Potential Harm to Small Businesses from New York State's Proposed Abuse-of-Dominance Antitrust Legislation—the "Twenty-First Century Anti-Trust Act

John T. Scott, Dartmouth College

Technical Report

April 2025

The Business Council

Executive Summary

New York's proposed "Twenty-First Century Anti-Trust Act" (S335/AB2015) would impose European-style "Abuse of Dominance" regulations, which many believe have suppressed the potential success of and investment in European digital platforms and hurt the European economy. As in Europe, the legislation's vague "dominance" and "abuse" standards would create prohibitive legal uncertainty for digital platforms. Indeed, S335 could have worse effects than the European Union abuse law, which EU courts have recently moved in the direction of U.S. federal monopolization law through a more economically oriented analysis.[1] In contrast, S335 would abandon U.S. antitrust law's economic evolution for a blank slate.

More important for New Yorkers is the bill's massive secondary impacts on local small businesses. Faced with the risk of substantial penalties, many platforms would respond to S335's vague legal standards by restricting data-driven marketing, advertising, and customer-engagement services in New York, severely harming small local businesses that need them to succeed.

This report conservatively estimates the economic harm this legislation would inflict on New York's small and medium-sized businesses (SMBs) at the state and county level and reveals devastating economic consequences that will inevitably ripple out to harm employment, tax revenue, government services, school budgets, and even home prices. These estimates represent minimum expected losses, as our analysis focused solely on businesses selling physical goods and excluded service-sector SMBs, which would also be harmed by disruption to digital platforms they rely on for customer acquisition and business operations.

Key findings include:

- Statewide, this bill would conservatively cause small businesses to lose an estimated $47.5 billion in annual sales, which is about 8% of their total revenue.
- SMBs in urban centers would suffer massively, with Manhattan small businesses losing $6.4 billion in annual sales, Brooklyn SMBs nearly $5 billion, and Queens SMBs $3.7 billion.
- Suburban and rural SMBs would suffer proportionally severe effects, from Suffolk County's conservative $5.4 billion in annual lost sales to rural Hamilton County's $5.9 million.
- On a per-SMB basis, S335 would hit upstate NY regions hardest. For example, SMBs in Chemung County would lose an average of $400,000 in sales annually, and Erie County SMBs would lose an average of $276,000 in annual sales.

1 See Fox (2014, p. 131) who observes: "... EU abuse law has moved in the direction of U.S. monopolization law ... by reason of its appreciation of economics effects ..." https://journals.sagepub.com/doi/abs/10.1177/0003603x1405900106

Introduction

New York State's "Twenty-First Century Anti-Trust Act" (S335/AB2015)

The "Twenty-First Century Anti-Trust Act" (S335/AB2015) currently under consideration in the New York State Senate represents the third attempt to introduce European-style "Abuse of Dominance" (AOD) legislation in the state, following previous versions S6748B in the 2023-2024 session and S933C in 2021-2022.

The proposed legislation would have far-reaching negative consequences for local economies throughout New York State by disrupting the digital platforms and services that small businesses increasingly rely on for critical everyday tasks such as advertising, product sales, inventory management, and customer service.

This report updates and extends the author's earlier research on the statewide economic impact of such AOD legislation by providing updated estimates for NY state as well as detailed county-by-county projections. Our analysis shows that contrary to proponents' claims that the bill would protect small and medium-sized businesses (SMBs), they would suffer substantial economic harm from its implementation.

Mechanisms of Economic Harm to Small Business Operations

Faced with legal uncertainty and the risk of severe penalties (including treble damages, criminal sanctions, and class action lawsuits), many digital service providers would respond to the enactment of this law in ways that harm the SMBs that rely on those services. For example, platforms could try to avoid liability for dominance by eliminating investment in innovation in order to avoid gaining market share. Interstate commerce would suffer as disruption of platform services for NY businesses would reduce their sales to out-of-state businesses, and SMBs in nearby states with better service from platforms would gain New Yorkers' business at the expense of NY SMBs. Additionally, the legal uncertainty resulting from S335 would dampen innovation in digital services that support NY SMBs, as boards, executives, investors, and entrepreneurs would redirect their resources to states with more predictable regulatory environments.

The economic impacts would be far-reaching for NY SMBs. The 72% of NY small businesses that sell physical goods rely on digital marketplaces and advertising platforms to reach customers. These platforms also provide essential operational tools for inventory management, customer relationship management, payment processing, and logistics. Disruptions to these services would force SMBs to find costlier alternatives or revert to less efficient methods, reducing their success generally and their competitiveness against out-of-state rivals. This legislation is not merely a "Big Tech" issue— it would fundamentally disrupt every community across NY. Rather than reining in the power of large technology companies, the bill would undermine the digital infrastructure that enables SMBs to succeed, grow, and compete.

