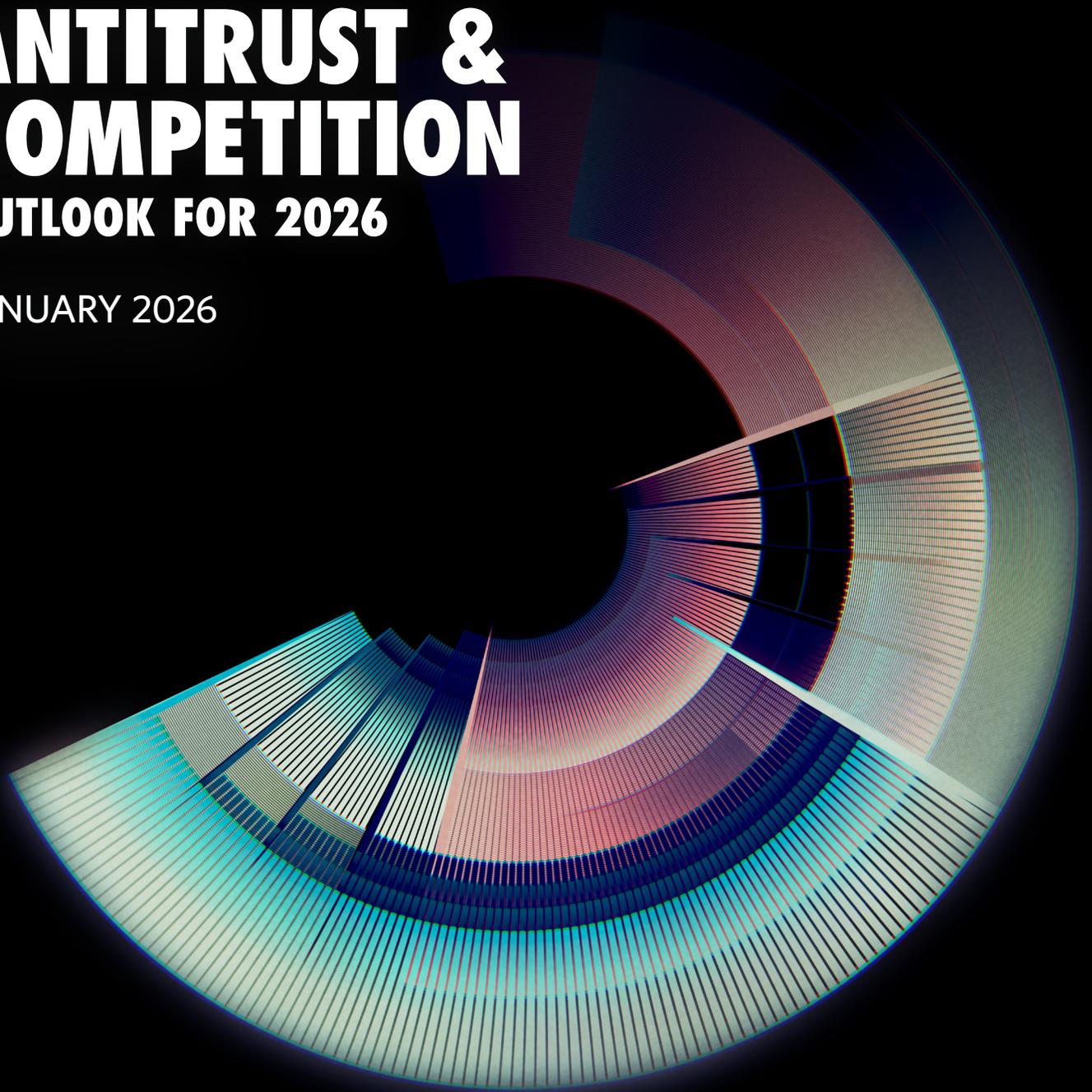


ANTITRUST & COMPETITION

OUTLOOK FOR 2026

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ANTITRUST & COMPETITION OUTLOOK FOR 2026

2025 was a year of impactful developments across the full spectrum of antitrust matters. This three-part report closes the book on 2025 by providing an overview of the key trends and developments that shaped antitrust law during the last year and looks ahead at what is likely to come in 2026.

The first section examines trends and developments in private civil antitrust litigation, where we saw a surge of cases challenging the use of artificial intelligence (AI) and algorithmic pricing across industries, the continued focus of the plaintiffs' bar on the healthcare and higher education sectors, and the first-ever successful antitrust class action to be fully litigated in the United Kingdom, signaling a new phase for private enforcement in Europe.

The second section examines the first year of Federal Trade Commission (FTC) and US Department of Justice (DOJ) Antitrust Division non-merger enforcement under the current US administration, which was characterized by the continuation of an aggressive pursuit of Big Tech and attention to the use of algorithmic pricing, the issuance of new labor-related guidelines, and consumer protection enforcement in the areas of children's safety and auto-renewals.

Finally, the third section looks back on developments in 2025 in transactional antitrust, where a new final rule expanded the scope of information and materials required to be submitted in connection with premerger notifications, and where the agencies returned to some pre-Biden-era practices in terms of entering into merger settlements more regularly and granting early termination for transactions that are deemed to not present substantive antitrust concerns.

It also addresses parallel developments in Europe, where merger review increasingly sits alongside foreign subsidies and investment-screening regimes, complicating cross-border deal execution. All three sections examine how the developments of 2025 are likely to influence antitrust law in 2026 and beyond.

PRIVATE CIVIL ANTITRUST LITIGATION

2025 saw the emergence of fascinating trends and developments in private civil antitrust litigation. Those include landmark decisions in private lawsuits challenging the use of AI and algorithmic software to recommend prices, as well as the continuation of aggressive private litigation in a number of market sectors, including healthcare and higher education.

