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Inside State Enforcement

Tracking key developments in California competition and AG enforcement

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NEW DEVELOPMENTS

A Structural Change in how California Enforces Antitrust Laws

The California Department of Justice is quietly changing the structure of its office to add new positions and capabilities. The legislature is also working on statutes that would provide the Department more robust tools to pursue anticompetitive conduct. The combination of more staff and potentially stronger enforcement powers will make California a potent antitrust enforcer.

Recent Changes

Three recent moves within the California Department of Justice deserve attention. *First*, the office is seeking a supervisor capable of managing both civil and criminal matters. That may sound routine. It is not.

Although the Department has had the authority for many years, the Attorney General has not pursued criminal antitrust enforcement in decades. Civil enforcement has been the dominant mode-flexible, scalable, and politically durable law enforcement mechanism for the state. This is now changing. Reintroducing criminal capacity, even at the supervisory level, signals optionality. This person is expected to develop the capacity to pursue criminal charges which creates the ability—whether exercised or not—to escalate.

Having criminal optionality signals a desire to make a strong and significant impact on antitrust enforcement in California. The ability to criminally prosecute and incarcerate offenders will likely have a profound effect on conduct.

Before, if you were caught, all you needed to do is pay a fine. Potential criminal charges, and the risk of jail time, change this calculus for businesses and actors. If personal freedom is at risk, most individuals and businesses will think twice about engaging in illegal conduct.

Second, the office has recently hired two economists. This is a more profound shift than it may appear. Historically, economic analysis has been externalized—outsourced to experts or developed indirectly through litigation. Bringing that capacity in-house changes how cases are selected, developed, and resolved. In-house economists enable staff to vet theories before outreach, increasing the likelihood that investigations are theory forward and settlement resistant.

Third, the section has almost doubled in size over the past three years. Recent hires have substantial litigation and trial experience signaling a willingness and interest to try more cases. This recent expansion in ability signals a shift that will play out over time rather than in a single case.

Staffing composition matters as much as staffing levels. There is a meaningful difference between an office that can investigate and negotiate and an office that can confidently take a case through trial. Trial-capable attorneys affect decisions early in the process.

- Case selection becomes more ambitious.
- Legal theories can be tested more aggressively.
- Settlement posture shifts because trial is a credible endpoint.

This also means there is a higher tolerance for risk because the office is more willing to pursue novel or complex theories when they believe they can carry the case through trial. Settlement dynamics change when counter-parties believe the office is prepared to litigate. And trial-ready offices build records differently—from the outset—with litigation in mind.

IMPACT

Enforcement strength is not defined by how many cases an office brings. It is defined by how many it is prepared to try. The California Department of Justice is expanding its capacity to try cases.

Taken together, these moves suggest a transition:

From reactive enforcement to internally driven, analytically grounded strategy and a greater appetite and capacity to try cases.

This is how federal agencies like the Federal Trade Commission and the DOJ Antitrust Division have operated for years.

California is now building towards that model.

WHY THIS MATTERS TO YOU:

These are not cosmetic changes. They affect:

***Case selection**: more rigorous screening based on economic theory*

***Leverage**: credible threat of criminal exposure, even if rarely used*

***Settlement posture**: stronger internal models of harm and damages*

***Speed**: less reliance on external experts in early phases*

For companies, the practical implication is clear:

Expect fewer weak cases – but more durable ones.

What to Expect

Expect significant changes when dealing with the California Department of Justice. Settlements will become harder to obtain since cases will have been developed from the beginning with trial in mind. The record built at the outset will carry through the litigation which means investigative hearings will likely become trial testimony—this means having better prepared witnesses and a stronger strategy from the beginning. Companies must now assume the Department is prepared to go the distance. This also means investigations started by the office carry much more exposure for companies.

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Other States are Watching

Most states have historically leaned on external economic expertise. If California demonstrates the value of in-house economists and increased litigation capacity produces results, expect replication—particularly in complex areas like labor markets and platform conduct.

