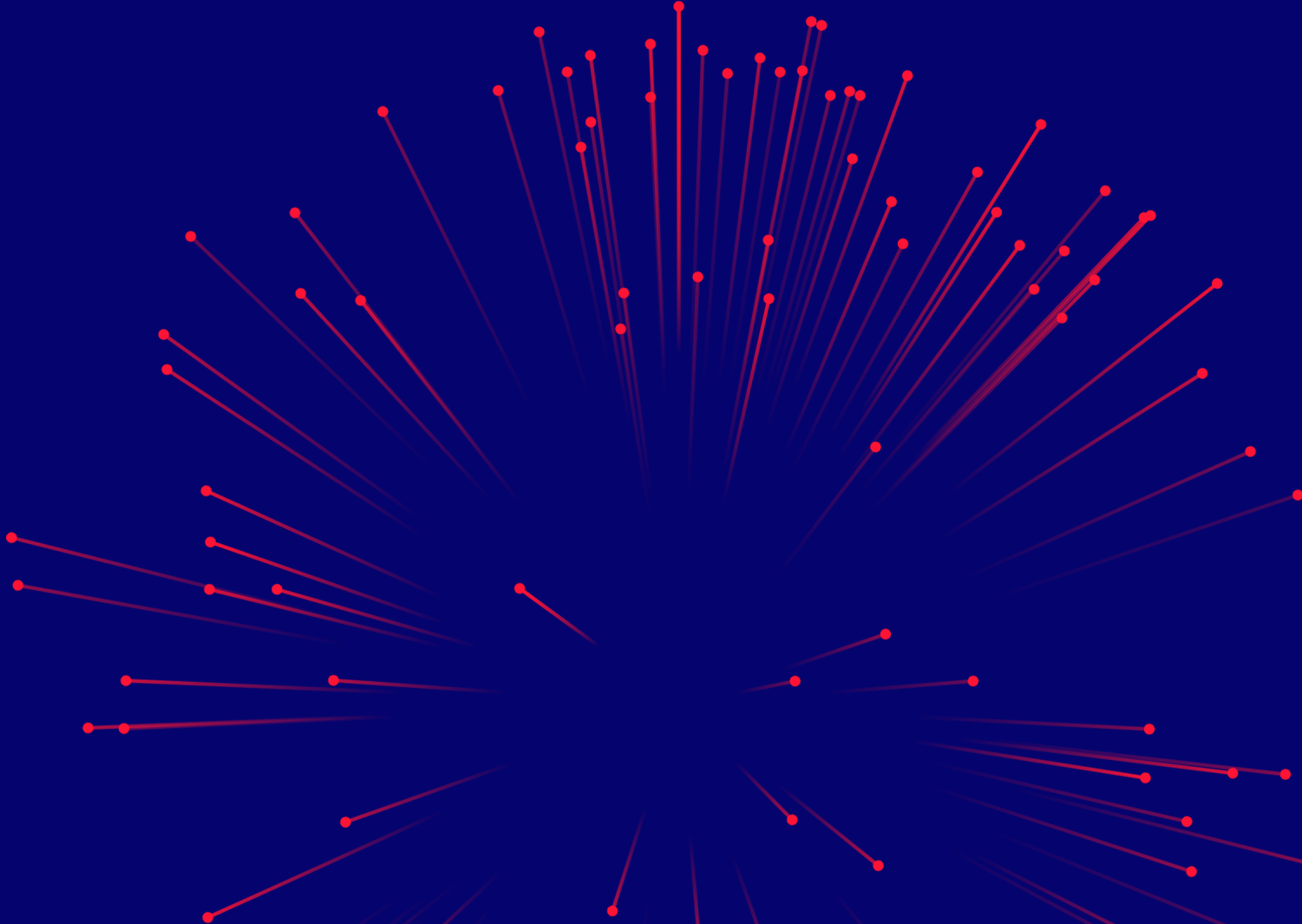


Legal Insights Antitrust Under the Trump Administration

A CLE webinar series

Jeremy Morrison



Antitrust Under Trump

- **Evolving Antitrust Landscape**
 - Key trends
 - Evolving set of antitrust enforcers
- **Non-Merger Enforcement**
 - Monopolization
 - Robinson-Patman Act
 - Algorithmic Pricing
- **Merger Enforcement**
 - Key trends and actions during the first year
- **Navigating the Remaining Years**

Evolving Antitrust Landscape

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Antitrust Under Trump

- **Return of more traditional pro-business wing of Republican party**
 - At start of 2025, view that populist wing may take hold, but that seems less likely
- **Continued merger enforcement, but traditional cases**
- **Politics take on a more leading role and influencing outcomes in some cases**
 - Expansion of prior administration's acceptance of politics in antitrust
 - “The welcoming of political intervention and the role of the lobbyist means that traditional methods of technical analysis count for less in the decision to prosecute.”