Key Decisions and Trends in 2025

The Use of AI for Pricing Decisions Continued to Take Center Stage

While algorithmic pricing has been used in many industries for decades, the proliferation of AI software has led antitrust enforcers, legislators, and private plaintiffs to actively scrutinize potential anticompetitive practices related to the use of algorithmic pricing tools, particularly such tools that may involve elements of AI.

The antitrust issues at the core of these challenges have included questions about the extent of confidential information from multiple companies fed into algorithmic pricing tools for common use and whether alleged horizontal competitors have agreed to use that information when making pricing decisions. In 2025, key decisions helped shed light on the types of algorithmic pricing conduct that might give rise to antitrust liability.

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In August 2025, the US Court of Appeals for the Ninth Circuit became the first federal appeals court to address the extent to which the use of AI-driven algorithmic pricing tools may infringe the antitrust laws. In *Gibson v. Cendyn Group, LLC*, the Ninth Circuit held that competitors' independent decisions to each purchase a license to use the same price recommendation software products—which did not share any licensee's confidential information—did not violate the antitrust laws.

The plaintiffs' allegations in the *Gibson* case had concerned a pricing algorithm alleged to recommend prices for hotel rooms. The plaintiffs appealed the district court's dismissal of their claim that individual agreements between Cendyn—a private company that provides technology for the hospitality industry—and certain hotels on the Las Vegas Strip had an aggregate effect of "artificially inflat[ing] prices." The Ninth Circuit affirmed dismissal, holding that to state a claim under the antitrust laws, plaintiffs are required to plead more than the existence of "ordinary sales contracts" licensing the use of algorithmic pricing software and an allegation that prices rose after the adoption of those contracts.

The Ninth Circuit also provided guidance on the types of algorithmic pricing conduct that *might* violate the Sherman Act, in their view. For example, the court explained that it would "undoubtedly violate Section 1 were those competing hotels to agree among themselves to abide by a third party's pricing recommendations when pricing their own hotel rooms."

The Ninth Circuit also noted that the antitrust implications may have been different if Cendyn's software "pool[ed], shar[ed], or us[ed] the confidential information provided by a given [hotel] into the pricing recommendations it generates for any other [hotel]." Companies using AI or algorithmic tools in connection with making pricing decisions should consider the Ninth Circuit's guideposts when assessing their antitrust risk profile.

In 2025, state courts also provided some further insight on the risk of antitrust liability under this burgeoning area of the law. In *Victor Mach v. Yardi Systems Inc.*, a California state court granted summary judgment in favor of defendants who made the "forthright decision" to produce early in discovery the source code and related evidence for defendant Yardi Systems' software Revenue IQ, proving that "Revenue IQ does not pull rental price information from other [Yardi Systems] customers to inform any price-recommendation function in it."

A putative class of residential lessees alleged that defendant real property lessors entered into separate agreements with Yardi Systems pursuant to which they agreed to provide rental property information to Yardi Systems and to generally use the information supplied back to them by Yardi Systems to set residential lease rates. But, in granting summary judgment, the court found no evidence that the defendants ever agreed among themselves or with Yardi Systems to use "competitively sensitive (or otherwise confidential) information" to generate rental price recommendations or even use the Revenue IQ software. And, relying on *Gibson v. Cendyn Group, LLC*, the court rejected the plaintiffs' additional argument that it was enough for the defendants to "jointly adopt a common pricing algorithm." Together, these cases provided useful data points for companies assessing any potential antitrust risk related to their use of algorithmic pricing software.

There was also significant development in this area in an enforcement action brought by the government. In November 2025, the DOJ and RealPage Inc., a leading global provider of revenue management software platforms for the real estate industry, announced a settlement to resolve the DOJ's antitrust claims relating to RealPage's software used in the multifamily rental housing sector. The settlement did not include a monetary payment. Instead, RealPage agreed to certain restrictions for its software, including limits regarding the use of nonpublic data to determine rent recommendations and train its software's algorithm.

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Companies should also continue to monitor state legislative efforts. For example, in October 2025, New York Governor Kathy Hochul signed Senate Bill S.7882 into law, making New York the first state to prohibit the use of algorithmic pricing tools in residential rent setting. With the enactment of S.7882, New York has expanded potential antitrust exposure for residential landlords, property managers, and real estate technology providers involved in rental pricing practices.

In December 2025, RealPage filed a motion for a preliminary injunction to enjoin the new law, and the motion remains pending as of the date of this publication.

Checking Up on Private Antitrust Litigation in the Healthcare Industry

2025 was also an active year for private antitrust litigation in healthcare. The year brought significant new developments in existing multidistrict litigation (MDL), as well as new cases asserting novel theories of antitrust liability against dozens of healthcare providers across the country.

In 2025, thousands of healthcare providers opted out of a \$2.8 billion antitrust settlement among the Blue Cross Blue Shield Association (BCBSA), 33 independent BCBSA entities (the Blues), and healthcare providers. In this long-running MDL, a class of healthcare providers “challenged, among other things, the Blues’ use of exclusive service areas as a restraint of trade in violation of the Sherman Act.”

On August 19, 2025, the Alabama federal district court overseeing the MDL granted final approval of a historic settlement, which, according to the court, included “extraordinary injunctive relief,” such as “transformative changes” to how Blue Cross operates—in addition to a \$2.8 billion cash payment. Nearly 6,500 healthcare providers opted out of the settlement. As a result, a new wave of lawsuits was filed across the country by plaintiff hospitals, physician-owned healthcare systems, and other healthcare providers alleging that BCBSA and the Blues purportedly conspired to allocate insurance markets and fix prices. These new lawsuits set off a new era of what will surely be hard-fought antitrust litigation involving a significant segment of US healthcare providers.

Healthcare providers were also on the receiving end of significant new antitrust litigation in 2025. Earlier in the year, multiple putative classes of recent pharmacy school graduates filed lawsuits against the entity that operates the primary pharmacy resident match program in the United States, as well as the healthcare providers that participate in the program. These cases, consolidated in Maryland federal district court, allege that the pharmacy residency match program unlawfully eliminates prospective pharmacists’ ability to negotiate the terms of their employment and prohibits them from moving between employers after they are hired, artificially suppressing wages and employment benefits.

