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Vertical Agreements and Dominant Firms 2026

A practical cross-border resource to inform legal minds

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Q&A Chapters

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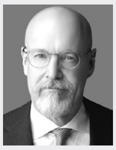

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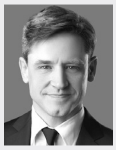

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1 General

1.1 What authorities or agencies investigate and enforce the laws governing vertical agreements and dominant firm conduct?

In the U.S., two separate federal agencies investigate and enforce the laws governing vertical agreements and dominant firm conduct: the Antitrust Division of the Department of Justice (DOJ); and the Federal Trade Commission (FTC). State Attorneys General and private plaintiffs may also bring actions under the federal antitrust laws or state equivalents. Although State Attorneys General have grown more active in enforcing state and federal antitrust laws against vertical agreements, the variances and nuances of individual state laws are outside the scope of this chapter. The following responses will focus primarily on federal antitrust laws and enforcers.

The DOJ's Antitrust Division is led by an Assistant Attorney General (AAG) appointed by the President and confirmed by the Senate. Division staff are assigned to various civil sections located in Washington, D.C.: Anti-Monopoly and Collusion Enforcement; Defence, Industrials, and Aerospace; Financial Services, Fintech, and Banking; Healthcare and Consumer Products; Media, Entertainment, and Communications; Technology and Digital Platforms; and a Transportation, Energy, and Agriculture section. There are also several criminal sections, an appellate section, a policy section, and an economic analysis group. Further, the Antitrust Division has three regional offices focusing on criminal enforcement in the following cities: Chicago; New York; and San Francisco.

The FTC is led by a commission of up to five commissioners, with each commissioner appointed by the President and confirmed by the Senate to a staggered seven-year term. No more than three commissioners may be from the same political party. The President also designates the Chairman of the Commission. The FTC's Bureau of Competition has several enforcement divisions located in Washington, D.C.: Mergers I, II, III, and IV; Health Care; Technology Enforcement; American Competition Enforcement; and Anticompetitive Practices. The FTC also has consumer protection and economics bureaus, and regional field offices in the following cities: Atlanta; Chicago; Cleveland; Dallas; Los Angeles; New York; San Francisco; and Seattle.

1.2 What investigative powers do the responsible competition authorities have?

The DOJ and FTC both have the power to issue subpoenas and civil investigative demands (CIDs) for documents, data, and testimony prior to filing a complaint. The agencies may seek information from targets of investigations as well as potentially relevant third parties. In addition to the use of compulsory process, the agencies frequently request information on a voluntary basis.

Within the DOJ, a CID must be approved by the AAG in charge of the Antitrust Division. At the FTC, the Commission generally must first vote to approve the compulsory process to investigate a matter or category of conduct. In 2022, however, the FTC passed omnibus resolutions removing the need for a full Commission vote for three broad categories of investigations, specifically those regarding collusive practices, acquisitions and transactions, and the car rental industry. In 2023, the FTC expanded these categories to include products and services that use or are produced using AI or that purport to detect the use of AI. Individual CIDs and subpoenas must be signed by a commissioner assigned to review such requests. This duty rotates among the commissioners.

1.3 Describe the steps in the process from the opening of an investigation to its resolution.

The antitrust agencies frequently open an investigation in response to a complaint by a party claiming to be injured by the conduct at issue or another interested party. The agencies may also initiate investigations based on information obtained from press reports, foreign antitrust authorities, and congressional oversight committees, or other information. In recent years, the agencies have also, at times, signalled an interest in deploying investigative tools in service of broader presidential policy priorities beyond traditional competition policy – sometimes including initiatives touching on corporate ESG- and DEI-related practices – although the extent to which such initiatives translate into sustained antitrust enforcement varies across administrations.

The agencies often begin an investigation with a voluntary request for information; however, they may also use subpoenas and CIDs to obtain information and conduct investigational hearings or depositions.

If the agency staff believe there is sufficient evidence to prove a violation after reviewing the investigation materials, the staff issue a recommendation to the decision-maker at the agency. At the FTC, final decisions are made by a quorum of the current commissioners, who vote on whether to bring an enforcement action. At the DOJ, the AAG in charge of the Antitrust Division generally makes final enforcement decisions.

Settlement is a common outcome of federal investigations; however, the agencies also have the power to prosecute claims through litigation. Both agencies can file an enforcement action in the federal district court; however, the FTC also has the option of filing for administrative adjudication before an administrative law judge (ALJ). State Attorneys General may join claims brought by the DOJ and the FTC in a federal court, but such enforcers may not join administrative actions brought by the FTC in administrative court.

1.4 What remedies (e.g., fines, damages, injunctions, etc.) are available to enforcers?

U.S. antitrust enforcement authorities can seek equitable relief in the form of injunctions against anticompetitive conduct. In addition, the DOJ may seek restitution for parties injured, or disgorgement of ill-gotten gains. In 2021, the Supreme Court ruled that the FTC does not have the authority to seek equitable monetary relief such as disgorgement or restitution under Section 13(b) of the FTC Act. Efforts to expand the FTC's authority in respect of monetary remedies have continued to be debated from time to time, but Congress has yet to enact a broad restoration of Section 13(b) monetary authority. Under the Sherman Act, the DOJ may also recover treble damages for injuries suffered by the U.S. as a consumer. Both agencies also may seek fines or civil penalties for certain violations of existing consent decrees or orders.

Additionally, the DOJ has the power to prosecute criminal violations under the antitrust laws; however, the FTC does not. Although criminal enforcement of the Sherman Act has historically been limited to *per se* violations of Section 1, the DOJ has recently pursued a small number of criminal Section 2 cases – primarily alongside Section 1 charges and involving horizontal conduct – without any judicial rulings on the merits. Vertical conduct remains unlikely to face criminal enforcement, as it is commonly assessed under the rule of reason, which generally applies to all conduct that is not *per se* unlawful (see question 2.5). The remedies available to State Attorneys General are similar, although may exceed those available to federal authorities in some instances.

1.5 How are those remedies determined and/or calculated?

Injunctive, behavioural, or structural relief is devised to address the alleged harm directly. For example, an agreement found to be anticompetitive may be invalidated. If a firm is found to be abusing monopoly power, it may be forced to divest assets or divide its business.

Monetary damages are determined after calculating an estimate of the harm caused by the agreement or conduct. Various measures may be used, such as overpayment by consumers, ill-gotten profits by the defendant, etc. Under the Sherman Act, these amounts can then be trebled.

1.6 Describe the process of negotiating commitments or other forms of voluntary resolution.

At any point during an investigation or enforcement action, the company under investigation can propose a settlement with the agency staff. The staff will evaluate whether the settlement addresses the competitive concerns, and the final decision is made either by a majority of the commissioners at the FTC or the AAG at the DOJ, depending on which agency is conducting the investigation/instituting the enforcement action. Settlements with the DOJ are often implemented through the issuance of a consent decree filed in a federal court, whereas settlements with the FTC are referred to as consent orders issued by the FTC. DOJ consent decrees must be reviewed and approved by a federal court and are subject to a 60-day comment period required by the Tunney Act. The FTC is not required to seek approval from a federal court; however, a proposed order must receive preliminary approval by the Commission and then be published for a public comment period of at least 30 days before the Commission grants final approval. In March 2026, Senator Amy Klobuchar, joined by several Democratic senators, introduced the Antitrust Accountability and Transparency Act amid concerns that certain recent antitrust settlements between parties and DOJ have lacked sufficient transparency and scrutiny. The proposed legislation would amend the Tunney Act by imposing a minimum 15-day hold separate obligation on the parties, enhancing disclosure obligations, extending similar review to FTC settlements, and expanding opportunities for public and state-level participation.

Settlements vary based on the alleged conduct; even so, vertical settlements can include: a cease-and-desist order; fencing-in provisions to prevent a recurrence of the conduct; monitoring or reporting requirements; and, potentially, divestments. The agencies view a well-drafted settlement as an avenue to maintain or restore competition without using the time and resources required for litigation.

