Cooley

2026 Antitrust Outlook: Learnings From the First Year of 'America First' Enforcement

February 19, 2026

Following the transition to the second Trump administration, the Department of Justice (DOJ) and Federal Trade Commission (FTC) pivoted toward a more "business-friendly" posture in many respects, while pursuing other aggressive theories of harm, reminiscent of the Biden-era antitrust enforcers.

The strategic shift toward an "America First Antitrust" policy in 2025 prioritized the "pocketbook" interests of Americans. In this review, we first explore the principles underlying the policy and analyze how these positions have a surgical approach to labor market competition and have fueled investigations into "tech censorship." Second, we assess the state of a more deal-friendly merger environment, highlighting the return of structural remedies and early termination of certain review periods, though the agencies remain ready to litigate where remedies may not resolve the competitive concerns. Finally, we address the rising influence of state-level oversight, examining how state attorneys general and legislatures are filling perceived federal gaps through independent litigation, along with the enactment of "mini-HSR" (Hart-Scott-Rodino Act) and anti-algorithmic collusion laws.

'America First Antitrust': Policy shifts in 2025

With the introduction of the "**America First Antitrust**" policy, the second Trump administration emphasized an enforcement regime rooted in values designed to center the interests of average American workers and consumers by focusing on "pocketbook" or "kitchen-table" industries – sectors like housing, healthcare, groceries and transportation that directly impact daily life.

The origin of the term, "America First Antitrust" policy, is an early speech from now former DOJ Antitrust Assistant General Gail Slater, and so it is less clear how relevant the principles will be going forward. Even so, we can look to White House policy and enforcement actions at both the DOJ and FTC as useful bellwethers for what to expect going forward. For example, the White House directed the DOJ to investigate major meatpacking companies for potential price fixing, while the DOJ and US Department of Agriculture formalized a partnership to increase competition in agricultural inputs, like seeds and fertilizer. The FTC and DOJ have also continued their Big Tech cases. Indeed, FTC Commissioner Mark Meador shared his view that Big Tech has become as much of a kitchen-table issue as groceries or housing. Other priorities at the FTC and DOJ include protecting labor competition for workers and consumers against censorship.

Labor markets: Case-by-case enforcement over rulemaking

Labor competition remains squarely on the antitrust agencies' radar as they pivot their strategy from rulemaking to targeted enforcement. Skeptical of what FTC Chairman Andrew Ferguson perceived to be the regulatory nature of the Biden-era's noncompete rulemaking, the FTC under the new Trump administration withdrew its appeal of a district court decision blocking the agency's enforcement of the noncompete rule. The FTC since announced a new **Joint Labor Task Force**, which aims to "root out" anticompetitive labor practices like noncompete, no-poach and no-hire agreements.

Censorship of speech as competitive harm

Under Ferguson, the FTC launched a probe into alleged collusion and coordinated boycotts among media and advertising firms. The investigation focuses on whether these entities have conspired to "ban," "shadow ban" or "demonetize" (e.g., by withholding advertising funds) certain publishers based on political or ideological content.

These concerns are featured in the FTC's enforcement action in **Omnicom/IPG**. In that matter, the FTC alleged that Omnicom's $13.5 billion acquisition of IPG reduced the "impediments to coordinating the placement of advertisements, monitoring [other media buying services], and punishing one another for taking actions that

harm them collectively." The FTC's complaint cited a "history of coordination" in the advertising industry, including agencies working through industry associations to potentially boycott media publishers. The final consent order prohibited the 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.

According to court filings, the FTC is actively investigating other parts of the media advertising industry as well. The investigation came to light in a dispute between the FTC and **Media Matters for America (MMfA)**. In June 2025, MMfA filed for an injunction barring the FTC from enforcing a civil investigative demand (CID) issued to MMfA, alleging that the CID is unconstitutional. In August 2025, a district court granted a preliminary injunction, halting the FTC's investigation, which was affirmed by an appellate court in October 2025. In the briefing, the FTC claimed that the MMfA CID is "one of seventeen [at the time] outstanding CIDs" issued as part of the FTC's investigation into whether "entities have conspired to withhold, degrade, increase the cost of, or otherwise diminish the quantity of advertising placed on news outlets, media platforms, or other publishers in violation of [the antitrust laws] under the guise of promoting 'brand suitability' and 'brand safety' against 'misinformation.'"

Deal-friendlier merger enforcement in Trump 2.0

Moving away from the more aggressive posture of the Biden administration, the current administration has ushered in a more deal-friendly era. Key differences include a commitment to regulatory speed for nonproblematic deals and a renewed willingness to consider structural remedies to resolve competitive concerns.

'Getting out of the way' of nonproblematic deals

Ferguson summarized his view on merger enforcement: "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." Echoing this sentiment, the DOJ has also prioritized expediting reviews and redirected agency resources to identify those deals quickly and clear them without unnecessary delay.

A significant procedural update, which had been set in motion by the Biden administration, was the return to the practice of granting "early terminations" of statutory waiting periods under the HSR Act. Historically, early termination had been granted in about 80% of transactions where it was requested. There is not yet sufficient data available to assess if the cadence is similar.

Revival of structural remedies

A welcome development for dealmakers in 2025 was the return of merger remedies, often involving divestiture. Unlike the previous administration, which viewed remedies with skepticism and increasingly preferred litigation (though it did enter into some consents despite the rhetoric), current regulators are more open to addressing concerns with structural remedies in settlements.