A similar theory was alleged in a putative class action complaint by recent veterinary school graduates against the operator and participants of the veterinary residency matching program. These cases have broad implications for healthcare providers, as virtually every provider that employs resident pharmacists and veterinarians participates in these match programs. Separately, a congressional subcommittee has begun an inquiry into the residency match program for medical doctors—despite the existence of a statutory antitrust exemption for that match program.

Private Litigants Were Unsuccessful in Challenging Higher Education Practices

In September 2025, an Illinois federal district court dismissed a case involving an alleged conspiracy among the College Board and dozens of elite universities and colleges to raise the cost of attendance.

In *Hansen v. Northwestern University*, plaintiffs alleged that the College Board and 40 universities and colleges violated Section 1 of the Sherman Act by engaging in concerted action to require a noncustodial parent of any applicant seeking nonfederal financial aid to provide their financial information, which allegedly increased the putative class members’ costs to attend college.

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The plaintiffs contended that absent this agreement, the universities and colleges would have competed to offer better financial aid packages to students.

In dismissing the complaint, the court found the “lack of details” surrounding when each university defendant began to require that information over a 20-year period “calls into question” whether the use of noncustodial parents’ financial information actually suggests “coordinated action among all defendants.” Ultimately, the court held that “when viewed as a whole, the complaint falls short in plausibly alleging that this [alleged] parallel conduct reflect[ed] an agreement among Defendants to fix prices.” On October 24, 2025, the plaintiffs notified the court that they would not file an amended complaint.

Notwithstanding the dismissal of the *Hansen* case, at least three high-profile antitrust cases alleging concerted action with respect to the cost of university attendance remain pending, and an antitrust-focused congressional investigation is currently probing tuition practices in higher education. Given the landscape, institutions of higher education should remain vigilant about safeguarding the independence of their decision-making processes, particularly when it comes to admissions, tuition, and financial aid practices.

Outlook and Key Issues Ahead for 2026

AI Pricing Issues Will Remain in the Spotlight

In 2026, multiple significant litigations involving algorithmic pricing will be ripe for decisions that could shape the jurisprudence in this area. As a result, the stage is set for these issues to continue monopolizing the antitrust spotlight.

In September 2025, the Third Circuit heard oral argument in *Cornish-Adebiyi v. Caesars Entertainment, Inc. (Cornish)*, a widely followed alleged algorithmic price-fixing case. In *Cornish*, a putative class alleged that Atlantic City casino-hotels conspired to inflate and fix the price of hotel rooms using algorithmic pricing software. Last year, a New Jersey federal district court dismissed plaintiffs’ allegation at the pleadings stage, finding that plaintiffs failed to plausibly allege the existence of a horizontal agreement to fix prices. In particular, the court declined to “infer a plausible price-fixing agreement between the Casino-Hotels from the mere fact that they all use the same pricing software.” This holding is consistent with the Ninth Circuit’s later decision in *Gibson v. Cendyn Group, LLC*, discussed above. But, on appeal, plaintiffs argue that the court misconstrued their complaint and, as a result, the appellate court should breathe new life into the case.

On appeal, plaintiffs urge the Third Circuit to find their case distinguishable from *Gibson v. Cendyn Group, LLC*. Plaintiffs argue that, unlike in *Gibson*, they had sufficiently alleged that third-party pricing algorithm products used by the *Cornish* defendants analyzed pooled confidential data to generate the hotel room price recommendations. The Third Circuit’s decision may provide further guidance on the requirements for asserting a plausible antitrust conspiracy using algorithmic pricing tools in the Third Circuit.

Other algorithmic pricing cases to watch in 2026 include *In re Yardi Revenue Management Antitrust Litigation (Yardi)* and *In re Construction Equipment Rental Antitrust Litigation (Construction Equipment)*. In *Yardi*, a putative class of residential real estate renters brought Section 1 price-fixing claims against Yardi Systems, the provider of a revenue management software tool, and real estate owners and management companies that used the software. Summary judgment briefing is currently scheduled to conclude in early 2026.

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In addition, a new MDL, *Construction Equipment*, is getting underway and involves allegations that construction equipment rental companies conspired with and through a shared pricing and analytics platform to purportedly fix, stabilize, and maintain rental prices. Motions to dismiss are currently scheduled to be briefed over the first several months of the year, and the court set a July 28, 2026 “ruling date.” Motion practice in these key cases may raise and decide significant legal issues, resulting in additional data points for companies when assessing the risk associated with different types of algorithmic pricing software.

Other Alleged Price-Fixing MDLs to Watch in 2026

Multiple other notable alleged price-fixing MDLs, not implicating pricing algorithms, also kicked off in mid-to-late 2025, setting up key legal battles to watch in 2026. For example, nearly two dozen antitrust lawsuits were centralized in Colorado federal district court involving allegations of a sprawling conspiracy to fix prices for archery products (e.g., bows, arrows, arrowheads, targets, and accessories). The plaintiffs assert that the defendants—including some of the largest manufacturers, distributors, and retailers of archery products in the United States, as well as the Archery Trade Association—adopted, implemented, and enforced minimum advertised pricing (MAP) policies that are, in effect, minimum retail pricing policies because retailers that sell below MAP pricing are allegedly cut out of the supply chain. Defendants must answer the MDL complaints or move to dismiss them by February 27, 2026.

Additionally, in October 2025, five putative class actions filed in four federal district courts were centralized in the Northern District of California involving allegations of a price-fixing agreement and market allocation scheme to raise the price of closed cannabis oil vaporizer systems sold throughout the United States. The plaintiffs allege that the manufacturer of CCELL brand cannabis oil vaporization products and US distributors agreed to create a minimum price floor for the products, prevented the purchase of competing products, and shared price and customer information with one another.