1.7 At a high level, how often are cases settled by voluntary resolution compared with adversarial litigation?

Regarding a non-merger context, as discussed in question 1.3, settlement is a common outcome for investigations concerning vertical conduct. However, notable exceptions have involved the "big tech" companies, discussed further in question 3.16. Regarding mergers, both the FTC and the DOJ have the power to file suit to block a deal if they conclude that a merger may have the tendency to substantially lessen competition. Because such litigation is costly and time-consuming for the merging parties, the agencies have enormous leverage to negotiate a voluntary fix of any problematic overlap areas, e.g., via divestiture or by consent decree/order. Therefore, cases are far more likely to settle via voluntary resolution than via adversarial litigation. For example, the *AT&T/Time Warner* case filed in 2019 was the first vertical merger case litigated to decision since 1977. Since then, however, the federal agencies have brought several enforcement actions against pending or completed deals, which are discussed further in the responses to questions 1.16 and 3.16.

The current leadership of the DOJ and the FTC have sought to distinguish themselves from the aggressive approach of their predecessors. Chair Ferguson stated that "pro-competitive M&A can pass through [FTC review] quickly with certainty, and it's the anticompetitive stuff we move with equal alacrity to stop". Acting AAG Assefi, meanwhile, has emphasised that the Antitrust Division is open to "genuine discussion about what it would take to let the merger go through" but that "the threat of litigation is real" if a party is "not willing to meet us where we are at on the settlement". Chair Ferguson further contrasted his intended approach to that of prior FTC Chair Lina Khan, whose enforcement priorities were, he argued, characterised by a commitment to litigation over negotiated settlement. The FTC's loss in its vertical challenge to Tempur Sealy's acquisition of Mattress Firm (with the district court denying a preliminary injunction in February 2025) and the FTC's subsequent dismissal of its administrative complaint in April 2025, as described further in response to question 1.16, underscores the practical importance of the willingness of parties to litigate market definition and effects theories in vertical matters.

1.8 Does the enforcer have to defend its claims in front of a legal tribunal or in other judicial proceedings? If so, what is the legal standard that applies to justify an enforcement action?

Yes; in the U.S., the competition agency must prove a violation of law before a federal judge or an ALJ (in the case of the FTC) in order to obtain relief other than negotiated settlement. The DOJ may file suit in any federal district court of appropriate jurisdiction. The FTC may sue in either a federal district court or before an ALJ, although Chair Ferguson recently stated an intent to file merger challenges solely in the federal district court to align the process with that of the DOJ.

In order to file a complaint, staff in the Antitrust Division must get approval from the AAG. FTC staff submit recommendations to the Commission, which then formally votes on whether to file a complaint. When an agency brings civil claims in the federal district court, it must prove its case by a preponderance of the evidence. For FTC administrative trials, the agency must prove that its claims are supported by substantial evidence. For DOJ criminal matters, enforcement actions are brought in the federal district court, and the DOJ must prove its case beyond a reasonable doubt.

In 2023, the U.S. Supreme Court decided a case that challenged the regulatory and enforcement structure of the FTC's administrative court process. In *Axon Enterprise, Inc. v. Federal Trade Commission*, 598 U.S. 175 (2023), plaintiff Axon Enterprise claimed the FTC's in-house administrative proceedings violated its due process and equal protection rights and the agency's administrative law judge was unconstitutionally protected from removal. The Supreme Court limited its review to the question of whether federal district courts have jurisdiction over constitutional challenges to the FTC's structure, procedures, and existence. In a unanimous ruling, the Court held that the statutory review process established by the FTC Act does not displace a federal district court's jurisdiction to adjudicate challenges to the FTC's constitutionality. The Supreme Court ruling did not address the merits of Axon Enterprise's constitutional claims, and subsequent district court challenges have had mixed results; for example, in *Meta Platforms, Inc. v. FTC* (D.D.C.), the court denied preliminary injunctive relief and rejected Meta's constitutional challenges to an FTC administrative modification proceeding in March 2024. Meanwhile, other structural challenges to FTC administrative adjudication continue to be litigated in various procedural postures.

1.9 What is the appeals process?

The appropriate appeals process depends on where the enforcement action was filed. Actions filed in the federal district court are appealable to the appropriate court of appeals under the federal rules. The district court's findings of fact are reviewed under a "clearly erroneous" standard, and conclusions of law are reviewed *de novo*.

In the case of an FTC action in front of an ALJ, the decision is appealable to the full Commission. In this role, the commissioners act as judges and conduct a *de novo* review of the facts and the law. A company can appeal the Commission's final decision to a federal court of appeals within 60 days of the issuance of the order. The standard of review for the Commission's decision is more deferential than that applied to district court judgments. The Commission's facts are reviewed under the lenient "substantial evidence" standard, whereby findings are conclusive if supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion". *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 477 (1951). The Commission's conclusions of law are generally reviewed *de novo* but are traditionally given deference to the extent the agency is interpreting a statute the agency administers, such as the FTC Act. The Supreme Court recently reduced the level of default deference afforded to an administrative agency's interpretation of the statutes it administers in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). The new holding has already been invoked in challenges to FTC competition rulemaking, including litigation over the FTC's 2024 Non-Compete Clause Rule, which was permanently enjoined by a federal district court in August 2024. It remains to be seen whether *Loper Bright* will have any broader impact on the FTC's competition authority in adjudication or merger review.

1.10 Are private rights of action available and, if so, how do they differ from government enforcement actions?

Private rights of action for violations of the federal antitrust laws are available under Section 4 of the Clayton Act, which states that any person injured by reason of a violation of the antitrust laws may file a lawsuit in a federal court. The Clayton Act enables successful private plaintiffs to recover treble damages, including costs and attorney's fees. Under Section 16 of the Clayton Act, a private plaintiff may also seek injunctive relief for threatened loss or damage caused by violation of the antitrust laws. Plaintiffs must demonstrate antitrust injury, meaning injury of the type that the antitrust laws were intended to prevent. Under the *Illinois Brick* case (*Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977)), only direct purchasers have standing to recover antitrust damages in a federal court; however, indirect purchasers may be able to seek equitable relief. State Attorneys General enforce the state antitrust laws, but they may also bring what are essentially private actions under the federal antitrust laws to seek injunctive relief or money damages. Private parties often bring claims under the state antitrust laws in addition to the federal statutes. State standing law often differs from the federal antitrust law, most notably in that a majority of states expressly permit indirect purchasers to recover damages under their antitrust statutes.

1.11 Describe any immunities, exemptions, or safe harbours that apply.

There are very few immunities, exemptions, or safe harbours that apply; however, courts generally uphold vertical agreements that foreclose less than 20% of the market. There are several limited exemptions to antitrust law that could be relevant to vertical agreements or dominant firms such as the State Action Doctrine (exempting certain actions that are the intentional or foreseeable result of state policy), the *Noerr-Pennington* immunity (exempting collaboration in good-faith efforts to petition government entities or influence legislative and administrative processes), the filed-rate doctrine (exempting rates that are filed and approved by a government regulator from civil antitrust attack), and the statutory and non-statutory labour exemptions (exempting the functions of labour unions and collective bargaining agreements from federal antitrust laws).

In addition, there are few industry-specific immunities and exceptions to the antitrust laws. One of the most well-known is the baseball exemption established over 100 years ago in *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922). Legislation has been proposed to eliminate this exemption, and the DOJ issued a Statement of Interest in a civil case, arguing that the exemptions should be read narrowly and apply only to "conduct that is central to providing professional baseball games to the public". There are other limited exemptions for certain activities in regulated industries such as agriculture, financial institutions, and others, but these are narrow exemptions and highly fact specific.

The McCarran-Ferguson Act, which explicitly conferred to the states the ability to regulate the business of insurance, was amended in January 2021 to clarify that the business of insurance would not be exempted from federal antitrust law.

