Antitrust 2026: Federal Mixed Signals, State Ascendancy, and Global Complexity

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Abstract

For decades, U.S. antitrust policy focused on the consumer welfare standard, emphasizing low prices and output as the primary benchmarks of competitive health. That focus is now evolving as enforcers incorporate broader concerns, including labor market fairness, data control and privacy, innovation, and the systemic effects of concentrated economic power.

Debates over consolidation in healthcare, retail, agriculture, and digital markets have intensified questions about whether traditional tools can address modern competition challenges, particularly when competitive harms are identified in non-price dimensions such as wages, access, and innovation. This white paper surveys emerging enforcement trends across three levels—federal, state, and international—and identifies practical implications for legal counsel, investors, and operating businesses in 2026 and beyond.

I. Introduction

The antitrust enforcement environment in 2026 exhibits continuing divergence between federal, state, and international authorities, creating a multi-layered and often inconsistent risk landscape for business. Federal agencies are recalibrating enforcement priorities and signaling greater openness to structural remedies, even as they continue to target labor markets and digital platforms. Political objectives, such as addressing affordability through applying pressure to lower prices, particularly in the pharma and agricultural sectors, are embedded in the domestic antitrust agenda. At the same time, state attorneys general are asserting independent authority through new statutes, venue reforms, and sector-specific regimes, while international regulators in the European Union, United Kingdom, and elsewhere pursue expansive theories of harm centered on market structure, fairness, and data-driven conduct.

For companies operating across jurisdictions, this fragmentation means that transaction clearance and conduct compliance at the federal level in the U.S. no longer provides

meaningful comfort against challenge elsewhere. Businesses must instead plan for concurrent, and sometimes conflicting, expectations across federal agencies, state enforcers, and foreign competition authorities, especially in healthcare, agriculture, technology and AI, life sciences, and other markets.

II. Federal Antitrust Developments in 2026

A. DOJ Enforcement Priorities and Structural Remedies

The Antitrust Division of the Department of Justice remains focused on labor and digital markets, with active civil and criminal enforcement against wage-fixing, no-poach agreements, and misleading compensation schemes. The DOJ also continues to pursue monopolization theories in digital advertising and related technology markets, while an internal Anticompetitive Regulations Task Force evaluates regulatory barriers that may entrench incumbents. Notably, the agencies have withdrawn some conduct guidance statements, including the DOJ's 2023 healthcare policy statements, the joint 2024 competitor collaborative guidelines, and the FTC's long standing health care policy statements. And agency leaders have resurrected older doctrinal protectionist Supreme Court decisions. Meanwhile, traditional cartel and criminal enforcement efforts continue albeit with fewer headlines.

Recent merger actions reflect a notable shift back to pragmatic structural settlements, exemplified by the consent decree allowing Keysight Technologies' acquisition of Spirent Communications to proceed with divestitures in high-speed ethernet testing, network security testing, and RF channel emulation. This outcome, coupled with public statements by senior DOJ leadership, suggests a greater willingness to resolve transactions involving complementary businesses through targeted divestitures rather than insisting on outright blocks, other than exceptional cases.

Additionally, some observers note there is an appearance of political motivations or connections driving approvals, including the Skydance-Paramount merger, the Nextar-Tegna merger, the CVS-Aetna deal, and Hewlett Packard's acquisition of Juniper Networks. The criticism generally is that approvals, settlements, or non-enforcement decisions are not based on technical or traditional competition analysis, but rather appear related to unusually extensive lobbying, donations, personal relationships, or executive branch priorities. Critics point to Presidential tweets instructing antitrust authorities to get the deals done.