Four of the actions are brought on behalf of putative nationwide classes of indirect purchasers of the manufacturer-defendant’s closed cannabis oil vaporization products, and the fifth consolidated action is brought on behalf of a similar class of direct purchasers. Motion to dismiss briefing is scheduled to begin in late 2025.

Appeals Court Could Clarify Causation Standard in Delayed Generic Entry Cases

2026 is also likely to bring notable antitrust-related developments in the pharmaceutical and life sciences space. To sustain an antitrust claim for damages, private litigants must establish causation under the Clayton Act. In cases involving alleged conspiracies to restrain trade by settling Hatch-Waxman litigation (e.g., so-called “reverse payment” theories), this typically means that plaintiffs must prove that but for the patent litigation settlements, generic entry would have happened sooner.

Plaintiffs’ causation arguments often hinge on whether the generic manufacturer would have (or could have) obtained regulatory approval to market its generic product and/or succeeded in invalidating the brand manufacturer’s patent(s) in the underlying Hatch-Waxman litigation. In this regard, courts have held that the difference between “would have” and “could have” is not semantic.

In *In re Lipitor Antitrust Litigation (Lipitor)*, a New Jersey federal court recently granted summary judgment in favor of defendants where plaintiffs failed to show a genuine dispute of material fact as to whether the generic manufacturers “would have” obtained the required regulatory approvals to launch before they actually did (i.e., allowing them to launch earlier in a world where the challenged settlement did not occur). The court relied on the Third Circuit’s *Wellbutrin* decision to support its application of the “would have” (as opposed to a “could have”) standard.

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In *Wellbutrin*, the court held that plaintiffs were required to produce evidence from which a reasonable jury could conclude that “it [was] more likely than not” that the generic product “would have” entered the market sooner (i.e., by obtaining a license from the patent holder or prevailing in patent litigation). The *Lipitor* decision was recently appealed to the Third Circuit and is pending. In 2026, private litigants should closely monitor this case for a decision. A ruling affirming the district court’s decision would confirm that the more stringent causation standard applies and could potentially be the genesis of a new, more defendant-friendly trend in causation jurisprudence.

Collective Actions to Continue to Gain Momentum in Europe

2025 marked a turning point for competition litigation in Europe, with an increasing number of collective actions progressing beyond certification and into substantive merits determinations. Courts are showing greater willingness to engage with complex economic evidence and damages methodologies, reducing the procedural uncertainty that historically constrained large-scale private enforcement. At the EU level, the continued implementation of the Representative Actions Directive (EU) 2020/1828 is expected to further stimulate collective actions across member states by harmonizing key aspects of standing and redress.

In the UK, momentum is expected to accelerate further in light of the first-ever successful private competition collective action to proceed through a full trial, as well as the government’s confirmed intention to legislate to reverse the effects of the UK Supreme Court’s *PACCAR* decision. *PACCAR* significantly restricted access to third-party litigation funding for opt-out collective proceedings by treating many funding arrangements as damages-based agreements. Proposed legislative reforms, following recommendations from the Civil Justice Council, are expected to restore funding certainty.

FTC AND DOJ ANTITRUST AND CONSUMER PROTECTION LITIGATION

Amid shifts in leadership and policy and an overall push for deregulation, the DOJ and the FTC (the Agencies) saw pivotal developments in 2025. On the competition side, the Agencies forged ahead with multiple enforcement actions in the technology sector, continued their focus on alleged algorithmic collusion, and reiterated a joint focus on labor markets, with the DOJ securing its first-ever jury trial conviction in a criminal wage-fixing case.

On the consumer protection side, AI continued to be a source of concern alongside data privacy and security issues, while subscription services and auto-renewals faced heightened scrutiny (despite a vacated “Click-to-Cancel” Rule). In this section, we examine the key cases and trends that defined 2025 and consider what lies ahead for 2026.

Key Decisions and Trends in 2025

The Agencies’ Enforcement in the Tech Sector Continued

Various litigations between federal enforcers and Big Tech companies continued throughout 2025, with pivotal developments in several major cases.

On November 18, 2025, Judge James Boasberg of the District of Columbia issued a decisive ruling dismissing the FTC’s antitrust claims against Meta Platforms, Inc. The long-running case, initially filed in 2020, centered on allegations that Meta illegally monopolized the market for “personal social network services” through its 2012 and 2014 acquisitions of Instagram and WhatsApp. Following a six-week bench trial in the spring of 2025, Judge Boasberg ruled that the FTC failed to prove that Meta currently holds monopoly power. Critically, the court rejected the FTC’s market definition, which excluded platforms like TikTok, YouTube, and X (formerly Twitter).

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In his ruling, Judge Boasberg emphasized how the social media landscape has evolved dramatically since the lawsuit was first filed—emphasizing the dynamic and highly competitive nature of digital markets. As the FTC’s first monopolization case to proceed to trial since 2020, the ruling represents a major setback for federal enforcers and raises questions regarding the viability of post-consummation challenges to acquisitions in digital markets, particularly where traditional concepts of market definition may be outpaced by changing market dynamics. The FTC has said it will appeal.

In April 2025, Judge Leonie Brinkema of the US District Court for the Eastern District of Virginia issued a ruling in *United States v. Google*, sometimes referred to as the Google “ad tech” case. Judge Brinkema held that Google acquired and maintained monopoly power in the alleged publisher ad server and ad exchange markets by tying its publisher ad server (DoubleClick for Publishers) to its ad exchange. Of note, however, Judge Brinkema rejected the DOJ’s claim regarding the market for advertiser ad networks and upheld the legality of Google’s prior acquisitions of AdMeld and DoubleClick.

The evidentiary phase of the remedies proceedings concluded in early October 2025, followed by closing arguments in November. The DOJ is seeking forced divestiture of Google’s ad exchange, open sourcing of certain auction logic, and mandated interoperability. In contrast, Google is proposing more tailored behavioral remedies. A remedies decision is anticipated in 2026. Google had indicated that it disagrees with the merits decision and intends to appeal.

