



May 30, 2024

Sharon Reilly, Executive Director
California Law Revision Commission
925 L Street, Suite 275
Sacramento, CA 95814

Dear Executive Director Reilly and Members of the California Law Revision Commission:

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 progress – I write today regarding the Commission’s inquiry into competition policy, specifically the working group’s report on technology platforms.

Chamber of Progress advocates for a sensible policy approach that will sustain California’s world-leading innovation economy. Our goals are to preserve California’s leadership, ensure that California-based companies serve the best interests of consumers, and spread technology’s benefits to more people.

We have been grateful for our ongoing dialog with the Commission, including our staff’s comments at the May 2nd, 2024 Commission meeting in Sacramento. We appreciate the opportunity to share additional thoughts on the tech platforms working group report.

The tech platforms working group is right that importing novel theories of harm would be a mistake

We commend the working group’s thoughtful analysis of several proposals that would import novel theories of harm to other jurisdictions domestically or abroad.

We agree with the working group’s conclusion in the tech platform report and elsewhere¹ that an “abuse of dominance” standard from failed legislative measures in New York would be a poor fit for California. The working group is to be commended for acknowledging that “at a minimum, more study is needed of the potential impact of the recommendations below - as they would further expand the scope of California’s laws beyond existing federal law.”²

¹ See *in particular*: the Single Firm Conduct report

² See <http://www.clrc.ca.gov/pub/Misc-Report/ExRpt-B750-Grp5.pdf>, page 11.

In particular, the regulations contemplated would make “presumptively unlawful” common business practices that Californians rely on daily, including Amazon Prime shipping and Apple iMessage, under prohibitions on “self-preferencing.”

Concerning federal law, the working group laudably summarizes Professor Hovenkamp’s critique of the failed American Innovation and Choice Online Act (AICOA), which would have labeled certain firms “gatekeepers” and subjected them to onerous regulations. As Hovenkamp notes, “AICOA’s focus on ‘online firms’ could mean that companies like Walmart—whose retail business is larger than Amazon’s—would not be covered by the statute³.”

This highlights the shortcomings of technology-specific competition policy. A better approach is to write generally applicable policies that advance consumer welfare in a technologically-neutral manner. This is essential in California, where tech-skeptical competition policy would harm startup entrepreneurs, tech employees, and consumers alike.

Vertical integration benefits California consumers, making it presumptively unlawful would harm them

Vertical integration allows for more seamless product functionality and a better overall consumer experience. We were therefore disappointed to read the working group’s finding that many common forms of vertical integration would be “presumptively unlawful” unless “the covered platform can show the action is pro-competitive.”

When a resident of San Jose searches on Google for “local pizza place” they benefit from seeing Google Maps listings integrated into their search results. And the restaurants that see increased business benefit too. Likewise, Apple’s Find My iPhone provides genuine consumer benefit, and Apple should not be punished for integrating this functionality into its mobile operating system.

Making these integrations presumptively unlawful would chill innovation and force California tech platforms to make their products less useful to California consumers.

App store regulation opens a Pandora’s box

We note, however, that the working group report’s analysis that “Similar pros and cons apply to the Open App Markets Act as the American Innovation and Choice Online Act (OAMA)” is insufficient. Proposals like OAMA would force phone and tablet manufacturers to permit “sideloading” of applications from across the internet.

³ Ibid, at 14.

This raises several issues. Notably, in Europe where Digital Markets Act (DMA) regulations mandate sideloading, many European government agencies disallow sideloading on staff devices because it introduces unacceptable cybersecurity risks⁴.

Moreover, mandated sideloading undercuts device manufacturers' ability to curate their app stores. This will result in a flood of spammy or scammy apps. Worse yet, it could make the problem of dangerous misinformation worse. After the January 6th, 2021 attack on our nation's democracy, Google and Apple banned Parler, a locus of insurrectionist organizing, from their app stores for violating terms of service. Forced sideloading would remove that important line of defense.

Applying a public interest test to acquisitions would seriously harm Silicon Valley

Additionally, we feel the working group's analysis of the proposed Digital Consumer Protection Commission Act is inadequate. The bill would empower a new digital regulator with broad regulatory authority, including the authority to deny acquisitions unless merging parties can prove they are in the public interest. This could profoundly harm California's unique marriage of venture capital and startup entrepreneurship.

Acquisition plays a crucial role in the cycle of business creation in Silicon Valley. Venture capital investors are willing to risk millions of dollars on a longshot bid to create the next world-changing app if they know that should the business fail there's a chance to recoup some of the investment through acquisition by a larger company. This also incentivizes startup entrepreneurs to strike out on their own, knowing the possibility of acquisition limits the downside of failure.

Finally, in the event that a successful California startup produces a great new product or service, acquisition by a larger company enables it to be scaled up to a global audience much more quickly - a tremendous boon to consumer welfare.

Unfortunately, the working group discounts this nuance by stating "the legislation is quite new and so the usual players have generally not yet formally weighed in. But we expect the same policy concerns to be raised by proponents and opponents." This is a disservice to a critical debate about the future of the California innovation economy.


We do note, however, that the report includes the remark that "Some within the working group have expressed concern that, at a minimum, more study is needed of the potential impact of the recommendations below – as they would further expand the scope of California's antitrust laws beyond existing federal law." We agree - these proposals could

⁴ See <https://www.reuters.com/technology/number-agencies-have-concerns-about-sideloading-iphone-apple-says-2024-03-01/>

have such a substantial impact on consumers and California companies that they require further study before the commission can recommend specific courses of action.

We thank you for your continued work on this pivotal and dynamic topic, and we look forward to continuing our dialogue on competition policy in California.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. O'Boyle', is centered on a light blue background. The signature is fluid and cursive.

Todd O'Boyle
Senior Director, Technology Policy
Chamber of Progress