On the other hand, pre-HSR filing lobbying and communications with the agencies has always been a strategy to help secure approval by clarifying issues in advance and explaining why anticompetitive effects are unlikely. Those efforts may include approaches

to the agency staffs and the executive branch and Congress. **B. FTC Strategic Realignment**

Under current leadership, the Federal Trade Commission has softened some of the more expansive positions articulated under prior administrations, while preserving focus on digital markets and data-driven conduct. Recent patterns include:

- Approval of significant mergers in advertising and communications sectors, including transactions involving major marketing conglomerates.
- Retreat from legacy Robinson-Patman price discrimination enforcement in favor of modern competition and consumer protection theories.
- Continued attention to privacy, platform self-preferencing, and alleged loyalty or exclusionary programs in sectors such as crop protection products, where the FTC and several states are litigating against Syngenta and Corteva.
- At the same time, both the DOJ and FTC are monitoring how firms respond to the impact of tariffs, warning that coordinated price increases or information sharing framed as tariff responses may still trigger antitrust liability.

C. Merger Guidelines, Litigation, and Procedure

- The updated Merger Guidelines continue to influence the DOJ and FTC case selection and litigation posture, with heightened emphasis on concentration metrics, vertical theories, and digital platform dynamics. Courts, however, have shown varying degrees of skepticism toward some structural presumptions and agency theories, contributing to more contested litigation matters.
- In October 2024 the agencies finalized Hart-Scott-Rodino (HSR) reporting form changes, which broadly expanded HSR disclosure obligations. Those changes, particularly around competitive overlaps, supply relationships, and strategic documents, threatened substantial increases in the cost, timing, and complexity of federal merger review. In February 2026 a federal court vacated use of the updated form. The FTC is now seeking public comment on whether to revise the HSR process again. The public comment process signals possible future changes, such as addressing acqihires (acquisition of key personnel rather than products, services or IP), investment-only exemptions, supplemental filings for changed deals, housing acquisition, CFIUS/foreign ownership disclosures, and government contacting data. Filings are now accepted under the older pre-2025 form or under the vacated updated form on a voluntary basis. Regardless, Companies must now assume that

detailed internal analyses will be scrutinized not only by federal agencies but also, through parallel statutes, by multiple state attorneys general.

III. State-Level Antitrust: From "Tag-Along" to Independent Power Centers

A. Substantive Divergence and Broader Legal Bases

State attorneys general now act as increasingly independent competition enforcers, often willing to challenge conduct and transactions that federal agencies decline to pursue or resolve more narrowly. Unlike the DOJ and FTC, which are limited to federal law, states can proceed under both federal statutes and their own antitrust and consumer protection laws, many of which feature more plaintiff-friendly standards and broader remedial authority.

US state attorneys general are rapidly expanding their role as de facto national enforcers, stepping into cases and policy fights that federal agencies are no longer pursuing. With federal enforcement capacity constrained by staffing cuts, shifting priorities, and political limitations, state AG offices — now backed by growing budgets and multistate coalitions — have developed resources and legal strategies to initiate complex litigation on their own.

Recent legislative and policy developments have expanded state tools in several directions:

- New or proposed rules on algorithmic and "surveillance" pricing, non-competes, and sector-specific merger notification ("mini HSR") regimes, particularly in healthcare and other sensitive industries.
- Venue reforms—most notably the State Antitrust Enforcement Venue Act—that allow state AGs to keep federal antitrust cases in their preferred courts rather than being swept into multidistrict litigation, thereby retaining strategic control over forum and timing.

B. Stronger State Merger Review and "Mini HSR" Regimes

States are now structuring merger review around both traditional "substantial lessening of competition" concepts and additional public interest factors such as labor, local access, and community impacts. Some proposals, including draft language in California, would adopt lower thresholds like "appreciable risk of materially lessening competition," effectively making it easier to challenge deals than under federal standards.

A small but growing number of states have adopted general premerger notification statutes tied to HSR filings:

- Washington and Colorado require contemporaneous submission of federal HSR filings and associated documents when certain in-state nexus thresholds (e.g., 20

percent of the HSR size-of-transaction threshold in relevant state sales) are met, backed by significant per-day civil penalties for non-compliance.

- Other jurisdictions—including Hawaii, West Virginia, the District of Columbia, and several large states such as California and New York—have pending or sector-specific proposals that, once effective, will further expand state-level merger screening.