1.12 Does enforcement vary between industries or businesses?

As noted above, the DOJ and FTC share enforcement of the antitrust laws in the U.S. In order to coordinate their overlapping jurisdiction, the two agencies have agreed upon a "clearance" process, by which each agency seeks clearance from the other prior to opening a new investigation. In addition, in order to facilitate the development of industry expertise and speed up the clearance process, the agencies have informally agreed upon a division of industries.

Occasionally, a merger or conduct investigation arises in which it is not immediately apparent which agency is best suited to handle the matter. In these cases, the back-and-forth between the agencies for clearance can drag on.

While it is uncommon for the FTC and DOJ to have significant disagreements over enforcement policy, variations in emphasis, priorities, and remedies sought may arise, especially as political administrations change. The enforcement priorities of the DOJ may change more rapidly since it is headed by a single presidential appointee that can change immediately with each presidential election.

Nonetheless, the two agencies frequently collaborate on antitrust policy guidance and agreements with foreign jurisdictions.

1.13 How do enforcers and courts take into consideration an industry's regulatory context when assessing competition concerns?

The regulatory environment informs antitrust enforcement in an industry in two ways. First, the incentives, restrictions, and requirements imposed by regulations play an important role in how the agencies understand the competitive dynamics of the market. Whether or not a given course of conduct or agreement is exclusionary or anticompetitive will in large part depend on whether regulations require or amplify the effects of the act in question. For example, in the pharmaceutical industry, legal challenges to "reverse payment" agreements are heavily informed by the regulatory framework put in place by the Hatch-Waxman Act.

At the same time, there is a generally recognised principle that competition policy and regulation should be complementary. Where regulations attempt to govern the competitive dynamics of an industry, antitrust enforcers and courts will be more reticent to add competition oversight on top of this. See, for example, *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko*, 540 U.S. 398 (2004).

Second, the federal antitrust enforcers will also consider possible statutory or implied antitrust exemptions under certain regulatory schemes. Although enforcers disfavour such exemptions, certain limited exemptions are applicable (see question 1.11).

1.14 Describe how your jurisdiction's political environment may or may not affect antitrust enforcement.

Technically, the courts' interpretation of the antitrust statutes sets the metes and bounds of the enforcement powers of the antitrust enforcers. However, the political environment can affect the enforcers' enforcement discretion and their interpretation of the law. In the 1980s, for example, the antitrust agencies relying on the "Chicago School" used their discretion to limit – some would say to cease – enforcement of the federal antitrust laws against vertical practices and monopolisation. The stated policy of the antitrust agencies under the former Biden Administration was to reverse those changes by persuading the courts that the federal antitrust laws (and, where politically feasible, federal legislation) protect competition broadly understood (as opposed to just protecting "consumer welfare").

Antitrust played a less prominent role in the 2024 election than 2020, and antitrust enforcers under the new Trump Administration have signalled that they generally plan to be less aggressive toward merger activity than under the prior administration while remaining active in challenging anticompetitive conduct, including any such conduct carried out through vertical relationships. Upon appointing Andrew N. Ferguson to serve as Chair of the FTC, President Trump noted then-Commissioner Ferguson's "proven record of standing up to Big Tech censorship". In recent remarks, Chair Ferguson and other commissioners have also emphasised a preference for predictable and efficient merger review that avoids deterring lawful transactions and "gets out of the way" of procompetitive business activity, while continuing to pursue cases where the agencies view the competitive concerns as substantial. Similarly, DOJ Antitrust leadership has framed "America First Antitrust" as case-by-case law enforcement rather than broad regulation, and has paired continued emphasis on certain major monopoly and merger matters, with calls to identify and remove regulations viewed as unnecessarily burdening entry, entrepreneurship, and innovation. At the same time, as discussed in greater detail in question 2.19, newly appointed FTC Commissioner Mark Meador has emphasised his willingness to bring enforcement actions under the Robinson-Patman Act (Robinson-Patman), which can be used to challenge certain vertical conduct.

In practice, the political agenda of the acting President can influence the focus of the DOJ or FTC on particular industries, business, or transactions, but any enforcement actions remain subject to judicial interpretation of the antitrust laws.

1.15 What are the current enforcement trends and priorities in your jurisdiction?

On December 18, 2023, the agencies released a final version of the 2023 Merger Guidelines to replace the previously withdrawn horizontal and vertical guidelines. While there was some anticipation that the new antitrust enforcement leadership under the Trump Administration would step back from the 2023 Guidelines, on February 18, 2025, the DOJ issued a memorandum noting that the "Antitrust Division plans to continue using the 2023 Merger Guidelines…until further notice". Meanwhile, Chair Ferguson, while noting "[s]tability is good for the enforcement agencies", announced the 2023 Guidelines were officially in effect, would not be rescinded, and would serve as the framework for the FTC's merger review analysis. Chair Ferguson suggested any "reworking" of the 2023 Guidelines would occur only "sparingly". The 2023 Guidelines do not distinguish between horizontal and vertical transactions but rather address a range of potential competitive conduct and state that the agencies are adopting a presumption that mergers may be unlawful at levels of concentration lower than under the prior guidelines. The preamble to the 2023 Merger Guidelines articulates 11 principles said to guide the agencies' merger review. Among the several significant changes to merger policy revealed by the 2023 Merger Guidelines is an indication that scrutiny will be given to vertical acquisitions that result in a firm controlling "important inputs" used by current and potential competitors. Commenting on the drafting process that resulted in the 2023 Guidelines, then-AAG Kanter noted that while the prior guidelines "bifurcated horizontal and vertical analysis", transactions often "don't neatly fit into [those] categorizations" and the revised Guidelines therefore do not rely on such a distinction. According to then-AAG Kanter, the revisions emphasise that "market realities should drive the antitrust analysis".

The release of the 2023 Merger Guidelines followed the FTC's June 27, 2023 notice of proposed rulemaking (NPRM) concerning planned revisions to the Hart-Scott-Rodino Act (HSR) Form and Instructions. Following a comment period required for administrative rulemaking, during which time the public is able to submit written remarks critiquing the NPRM, the FTC issued a revised rulemaking incorporating some of the feedback. While the FTC's 2024 HSR Rule pared back some aspects of the revisions initially outlined by the FTC in the NPRM, it represented a substantial departure from the prior Form and Instructions and imposed significant new burdens on all filers by demanding, for example, narrative descriptions of certain vertical relationships between the parties. The final rule implementing the revisions took effect on February 10, 2025; however, on February 12, 2026, a federal district court in Texas vacated the new HSR Rule, and on March 19, 2026, the U.S. Court of Appeals denied the Commission's motion for a stay pending appeal. The Commission is therefore now accepting HSR filings using the Form and Instructions that were in place before the February 10, 2025 effective date of the new rule (while continuing to accept filings using the February 10, 2025 form on a voluntary basis).

Regarding specific industries, both agencies continue to focus on investigations in the big tech, healthcare, and agricultural sectors.

In February 2020, the FTC launched a Technology Task Force "dedicated to monitoring competition in U.S. technology markets, investigating any potential anticompetitive conduct in those markets, and taking enforcement actions when warranted". More recently, the FTC launched an inquiry in early 2023 into generative AI investments and partnerships to, according to then-Chair Khan, "shed light on whether investments and partnerships pursued by dominant companies risk distorting innovation and undermining fair competition [in AI product markets]".

On September 26, 2023, the FTC and 17 State Attorneys General filed suit against Amazon in U.S. district court, alleging that Amazon engages in monopolisation through a "course of exclusionary conduct" consisting of, among other acts, "anti-discounting measures that punish sellers and deter other online retailers from offering prices lower than Amazon" and "[c]onditioning sellers' ability to obtain 'Prime' eligibility for their products … on sellers using Amazon's … fulfillment service". In September 2024, the district court largely denied Amazon's motion to dismiss (while dismissing certain state-law claims), allowing the FTC's federal claims to proceed. The matter has proceeded into discovery, and the court has set a bench trial on liability for October 2026, with remedies (if any) to be addressed in subsequent proceedings.