Key Findings

Statewide Economic Impact of $47.5 Billion in Annual SMB Losses

The NY AOD legislation, as proposed, would cause an estimated $47.5 billion in annual losses to SMBs across New York State—approximately 8% of annual sales for SMBs in the manufacturing, wholesale trade, and retail sectors alone. Over 265,000 SMBs would lose an average of $179,000 per business annually ($14,900 monthly).

For context, a March 2025 report published by the Connected Commerce Council found that 72% of NY SMBs sell physical goods, 89% of SMB leaders consider digital tools important for running their business, and 81% say digital tools are important for selling products or services and driving revenue. A 2020 report published by the Data Catalyst Institute showed that even then, most NY SMBs (p. 164) were using digital tools and platforms as part of their business, numbers that only increased as a result of the COVID-19 pandemic.

Regional Economic Consequences Across All Counties

The harm would affect every region of New York State, with distinct patterns:

- For highly urban areas, SMBs based in New York City's five counties would collectively lose $17.2 billion in SMB sales annually, with Manhattan SMBs alone facing $6.4 billion in losses.
- Suburban communities would also be severely affected, with Long Island's Nassau and Suffolk counties experiencing $8.8 billion in combined annual SMB sales losses.
- The economically important upstate Buffalo, Rochester, and Syracuse regions would experience a combined $6.5 billion in annual SMB sales losses.
- While the total dollar amount of lost SMB sales is highest in populated areas, the per-business impact is often more severe in less populous counties. For example, in Chemung County, SMBs would lose $400,000 annually per business, over three times the average losses of SMBs in the Bronx.
- Even the state's more rural counties (e.g., Hamilton, Lewis, Schoharie, Schuyler) would experience multi-million dollar losses, with losses per business equal to or exceeding $63,700 annually.

Detailed County Data Shows Harm Across All New York Communities

The legislation's harm would be widespread, affecting businesses in all 62 New York counties. Table 1 provides a comprehensive county-by-county breakdown of projected economic harm, allowing policymakers to understand the specific impact on businesses in their districts.

Key observations from the county-level data include the following:

- The five NY counties with the highest total annual harm (in billions) are New York ($6.4), Suffolk ($5.4), Kings ($5.0), Queens ($3.7), and Nassau ($3.4).
- The five NY counties with the highest monthly harm per SMB (in thousands) are Chemung ($33.0), Genesee ($23.9), Montgomery ($23.3), Erie ($23.0), and Wayne ($22.8).
- In New York City, SMBs would lose $17.2 billion annually, while Suffolk County, the fourth most populous county, would alone lose $5.4 billion.
- Measured by annual harm per SMB, SMBs in dense urban areas would face substantial impacts ($218,700 per SMB in Manhattan, $130,500 in Brooklyn).
- Rural counties with the lowest population densities would also face significant harm. Even Hamilton County, with just 2.5 people per square mile, would see its SMBs lose $5.9 million in annual sales.
- The eight least populous counties (Hamilton, Lewis, Essex, Delaware, Franklin, Schuyler, Yates, and Schoharie)—as defined by combining the bottom five counties by both absolute population and population density—would collectively lose $479 million in annual SMB sales.

In total, the insights above, along with the data in Table 1, clearly illustrate that S335 would have negative economic consequences across New York's diverse regions—from the state's economic and population centers to its rural communities.

Methodology

The analysis presented in this report follows a three-step process to estimate county-level economic harm across New York State:

1. The analysis begins with a NY statewide estimate of $47.5 billion in annual lost SMB sales, updated to 2024 dollars from the author's previous estimate of $41.0 billion in 2021 dollars.
2. The total above is then distributed among New York's 62 counties based on each county's share of the state's SMB employment in manufacturing, wholesale trade, and retail trade sectors, using U.S. Census Bureau data.
3. The per-business impact is then calculated by dividing each county's total estimated harm by the number of SMBs in those sectors in that county.

The estimates presented here are intentionally conservative and likely understate the full economic harm. The analysis focuses solely on SMBs in sectors selling physical goods (approximately 20.9% of New York's SMB employment), excludes service-sector businesses, uses pre-pandemic baseline data (when SMB reliance on digital platforms was lower), and doesn't account for potential R&D investment reductions.

Data sources include the U.S. Census Bureau's Statistics of U.S. Businesses and Nonemployer Statistics (2021) and the New York State Department of Health's county population statistics (2020).

For detailed methodology, data tables, and calculations, please see the Technical Appendix to this report.

Table 1. Estimated Harm to SMBs by County if New York State's AOD Legislation is Enacted.

