

FIRST SUPPLEMENT TO MEMORANDUM 2025-41

**Draft Language for Single Firm Conduct Provisions, Legislative Findings and
Declarations, and Public Comment**

This supplement presents a public comment received by the Commission related to Memorandum 2025-41.¹ The public comment is attached as an Exhibit to this supplement.

<i>Exhibit</i>	<i>Exhibit page</i>
Writers Guild of America West (9/12/25)	1

As with prior memoranda, a brief description of the commentator is below.

Writers Guild of America West

This comment was submitted by Erica Knox, Director of Research and Public Policy; Shelagh Wagener, Political and Legislative Director; and Jennifer Suh, Senior Research and Public Policy Analyst for the Writers Guild of America West (WGAW). According to its [website](#), WGAW is:

... a labor union representing the thousands of creators who write scripted series, features, news programs, and other content. Founded in 1933, the Guild negotiates and administers contracts that protect the creative and economic rights of our members. We are involved in a wide range of programs that advance the interests of writers, and are active in public policy and legislative matters on the local, national, and international levels.

PUBLIC COMMENT

Similar to other public commentators,² the WGAW urges the Commission to adopt Option Two and the legislative findings and declarations, stating:

Consistent with the letter we submitted alongside 13 labor unions and advocacy organizations in March and public comments delivered in April, the WGAW recommends the Commission adopt Option Two, the Enhanced Purpose Statement, Statement Rejecting

¹ Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise. The Commission welcomes written comments at any time during its study process.

Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

² See Memorandum [2025-41](#), pp. 9, 12.

Federal Principles, and the Statement Rejecting Federal Precedents from Memorandum 2025-21 as a single package. The codification of the three statements clarifies that this change to California antitrust law will operate independently of federal precedents, and that protecting competition in labor markets is an essential component of antitrust law.³

The WGAW also urges the Commission to take immediate action at its September 18, 2025 meeting to approve “staff’s single firm conduct proposal.”⁴

Respectfully submitted,

Sharon Reilly
Executive Director

Sarah Huchel
Chief Deputy Director

³ EX 3.

⁴ EX 3.



September 12, 2025

The Honorable Xochitl Carrion, Chairperson, 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 of the California Law Revision Commission

Dear Chairperson Carrion and Honorable Commissioners:

We commend the California Law Revision Commission (CLRC) and staff on their committed work to modernize and strengthen state antitrust law through Antitrust Law – Study B-750. We are pleased to provide comments on the draft language under consideration regarding single firm conduct (Memorandum 2025-21, “Draft Language for Single Firm Conduct Provision”) and mergers (Memorandum 2025-31, “Draft Language for Merger Provisions”). In response to Memorandum 2025-21 on single firm conduct, we urge the Commission to vote on and approve Option Two in conjunction with the Enhanced Purpose Statement, Statement Rejecting Federal Principles, and the Statement Rejecting Federal Precedents at the September 18, 2025 meeting. In response to Memorandum 2025-31 on merger provisions, we urge the adoption of Options Two, Three, and Four.

I. The Writers Guild of America West and the Media Industry

The Writers Guild of America West (WGAW) is a labor union that represents over 10,000 writers of movies, television and streaming series in the media and entertainment industry vital to California. The Guild has been advocating for more aggressive competition policy for decades, as our members experience the harms of working in a heavily concentrated market made possible by lax antitrust enforcement; several additional research reports and comment letters published by the WGAW in recent years can be found in the WGAW’s June 12, 2024 comment to the CLRC.¹ Significant strengthening of state antitrust law, as captured in many of the reforms recommended by CLRC staff, is urgently needed.

Deregulation, antitrust underenforcement, and the erosion of Congressional intent by the courts have allowed for multiple waves of vertical and horizontal consolidation in the media industry. The 1993 repeal of the federal Financial Interest and Syndication Rules, for instance, unleashed a rash of mergers between TV networks and production studios, creating a landscape of

¹ Writers Guild of America West, “Writers Guild of America West Literature Submission and Comments RE: Antitrust Law – Study B-750 of the California Law Revision Commission,” (Jun. 12, 2024), https://www.wga.org/uploadedfiles/news_and_events/public_policy/wgaw_comment_to_the_california_la_w_revision_commission_on_state_antitrust_law_reform.pdf.

vertically integrated conglomerates and a significant decline of independent content on broadcast networks.