On January 24, 2023, the DOJ, along with eight State Attorneys General, filed suit against Google in U.S. district court, alleging monopolisation of the digital advertising technologies used by website publishers to sell ads and advertisers to buy them. The case is pursuing similar arguments brought by several other State Attorneys General and discussed in further detail in the answer to question 3.16. Following a trial, on April 17, 2025, the district court held that Google violated Section 2 of the Sherman Act by wilfully acquiring and maintaining monopoly power in certain open-web display advertising technology markets, and also found unlawful tying in violation of Sections 1 and 2. The case has now moved into a remedies phase, with further scheduling and potential appellate proceedings to follow.

Additionally, on March 21, 2024, the DOJ and 16 State Attorneys General sued Apple in U.S. district court, alleging that Apple "illegally maintains a monopoly over smartphones by selectively imposing contractual restrictions on, and withholding critical access points from, developers". On June 30, 2025, the district court denied Apple's motion to dismiss, allowing the case to proceed into discovery. The enforcement actions and information-gathering efforts brought against the big tech platforms are discussed further in response to question 3.16.

The FTC has also continued to put significant resources into antitrust enforcement in the healthcare industry, particularly relating to hospital and pharmaceutical transactions.

In 2023, the FTC challenged Amgen's plans to acquire drug maker Horizon Therapeutics based on a cross-market bundling theory of harm, ultimately settling the challenge based on a modified form of a behavioural remedy initially proposed by the parties during the investigation (the first such settlement under the Biden Administration's antitrust agencies).

In 2021, the FTC unanimously voted to file a complaint to block Illumina's proposed acquisition of Grail, a company focused on multi-cancer early detection. The potential harm alleged by the FTC was entirely vertical in nature. The FTC claimed that Illumina, if it acquired Grail, would have had the incentive and ability to disadvantage Grail's competitors by foreclosing access to Illumina's must-have next-generation gene-sequencing technology. The case marked the first time in several decades that the FTC had challenged a vertical merger and was the first case brought under the then-operative Vertical Merger Guidelines. While the FTC's action was first dismissed by an administrative law judge, on April 3, 2023, the Commission reversed the ALJ's decision and issued an opinion and order requiring Illumina to divest Grail. Illumina appealed the Commission's decision in U.S. circuit court but later announced it would divest Grail after the circuit court agreed with the FTC that the merger was "likely to substantially lessen competition".

The agencies have recently relied on more novel vertical theories or harm, such as access to competitively sensitive information. In 2022, the DOJ sued to block UnitedHealth Group's proposed acquisition of Change Healthcare, primarily under a vertical theory of harm alleging the transaction would give UnitedHealth a significant amount of its rival health insurers' competitively sensitive information through Change Healthcare's electronic data interchange clearinghouse software. On September 19, 2022, the U.S. District Court for D.C. denied the DOJ's attempt to block the merger and permitted the parties to merge on the condition that Change Healthcare divest assets related to a competitive overlap between the two parties, as the parties had initially proposed they would do when seeking to clear the merger prior to litigation. The DOJ and the States of New York and Minnesota initially filed to appeal the decision but subsequently withdrew their appeal on March 20, 2023. On April 29, 2024, the FTC issued a request for additional information (second request) to Walmart and TV-maker Vizio concerning Walmart's efforts to acquire Vizio. Aside from more traditional competition theories suggesting that Walmart may self-preference Vizio as a house brand over other products following the merger, advocacy groups have voiced concerns to the FTC that the merger may pose privacy concerns because it will provide Walmart with Vizio's collection of consumer data. Vizio itself previously settled charges with the FTC and the State of New Jersey in 2017, following a complaint alleging the company had collected the data of millions of viewers without their consent. The FTC ultimately cleared the transaction, and Walmart announced the completion of its Vizio acquisition on December 3, 2024.

1.16 Describe any notable recent legal developments in respect of, e.g., vertical agreements, dominant firms and/or vertical merger analysis.

In July 2024, the FTC challenged Tempur Sealy's acquisition of Mattress Firm, alleging that the merger would harm competition by allowing Tempur Sealy, the world's largest mattress manufacturer, to control the largest mattress retailer in the U.S. The FTC alleged the merger would allow Tempur Sealy to vertically foreclose its competitors by denying them access to "essential retail space" in the form of Mattress Firm's retail locations. In reply, Tempur Sealy noted the efficiencies the merger would produce, such as improved inventory management and reduced delivery times for consumers. In February 2025, a federal district court denied the FTC's efforts to enjoin the merger, holding that vertical integration "virtually never poses a threat to competition when undertaken unilaterally and in competitive markets". The FTC formally dismissed its complaint against the merger on April 11, 2025.

Big tech platforms (e.g., Google, Facebook (Meta), Amazon, Apple) and their vertical acquisitions have been subject to increasing antitrust scrutiny and several enforcement actions in the U.S., in part due to concerns about alleged market concentration and monopolisation. In the FTC's monopolisation case seeking divestiture of Meta's Instagram and WhatsApp acquisitions, the district court entered judgment for Meta on November 18, 2025, concluding that the FTC failed to prove current monopoly power; the FTC has since indicated it will appeal. In the DOJ's search case against Google, the district court found Google liable in August 2024 and entered a remedies order in September 2025 imposing primarily behavioural relief (including limits on certain exclusive distribution arrangements and data- and syndication-related remedies), with further proceedings and appellate review remaining possible. In a separate DOJ case concerning Google's ad-tech stack, the district court found Google liable in April 2025, with a remedies phase still pending. Finally, in the FTC and States' case against Amazon (filed in September 2023), the court largely denied Amazon's motion to dismiss in October 2024 and the matter has proceeded into discovery, with a trial currently scheduled for October 2026. These cases and other enforcement actions brought against the big tech entities are discussed further in response to question 3.16.

The FTC has also indicated increased interest in vertical relationships. For instance, the FTC is currently engaged in market studies of the pharmacy benefit manager (PBM) industry focused on various aspects of PBMs' vertical business practices, including their integrated pharmacies, and their relationships with non-affiliated, independent pharmacies. On July 9, 2024, the FTC published an interim staff report discussing what it characterised as a "vertically integrated and concentrated market structure" ("Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies"). On January 14, 2025, the FTC issued a second interim report targeting what it described as "vertically integrated PBM-pharmacy-insurer entities" ("Specialty Generic Drugs: A Growing Profit Center for Vertically Integrated Pharmacy Benefit Managers"). Then-Commissioner Ferguson voted to publish both reports, each time noting reservations about the quality of the analysis, and then-Commissioner Holyoak voted against publication of the initial interim report while joining then-Commissioner Ferguson's qualified statement approving publication of the second interim report. In September 2024, following the PBM market study, the FTC filed an administrative complaint against the three largest PBMs (Caremark, Express Scripts, and OptumRx) and their affiliated group purchasing organisations, alleging that their rebate practices "artificially inflated" insulin list prices and impaired access to lower-list-price products. On February 4, 2026, the FTC entered into a consent settlement with Express Scripts, and in March 2026, withdrew the matter from adjudication in respect of Caremark for the Commission to consider a proposed consent agreement; proceedings remain pending as to OptumRx and certain related entities.

In April 2026, a federal jury returned verdict against Live Nation Entertainment and its subsidiary Ticketmaster, finding that the vertically integrated live events company had unlawfully maintained monopoly power in several interrelated markets, including primary ticketing for major concert venues and the promotion and operation of large amphitheatres. The case – litigated by a coalition of more than 30 State Attorneys General after the DOJ reached a partial mid-trial settlement – centred on allegations that Live Nation leveraged its control over venues, promotion, and ticketing to coerce exclusive dealing, unlawfully tie services, and foreclose rival ticketing and promotion firms, resulting in higher prices and reduced choice for consumers, artists, and venues. The jury agreed, finding that Ticketmaster's exclusionary practices led to concertgoers paying supracompetitive prices and that Live Nation unlawfully used its vertical integration to entrench its dominance. The verdict is significant not only for its potential remedies – which remain to be determined and could include substantial monetary relief or structural divestitures – but also because it represents one of the most consequential successful monopolisation cases in decades and underscores the renewed willingness of courts and enforcers to scrutinise vertical integration and foreclosure theories under Sections 1 and 2 of the Sherman Act.

