



April 8, 2024

The Honorable Thomas Umberg  
Chair  
Senate Committee on Judiciary  
1021 O Street, Room 3240  
Sacramento, CA 95814

Dear Chair Umberg and members of the committee,

On behalf of Chamber of Progress, a tech industry association supporting public policies to build a more inclusive country in which all people benefit from technological leaps, **we urge you to oppose SB 1154** for the following reasons:

**SB 1154's mandatory disclosures risk trade secrets and stifle competition.**

The bill's reporting requirements threaten to expose trade secrets and stifle competition by mandating that businesses disclose the details of their pricing algorithms to the government and the public. Algorithms serve as pivotal tools for online platforms, enabling them to dynamically adjust prices in response to fluctuating demand and user interactions. The bill's reporting requirements not only risk handing proprietary strategies to competitors but also muddles the legal landscape with vaguely defined terms such as "nonpublic competitor data." Such ambiguity may deter the use of pricing algorithms, undermining the competitive advantages these tools offer to both businesses and consumers.

**SB 1154 assumes the occurrence of collusion through pricing algorithms without evidence.**

SB 1154 presupposes, without empirical evidence, that collusion through pricing algorithms is a prevalent issue. This speculative approach risks legislating against a hypothetical rather than an actual problem. Pricing algorithms, in

reality, serve as a force for good in the marketplace, enabling dynamic pricing that benefits consumers with competitive prices across various sectors, from retail to real estate.

Illegal price collusion constitutes a deliberate conspiracy among competitors to set, control, or manipulate prices and trade terms, effectively stifling free market competition. Such actions contravene existing antitrust laws, compromise market integrity, unjustly inflate prices, and harm consumer welfare by coordinating anti-competitive strategies.

Automated pricing algorithms, in stark contrast, embody the evolution of market tools. Businesses employ these algorithms independently to tailor their pricing dynamically, leveraging extensive data analyses on costs, competitor pricing, demand patterns, and consumer behavior. Far from intending to subvert competition, the deployment of these algorithms exemplifies technological progress, aiming for market efficiency, responsiveness, and optimal profitability. Hence, unlike illegal price collusion, which undermines market fairness, automated pricing algorithms often directly benefit consumers. Indeed, the most successful online marketplaces have honed their pricing algorithms to offer high-quality products at competitive prices.

**SB 1154 will only further entrench the tech incumbents that have the resources to comply with the bill's onerous reporting requirements.**

Furthermore, the bill inadvertently favors large tech incumbents by setting a \$5 million compliance threshold, encouraging smaller businesses to either curtail their growth or merge with larger entities to evade burdensome disclosures. This not only dampens innovation and entrepreneurship but also potentially entrenches the market dominance of established players.<sup>1</sup>

**SB 1154's disclosure requirements violate the First Amendment.**

Lastly, the bill's demand for public disclosure of pricing algorithms encroaches upon First Amendment rights, compelling speech from businesses without a clear, substantial government interest.<sup>2</sup> This overreach, which mandates businesses to publicly unveil complex, proprietary information, is both unduly burdensome and

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<sup>1</sup> Goldman, Eric and Miers, Jess, *Regulating Internet Services by Size* (May 2021). *CPI Antitrust Chronicle*, Santa Clara Univ. Legal Studies Research Paper, Available at SSRN: <https://ssrn.com/abstract=3863015>.

<sup>2</sup> *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985).

misaligned with the original intent of protecting consumers from deceptive practices.<sup>3</sup>

In summary, SB 1154's approach to regulating pricing algorithms—with its potential to expose trade secrets, its speculative basis for collusion, its disincentive for business growth, and its conflict with First Amendment rights—poses significant challenges to the competitive and innovative landscape of the tech industry.

Competition encourages online platforms to improve the quality of their services and innovate within the rapidly evolving digital marketplace. It also benefits consumers. Protecting marketplace algorithms, and the trade secrets that drive them, is an essential part of this competitive process.

For these reasons, we urge you to **oppose SB 1154**.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Singleton". The signature is fluid and cursive, with the first name "Robert" being larger and more prominent than the last name "Singleton".

Robert Singleton  
Director of Policy and Public Affairs, California and US West

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<sup>3</sup> Goldman, Eric, Zauderer and Compelled Editorial Transparency ( 2023). Iowa Law Review Online, Forthcoming, Santa Clara Univ. Legal Studies Research Paper No. 4246090, Available at SSRN: <https://ssrn.com/abstract=4246090> or <http://dx.doi.org/10.2139/ssrn.4246090>.