Multi-state investigations will also change. A state with internal economic capacity is more likely to: lead coalitions, shape theories of harm, and control negotiation dynamics.

WHAT THIS MEANS FOR YOU:

***Early-stage exposure increases**: Internal analysis allows the state to develop cases before companies see them coming*
***Data matters more**: economic narratives will be built earlier and more rigorously*

***Escalation risk changes**: even dormant criminal authority alters negotiation dynamics*

This more muscular office, combined with recent legislative changes, will result in more robust enforcement capability.

LEGISLATIVE UPDATE

NEW FILING AND NOTICE REGIMES

SB 25: California Uniform Antitrust Premerger Notification Act

On February 10, 2026, Governor Gavin Newsom signed SB 25, the California Uniform Antitrust Premerger Notification Act. This makes California the third state (after Washington and Colorado) to adopt a broad, cross-industry premerger filing regime modeled on the Uniform Law Commission's version of the Hart-Scott-Rodino (HSR) Act. (New York has a much narrower premerger notification regime, but is considering broadening its filing requirement.)

Key Provisions of SB 25

- Effective **January 1, 2027**: applies to transactions closing on/after that date.
- **Submission Timing**: Unlike the contemporaneous filing required in some states, California requires the state filing within one business day of the federal HSR submission.
- **Penalties**: Failure to comply carries a civil penalty of up to $25,000 per day.
- **Filing Fees**: California is unique in imposing a state-level fee: $1,000 for principal-place-of-business filers and $500 for those meeting the sales threshold.
- **Confidentiality**: The Attorney General cannot make these filings public, but may share the information with the Federal Trade Commission, the USDOJ, or other states (provided they are able to maintain the confidentiality).

If a party is required to file a federal HSR notification, they must also file in California if they meet either of the following "nexus" tests:

1. The party's principal place of business is in California; or
2. The party (or its controlled entities) had annual net sales in California of the goods or services involved in the transaction equal to at least 20% of the federal HSR threshold (currently approximately $26.8 million).

How the California Uniform Antitrust Premerger Notification Act Differs from Federal HSR Requirements

While modeled on the HSR Act, the California statute is *non-suspensory*. This means there is no mandatory waiting period at the state level; parties can technically close their deal once the federal waiting period expires, even if the California Attorney General is still reviewing the submission. However, the law provides the AG with automatic and early access to the HSR forms, likely increasing the speed and frequency of state-level investigations and giving the state an early start to file suit to challenge the proposed transaction.

Recent Legislation

- AB 325: Enacted **October 6, 2025**: Prohibits the use or distribution of "common pricing algorithms" in anticompetitive agreements, establishes liability for forcing others to use algorithm recommended prices, and lowers the pleading standard for the Cartwright Act.
- SB 763: Enacted **October 6, 2025**: increases corporate criminal penalties to $6 million and creates new civil penalties up to $1 million in state law enforcement actions.

Forthcoming Shifts

Beyond the general SB 25, California has been aggressively targeting specific sectors:

- COMPETE Act (AB1776): Competition and Opportunity in Markets for a Prosperous, Equitable and Transparent Economy. This legislation would expand potential liability for single-firm conduct and monopolization, and would explicitly decouple California antitrust analysis from federal standards.
- Law Revision Commission: The California Law Revision Commission is currently discussing recommendations (as of March 2026) to create a standalone state merger statute that would allow the state to challenge mergers.
- Health Care (AB 1415 & SB 351): Effective January 1, 2026, these laws expanded the oversight of the Office of Health Care Affordability (OHCA). They require "noticing entities" to provide 90-day advance notice of certain healthcare-related transactions, regardless of whether they trigger federal HSR requirements.

This newsletter is written by Paul Moore – Partner at Bona Law, PC, former California Deputy Attorney General and staff attorney at the USDOJ's Antitrust Division. This newsletter is for informational purposes only and does not constitute legal advice. Feedback: paul.moore@bonalawpc.com