In 2025, the DOJ and FTC brought 12 enforcement actions challenging mergers, nine of which resulted in consent orders. The agencies have tended to prefer divestitures, as reflected in the consents in **Boeing/Spirit**, **ACT/Giant Eagle** and **Synopsys/Ansys**, while a few other settlements involved behavioral remedies, as in **Omnicom/IPG**.

But the agencies are willing to litigate

While the environment is undoubtedly more hospitable to M&A, the agencies have not abandoned their enforcement mandate. In cases where they believe a proposed transaction is insufficient, including any proposed remedies, they remain willing to go to trial. In 2025, the FTC litigated two large life sciences deals with mixed success.

In **GTCR/Surmodics**, the FTC attempted to block a $627 million medical device merger, alleging that Biocoat, a majority stake of which is owned by GTCR, and Surmodics are the two largest players and frequent head-to-head competitors in the highly concentrated hydrophilic coating market, and that the acquisition would result in a combined market share of more than 50%. The agency rejected the merging parties' proposed divestiture of key Biocoat assets to a medical device manufacturer, Integer, as "falling significantly short of protecting

competition."

A federal court denied the FTC's request for a preliminary injunction, rejecting the FTC's argument that a divestiture must "negate the anti-competitive effects […] entirely" or fully restore the market to its pre-merger state. Instead, the court ruled that the merging parties are only required to show that a divestiture "sufficiently mitigates" a merger's anticompetitive effects. The court further rejected the idea that a remedy is inadequate simply because it is a partial divestiture rather than the sale of a complete, stand-alone business. Here, the court found that the specific Biocoat assets proposed to be divested were sufficient when combined with Integer's existing capabilities. The court further noted that such divested assets would fill an "important capability gap" for Integer, making it an "exceptionally well-qualified" buyer. It concluded that adding these Biocoat assets would allow Integer to serve as a "one-stop shop" for the manufacturing and application of medical coatings, making it a viable competitor.

In **Edwards/JenaValve**, the FTC filed suit to block Edwards' proposed $945 million acquisition of JenaValve, alleging that JC Medical, a company acquired by Edwards days before the announcement of the Edwards-JenaValve deal, and JenaValve are the only two companies with ongoing clinical trials for transcatheter aortic valve replacement (TAVR-AR) devices used to treat aortic regurgitation, and that this deal would "eliminate the vigorous head-to-head competition" between them. In January 2026, the court ruled in favor of the FTC, despite neither product yet being on market, finding that the merger would create a monopoly in the market for research, development and commercialization of transfemoral TAVR-AR devices. The court notably identified the loss of innovation competition in the development of these devices as a cognizable Section 7 harm, relying on the US Court of Appeals for the Fifth Circuit's 2023 decision in **Illumina** that similarly identified competitive harm in a research and development market, in the context of a vertical merger. Edwards and JenaValve have since abandoned the deal. The decision is notable in that it marks the first successful antitrust agency action in recent history to block a merger of two pre-commercial products, as compared to most litigated merger challenges that involve marketed products.

State attorneys general aim to supplement federal enforcement

In 2025, state attorneys general and legislatures made moves to expand their role in antitrust oversight to fill the perceived gaps at the federal level. State legislatures also passed additional laws to expand the role of state laws in antitrust enforcement.

Rise of 'mini-HSR' laws

States have moved to enact their own premerger notification laws. Washington and Colorado led this wave, becoming the first states to implement state laws modeled after the **Uniform Antitrust Pre-Merger Notification Act**, requiring contemporaneous state-level notices for any deal triggering federal HSR thresholds that also meet state-specific thresholds. Several other states are considering doing the same.

Targeting 'new frontier' anticompetitive conduct in algorithmic pricing

States are also focusing on conduct enforcement, including in algorithmic pricing. In January 2025, the DOJ, joined by 10 states, filed an amended complaint against **RealPage**, alleging that RealPage's algorithmic software enabled landlords to coordinate rental prices and artificially inflate rents for millions of tenants. In November 2025, the DOJ and RealPage reached a settlement that imposes restrictions on RealPage's use of competitors' nonpublic, competitively sensitive information (e.g., active lease data) to generate real-time rental price recommendations. However, the state enforcers that had joined the DOJ's complaint refused to sign onto the federal settlement and reserved the right to continue their own legal challenges, signaling that the states did not find the relief to be sufficient. Certain states that had not originally joined the DOJ-led suit – including Arizona, Maryland and New Jersey – are also pursuing independent lawsuits against RealPage, alleging that its algorithmic pricing tools facilitated illegal rent-fixing schemes.

California also enacted the **Preventing Algorithmic Collusion Act (AB 325)**, which went into effect on January 1, 2026. AB 325 amends the **Cartwright Act**, California's primary antitrust statute, to establish two primary causes of action in relation to the use of pricing technology:

1. Use or distribution of artificial intelligence pricing technology that uses competitor data to set or influence

prices (“common pricing algorithm”) as part of a contract, combination or conspiracy to restrain trade.
2. Use or distribution of a common pricing algorithm if the user coerces another party into setting or adopting a recommended price or commercial term for the same or similar products or services.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

Megan Browdie **Washington, DC**	**mbrowdie@cooley.com** **+1 202 728 7104**
Jennifer C. Ok Washington, DC	jok@cooley.com +1 202 728 7082
David Burns Washington, DC	dburns@cooley.com +1 202 728 7147

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.