2025 also brought pivotal developments in the separate *United States v. Google* case focused on the alleged online search engine market, known as the Google “search” case. In September 2025, Judge Amit Mehta of the US District Court for the District of Columbia issued a remedies decision that imposed certain behavioral restraints (e.g., a requirement to share certain data with rivals) but declined to order a divestiture of products like Chrome and Android, rejecting the government’s request for structural remedies. The remedies proceedings and order followed his August 2024 finding that Google monopolized the alleged general search services and general text advertising markets through its distribution agreements with device makers and others.

Google has indicated that it disagrees with the merits decision and recently noticed an appeal. Of note, the remedies proceedings included new evidence related to the potential impact of AI on the future of the search marketplace, which underscores how quickly technologies evolve, particularly when it comes to the ways consumers interact with digital information.

The potential impact of AI on future search engine market share proved to be a critical consideration in Judge Mehta’s decision, signaling an increased awareness of AI’s potential to reshape market dynamics. Google has stated that it intends to appeal the liability and remedies findings.

AI and Algorithmic Pricing Tools Remained a Significant Focus

The Agencies continued to scrutinize algorithmic pricing tools in 2025. Assistant Attorney General Abigail Slater has explicitly reaffirmed the DOJ’s interest in targeting so-called “algorithmic collusion,” noting that investigations into such practices are likely to increase as deployment of AI algorithmic pricing technology continues.

The DOJ’s case against real estate software company RealPage remained in the spotlight last year. In November 2025, the DOJ announced a proposed settlement with RealPage that, subject to court approval, would impose certain restrictions on RealPage’s use of nonpublic competitively sensitive information in making rent recommendations and in training its models, among other provisions. The case remains ongoing with respect to certain property management company defendants that have not reached proposed settlements with the DOJ.

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Across the EU and the UK, algorithmic pricing has moved firmly onto the enforcement radar. In 2025, senior EC officials confirmed multiple ongoing investigations into suspected algorithmic collusion, while the UK Competition and Markets Authority (CMA)'s chief executive described algorithmic pricing as an emerging risk area and highlighted the authority's close monitoring of US developments.

EU and UK authorities are expected to apply established competition law concepts—such as concerted practices, hub-and-spoke liability, and unlawful exchanges of competitively sensitive information—in assessing these practices, drawing on precedent including the EU Court of Justice's *Eturas* judgment, which illustrated how the use of common software can give rise to antitrust liability absent a conventional "meeting of minds."

The Labor Market Landscape Saw Several Key Shifts

Labor markets once again emerged as a priority area for the Agencies in 2025. In January, the Agencies' outgoing Biden administration enforcers issued the new Antitrust Guidelines for Business Activities Affecting Workers, replacing guidance issued in 2016. The new guidelines address a wider range of potentially anticompetitive labor practices, establishing the groundwork for robust enforcement in this area. In February 2025, FTC Chair Andrew Ferguson launched the Joint Labor Task Force to "prioritize rooting out and prosecuting deceptive, unfair, and anticompetitive labor-market practices that harm American workers."

Attention to labor-related matters continued throughout the year, despite the FTC's decision to "accede to the vacatur" of the so-called "Noncompete Rule," which would have prohibited the vast majority of employee noncompete agreements in the United States. In a statement announcing the decision, Chairman Ferguson (joined by Commissioner Melissa Holyoak) publicly reiterated the FTC's commitment to promoting labor competition by challenging unlawful noncompete agreements on a case-by-case basis.

In April 2025, the DOJ secured its first-ever criminal wage-fixing conviction via jury trial in *United States v. Lopez*. Eduardo Lopez, a home healthcare staffing executive, was convicted in the US District Court for the District of Nevada for conspiring to fix the wages of home health nurses in Las Vegas. Lopez faces up to 10 years in prison, along with significant restitution. This case underscores that federal antitrust enforcers will continue to prioritize competitive labor markets, including through the selective use of criminal prosecution.

In Europe, the EC issued its first-ever cartel decision targeting labor market restrictions, fining two food delivery companies a combined EUR 329 million for engaging in a no-poach agreement, exchanging competitively sensitive information, and allocating geographic markets. This decision represents the first time the EC has treated a non-controlling 10% minority shareholding in a competitor as a facilitating mechanism for collusion, underscoring the risks that can arise where minority investors gain access to sensitive information or exert influence over a rival's strategic decisions.

National competition authorities in Europe have also been active in pursuing labor market cases across a range of sectors, including private security, HR consultancy, engineering services, sports, and media. Authorities draw on updated policy guidance—including the EC 2024 Policy Brief on Antitrust in Labor Markets and the EC's revised Horizontal Guidelines—which expressly characterize wage-fixing and no-poach arrangements as serious infringements, clarify that labor is a relevant parameter of competition, and signal that labor market restrictions will typically be treated as restrictions of competition "by object," thereby supporting a more assertive enforcement approach.

CONSUMER PROTECTION

Key Developments in 2025

Data Privacy and Security Remained a Paramount Focus, with a Pronounced Emphasis on Children's Safety Issues

The FTC maintained aggressive enforcement of children's privacy protections in 2025 through targeted enforcement actions and amendments to the Children's Online Privacy Protection Act (COPPA).

The amended rule, which took effect in June 2025, expands the definition of personal information, imposes stricter data retention and deletion requirements, and enhances parental consent mechanisms.

In September 2025, the FTC announced a \$10 million settlement with Disney over alleged COPPA violations, underscoring its commitment to prioritizing children's privacy enforcement. The FTC argued that Disney failed to properly designate child-directed videos, which in turn allowed YouTube to collect personal information from and deliver targeted advertising to children. The settlement requires Disney to "set up a program to review each video it publishes on YouTube to determine if it is targeted to children."