2 Vertical Agreements

2.1 At a high level, what is the level of concern over, and scrutiny given to, vertical agreements?

Generally, vertical agreements raise fewer antitrust concerns than horizontal agreements. The federal antitrust agencies have acknowledged that vertical agreements have the potential to enhance competition. Absent significant market power, a strong likelihood of anticompetitive effects, or strong intent of anticompetitive conduct, the agencies are unlikely to challenge a vertical agreement. This is in stark contrast to horizontal agreements, where a finding of an agreement itself may be unlawful *per se*. In recent years, both the FTC and the DOJ have indicated an interest in pursuing potential vertical theories of harm more aggressively, however, and state antitrust enforcers or private plaintiffs may take a more aggressive posture in certain circumstances.

2.2 What is the analysis to determine (a) whether there is an agreement, and (b) whether that agreement is vertical?

Evidence of an express agreement is helpful, although not necessary in analysing whether an agreement exists. The Supreme Court established the modern formula for evaluating whether there is an agreement in *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752 (1984), stating "the correct standard is that there must be evidence that tends to exclude the possibility of independent action". An agreement is vertical if it involves different levels in the chain of distribution. Vertically related firms are often in contact and therefore the existence of the agreement itself in vertical cases can be of less importance than the existence of an agreement in horizontal cases.

2.3 What are the laws governing vertical agreements?

Vertical agreements are generally analysed under Section 1 of the Sherman Act, 15 USC § 1, which declares illegal any contract, combination or conspiracy in restraint of trade. A violation of Section 1 requires proof of three elements: (1) the existence of a contract, combination or conspiracy among two or more separate entities; that (2) unreasonably restrains trade; and (3) affects interstate or foreign commerce.

Section 2 of the Sherman Act, 15 USC § 2, may also apply to vertical agreements involving distribution. Section 2 applies to unilateral conduct and makes illegal the acquisition and maintenance of monopoly power by anticompetitive conduct. Section 2 applies where the defendant has monopoly power or near-monopoly power and engages in vertical conduct (often tying, bundling, or exclusive dealing) with the intention of foreclosing competition.

Plaintiffs may also bring a case involving exclusive dealing or tying under Section 3 of the Clayton Act, 15 USC § 14. Section 3 of the Clayton Act makes it illegal to condition any sale on the purchaser not dealing with a competitor if the effect may be to substantially lessen competition.

The FTC may also bring a case under Section 5 of the FTC Act, 15 USC § 45, to challenge vertical agreements. Moreover, as previously noted, Robinson-Patman can be used to challenge certain vertical conduct such as price discrimination.

2.4 Are there any types of vertical agreements or restraints that are absolutely ("*per se*") protected? Are there any types of vertical agreements or restraints that are *per se* unlawful?

There are no purely vertical agreements that are *per se* protected or *per se* unlawful. Although there is Supreme Court precedent suggesting that certain vertical tying arrangements should be subjected to *per se* treatment, there are sufficient limitations that would require some level of factual analysis. Those limitations include that the defendant must have market power in the market for the tying product, the tying arrangement must result in substantial competitive foreclosure in the market for the tied product, and the defendant must have some power over the buyer to require the purchase of the tying and tied products jointly rather than separately.

2.5 What is the analytical framework for assessing vertical agreements?

Vertical agreements are typically analysed under the rule of reason. The rule-of-reason analysis focuses on whether the party seeking to impose the restriction has market power. If there is market power, the court will then evaluate whether competition has been harmed. The court may examine the nature and extent of possible foreclosure, the duration of the agreement, the importance of the input, the impact on entry, evidence of actual effects, the extent of other similar agreements, and any other relevant evidence of harm. This evidence is then balanced against any procompetitive benefits, efficiencies, or other mitigating factors. In the case of vertical agreements, the procompetitive benefits and efficiencies are typically found to be quite substantial. Certain states may analyse certain types of vertical agreements as *per se* violations.

2.6 What is the analytical framework for defining a market in vertical agreement cases?

The relevant product and geographic markets for vertical agreements are defined in the same manner as for other agreements or conduct. They are fact-specific inquiries that depend on substitutability of other products or geographies. Since parties to vertical agreements, as the name implies, operate at different levels within commerce, there will be different product markets for each firm.

2.7 How are vertical agreements analysed when one of the parties is vertically integrated into the same level as the other party (so-called "dual distribution")? Are these treated as vertical or horizontal agreements?

In general, the modern trend is for courts to view agreements between distributors and manufacturers operating as distributors in competition with their distributors as vertical agreements, subject to rule-of-reason analysis.

2.8 What is the role of market share in reviewing a vertical agreement?

As with other Sherman Act claims, market share is a proxy for inferring market power, and thus harm to competition from exclusionary conduct. In addition, market shares can provide an indication of the potential for foreclosure resulting from a vertical agreement.

2.9 What is the role of economic analysis in assessing vertical agreements?

Economic analysis is central to any analysis of a vertical agreement. Through economic analysis, the court, the enforcer, and the firms must determine whether the agreement has or likely will create or increase market power of the firms involved, whether this will cause anticompetitive harm, and whether the agreement is reasonably necessary to achieve procompetitive results. Each step along the way in this process, and the final balancing of potential anticompetitive harm against potential procompetitive results, requires economic analysis of a variety of factors.

2.10 What is the role of efficiencies in analysing vertical agreements?

The Supreme Court has recognised that certain non-price restrictions may "promote interbrand competition by allowing the manufacturer to achieve certain efficiencies in the distribution of his products" (*GTE Sylvania*, 433 U.S. 36, 54 (1977)) and the "market impact of vertical restrictions is complex because of their potential for a simultaneous reduction of intrabrand competition and stimulation of interbrand competition" (*Id.* at 51–52 (1977)). Thus, the Supreme Court and lower courts have considered and upheld various vertical restraints, including territorial restrictions, exclusive distributorships, location requirements, and other non-price restrictions.

2.11 Are there any special rules for vertical agreements relating to intellectual property and, if so, how does the analysis of such rules differ?

Intellectual property licensing arrangements often have a vertical component and, as such, will be analysed accordingly. Although no special rules apply in such situations, the DOJ and FTC have jointly issued Antitrust Guidelines for the Licensing of Intellectual Property. The most recent update, issued in January 2017, reaffirmed the enforcers' general position that "intellectual property licensing allows firms to combine complementary factors of production and is generally procompetitive". The update reflects changes and developments in the antitrust laws that have occurred in the two decades since the Guidelines were originally published. The Guidelines are available at https://www.justice.gov/atr/IPguidelines/download

2.12 Does the enforcer have to demonstrate anticompetitive effects?

Yes, the enforcer generally must demonstrate the anticompetitive effects of vertical agreements.

2.13 Will enforcers or legal tribunals weigh the harm against potential benefits or efficiencies?

Yes; courts employing the rule of reason will balance the anticompetitive effect of a restraint against the procompetitive benefits and efficiencies of the same restraint and consider the net impact on competition in the relevant market. A restraint or agreement will only be held to violate the antitrust laws if its harm to competition outweighs the benefits and efficiencies.

2.14 What other defences are available to allegations that a vertical agreement is anticompetitive?

Firms have successfully defended vertical agreements on the basis of business justifications, including: promoting efficiencies; responding to customer dissatisfaction; preventing confusion, fraud, and deception; ensuring that the product provided to the consumer meets consumer expectations; eliminating free-riding; and ensuring quality. In addition, legal defences, such as a lack of proof of a relevant market or market power, can be used. Courts, however, can reject justifications where there is a less restrictive way of ensuring quality.

2.15 Have the enforcement authorities issued any formal guidelines regarding vertical agreements?

As discussed in response to question 1.15, the agencies withdrew prior horizontal and vertical merger guidelines and issued the 2023 Merger Guidelines that eliminated the distinction between horizontal and vertical transactions, which current agency leaders have committed to maintaining.