Current competition policy has failed to stop numerous anticompetitive mergers in the media industry, resulting in just a few dominant firms that use their increased market power and vertical control to disadvantage competitors, raise prices for consumers, limit creative innovation, and push down wages for creative workers. Recent harmful media mergers include:

- **Discovery-WarnerMedia:** Less than a year after WarnerMedia acquired Discovery in 2022, the company cancelled or wrote off \$2 billion in programming, which predominantly featured the experiences of women and communities of color despite stating publicly that it planned “to invest in more original content” and “create more opportunity for underrepresented storytellers and independent creators.”² Now, only three years later, the company is planning to split into two firms that largely resemble Warner Bros. and Discovery before the merger.³
- **Amazon-MGM:** In 2022, Amazon acquired MGM, one of the few remaining mid-sized media companies not owned by a major conglomerate or focused on self-distribution. Amazon had already gained a sizeable footprint in media in a short time through anticompetitive behavior, and its acquisition of a legacy studio further consolidated its vertical control in the industry.⁴
- **Disney-Fox:** In 2019, Disney purchased Fox’s film and TV studios, most of its cable networks, and its share of Hulu. Following the acquisition, Disney leveraged its increased market power to pull back content it had licensed from rival platforms, pressed creators and other workers to start foregoing future licensing revenue on Disney shows, and shuttered a former competitor it had acquired—Fox’s animation studio.⁵ The company eventually gained full control of Hulu, one the largest domestic streaming services, and now plans to shut down Hulu as a separate streaming service.⁶

In the industry’s transition to streaming, consolidated firms like Disney and Netflix have pursued strategies of pure vertical integration and strategic acquisitions, producing content primarily to distribute globally on their own streaming platforms and raising barriers for independent producers and distributors. Big tech firms like Amazon have brought well-documented playbooks of anti-competitive business practices to the media industry, establishing and abusing gatekeeper positions between competitors and consumers.

² AT&T, “AT&T WarnerMedia and Discovery, Inc. Creating Standalone Company by Combining Operations to Form New Global Leader in Entertainment,” (May 17, 2021), <https://investors.att.com/~media/Files/A/ATT-IR-V2/press-release/press-release-17052021.pdf>

³ Writers Guild of America West, “Broken Promises Bulletin: How the Warner Bros. Discovery Merger Hurts Works and Diversity,” (Jan. 2023), https://www.wga.org/uploadedfiles/news_and_events/public_policy/broken-promises-bulletin-1-23.pdf

⁴ Writers Guild of America West, “The New Gatekeepers: How Disney, Amazon, and Netflix Will Take Over Media,” (Aug. 2023), https://www.wga.org/uploadedfiles/news_and_events/public_policy/GatekeepersReport23.pdf.

⁵ Writers Guild of America West, “Broken Promises: Media Mega-Mergers and the Case for Antitrust Reform,” (Dec. 2021), https://www.wga.org/uploadedfiles/news_and_events/public_policy/broken-promises-merger-report.pdf.

⁶ Alex Weprin, “Standalone Hulu App to Wind Down, Be Added to Disney+ In 2026,” *The Hollywood Reporter* (August 6, 2025), <https://www.hollywoodreporter.com/business/digital/disney-stop-reporting-subscribr-numbers-hulu-disney-plus-1236338393/>.

Writers have seen their livelihoods deteriorate as their employers leverage oligopsony power to worsen compensation and employment practices. In 2023, the Writers Guild went on strike for nearly five months in response to these conditions and ultimately achieved significant gains, but the landscape of excessive concentration continues to worsen. In the streaming market, instead of dynamic competition, we see all the major firms raising prices and reducing content spending in parallel, leaving consumers to pay more for less. And despite these already anticompetitive conditions, Wall Street continues to call for further consolidation.⁷

Over the past few months, both Comcast-NBCUniversal and Warner Bros. Discovery have announced plans to spin off their linear networks to better position themselves for future M&A transactions.⁸ Absent government intervention, more harmful mergers and anticompetitive conduct are on the horizon. The WGAW strongly believes that state antitrust law must be modernized to better protect markets.

II. Single Firm Conduct

The Commission has engaged in critical work reviewing potential revisions to California antitrust law, focusing on a well-known shortcoming—the exclusion of single firm conduct (SFC) rules. Since the commencement of Antitrust Study B-750 nearly three years ago, the Commission convened an expert working group on SFC which released a comprehensive report more than 18 months ago. CLRC staff have drafted several SFC language proposals, with the most recent draft released this past June, and the public has been given ample opportunity to comment and engage in this process. The WGAW recommends no further delay, and urges the Commission to take immediate action at the September 18, 2025 meeting to approve staff’s single firm conduct proposals.

Consistent with the letter we submitted alongside 13 labor unions and advocacy organizations in March and public comments delivered in April, the WGAW recommends the Commission adopt Option Two, the Enhanced Purpose Statement, Statement Rejecting Federal Principles, and the Statement Rejecting Federal Precedents from Memorandum 2025-21 as a single package. The codification of the three statements clarifies that this change to California antitrust law will operate independently of federal precedents, and that protecting competition in labor markets is an essential component of antitrust law.