Also in September 2025, the FTC reached a COPPA settlement with robot toy maker Apitor over allegations that the company's application enabled a third party in China to collect geolocation information from children without parental consent. The case highlights mounting concerns regarding international data flows and third-party access to children's data, particularly where foreign entities are involved.

AI Remained a Key Area of Attention

The FTC pursued multiple consumer protection enforcement actions targeting allegedly deceptive AI claims this past year. In March 2025, a federal court temporarily halted an online business opportunity operation that promised passive income through AI-powered tools.

In August 2025, the FTC filed a complaint against Air AI and five other companies, alleging that they deceptively marketed AI-related tools to small businesses by making false claims about the capabilities and effectiveness of their AI products and failing to deliver on promised functionality. That same month, the FTC approved a final order against Workado, LLC for allegedly misrepresenting the accuracy of its AI content detection product.

In September 2025, the FTC announced an inquiry into AI chatbots acting as companions. As part of its inquiry, the FTC pointed to industry study authority under Section 6(b) of the FTC Act to issue orders requesting a wide range of information from companies that provide consumer-facing AI-powered chatbots, including information on how these firms measure, test, and monitor potentially negative impacts of their AI-companion technology on children and teens. The inquiry underscores the FTC's interest in emerging AI applications and how they may impact consumers.

In Europe, AI and algorithmic pricing also increasingly intersect with consumer protection enforcement. For example, in the UK, the Digital Markets, Competition and Consumers Act 2024 (DMCCA), which came into force in 2025, significantly strengthened the CMA's ability to address pricing practices that mislead or disadvantage consumers, including drip pricing and opaque price presentation often facilitated by automated systems.

Unlike competition law, consumer protection enforcement does not require proof of coordination, market power, or anticompetitive effects, giving the CMA a lower threshold for intervention where algorithmic pricing obscures the true cost of products or services.

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Subscription Services and Auto-Renewals Faced Scrutiny Despite Vacated Click-to-Cancel Rule

Subscription billing and autorenewal practices faced continued scrutiny in 2025, even as the FTC's rulemaking efforts in this area faced setbacks.

In July 2025, the Eighth Circuit vacated the FTC's Click-to-Cancel Rule, which would have required businesses to provide clear disclosures and an easy "click-to-cancel" method for recurring subscriptions. The FTC nonetheless aggressively pursued enforcement of allegedly unlawful auto-renewal practices under the FTC Act and ROSCA.

By way of example, in August and September 2025, the FTC secured \$14 million and \$7.5 million settlements from Match.com and Chegg, respectively. In both cases, the FTC challenged what it claimed to be unlawful advertising, billing, and cancellation practices under Section 5 of the FTC Act and the Restore Online Shoppers' Confidence Act (ROSCA).

In early December, the FTC published a petition to reopen the rulemaking on the Click-to-Cancel Rule in the *Federal Register*. Although it remains to be seen whether the petition will materialize, the cases above make clear that we can continue to expect regulatory scrutiny of potentially unlawful autorenewal and billing practices, with or without a Click-to-Cancel Rule.

Outlook and Key Issues Ahead for 2026

Tech Is Likely to Remain in Focus

On the competition side, scrutiny of the technology sector will likely continue. The Agencies' strategy for retroactively challenging consummated mergers will undoubtedly be shaped by Judge James Boasberg's ruling in *FTC v. Meta*, while the appropriateness of forced sharing and other post-trial behavioral remedies in monopolization cases will continue to be litigated, with the prospect for notable appeals.

On the consumer protection side, the FTC is expected to continue evaluating the conduct of technology companies from a consumer protection perspective, including in the areas of privacy and data security practices, auto-renewal and subscription billing, AI capabilities, and algorithmic systems.

Oversight of AI Technology Will Continue

Whether it is the use of AI in the context of algorithms, customer service chatbots, or consumer-facing claims and representations made about AI's capabilities, we can anticipate continued scrutiny of all things AI from the Agencies. Targeted enforcement of so-called "AI washing" and mounting concerns about data practices in emerging AI applications will continue to play a prominent role in 2026.

Deregulation May Be on the Horizon

Largely driven by directives from the executive branch, we can expect to see the rolling back of certain regulations deemed unnecessary or anticompetitive in 2026. In March 2025, the DOJ launched an Anticompetitive Regulations Task Force to identify and eliminate state and federal laws and regulations that harm competition, reflecting a broader push to deregulate.

In September 2025, the Agencies announced they had identified over 125 "anticompetitive" regulations for potential elimination or modification in furtherance of Executive Order 14267 (Executive Order on Reducing Anti-Competitive Regulatory Barriers), which aims to reduce barriers to competition. This deregulatory agenda is anticipated to continue in 2026, potentially resulting in meaningful changes to existing regulatory frameworks.

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Digital Regulation is Expected to Intensify and Evolve in Europe

Across the EU and the UK, digital regulation is expected to remain a central policy and enforcement priority in 2026, even as lawmakers consider targeted adjustments to existing frameworks. In the EU, flagship regimes—including the Digital Markets Act (DMA) and Digital Services Act (DSA)—are moving from implementation into early enforcement.

The EC has a central supervisory role over designated “gatekeepers” and very large online platforms, with the DMA imposing ex ante conduct obligations aimed at preventing self-preferencing, tying, and restrictions on interoperability, and the DSA addressing systemic risks, transparency, and online safety.

In late 2025, the EC adopted its first non-compliance decision under the Digital Services Act, imposing a €120 million fine on a large online platform for breaches of core transparency obligations, including alleged deceptive interface design relating to account verification, deficiencies in advertising transparency, and failures to provide researchers with effective access to public data.

These enforcement steps have sharpened tensions with US-based technology firms and drawn criticism from the US administration, which has argued that Europe’s digital regimes disproportionately affect American companies and may chill innovation. Notwithstanding this pressure—and increasing instances of regulatory resistance and litigation by regulated firms—the EU has shown little inclination to moderate enforcement.