-William Kovacic, Professor of Law and former FTC Commissioner

Antitrust Under Trump

- **Evolving set of enforcers**

- Hard to hang onto a management job at DOJ Antitrust
 - July 2025: Roger Alford and William Rinner (top antitrust deputies) fired
 - February 2026: AAG Gail Slater forced out after just one year on job
- Significant FTC changes—no longer a bipartisan commission
 - Trump fired the two Democratic Commissioners; challenge by former Commissioner Slaughter with matter pending at Supreme Court
 - Recently nominated David MacNeil (CEO of WeatherTech) to fill open Republican seat

All Fired In First Year of Trump Administration



Non-Merger Enforcement Under Trump II

Cooley

Monopolization and Related Enforcement

- **Trump administration generally viewed as less aggressive in pursuing potential violations**
- **Monopolization Cases**
 - Apple case continues at DOJ
 - FTC went to trial against Meta (but lost); DOJ “won” Google challenges
 - Ticketmaster challenge??
- **Area where politics could play a larger role**
 - “Censorship” of conservative voices
 - Letter to Apple News
 - Letter to consumer packaged goods companies from Republican State AGs relating to “anticompetitive environmental groups”
 - Executive order “Addressing Security Risks from Price Fixing and Anti-competitive behavior in the Food Supply Chain



ATTORNEY GENERAL JAMES UTHMEIER LEADS MULTI-STATE COALITION PUTTING CORPORATIONS ON NOTICE OVER INVOLVEMENT WITH ANTICOMPETITIVE ENVIRONMENTAL GROUPS

Release Date Feb 10, 2026



The Robinson Patman Act

- **Mixed signals on Robinson Patman Act**

- Biden Administration Robinson-Patman challenges against Southern Glazer and Pepsi (December 2024 / January 2025)
 - FTC dismissed Pepsi challenge in July 2025
 - Southern Glazer's challenge continues

- **Where is Robinson-Patman Act heading?**

- Bipartisan support in Congress
- Commissioner Meador: “[i]t is imperative that the Federal Trade Commission vigorously enforce the antitrust laws, including the Robinson-Patman Act.”

United States Senate
WASHINGTON, DC 20510

The Honorable Pam Bondi
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

The Honorable Andrew Ferguson
Chairman
U.S. Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

January 20, 2026

Dear Attorney General Bondi & Chairman Ferguson:

We write to encourage the Department of Justice (DOJ) and the Federal Trade Commission (Commission) to look into potential discriminatory pricing and product supply practices that harm small and medium-sized businesses, particularly in the grocery industry. In addition to your investigative authority, we urge you to utilize all federal laws that empower you to bring enforcement actions against any discriminatory conduct that you may discover in violation of

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concerns that concentrated market power has caused downstream effects that unnecessarily disrupt the supply chain for small and medium-sized businesses.⁸ For example, there have been complaints about how the lack of competition and choice has forced small and medium-sized businesses, in particular independent grocers, to accept increasingly discriminatory terms and

¹ López, Rigoberto, Keenan Marchesi, and Sandro Steinbach. “Dollar Store Expansion and Independent Grocery Retailer Contraction.” *Applied Economic Perspectives and Policy*, (2024) <https://ageconsearch.umn.edu/record/329895>.

² Office of Advocacy, U.S. Small Business Administration, *2023 Small Business Profile: United States*, (2023) <https://advocacy.sba.gov>.

³ U.S. Bureau of Labor Statistics, *Business Employment Dynamics*, (2023) <https://www.bls.gov/bdm>.

⁴ Dima M. Qato et al., *Pharmacy Access in the United States: Geographic and Demographic Disparities*, 177 *JAMA Internal Med.* 138, 138–45 (2017).

⁵ Econ. Rsch. Serv., U.S. Dep’t of Agric., *Food Access Research Atlas*, <https://www.ers.usda.gov/data-products/food-access-research-atlas>.

⁶ Federal Trade Commission, *Feeding America in a Time of Crisis: FTC Staff Report on the U.S. Grocery Supply Chain and the COVID-19 Pandemic*, (Mar. 2024) <https://www.ftc.gov>.

⁷ *Id.*

⁸ Asil, Aslihan, *Can Robinson-Patman Enforcement Be Pro-Consumer?* (May 19, 2024). Available at SSRN: <https://ssrn.com/abstract=4833711> or <http://dx.doi.org/10.2139/ssrn.4833711>.