Even where states nominally request only the federal HSR package, their express authority to demand supplemental documents on short deadlines, combined with detailed healthcare and labor questionnaires, requires deal teams to treat state filings as separate workstreams rather than secondary add-ons.

C. Sector and Conduct Priorities

State and federal enforcers are converging on a core set of high-priority sectors, but state AGs are often more aggressive and locally focused in deploying novel theories. Key areas in 2026 include:

- Healthcare and life sciences: Enhanced scrutiny of hospital and physician group consolidation, private-equity-backed roll-ups, corporate practice of medicine structures, and contractual restraints that affect access, quality, or cost of care.
- Food and agriculture: Investigations into pricing, information sharing, and trade association behavior across meat processing, eggs, seeds, fertilizer, and farm equipment, with particular focus on foreign-controlled entities and grocery inflation.
- Technology, AI, and digital infrastructure: Concerns about control over data centers, cloud capacity, and AI-driven infrastructure, including tying up scarce power resources and bottleneck inputs.
- Right-to-repair and consumer goods: Challenges to repair restrictions and interoperability limits in farm equipment, autos, medical devices, and consumer electronics as potential competition issues.
- ESG and climate initiatives: Examinations of investor coalitions, standard-setting bodies, and coordinated "net zero" commitments under both antitrust and consumer protection theories, including allegations of collusion or misleading disclosures.

D. Algorithmic Pricing, AI, and "Surveillance" Markets

AI related bills have been introduced in all fifty states, ranging from broad governance to narrower employment, deepfake, or consumer protection rules. States are moving swiftly

to regulate algorithmic pricing and AI-driven commercial conduct, with California, New York, and Connecticut as leading examples. Prominent developments include:

- California's AB 325, effective January 1, 2026, which prohibits the use or distribution of "common pricing algorithms" in concerted practices and exposes firms and individuals to civil and criminal liability.
- New York's Algorithmic Pricing Disclosure Act, requiring clear consumer disclosure when personalized pricing is based on personal data and authorizing civil penalties per violation.
- Connecticut's rental housing law, which targets rent-setting algorithms while preserving limited use of aggregated, non-predictive competitor data in certain analytics.

Dozens of additional state bills introduced in 2025 address "surveillance pricing"—individualized prices or wages based on sensitive data—often proposing bans or heightened disclosure requirements. Companies using shared or third-party pricing tools must assume that enforcement in this area will be both dynamic and politically salient.

E. Leading State Enforcers and Multistate Dynamics

A core group of states—California, New York, Colorado, Minnesota, Washington, and Oregon—is poised to define much of the state-level antitrust agenda in 2026, supported by expanding staff and statutory authority. A second tier, including New Jersey, Connecticut, and Michigan, is investing in dedicated antitrust units and often plays organizing roles in multistate investigations.

Through the National Association of Attorneys General (NAAG), these states are coordinating on bid-rigging (BRACE committee), healthcare and pharmaceutical consolidation, and large digital platform matters, enabling rapid formation of nationwide coalitions and settlements even where federal agencies adopt a more cautious approach.

The willingness of the states to pursue antitrust enforcement litigation was nowhere more evident than two dozen states successful continuation of the case against Live Nation and Ticketmaster over alleged monopolization of the entertainment ticketing industry after the DOJ's Antitrust Division suddenly dropped out and settled with the companies one week into the jury trial. Thus, US state attorneys general are rapidly expanding their role as de facto national enforcers, stepping into cases and policy fights that federal agencies are no longer pursuing. With federal enforcement capacity constrained by staffing cuts, shifting priorities and political limitations, state AG offices — now backed by growing budgets and multistate coalitions — have developed the resources and legal strategies to initiate complex litigation on their own.

IV. International Antitrust and the Global Compliance Burden

A. Enforcement Against U.S.-Based Multinationals

International competition authorities are intensifying scrutiny of U.S.-based firms, particularly in technology, pharmaceuticals, and payment industries. Illustrative developments include:

- More than €8.2 billion in cumulative fines imposed on Google by the European Commission, with continued investigations into self-preferencing and platform conduct by Meta and Amazon.
- A major cartel settlement involving Teva, which paid approximately $225 million in the United States, highlighting cross-border coordination in life sciences enforcement.
- EU and UK investigations into algorithmic and data-driven conduct, such as alleged price coordination among tiremakers via investor calls and competition concerns involving Amazon's marketplace policies in Canada.