In the UK, the DMCCA entered into force in 2025, establishing a parallel digital markets regime that empowers the CMA to impose tailored conduct requirements on firms designated as having “strategic market status” (SMS), alongside enhanced transaction-reporting obligations and the ability to impose penalties of up to 10% of global turnover for non-compliance. In 2025, the CMA’s Digital Markets Unit completed its first SMS investigations, designating the two largest mobile ecosystem providers as having SMS in respect of their mobile operating systems, app distribution, and mobile browsers.

These designations trigger bespoke conduct requirements, enhanced merger reporting obligations, and the potential for “pro-competition interventions,” with the CMA publishing initial roadmaps identifying priority issues such as fair dealing in app distribution, choice architecture, and restrictions on interoperability. Looking ahead to 2026, the focus is expected to shift to the design, consultation, and enforcement of conduct requirements, alongside further SMS investigations—potentially in areas such as cloud services.

US Supreme Court Expected to Address Legality of President’s Removal of Former FTC Commissioner Rebecca Slaughter

On December 8, 2025, the US Supreme Court heard oral arguments concerning the legality of President Donald Trump’s removal of former FTC Commissioner Rebecca Slaughter. The case presents fundamental constitutional questions about presidential removal power.

If the Court upholds broad presidential removal authority, notwithstanding the limitations on removals that the US Congress enacted in the FTC Act, it could significantly change the traditional independence of multimember commissions like the FTC by subjecting commissioners to at-will removal.

TRANSACTIONAL ANTITRUST

Key Developments in 2025

Continued Merger Enforcement

Despite the change in presidential administrations, the DOJ and FTC continued to investigate and challenge mergers under Section 7 of the Clayton Act. The Agencies also maintained the 2023 Merger Guidelines, which describe enforcement principles, thresholds, and considerations for antitrust merger investigations, and, in February 2025, the Agencies oversaw the entry into effect of a final rule expanding the information and materials required to be filed in connection with premerger notifications under the Hart-Scott-Rodino (HSR) Act.

The Agencies litigated two merger challenges in 2025 that reached contested preliminary injunction hearings in federal district court. In November 2025, a federal district court denied the FTC's request for a preliminary injunction to enjoin GTCR BC Holdings, LLC's proposed \$627 million acquisition of Surmodics, Inc. The court rejected the FTC's claims that the transaction would substantially lessen competition in an alleged market for outsourced hydrophilic coatings used to create medical devices, holding instead that GTCR's proposal to divest a portion of its hydrophilic coatings business to a third-party buyer adequately resolved any harm to competition, among other findings.

The FTC elected not to appeal the district court's ruling. The FTC also challenged another acquisition in the life sciences sector, culminating in a preliminary injunction hearing in November 2025 before a federal district court. In January 2026, the court granted the FTC's motion for preliminary injunction, resulting in the merging parties abandoning the deal shortly after the court's decision.

Additionally, in December 2025, the FTC challenged Henkel AG & Co. KGaA's proposed \$725 million acquisition of Liquid Nails from private equity firm American Industrial Partners. The FTC alleged that the deal would eliminate competition between the two largest US brands of construction adhesives (Henkel's Loctite and Liquid Nails) used in home construction projects. The merging parties have not yet responded to the FTC's claims at the time of writing, and a court hearing on the FTC's request for a preliminary injunction has not yet occurred.

Beyond these litigated cases, the Agencies actively continue to pursue full-phase merger investigations, known as second requests. While the Agencies do not publicize ongoing second request investigations, press reporting and company disclosures indicate that the Agencies in 2025 continued to open such in-depth investigations at a level consistent with prior years of active merger enforcement.

As part of these second request investigations, the Agencies have also continued to seek rigorous compliance with discovery requirements. In August 2025, as part of a settlement in connection with UnitedHealth Group's \$3.3 billion acquisition of Amedisys Inc., Amedisys agreed to pay a civil penalty of \$1.1 million under the HSR Act and to conduct compliance training for certifying compliance with its Second Request after purportedly failing to produce various emails, text messages, and hardcopy materials from document custodians.

Early Termination and Merger Settlements Are Back

Although the Agencies suspended grants of early termination for several years during the Biden administration, the Agencies in 2025 returned to the granting of early termination for deals that do not present substantive antitrust issues. Dozens of deals received grants of early termination in 2025, allowing closing to occur in such deals faster than the typical 30 days required following an HSR filing.

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The Agencies also returned to more regularly settling merger matters through consent agreements requiring conditions, such as divestitures. Such settlements were comparatively rare under the Biden administration, with the Agencies more frequently opting to reject proposed divestitures and litigate, although some commentators posited that this Agency posture may have led to more informal restructuring of deals not reflected in formal settlement agreements.

The Agencies approved multiple transactions in 2025 as part of settlements, including the following:

- Keysight Technologies Inc.’s proposed \$1.5 billion acquisition of Spirent Communications plc, following Keysight’s agreement to divest Spirent’s high-speed ethernet testing, network security testing, and RF channel emulation businesses
- Safran, S.A.’s proposed \$1.8 billion acquisition of certain aircraft component businesses from RTX Corp., following Safran’s agreement to divest its trimmable horizontal stabilizer actuator, secondary flight control actuator, and electronic control unit businesses
- UnitedHealth Group Inc.’s proposed \$3.3 billion acquisition of Amedisys Inc., following the merging parties’ agreement to divest 164 home health and hospice locations in 19 states
- Constellation Energy Corp.’s proposed \$26.6 billion acquisition of Calpine Corp., following Constellation’s agreement to divest six power plants located in Delaware, Pennsylvania, and Texas
- Synopsys, Inc.’s proposed \$35 billion acquisition of Ansys, Inc., following Synopsys’s agreement to divest its optical software tool and photonic software tool businesses and Ansys’s agreement to divest its PowerArtist power consumption analysis tool, which are all products used in the design of semiconductors and light simulation devices
- Alimentation Couche-Tarde Inc.’s proposed \$1.57 billion acquisition of 270 retail fuel outlets from Giant Eagle, Inc., following the acquirer’s agreement to divest 35 gas stations in Indiana, Ohio, and Pennsylvania
- Valvoline Inc.’s proposed \$625 million acquisition of approximately 200 automotive quick-lube oil change outlets from Greenbriar Equity Fund V, L.P., following Valvoline’s agreement to divest 45 outlets in 25 local geographic markets
- Boeing Co.’s proposed \$8.3 billion acquisition of Spirit AeroSystems Holdings, Inc., following Boeing’s agreement to divest to Airbus SE certain Spirit businesses that supply aerostructures used in commercial and military aircraft, and Boeing’s behavioral commitment to continue supplying Spirit’s aerostructures and related services on nondiscriminatory terms to Boeing’s competitors for military aircraft contracts
- Omnicom Group Inc.’s proposed \$13.5 billion acquisition of The Interpublic Group of Companies, Inc., following Omnicom’s behavioral commitment not to coordinate with other advertising agencies regarding the websites in which to purchase advertising space based upon the websites’ political or ideological viewpoints