Outside of the merger context, the DOJ published Vertical Restraints Guidelines in 1985; however, those Guidelines were withdrawn in 1993, and the DOJ has not proposed to publish new Vertical Restraints Guidelines under any subsequent administration. In 2008, the DOJ published a report on monopolisation and single-firm conduct under Section 2 of the Sherman Act; however, that report was withdrawn in 2009, nullifying it as part of DOJ policy. The DOJ has not proposed publishing a new policy report or guidelines relating to monopolisation and single-firm conduct under subsequent administrations.

2.16 How is resale price maintenance treated under the law?

Since the Supreme Court's decision in *Leegin* (*Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877 (2007)), resale price maintenance (RPM) has been evaluated under the rule of reason under the federal antitrust laws and is no longer considered *per se* illegal. Rule-of-reason analysis for RPM cases focuses on the possible relationship between minimum prices and the provision of ancillary services that assist customers, improve quality, or achieve any of the benefits listed above. However, some states have passed "*Leegin* repealer" laws to ensure *per se* liability for RPM agreements under the state's antitrust laws.

2.17 How do enforcers and courts examine exclusive dealing claims?

Exclusive dealing arrangements are generally analysed under the rule of reason, balancing any harm to competition with the agreement's procompetitive benefits. This analysis often comes out in favour of the agreement, as exclusive dealing is often a vehicle for substantial efficiencies, including economies of scale and support services for the manufacturer's brand. However, exclusive dealing contracts can be anticompetitive when used by a firm with market power to foreclose competition from smaller firms.

2.18 How do enforcers and courts examine tying/supplementary obligation claims?

Tying claims are also generally evaluated under the rule of reason's balancing test. Regulators and courts will assess whether the firm offering the "tied" product has market power in the "tying" product. If so, the arrangement may violate the antitrust laws if anticompetitive effects can be established. On the procompetitive side, tying can reduce costs and increase convenience for consumers.

2.19 How do enforcers and courts examine price discrimination claims?

Price discrimination claims are generally reviewed pursuant to Robinson-Patman, although the statute condemns charging different prices to similarly situated buyers as opposed to what economists would label true "price discrimination". Robinson-Patman is a "Depression-era" statute enacted to protect small businesses and has specific requirements and several exemptions. For example, Robinson-Patman applies to commodities of like grade and quality but does not apply to services. Price discrimination conduct may be excused for several reasons, including where the difference in price can be accounted for by different costs in manufacturing, sales, or distribution, and where a price concession was given in good faith to match that of a competitor. Historically, Robinson-Patman had been disfavoured by enforcers across administrations for decades (with the DOJ announcing it would no longer enforce it in 1988 and the FTC last invoking it in 2000), as enforcement can be counter to efficiency and harm consumers; more recently, however, the antitrust agencies, particularly the FTC, have spoken favourably about the statute. After years of threatening to bring a Robinson-Patman case, in the waning days of the Biden Administration, on December 12, 2024, the FTC voted 3–2 to sue the largest U.S. distributor of wine and spirits – Southern Glazer's Wine and Spirits, LLC – in U.S. district court, alleging violations of the Act. The FTC claims Southern Glazer's is violating Robinson-Patman because it "harm[s] small, independent businesses by depriving them of access to discounts and rebates, [] impeding their ability to compete against large national and regional chains". In April 2025, the district court denied Southern Glazer's motion to dismiss, allowing the FTC's Robinson-Patman claims to proceed, and the matter remains pending and has proceeded into discovery. On January 17, 2025, the FTC voted 3–2 to sue PepsiCo, Inc. in U.S. district court, alleging it had "engaged in illegal price discrimination by providing one customer—a large, big box retailer—with unfair pricing advantages, while raising prices for competing retailers and customers". On May 22, 2025, the FTC voted 3–0 to dismiss the action against PepsiCo without prejudice, with Chair Ferguson and then-Commissioner Holyoak noting that while "the Robinson-Patman Act is a valid law that the Commission is constitutionally obliged to enforce", the complaint against PepsiCo had "no evidence" to support its "most important allegations". In a concurring statement, Commissioner Meador emphasised his agreement that the case was worthy of dismissal for lack of "sound factual evidence" but also underscored his position that Robinson-Patman is "a validly enacted law that the Commission should enforce when the facts warrant it". While the PepsiCo complaint has been dismissed, the FTC continues to pursue its Robinson-Patman litigation against Southern Glazer's.

2.20 How do enforcers and courts examine loyalty discount claims?

Enforcers and courts analyse loyalty discount claims under a rule-of-reason type analysis. Loyalty discounts resemble volume discounts, offer similar benefits, and can lead to lower prices for consumers. Theoretically, loyalty discounts can also pose similar threats to competition akin to exclusive dealing or predatory pricing; e.g., that a firm with market power will use the discounts to price below cost and drive out smaller competitors.

2.21 How do enforcers and courts examine multi-product or "bundled" discount claims?

As with each of the previous forms of unilateral conduct, bundled discounts are evaluated under the rule of reason. There are often procompetitive benefits for these provisions, as with loyalty discounts. A key factual inquiry is whether the discounted price of the bundle of goods or services exceeds the aggregate cost of the goods or services in the bundle. If not, there is a greater risk that it could be viewed as a pretext for driving rival firms from the market.

2.22 What other types of vertical restraints are prohibited by the applicable laws?

Vertical restraints can take any number of forms, including permutations and combinations of those discussed above. Regardless of the form, the restraints will typically be assessed under the rule of reason, weighing anticompetitive harm against any procompetitive benefits and efficiencies.

2.23 How are MFNs treated under the law?

While most-favoured-nation clauses (MFNs) can have procompetitive benefits, they have come under greater scrutiny in recent years. Price-fixing allegations successfully brought against Apple by the DOJ and several states centred around the alleged use of MFNs to ensure uniform pricing for e-books among five different publishers.

The debate over MFNs is ongoing, and legal risk depends on the specific facts and circumstances.

3 Dominant Firms

3.1 At a high level, what is the level of concern over, and scrutiny given to, unilateral conduct (e.g., abuse of dominance)?

Courts and regulators have found that many forms of allegedly harmful unilateral conduct are justified by their economic efficiencies and other benefits. However, there are instances of unilateral conduct enforcement, and practitioners are constantly evaluating whether such enforcement is increasing. These are very fact-specific inquiries.

3.2 What are the laws governing dominant firms?

Dominant firm behaviour is governed by Section 2 of the Sherman Act, discussed above, which makes it illegal to "monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize" any market, as well as Section 5 of the FTC Act, which prohibits "unfair methods of competition".

3.3 What is the analytical framework for defining a market in dominant firm cases?

The analysis is substantively similar to the rule-of-reason analysis, such as that outlined in response to question 2.16.

3.4 What is the market share threshold for enforcers or a court to consider a firm as dominant or a monopolist?

There is no precise threshold as to whether a firm is dominant or a monopolist. Rather, the question of whether a firm is dominant in a given market is an intensively fact-specific inquiry. That said, while there is no bright line, it is generally understood that as a firm's market share approaches 70%, the firm is increasingly likely to be considered to have monopoly power. Additionally, the 2023 Merger Guidelines reduce the thresholds for assessing concentration in a market and suggest the agencies may be willing to assert dominance at lower shares or concentrations.

3.5 In general, what are the consequences of being adjudged "dominant" or a "monopolist"? Is dominance or monopoly illegal *per se* (or subject to regulation), or are there specific types of conduct that are prohibited?

Under the U.S. antitrust laws, it is not illegal to be a monopolist, only to acquire or maintain a monopoly through exclusionary means. Whether a company has monopoly power or has engaged in exclusionary conduct is a fact-specific inquiry.

3.6 What is the role of economic analysis in assessing market dominance?

Economic analysis is indispensable to assessing the competitive effects of a course of conduct and in determining whether a firm possesses market power. It can inform every stage of antitrust investigations and litigation, from the decision to prosecute to the calculation of damages.

3.7 What is the role of market share in assessing market dominance?

Market share is the most common means of drawing an inference of monopoly power. As discussed above, typically anything over 70% may be considered monopolistic.

