger for smaller deals, rather it piggybacks on the federal system. However, it captures deals that have substantial impact on California by the 20% sales provision. For example, a merger just at the HSR threshold where a large portion of sales are in California would get flagged to the AG. Other states (like Washington and Oregon) have considered similar measures as they grow more active in antitrust enforcement. For companies, this means parallel state filing when doing an HSR. This is an additional administrative step that allows California's AG to potentially coordinate or take independent action. In practice, we may see more California-specific merger investigations or state challenges to mergers that federal agencies approve of given this early warning system.

Status: Passed the Assembly Judiciary Committee and advanced to the Assembly Appropriations Committee where it will be heard when the Legislature returns from summer recess in August.

[AB 325 Cartwright Act: Violations; Assemblymember Cecilia Aguiar-Curry (D - Winters)]

AB 325 aims to strengthen California's Cartwright Act (the state antitrust law) in two ways: (1) by easing the pleading standard for antitrust plaintiffs, and (2) by explicitly outlawing certain algorithmic collusion practices. The bill responds to concerns that modern price-fixing can be facilitated by shared technology (pricing algorithms) and that California plaintiffs faced undue hurdles in court at the pleading stage.

Key Provisions:

- **Simplified Pleading:** The bill provides that a Cartwright Act complaint is sufficient if it alleges facts showing an antitrust conspiracy is "plausible," and need not plead facts excluding the possibility of independent action by defendants. This effectively rejects the stricter federal pleading rule from Bell Atlantic v. Twombly, which required detailed facts suggesting defendants' conduct was collusive rather than coincidental. In practice, AB 325 would make it harder for

courts in California to dismiss antitrust cases at the outset, allowing more claims to proceed to discovery on a mere plausible allegation of agreement.

- **Ban on "Common Pricing Algorithms":** The bill would make it unlawful to use or distribute a common pricing algorithm as part of any contract, combination, or conspiracy in restraint of trade. A "common pricing algorithm" in this context means a software tool or algorithm shared across competitors that coordinates pricing or other competitive terms. AB 325 targets scenarios where firms use the same algorithm or data pool to set prices, which can result in tacit collusion.
- **Specific Liability for Algorithm Use:** It is unlawful to distribute or use a pricing algorithm to two or more entities with the intent that it be used for setting or recommending prices and to coerce those others to follow the recommended prices.
- **No Safe Harbor for "Neutral" Algorithms:** The bill makes clear that these provisions do not narrow existing antitrust law. Legitimate uses of pricing software (for independent pricing decisions) remain lawful, but any secret coordination via algorithms would explicitly violate the Cartwright Act.

Federal Law: There is no direct federal statute on pricing algorithms; enforcement has proceeded under general antitrust principles. The U.S. DOJ and FTC have voiced concern about algorithm-driven collusion, but cases are rare due to the difficulty of proving an agreement. AB 325 would give California enforcers a clearer statutory hook to go after perceived modern collusion methods. Additionally, by lowering the pleading bar, California plaintiffs avoid some federal hurdles (federal courts post-Twombly often dismiss cartel cases absent a "plus factor" to exclude independent conduct). In effect, California would become a more plaintiff-friendly forum for antitrust cases involving AI or pricing software collusion, as well as traditional cartels.

Status: In its most recent hearing, Chair of the Senate Judiciary Committee, Tom Umberg, urged the author to keep working on the definition of common pricing algorithm. If passed, companies using shared pricing tools or participating in pricing consortia should reevaluate those practices under this impending change. The bill is now in on the Senate Appropriations Suspense file and will be considered when the Legislature reconvenes from summer recess.

SB 295 California Preventing Algorithmic Collusion Act of 2025; Senator Melissa Hurtado (D – Bakersfield)

SB 295, along with 3 other bills including AB 325, tackles the emerging problem of algorithm-driven collusion, where companies might use shared pricing algorithms or artificial intelligence to synchronize prices or outputs in a way that harms competition. It also grants new investigative and enforcement powers to state authorities to deal with these high-tech collusive practices

Key Provisions:

- **Prohibition of Collusive Algorithms:** The bill makes it unlawful to distribute or recommend the use of a pricing algorithm to two or more competing businesses if the algorithm uses competitors' data to set prices, and the person (distributor) knows or should know that fact. In essence, no one can play "hub" by giving multiple competitors a tool that tells them how to price using shared data, that would be treated like a hub-and-spoke conspiracy via software. Similarly, it bans any business from using a pricing algorithm's recommendations if it knows or should know the algorithm was trained on or incorporates competitors' confidential data. This targets the scenario where competing firms might knowingly rely on the same AI pricing system that aggregates their market information, leading to synchronized pricing.
- **Look-Back Period Exception:** The law clarifies it does not apply if the competitor data in the algorithm is over 1 year old. This carve-out is likely to exclude algorithms using only historical market data (e.g. an index of last year's prices) on the theory that stale data is less useful for real-time collusion. It focuses on enforcement on real-time price coordination facilitated by AI.