In the UK, new digital competition legislation adopted in 2024 grants regulators proactive tools to oversee "strategic market status" platforms, further increasing the likelihood of divergent remedies and conduct expectations compared to the United States.

B. Philosophical and Legal Divergence

Differences in legal frameworks and enforcement philosophies between the United States and European Union are increasingly material to business planning. In general:

- U.S. law remains case-law-driven and anchored in consumer welfare, with limited willingness to pursue excessive pricing or pure fairness-based theories.
- EU law operates in a more regulation-heavy environment, with greater openness to cases based on excessive pricing, refusals to deal, and proactive digital oversight through instruments like the Digital Markets Act.

These divergences mean that a business model or pricing strategy acceptable under U.S. antitrust law may still face serious risk in Europe, particularly where it implicates data access, platform neutrality, or market structure in networked industries.

C. Emerging Global Themes

Across jurisdictions, several trends are evident:

- Heightened attention to AI, algorithms, and data as potential mechanisms for tacit or explicit collusion, including scrutiny of shared pricing software and industry-wide data-sharing.
- Increased willingness to view digital infrastructure, payment systems, and energy-intensive facilities (such as data centers) as potential chokepoints warranting sector-specific commitments or remedies.
- More push-back on large international fines, both through political avenues and appeals, such as in the Mastercard, Visa UK card fees litigation.
- Expanding overlap between antitrust, foreign investment review, and national security screening, particularly in life sciences, cloud computing, and cross-border collaborations with Chinese or other "sensitive" partners.

V. Sector-Focused Outlook: Life Sciences and Healthcare

Life sciences companies—biopharma, medtech, digital health, and investor-backed healthcare delivery—face a particularly dense convergence of antitrust, data, and national security risks in 2026. Enforcement agencies are examining not only traditional horizontal overlaps but also how deals, contracts, and data governance practices shape innovation and access.

Key dimensions include:

- M&A and roll-ups: Tougher review of bolt-on acquisitions and private-equity-driven consolidation in specialized clinics, manufacturers, and distributors, especially where local or niche market power may increase despite modest national shares.
- Licensing and collaborations: Greater scrutiny of co-development, exclusive licensing, and joint ventures (including with Chinese counterparties) that could reduce pipeline competition or foreclose rivals from key technologies or clinical data.
- Pricing and exclusivity: Focus on rebates, bundled discounts, formulary placement, exclusive distribution, "most favored nation" clauses, and long-term supply deals in high-cost or shortage-prone therapies.
- Data, AI, and digital health: Attention to control over clinical data, interoperability, and algorithm design in AI-enabled diagnostics, imaging, and monitoring platforms, including concerns about self-preferencing and exclusion of rival apps or devices.
- Supply chain and biosecurity: New measures, such as emerging BIOSECURE-style restrictions on "biotechnology companies of concern," that bring competition,

procurement, and national security considerations into vendor selection and long-term contracts.

Practical preparation steps for life sciences and healthcare businesses include mapping transactions and key contracts against modern antitrust theories, enhancing governance for pricing and data sharing decisions, and involving antitrust and regulatory counsel early in deal planning and major commercial negotiations.

VI. Federal–State Philosophical Split

Federal and state enforcers increasingly apply different lenses to similar conduct, creating a layered enforcement environment. Broadly:

- Federal agencies emphasize consistency, economic modeling, and national market definitions, with remedies tailored to identified competitive effects.
- States prioritize community-level impacts, equity, worker outcomes, and access, often under statutes that explicitly incorporate broader public-interest factors.