3.8 What defences are available to allegations that a firm is abusing its dominance or market power?

Apart from contesting the facts, firms facing allegations of monopolisation – the closest analogue in American antitrust law to an abuse of market dominance claim – can argue several points, including that they do not hold market power, that there has been no antitrust injury, that plaintiffs have improperly defined the alleged market, and that any competitive harm from their conduct is outweighed by procompetitive benefits and/or efficiencies, or that the conduct is excused by some other legal principle (e.g., no duty to deal with competitors).

3.9 What is the role of efficiencies in analysing dominant firm behaviour?

Efficiencies are a fundamental part of the balancing test under the rule of reason and essential to almost every defence put forth by antitrust defendants. In the U.S., monopoly power obtained through luck, skill, or foresight (as opposed to through exclusionary or predatory conduct) is not illegal. Consequently, if a monopolist obtains its position through superior efficiency, it has not violated Section 2. Efficiency defences can take a variety of forms – for example, that consumers will benefit from lower prices, higher quality, or greater selection, or that improved innovation or other synergies have led to greater competition in an industry.

3.10 Do the governing laws apply to "collective" dominance?

No; collective dominance is not covered by the U.S. antitrust laws.

3.11 How do the laws in your jurisdiction apply to dominant purchasers?

Monopsony cases, although less common than monopoly ones, are evaluated under a framework analogous to that of other dominant firm cases.

3.12 What counts as abuse of dominance or exclusionary or anticompetitive conduct?

Generally speaking, abuse of dominance or anticompetitive conduct is harmful conduct other than competition on the merits. Courts applying the U.S. antitrust laws seek to protect "competition, not competitors", meaning they are more concerned with harm to the competitive process than the success or failure of individual firms. Anticompetitive conduct leads to one or more of: higher prices; lower quality; reduced innovation; and fewer choices for consumers.

3.13 What is the role of intellectual property in analysing dominant firm behaviour?

Courts and competition authorities view intellectual property as a key incentive to innovate and compete, driving much of the development in most markets. Even though patents are often labelled government-granted monopolies, the federal courts do not presume that a patent conveys monopoly power under Section 2. Nonetheless, patents can raise competition concerns depending on the specific facts.

Litigation over "reverse payment" pharmaceutical patent litigation settlements highlight the issue; possession of a lawful monopoly in the form of a patent does not permit patent-holders to foreclose competition to their patented product (e.g., by paying a potential competitor not to challenge the patent-holder's patent).

3.14 Do enforcers and/or legal tribunals consider "direct effects" evidence of market power?

Yes; courts and enforcers will consider direct effects evidence of market power. These can include: internal business plans describing exclusionary behaviour, past or contemplated; evidence of supracompetitive prices; and complaints from customers.

3.15 How is "platform dominance" assessed in your jurisdiction?

The question of "platform dominance" is an emerging and unsettled issue in U.S. antitrust law. The 2023 Merger

Guidelines state that "when a merger involves a multi-sided platform, the agencies examine competition between platforms, on a platform, or to displace a platform", while noting that "multi-sided platforms have characteristics that can exacerbate or accelerate competition problems". The question of how to balance the efficiencies and benefits created by platforms with the power held by their creators over competitors within the platform is a developing issue in antitrust jurisprudence. The FTC's recent case against Amazon and the DOJ's cases against Google and Apple are likely to help develop the law on this question.

3.16 Are the competition agencies in your jurisdiction doing anything special to try to regulate big tech platforms?

Big tech platforms (e.g., Google, Meta, Amazon, Apple) and their vertical acquisitions have been subject to increasing antitrust scrutiny in the U.S. from agencies under multiple administrations, in part due to concerns about alleged market concentration, monopolisation, and potential foreclosure of rivals, including in the emerging AI space. For example, the House Judiciary Committee conducted a public-facing bipartisan investigation and requested documents from key executives at Google, Meta, and Amazon. In October 2020, the antitrust subcommittee released its findings in a 449-page report accusing the big tech platforms of abusing monopoly power and called for large-scale changes, including restructurings, in order to rein in big tech. Both the House and Senate Judiciary Committees have also voted to advance certain antitrust bills focused on big tech and competition online. Such bills have generally stalled; however, bipartisan support for certain recent bills could suggest legislative action regarding competition online.

While legislation has thus far failed to advance in the U.S., law enforcers have initiated several cases over the last few years. Given the volume of matters currently involving the big tech platforms, the below information is organised by defendant company or by subject.

Google

U.S. authorities have filed five separate antitrust lawsuits against Google. First, on October 20, 2020, the DOJ, joined by 11 State Attorneys General, filed a lawsuit against Google alleging that by cutting deals to be the default search engine on mobile phone devices, Google violated antitrust laws. The trial in that case concluded in May of 2024 and on August 5, 2024, Judge Amit Mehta ruled that Google is a monopolist in two online search markets, and that its agreements with original equipment manufacturers requiring that Google be set as the default search engine on mobile devices are *de facto* exclusive dealing agreements that should be deemed exclusionary and thus unlawful under the antitrust laws. Following a remedies trial in 2025, the district court issued a remedies decision on September 2, 2025 that – among other things – prohibited Google from entering or maintaining certain exclusive distribution contracts relating to Google Search and certain related products, and ordered Google to make certain data and syndication services available to rivals, while declining to order immediate structural relief. Further remedial proceedings and appellate review remain possible.

Second, on December 16, 2020, a group of 10 states led by Texas Attorney General Ken Paxton filed a lawsuit alleging that Google has monopolised the markets related to the buying, selling, and displaying of digital ads. That matter remains pending and is proceeding through pretrial and discovery, including case-management decisions addressing bifurcation and jury-trial issues.

Third, on December 17, 2020, a bipartisan coalition of 38 states and territories filed a lawsuit alleging that Google holds a monopoly in general search, and that Google favours its own services over those of rivals when displaying search query results. This case was consolidated with the initial suit brought by the DOJ and 11 State Attorneys General. While the suit largely aligned with the initial action filed by the DOJ and state enforcers in October 2020, the second suit sought to include specialised vertical search providers and social media platforms in a proposed search market definition. Judge Mehta rejected that argument, holding that specialised vertical service providers such as Booking.com or Yelp, as well as social media platforms, are "walled gardens" rather than gateways to the broader internet. The district court found Google liable in August 2024 and issued a remedies order in September 2025; in February 2026, the DOJ and state plaintiffs filed notices of appeal seeking additional relief.

Fourth, on July 7, 2021, a coalition of 36 State Attorneys General and D.C. sued Google for allegedly monopolising the Android app store. In December 2023, Google agreed to pay $700 million and to make changes to certain Play Store practices; the settlement received preliminary court approval in November 2025, with a final approval hearing scheduled for April 30, 2026 and a consumer notice and distribution process underway.

Finally, on January 24, 2023, the DOJ, along with eight State Attorneys General, filed suit against Google in U.S. district court, alleging monopolisation of the digital advertising technologies used by website publishers to sell ads and by advertisers to buy them. The DOJ's case alleges similar conduct challenged by the Texas-led coalition of State Attorneys General. On April 17, 2025, following a trial, the district court ruled that Google violated Section 2 of the Sherman Act by wilfully acquiring and maintaining monopoly power in the open-web display publisher ad server market and the open-web display ad exchange market, and further held that Google unlawfully tied its publisher ad server and ad exchange in violation of Sections 1 and 2 of the Sherman Act. A remedies phase is expected to follow.

Meta

On December 9, 2020, the FTC and 46 State Attorneys General brought parallel enforcement actions against Meta in U.S. district court, alleging it had illegally acted to maintain its personal social networking monopoly through a course of conduct that includes its acquisitions of Instagram and WhatsApp. The lawsuits sought to require Meta to divest certain assets including Instagram and WhatsApp, but the district court dismissed the complaints. The FTC successfully appealed the dismissal and a bench trial on the FTC's amended complaint began in April 2025 and concluded in May 2025. On November 18, 2025, the district court entered judgment for Meta, concluding that the FTC failed to prove that Meta currently possesses monopoly power in the relevant market; the FTC has since indicated that it will appeal. The States' case did not fare as well, however, and the D.C. Circuit upheld the lower court's dismissal of the States' case on April 27, 2023.