An Expanding Regulatory Overlap in EU Merger Control

EU merger control remained robust, with the EC and national competition authorities continuing to scrutinize transactions perceived to risk entrenching market power or foreclosing future competition, including in digital, life sciences, energy, and industrial sectors. Under the leadership of its newly appointed Competition Commissioner Teresa Ribera, the EC advanced a wide-ranging—“once in a generation”—review of its merger guidelines, aimed at adapting EU merger control to better reflect dynamic competition, innovation, sustainability, and digital market realities. Draft revised guidelines are expected in 2026, with adoption targeted for 2026–2027.

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Following the EU Court of Justice's *Towercast* judgment, the EC encouraged national competition authorities to use Articles 101 TFEU (prohibiting anticompetitive agreements) and 102 TFEU (prohibiting abuses of dominance) to review certain below-threshold transactions (e.g., in relation to the acquisition of nascent competitors or pipeline assets), and a small but growing number of authorities, such as the Belgian one, have begun to explore this route in practice.

Although still applied sparingly, businesses should undertake early and careful competition risk assessments in respect of contemplated transactions even where no formal notification obligation appears to be triggered.

Alongside traditional merger review, the Foreign Subsidies Regulation (FSR)—designed to address distortive financial contributions granted by non-EU states to companies active in the EU—has become an increasingly material overlay for M&A activity. Having moved beyond its initial bedding-in phase, the EC in 2025 applied the regime with growing confidence, with notification volumes significantly exceeding early expectations and the opening of a second in-depth investigation into the proposed acquisition of a major EU industrial group by a state-linked non-EU acquirer.

At the same time, foreign direct investment (FDI) screening continued to proliferate across the EU, with all 27 member states now operating active regimes (with the last one, Cyprus, expected to implement its screening framework in April 2026).

A Recalibrated Enforcement Approach to UK Merger Control

In 2025, UK merger control underwent a notable shift following the UK government's revised "Strategic Steer" to the CMA and changes in CMA leadership, with the authority adopting what it described as a more pro-growth, investment-friendly approach while maintaining its willingness to intervene where UK-specific concerns arise. The CMA updated its merger guidance to embed the "4Ps" framework—pace, predictability, proportionality, and process—alongside revised remedies guidance that signals increased openness to behavioral and hybrid remedies and a reduced preference for structural divestments.

The CMA also stepped back from intensive scrutiny of global mergers lacking clear UK impacts, showing greater readiness to rely on overseas remedies, taking a wait-and-see approach, while preserving the ability to intervene if UK interests, especially in consumer-facing or strategically significant markets, are not adequately addressed.

In parallel, UK FDI screening remained highly active, with more than 1,000 notifications submitted annually under the National Security and Investment Act. The regime continues to operate on a nationality-agnostic basis and applies across 17 sensitive sectors, reflecting a broad conception of national security risk. Enforcement practice in 2025 showed a heightened focus on defense-related transactions and on acquisitions that could diminish the operational capabilities, resilience, or assured supply of UK companies active in strategically important sectors.

The UK government is currently consulting on targeted refinements to the regime, including proposals to add "water" as a standalone mandatory notification sector and to introduce exemptions for purely internal reorganizations (which currently trigger mandatory preclosing filings if they concern one of the 17 relevant sensitive sectors).

OUTLOOK AND KEY ISSUES AHEAD IN 2026

While the Agencies in 2025 continued to pursue an active merger enforcement agenda, the first year of the new US administration has also brought some shifts in merger policy, most notably the return of early termination and the increased willingness of the Agencies to consider merger settlements, especially those involving divestitures. As a result, where appropriate, merging parties should consider developing a divestiture strategy, as the Agencies appear likely to continue resolving certain cases through such settlements in the year to come.

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HOW WE CAN HELP

Our antitrust practice is recognized for exceptional client service and innovative strategies that drive client success and help shape broader antitrust trends. Our lawyers played meaningful roles in several of the matters featured in this report and stand ready to assist clients with the full spectrum of antitrust issues—including civil litigation, enforcement, and merger review and clearance.

CONTACTS

If you have any questions or would like more information on the issues discussed in this report, please contact any of the following:

Authors

Steven A. Reed	+1.215.963.5603	steven.reed@morganlewis.com
Noah J. Kaufman	+1.617.341.7590	noah.kaufman@morganlewis.com
R. Brendan Fee	+1.215.963.5136	brendan.fee@morganlewis.com
Joshua M. Goodman	+1.202.739.5418	joshua.goodman@morganlewis.com
Leonidas Theodosiou	+44.20.3201.5445	leonidas.theodosiou@morganlewis.com
Vincent C. Papa	+1.215.963.5324	vincent.papa@morganlewis.com
Y. Frank Ren	+1.202.739.5953	frank.ren@morganlewis.com
Caiti Zeytoonian	+1.617.341.7724	caiti.zeytoonian@morganlewis.com

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