III. Mergers

Today, California lacks explicit statutory grounding in state law to challenge mergers. Enhancing California’s antitrust law would enable state enforcers to try antitrust cases in state court and allow California judges to develop stronger legal standards. We urge the Commission to take advantage of this timely opportunity to adopt a broadly applicable merger statute. We recommend the Commission support a provision that incorporates Options Two, Three, and Four from Memorandum 2025-31.

⁷ Georg Szalai, “Wall Street’s Hollywood Dealmaking Predictions for 2025 and Beyond,” *The Hollywood Reporter* (Jan. 6, 2025), <https://www.hollywoodreporter.com/business/business-news/media-merger-mania-2025-analyst-predictions-1236090562/>.

⁸ Alex Weprin, “RichCo vs. PoorCo: Not All Spinoffs Are Created Equal,” *The Hollywood Reporter* (June 11, 2025), <https://www.hollywoodreporter.com/business/business-news/nbcuniversal-warner-bros-discovery-spinoff-versant-1236262097/>.

Options Two and Three revive the structural presumption standard established in *Philadelphia National Bank*, and codifies key sections of the federal 2023 Merger Guidelines. The WGAW strongly supported the revised 2023 Merger Guidelines⁹ and we are pleased to see the Commission consider designating the Guidelines as a persuasive authority in interpreting this presumption and codifying select bright line standards.

While the WGAW supports these bright line standards for consumer markets, we recommend the Commission set lower bright light standards for labor markets. Numerous unique characteristics of the labor market for writers in the professional entertainment industry increase employer market power beyond what a pure market share or Herfindahl-Hirschman Index assessment would suggest,¹⁰ an observation acknowledged in the 2023 Merger Guidelines regarding labor markets generally.¹¹ WGAW has seen powerful media companies without overwhelming market shares hold down wages and impose lower-quality employment terms on writers.

Option Four proposes a broader “appreciable risk” standard which would lower the burden of proof for what is considered a harmful merger and would allow state courts to establish improved case law distinct from overly permissive federal precedents. With these enhanced merger provisions in California antitrust law, state enforcers would be empowered to effectively and efficiently challenge harmful mergers in the media and entertainment industry, protecting Californians against higher prices, lower wages, less diverse content, and limits to creative innovation.

IV. Additional Recommendations

The Commission has the opportunity to modernize antitrust law in California, leading the nation in much-needed competition reform. The WGAW offers the following additional recommendations not captured by staff memoranda:

- Formalize deference to direct evidence of market power such as harms to labor and innovation.
- Shift the burden of proof for large firm acquisitions to the merging parties to relieve under-resourced government agencies.
- Empower the state’s antitrust enforcers with clear jurisdiction to regulate anticompetitive behavior in concentrated markets including granting the state attorney general rulemaking authority to designate additional conduct as unlawful. As the Mergers and Acquisitions Working Group notes in their report, almost all states have statutes

⁹ Writers Guild of America West and American Federation of Musicians, “Comment on Draft FTC-DOJ Merger Guidelines,” (Sept. 18, 2023), https://www.wga.org/uploadedfiles/news_and_events/public_policy/wgaw-afm-comment-on-doj-ftc-draft-merger.pdf

¹⁰ Demand for film and TV writers is irregularly timed, skills are highly varied, available opportunities are limited by genre type and job level, and idiosyncratic preferences play an outsized role in matching talent and employers.

¹¹ “The level of concentration at which competition concerns arise may be lower in labor markets than in product markets, given the unique features of certain labor markets.” U.S. Department of Justice and the Federal Trade Commission, “2023 Merger Guidelines,” (Dec. 18, 2023) p. 27.

specifically authorizing their AGs to address anticompetitive business practices and consolidations.¹²

- Include the explicit consideration of mergers' effects on labor markets, workers, and collective bargaining agreements and formalize a role for workers in the California Department of Justice's merger review process.
- Conduct regular merger retrospectives and market investigations in key industries such as media and entertainment. Investigations must allow for corrective measures up to and including structural separation and unwinding mergers proven anticompetitive after the fact.

Thank you for the opportunity to comment on this critical study and for your work on this important subject. The task of updating state antitrust law to serve today's realities is long overdue, and urgently needed in this moment as federal antitrust enforcers fail to challenge anticompetitive conduct that harms workers and consumers. We urge the Commission to take these imperative steps to support a vibrant economy for all Californians.

Respectfully submitted,

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¹² Mergers and Acquisitions Working Group, "California Antitrust Law and Mergers," <https://clrc.ca.gov/pub/Misc-Report/ExRpt-B750-Grp2.pdf>.