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Algorithmic Pricing

- **Focus on algorithmic pricing**
 - Price-fixing conspiracy claims against defendants who (1) share competitively sensitive information with a third-party software that (2) use that software to generate pricing recommendations
- **DOJ continues to aggressively investigate and challenge pricing algorithms**
 - “Using a common pricing algorithm can [violate the antitrust laws], even if the competitors do not always use the algorithm in the same way.”
 - DOJ claims parties do not have to share competitively sensitive data through the pricing algorithm, but competitors all choosing the same pricing mechanism *could* be enough to violate the antitrust laws as it reflects “coordination in the approaches to determine prices.” - DOJ Statement of Interest in *In re Multiplan Health Insurance Provider Litigation* (Mar. 27, 2025)
- **DOJ settled RealPage algorithmic case in November 2025**
 - Allegation that RealPage’s revenue management software used nonpublic, competitively sensitive information that was shared by landlords to set (or recommend) prices for those landlords
 - Settlement required RealPage to, among other things: cease using competitively sensitive information; use only historical data (12-months or older); provide pricing only for broad geographic data (state level); stop conducting market surveys of competitively sensitive data, etc.
- **Know your algorithm and the data it uses!**



M&A Enforcement Under Trump II

Cooley

M&A Under Trump II

- **Break from prior administration's reflexive hostility towards M&A**
 - Deals that don't raise risks under traditional theories typically obtaining quick clearance (including some early termination)
 - Shift away (rhetorically and in practice) from "taxing" M&A, "sand in gears"
- **But not a free pass**
 - Agencies continuing to bring enforcement actions
 - FTC: litigated two medical device deals with two challenges pending
 - DOJ: obtained significant remedies in several cases
 - Enforcement largely focused on traditional theories of harm – horizontal overlaps, standard vertical foreclosure concerns
 - Retained 2023 Merger Guidelines but not pursuing aggressive theories
 - Retained new HSR form
 - But, recently struck down by a district court
- **Merger remedies back on table**
- **Politics influencing outcomes in some cases**

"If we think [a] merger is going to hurt Americans economically, I'm **taking you to court.** But if we don't, **we'll get the hell out of the way.**"

-- *FTC Chair Ferguson*

"The vast majority of mergers **do not give rise to competitive concerns**, and in those cases, **we aim to get out of the way quickly.**"

-- *Former AAG Slater*



2025 Litigated Merger Challenges



- Horizontal theory involving two pre-commercial product candidates
- Two firms in clinic with devices to treat TAVR-AR: JenaValve and JC Medical
- On July 22, Edwards acquired JC Medical (non-reportable); on July 23 Edwards agreed to acquire JenaValve
- Earlier this month FTC obtained PI; Edwards has now announced it will abandon
- JenaValve due a \$45M RTF; has also suggested it will sue for fraud / breach

- Horizontal theory involving two leading products in FTC's defined market
- FTC alleged deal would combine the #1 and #2 competitors in outsourced hydrophilic coatings with 50%+ share
- After FTC sued, GTCR proposed to divest certain assets of Biocoat; FTC argued partial divestiture insufficient to restore lost competition
- Court found divestiture sufficient to mitigate competitive harms
- Key testimony from divestiture buyer than it was obtaining everything it needed

Return of Merger Remedies

- **Biden enforcers highly skeptical of remedies, typically sought to litigate to block deals rather than settle**
 - Led to marked increase in parties “litigating the fix” and increasing acceptance from the courts
- **DOJ/FTC have reversed this policy and settled multiple significant mergers, primarily with structural (divestitures)**
 - Former AAG Slater: DOJ “willing to settle merger reviews with targeted and well-crafted consent decrees”
 - Chair Ferguson: “A settlement may be the best way to protect competition in some cases”
- **Even if agency does not accept remedy, optionality to litigate the fix (e.g., GTCR / Surmodics)**

Agencies most likely to accept structural remedies involving a standalone or discrete business, assessing factors such as:

- Whether line of business is viable in hands of divestiture buyer
- Whether divestiture buyer has incentive and ability to compete
- Absence of problematic ongoing entanglements

Political Influence in M&A Review

- **Increasing allegations political influence determining outcomes, so far primarily at DOJ**
- **Ongoing Tunney Act proceedings scrutinizing HPE / Juniper settlement**
 - Complaint alleged harms in enterprise segment, but remedy only included divestiture of business targeting smaller companies
 - AAG Slater reportedly rejected settlement but was overruled by AG's office and two deputies fired for "insubordination"
 - Ongoing Tunney Act proceedings; 13 states have intervened, allege settlement was product of undue influence by lobbyists
- **Other high-profile mergers with facial risks have been cleared by DOJ without significant investigation (e.g., Compass / Anywhere)**

Robert Barnes [@barnes_law](#) · Jan 10

A consistent problem: [@mrddmia](#) & [@ArthurSchwartz](#) corrupting policies at [@TheJusticeDept](#) as they take \$1M each from big corporations to scuttle anti-trust cases. In order to get new clients, they then leak it to the press, but fool admin that DOJ leaked.