Amazon

Amazon has faced scrutiny from state-level enforcers, with the States of Washington and California, in addition to D.C., bringing monopolisation cases against it in their local courts, concerning Amazon's pricing and contracting practices related to its online Marketplace platform. Washington entered a consent decree with Amazon that requires it to cease its "Sold by Amazon" programme nationwide and to provide the State Attorney General's Office with annual updates on its compliance with antitrust laws, and Amazon agreed to pay $2.25 million in penalties. Washington had alleged Amazon's "Sold by Amazon" programme allowed it to fix prices with third-party sellers, rather than compete with them. In D.C., the local antitrust case was revived by the D.C. Court of Appeals in August 2024 and is proceeding on remand. In California, the Attorney General sought preliminary injunctive relief in February 2026 in the State's pending case challenging Amazon's alleged pricing policies, and trial is currently set for 2027.

On September 26, 2023, the FTC and 17 State Attorneys General filed suit against Amazon in U.S. district court, bringing claims similar to those pursued by Washington, California, and D.C. The FTC alleges that Amazon engages in monopolisation through a "course of exclusionary conduct" consisting of, among other acts, "anti-discounting measures that punish sellers and deter other online retailers from offering prices lower than Amazon['s]", and by "[c]onditioning sellers' ability to obtain 'Prime' eligibility for their products ... on sellers using Amazon's ... fulfillment service". In a September 30, 2024 order, the district court largely denied Amazon's motion to dismiss (while dismissing certain state-law claims), allowing the FTC's federal claims to proceed. The matter has proceeded into discovery, and the court has set a bench trial on liability for October 2026, with remedies (if any) to be addressed in subsequent proceedings.

Apple

On March 21, 2024, the DOJ and 15 State Attorneys General and the Attorney General of D.C. sued Apple in U.S. district court, alleging monopolisation and attempted monopolisation of smartphone markets in violation of Section 2 of the Sherman Act. The complaint claims Apple illegally maintains a monopoly over smartphones by selectively imposing contractual restrictions on developers and denying developers access to critical access points to thwart products that may reduce consumer reliance on the iPhone. The complaint specifically targets Apple's alleged blocking of so-called "super" apps, alleged suppression of mobile cloud streaming services, alleged degrading of cross-platform messaging and non-Apple smartwatch functionality, as well as Apple's alleged efforts to block third-party apps from offering tap-to-pay functionality. On June 30, 2025, the district court denied Apple's motion to dismiss, allowing the case to proceed into discovery.

Vertical merger challenges

The FTC has also followed through on its stated plans to challenge acquisitions pursued by big tech, bringing both a civil case and an administrative action in 2022 to block Meta's acquisition of virtual reality application developer Within. The district court ruled for Meta, and the FTC was unsuccessful in court and decided to drop its administrative challenge, leaving Meta free to complete its acquisition.

On December 8, 2022, the FTC brought an administrative complaint to block Microsoft's attempt to acquire Activision Blizzard. On May 7, 2025, the Ninth Circuit held that the lower court properly denied the FTC's request to preliminarily enjoin Microsoft's acquisition of Activision. The Ninth Circuit emphasised that if a vertical merger results in new exclusivities by the acquirer over the acquired property, that alone does not amount to a "substantial lessening of competition" that warrants an injunction of a merger. As the Ninth Circuit explained, "[t]he mere fact that, after a vertical merger, a company might make some of its newly acquired intellectual property exclusive to its platforms does not, without more, show a substantial lessening of competition"; "merely showing that some content will be exclusive after a vertical merger", the Ninth Circuit stressed – "without more" does not establish "that competition will be substantially lessened".

AI and cloud computing

In March of 2023, the FTC announced a request for information concerning cloud computing business practices and published its findings in November after receiving over 100 public comments. In its findings, the FTC noted that "many" comments were concerned with software licensing practices and the limits they allegedly impose on the interoperability of software and cloud infrastructure. The FTC's report also referenced comments that took issue with "fees paid by cloud customers to transfer their data out of (and within) certain cloud environments", which the commenters argued discouraged both switching between cloud providers and using multiple cloud providers at once. Finally, the FTC's report highlighted comments that argued "certain provisions in cloud computing contracts incentivize customers to consolidate their use of cloud services to just one cloud provider". As an example, the FTC's report noted that commenters criticised minimum spend contracts that "typically involve a cloud provider discounting its services in return for an agreed upon committed spend". The FTC further explained that such commenters alleged that minimum spend agreements can act as lock-in mechanisms that effectively prevent the use of multiple cloud providers. The FTC further emphasised that several comments underscored the FTC's own preexisting concern with "widespread reliance on a small number of cloud providers", as well as raised concerns with the relationship between cloud computing and the development of generative AI products that "are heavily reliant on cloud providers". The FTC noted that some comments criticised an emerging investment model in which AI investors condition investment on the use of particular cloud service providers.

Following its review of cloud computing, in January 2024, the FTC launched an inquiry into generative AI investments and partnerships to, according to then-Chair Khan, "shed light on whether investments and partnerships pursued by dominant companies risk distorting innovation and undermining fair competition [in AI product markets]". According to the FTC, generative AI raises competition concerns because incumbents "may be able to use unfair methods of competition to entrench their current power or use that power to gain control over a new generative AI market". At the time the inquiry was announced, the FTC noted it would assess the presence of bundling and tying arrangements to analyse the extent to which established firms could "take advantage" of network and platform effects. To facilitate this inquiry, the FTC issued orders to Google, Amazon, Anthropic PBC, Microsoft, and OpenAI.

In January 2025, the FTC published a staff report outlining the conclusions of its study of AI partnerships and investments, noting the inquiry revealed "some potential competition implications". The report highlights concerns that the partnerships and investments reviewed by FTC staff "may impact access to certain inputs, such as computing resources and engineering talent; the partnerships may increase switching costs for the AI developer partners; and the partnerships provide [the investor partners with] access to sensitive technical and business information that may be unavailable to others". According to then-Chair Khan, the report identified "lock-in" concerns that could "deprive start-ups of key AI inputs". Then-Commissioner Ferguson voted to approve publication of the report but criticised its efforts to forecast the future of AI markets, noting the study was conducted within a year, leaving it "notably narrow in scope". Then-Commissioner Holyoak, who joined then-Commissioner Ferguson's statement, voted to approve the study's publication but also noted the report has "limitations".

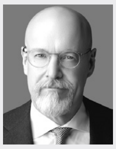
3.17 Under what circumstances are refusals to deal considered anticompetitive?

Unilateral refusals to deal can violate the Sherman Act but are considered at the "outer boundary" of Section 2. Three cases have helped outline the claim: *Otter Tail Power Co. v. United States*, 410 U.S. 366 (1973); *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 427 U.S. 585 (1985); and *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004). In *Otter Tail* and *Aspen Skiing*, the Supreme Court held that the defendant had violated the Sherman Act by refusing to deal with a competitor, while in *Trinko*, the Court held that the bar had not been met. Comparing the holdings of the three cases identifies some elements that were satisfied in *Otter Tail* and *Aspen Skiing*, but not in *Trinko*: (1) the parties ended a prior course of dealing which implied that doing business together had been profitable for the monopolist; (2) the monopolist demonstrated a willingness to forego short-term profit in the hope of obtaining long-term gain by eliminating a competitor; and (3) the monopolist refused to sell something it was already in the business of selling. This kind of difficult-to-establish standard means that refusal to deal cases, while possible, are very rare and extremely challenging for plaintiffs to bring successfully.

4 Miscellaneous

4.1 Please describe and comment on anything unique to your jurisdiction (or not covered above) with regard to vertical agreements and dominant firms.

This is not applicable.



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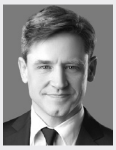

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