- Void Contracts: Any contract or agreement that violates the above algorithm restrictions is declared void and unenforceable to the extent of the violation.
- **Enforcement Powers:** SB 295 expands enforcement beyond the AG by allowing district attorneys, county counsels, and city attorneys to also bring civil actions for violations. Remedies include a civil penalty up to $25,000 per violation, plus restitution, punitive damages, and injunctive relief. This mirrors the kind of relief available under general antitrust laws but explicitly provides for a monetary penalty option and broadens who can sue. By empowering local prosecutors, the bill recognizes that smaller-scale algorithmic collusion (for instance, among local businesses using the same pricing app) could be prosecuted at the city or county level.

Federal Law: Federally, there is growing attention to AI and collusion (the FTC has warned that using AI to fix prices is still illegal, and the DOJ's Antitrust Division has an ongoing lawsuit against a landlord pricing algorithm provider.) However, no U.S. statute specifically addresses algorithmic collusion yet. California's SB 295 would be a first-of-its-kind law explicitly regulating pricing algorithms and requiring disclosure of how they work. SB 295's approach, combining transparency, prohibition, and broad enforcement, could become a model for other jurisdictions if successful in unearthing and deterring AI-driven collusion. In sum, SB 295 seeks to update California's antitrust toolkit for the age of Big Data and artificial intelligence.
Status: Passed the Assembly Privacy and Consumer Protection Committee and advanced to the Assembly Appropriations Committee where it will be heard when the Legislature returns from summer recess in August.

AB 1415 California Health Care Quality and Affordability Act; Assemblymember Mia Bonta (D - Oakland)

AB 1415 seeks to increase oversight of health care mergers and arrangements, especially those involving private equity investors and management service organizations (MSOs), to curb cost inflation in the health sector. It amends the 2022 Health Care Quality and Affordability Act, which created the Office of Health Care Affordability (OHCA), to close loopholes that allowed certain deals to escape scrutiny.
Key Provisions:

- **Expanded Definitions:** The bill adds the definition of a "management services organization," administrative entities often used by private equity to manage medical groups. It also adds a definition for "hedge fund."
- MSO Reporting: Under this bill, OHCA is tasked with ongoing monitoring of MSOs and must establish requirements for MSOs to submit data and information on their operations. In effect, MSOs, which previously might not have been directly regulated, would need to report transactions and possibly meet cost and quality benchmarks similar to hospitals and insurers.
- **Pre-Transaction Notice:** AB 1415 mandates that private equity groups, hedge funds, and other investment entities notify OHCA 90 days before executing any material transaction with a health care entity. Currently, California law already requires health care entities themselves to give notice to OHCA for significant mergers or acquisitions. This bill extends the obligation to the investor side of the deal, meaning a PE firm or holding company must file notice and extensive information (financial statements, organizational structure, prior health acquisitions, etc.) about the transaction.
- **Coverage of "NewCo" Vehicles:** The notice requirement explicitly covers any newly created acquisition entities (so-called "NewCos") formed to buy health care assets. This prevents circumvention by setting up shell companies.
- **No Approval Power:** Notably, while the bill expands reporting and transparency, it does not give OHCA authority to block a transaction outright. OHCA can still refer concerns to the Attorney General (Bonta's husband), but the emphasis is on shining light on deals rather than a new veto power.

Comparison: Proponents of this measure argue that health care consolidation is a major driver of cost increases, and California is following other states in scrutinizing MSOs and private equity in this sector. Federally, most hospital and physician group acquisitions do not trigger Hart-Scott-Rodino antitrust filings if they are below certain size thresholds. AB 1415's state-level notice ensures California regulators are informed of mid-sized transactions that might slip past federal review. This bill is similar to laws in states like Connecticut and Massachusetts, which have their own health transaction review laws. If passed and signed into law, health entities should be prepared for increased disclosure obligations and potential delays for deals closing after January 1, 2026 (the bill's anticipated effective date).
Status: Passed the Senate Health Committee and advanced to the Senate Appropriations Committee where it will be heard when the Legislature returns from summer recess in August.

Looking Ahead: 2025 Is Only the Beginning

While the current slate of bills marks a significant increase in antitrust legislation, this year's legislation is widely seen as the tip of the iceberg. The California Law Revision Commission is expected to finalize comprehensive reform proposals by early 2026, and lawmakers are already positioning for a larger legislative package next session. Key legislators such as Assemblymember Rebecca Bauer-Kahan (D-Orinda), Senator Tom Umberg (D-Santa Ana), and Assemblymember Ash Kalra (D-San Jose) are expected to take leading roles. Bauer-Kahan, who chairs the Assembly Privacy & Consumer Protection Committee, is already carrying a legislative vehicle, **AB 1345**, that lays the groundwork for broader reform by codifying general prohibitions on monopolization, monopsonization, and restraints of trade.

As the CLRC's recommendations take shape, next year's session could feature the most far-reaching overhaul of California's antitrust laws in decades, with impacts on labor markets, digital platforms, health care, and beyond. The Legislature has until September 12 to act on bills this year. Any bill that they do not act on this year may be eligible next year.

For additional information or questions please reach out to the CRA team (cra@calretailers.com)