County	Annual Harm to SMBs (millions of 2024 dollars)	Annual Harm per SMB (thousands of 2024 dollars)	Monthly Harm per SMB (thousands of 2024 dollars)
Albany	824.4	246.8	20.6
Allegany	88.3	142.4	11.9
Bronx	1719.6	119.8	10.0
Broome	529.3	261.5	21.8
Cattaraugus	203.2	208.0	17.3
Cayuga	218.7	225.7	18.8
Chautauqua	426.0	241.4	20.1
Chemung	357.4	395.8	33.0
Chenango	135.1	203.7	17.0
Clinton	231.0	233.8	19.5
Columbia	160.7	162.6	13.6
Cortland	128.3	226.7	18.9
Delaware	110.1	168.5	14.0
Dutchess	545.9	152.0	12.7
Erie	2889.5	275.7	23.0
Essex	65.5	131.5	11.0
Franklin	85.6	151.6	12.6
Fulton	158.9	223.7	18.6
Genesee	238.1	286.8	23.9
Greene	76.3	115.8	9.7
Hamilton	5.9	63.7	5.3
Herkimer	146.3	192.0	16.0
Jefferson	235.9	188.6	15.7
Kings	4967.2	130.5	10.9
Lewis	49.6	141.7	11.8
Livingston	161.2	209.9	17.5
Madison	176.7	212.4	17.7

Table 1 *(continued)* Estimated Harm to SMBs by County if New York State's AOD

Monroe	2241.3	261.2	21.8
Montgomery	173.6	279.9	23.3
Nassau	3405.2	150.0	12.5
New York	6368.5	218.7	18.2
Niagara	597.8	241.9	20.2
Oneida	635.2	246.8	20.6
Onondaga	1377.7	258.6	21.6
Ontario	453.1	266.4	22.2
Orange	950.0	187.6	15.6
Orleans	106.4	222.1	18.5
Oswego	184.7	151.6	12.6
Otsego	114.1	136.2	11.3
Putnam	223.9	171.7	14.3
Queens	3668.2	111.1	9.3
Rensselaer	228.8	143.7	12.0
Richmond	520.3	91.6	7.6
Rockland	763.0	160.0	13.3
St. Lawrence	194.9	176.9	14.7
Saratoga	436.1	153.6	12.8
Schenectady	237.1	151.5	12.6
Schoharie	41.9	100.2	8.3
Schuyler	51.6	180.4	15.0
Seneca	102.2	198.1	16.5
Steuben	166.1	132.1	11.0
Suffolk	5385.1	236.3	19.7
Sullivan	158.7	152.9	12.7
Tioga	115.3	182.1	15.2
Tompkins	209.3	219.9	18.3
Ulster	444.0	165.4	13.8
Warren	187.1	197.8	16.5
Washington	173.0	225.0	18.7
Wayne	353.4	273.5	22.8
Westchester	2037.9	177.1	14.8
Wyoming	136.4	241.5	20.1
Yates	68.9	118.1	9.8
	Sum = $47,446.0 million or $47.45 billion		

* Note that the sum of column 2 is slightly less than 47.5 billion because of a small amount of SMB activity not measured because of the Census rules to avoid the disclosure of individual firm data.

Conclusion

This county-by-county analysis demonstrates that New York's proposed "Twenty-First Century Anti-Trust Act" would impose substantial economic costs on small and medium-sized businesses in every corner of the state. No region would be spared from significant business disruption from Manhattan's urban corridors to Hamilton County's rural communities.

New York's proposed legislation is patterned on the EU approach to AOD rather than on the approach that has been taken by U.S. law and precedents, exposing firms doing business in New York state to great uncertainty and substantial liabilities. As Fox (2014) explains, U.S. antitrust case law sets a very high bar for a plaintiff to prove that a firm has monopolized a market, while EU law makes it much more likely that the behavior of a firm will be found to be an abuse of dominance. The proposed "Twenty-First Century Anti-Trust Act" would take antitrust back to what Fox (2023) refers to as "the pro-little-guy, anti-concentration model of the Warren Court in the 1960s" before the dramatic shift in the courts' interpretations that have emphasized economic efficiency.

The projected $47.5 billion in annual lost sales represents approximately 8% of SMB revenue in key sectors—a devastating blow to New York's economic foundation as the state continues its post-pandemic recovery. For individual businesses, monthly losses ranging from $5,300 to $33,000 would force difficult decisions about employment, expansion, and even survival.

Multiple research studies conclude that enacting AOD legislation is expected to disrupt SMBs' operations. Much of the expected disruption stems from the legislation's impact on SMBs' access to digital platform services they now rely on, as the primary target of the law would be the large providers of digital platform services that SMBs use.

Most critically, the analysis reveals that legislation intended to protect smaller businesses from large technology companies would instead do precisely the opposite. Rather than creating a more competitive environment, S335 would deprive over 265,000 New York SMBs that sell physical goods of the digital tools they rely on to reach customers, manage operations, and compete in today's marketplace.

Policymakers should carefully weigh these specific, documented economic costs against the legislation's theoretical benefits. The evidence presented in this report suggests that the Twenty-First Century Anti-Trust Act would harm the very businesses it purports to help, undermining economic growth and opportunity in every legislative district across New York State.

The Business Council

The Business Council of New York State, Inc.

www.bcnys.org | 518-465-7511