From wsj.com

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[Mike Davis](#) [@mrddmia](#)

A. Your statement is false and defamatory.

B. An attorney effectively representing his legal client is now corruption?

C. You're truly a moron, [@barnes_law](#). It's not even worth my time and money pursuing legal lowlives, like you.

Now that [@ChadMizelle47](#) has made it clear that he is open for business at the DOJ to the highest bidder, other consultants are now putting big price tags on their lobby efforts to influence the DOJ to settle even more anti-Trust cases.

Sources reveal that after hearing a consultant go around bragging they allegedly received a \$1 million payout for the [@HPE](#) settlement, influence peddlers in DC are now asking for \$1 million plus to make the DOJ's anti-Trust case against [@Ticketmaster](#) go away. I'm told

[I]t is my opinion that in the HPE/Juniper merger scandal Chad Mizelle and [Associate Attorney General nominee] Stanley Woodward perverted justice and acted inconsistent with the rule of law. I am not given to hyperbole, and I do not say that lightly. As part of the forthcoming Tunney Act proceedings, it would be

The head of the Justice Department's antitrust division, Gail Slater, wanted to launch an extended review of the merger to weigh whether it was anticompetitive, the people familiar with the matter said. Compass and its lawyers appealed above her, to the office of Deputy Attorney General Todd Blanche, arguing that any worries could be addressed without an investigation. Blanche's office agreed, the people said.

Trump Priorities Influencing Some Merger Review

- **Most M&A enforcement has followed traditional antitrust doctrine, but notable instances of partisan influence**
- **Omnicom/IPG: FTC alleged deal would make the market for media buying services “more concentrated,” “increas[ing] the risk of coordination among the remaining firms”**
 - Consent prohibits combined company from coordinating with other agencies to direct ad spending based on political viewpoints, refuse client requests based on publisher’s political content, or create or use “exclusion lists” based on political criteria
 - Critiqued by some as abuse of antitrust to achieve political goals
 - Deal cleared unconditionally by EC

“The prohibited behavior is limited to **‘the supreme evil of antitrust’**— collusion with other firms and the creation of pre-made ‘exclusion lists’ to encourage advertisers to join de facto boycotts coordinated by advertising firms and other third parties. . . . I hope the conditions imposed on this merger **will encourage all advertising firms to adopt similar practices** and thereby reduce the temptation to collude to the detriment of their customers, independent journalists, small and independent media companies, consumers, and the American public square.”

-- FTC Chair Ferguson

Evolving M&A Structures Coming Under Scrutiny

Novo / Metsera

- NN sought to mitigate antitrust risks in topping bid with a structure to pay ~\$6.5B at *signing* for 50% Metsera non-voting equity (thus no HSR upfront) to be disbursed as a dividend + CVRs up to \$2.5B issued at closing to avoid antitrust delay
- FTC took unusual step with written correspondence alleging structure may be a device for avoidance, and certain covenants (cap on capex, ability for Metsera to retain employees, etc.) raised gun-jumping concerns. FTC also reportedly told Metsera it would sue

“Acquihires”

- Multiple recent transactions – particularly in AI – where large tech firms have hired key employees and obtained non-exclusive license to IP
- Structure on face does not require HSR – no HSR for hiring employees, no HSR for acquiring non-voting shares, no HSR for acquiring non-exclusive license
- Agencies have expressed significant concerns these structures (a) unlawfully evade HSR and (b) raise substantive antitrust issues (e.g., consolidating entrenched power)
- Chair Ferguson earlier this month indicated FTC is reviewing multiple deals; argued this structure is unnecessary because “You’ll get a fair shake at the FTC,” and indicated FTC may be issuing “additional guidance here in the coming months”





Other Trends and the Road Ahead

Other Antitrust Developments in 2025

- **Growing state involvement in merger review**
 - Washington and Colorado passed laws requiring parties to concurrently submit HSR filings to the state AG if certain state-specific thresholds are met; additional states may follow
 - Not suspensory; no new enforcement powers; but raises specter of more state AG investigations / coordination with federal enforcers
 - Letter to CPG companies from State AGs
- **FTC operating with 2 Republican Commissioners**
 - Parties continue to challenge FTC structure as unconstitutional
 - FTC's most recent challenge (against Henkel / Liquid Nails) filed in federal court only seeking permanent injunction, rather than a PI pending administrative trial under FTC's 13(b) standard
 - Chairman Ferguson confirmed he intends to seek permanent injunctions rather than bring cases through administrative process going forward



What to Expect in 2026-2028



- **Enforcement focused on industries that can gain political points**
 - Healthcare, technology, consumer packaged goods
- **States continue take a more leading role**
 - “Fill the gap” in enforcement (e.g., California and other Democratic AGs)
 - Push MAGA or conservative positions (e.g., Florida, Texas and other Republican AGs)
- **Expect the unexpected**
 - Politics can change quickly as can who is in favor or not



Cooley

Thank you.