As noted, this can mean that a transaction cleared by DOJ or FTC still faces litigation risk from one or more states applying lower substantive thresholds or seeking broader behavioral conditions tied to employment, local presence, or service levels. Recently, the DOJ and the Federal Communications Commission approved the Nexstar-Tegna merger. The Colorado Attorney General said the agencies disregarded established standards and its own prior precedents. A coalition of states — including Colorado — challenged the transaction as presumptively illegal. For deal planning purposes, businesses must therefore assume that "the tightest standard wins"—one aggressive jurisdiction can effectively dictate timing and remedies for a national transaction.

VII. Implications and Strategic Recommendations

A. For Legal Counsel

- Develop jurisdiction-specific playbooks that account for differing standards, documentation expectations, and timelines at federal, state, and international levels.
- Build early cross-functional teams—legal, regulatory, government affairs, and business—to identify and address issues likely to resonate with state AGs and foreign authorities, not just the DOJ and FTC.

B. For Businesses and Deal Teams

- Assume multi-front review as the norm for material transactions, including parallel engagement with key state AG offices and foreign regulators.
- Proactively map algorithmic pricing tools, AI deployments, and HR policies (especially non-competes and wage practices) against emerging substantive rules and disclosure requirements.
- Treat state "mini HSR" and sectoral regimes as independent critical paths, with separate timelines and workstreams for document production, labor and community impact disclosures, and potential public comment processes.

C. For Compliance Efforts

- Business leaders must understand that antitrust risk is often created by **ordinary business behavior**—pricing, sales calls, competitor contacts, M&A, data sharing, and trade association participation—so leaders need a system that spots risk early and keeps decisions independent.
- Risk is not limited to the legal department; executives, sales teams, marketing, procurement, HR, and anyone who interacts with competitors or industry groups can create exposure.
- Competitor information sharing is a major danger area, especially if it involves current or sensitive pricing, strategy, capacity, wages, or other nonpublic competitive data.
- Mergers, acquisitions, joint ventures, and even some strategic partnerships need antitrust review early, because deal structure, market share, and disclosure obligations can all matter.
- A compliance program should be tailored to the company's actual risks, with training, reporting channels, monitoring, audits, and regular updates—not just a policy on paper.
- Establish Practical controls
    - Set clear rules on competitor contacts, trade association participation, and communications that could reveal pricing or strategic intent.
    - Train employees by role, especially people in sales, marketing, procurement, and leadership, so they know what conduct is prohibited and how to escalate concerns.

    - Build reporting mechanisms that let employees raise issues quickly without retaliation and enforce violations consistently.
    - Review pricing tools, analytics, AI systems, and third-party benchmarking data for antitrust risk, since algorithmic coordination and data pooling can draw scrutiny.
    - Reassess the program periodically and after major business changes such as acquisitions, entry into new markets, or new collaboration models.
- The strongest compliance programs start with leadership setting the tone that competition rules are a business priority, not just a legal formality. In practice, that means executives should support training, ask for antitrust review on risky decisions, and reward people for escalating concerns early.

C. For Policymakers

- Consider how fragmented standards and overlapping notification obligations affect investment, innovation, and cross-border commerce, especially for mid-sized companies.
- Use state experimentation as a policy laboratory, while exploring mechanisms to reduce unnecessary compliance friction and promote predictable, transparent enforcement frameworks.

D. For Consumers and Civil Society

- Recognize that antitrust enforcement now directly implicates wages, healthcare access, platform neutrality, and local market resilience, not only headline prices.
- Engage with comment opportunities in merger reviews and rulemakings, particularly when statutes require consideration of labor and community impacts.

VIII. Conclusion

The 2026 antitrust landscape reflects both innovation and fragmentation, as federal agencies recalibrate, state attorneys general assert independent power, and international regulators expand enforcement under different standards. Companies must navigate a complex matrix of overlapping jurisdictions and evolving doctrines, particularly in sectors where AI, data, and infrastructure create new forms of market power.

Effective strategy in this environment requires treating state and foreign enforcers as autonomous counterparts, integrating antitrust considerations into early-stage business

planning, and designing transactions, pricing strategies, and data practices that can withstand scrutiny across the full spectrum of modern competition law.

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June 2026