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2024 ANTITRUST LITIGATION ANNUAL REPORT

CONTENTS

Authors 3

I. Increased Rhetoric around Merger Enforcement 5

II. The Evolution of Antitrust Conduct Litigation as Traditional Antitrust Principles are Applied to Modern Markets 7

– Heightened Scrutiny of Information-Sharing and Artificial Intelligence 7

– Increased Concern around Pricing Practices in Healthcare 8

– Ongoing Debate on Defining Harm in Modern Technology Markets 9

III. Antitrust Enforcement in 2025 – What to Expect? 11

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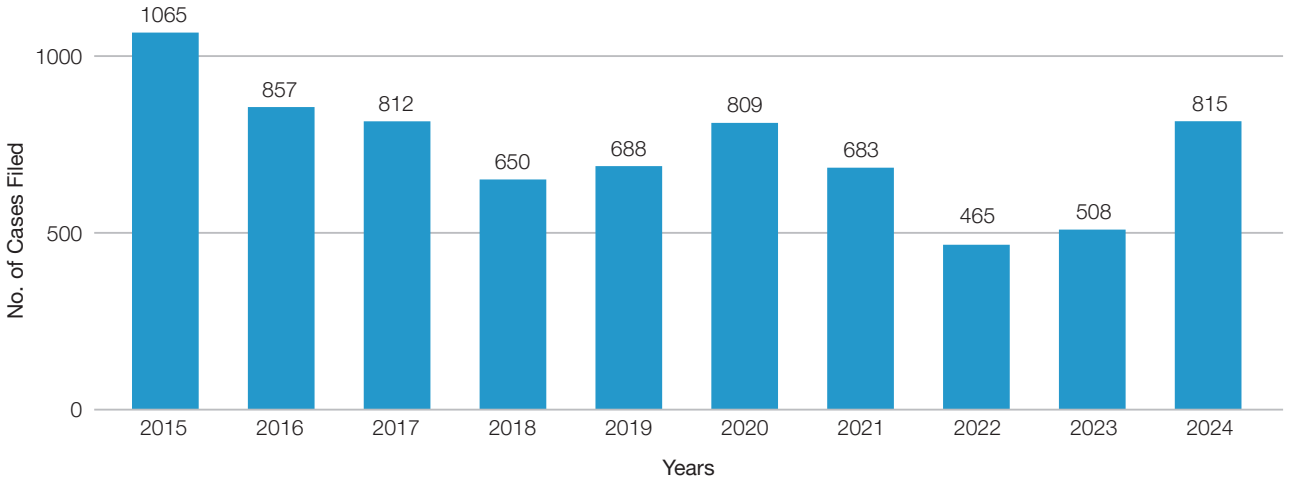
2024 ANTITRUST LITIGATION ANNUAL REPORT

In 2024, antitrust litigation in federal courts surged, continuing a recent trend toward increased government enforcement and heightened private-plaintiff activity. Last year, roughly 815 antitrust cases were filed in federal court, marking a 60% increase over the 508 cases filed in 2023, and reaching the highest volume seen since 2016. Notably, the number of antitrust class actions filed jumped sharply to around 340 cases—the highest number since 2015—reflecting aggressive regulatory actions and heightened private plaintiff activity.

It is worth noting, however, that annual litigation spikes often result from one or more large multidistrict litigations (MDLs). For example, in 2015, a single class action (*In re Domestic Airline Travel Antitrust Litigation*) and associated MDL complaints accounted for nearly 20% of the total cases filed. In 2024, similar drivers may include several major class actions, including the litigations against RealPage, potato processors, and opt outs in the various protein class actions. These active matters may have significantly contributed to the observed surge in 2024 filings, but overall activity appears to be trending upward.

The DOJ Antitrust Division continued robust enforcement in 2024, initiating around 24 new antitrust enforcement actions and submitting 8 statements of interest in private litigations. Similarly, the Federal Trade Commission (FTC) challenged approximately nine significant transactions, continuing a trend of favoring litigation over negotiated settlements. At year-end, 33 MDLs remained pending: 24 with Section 1 claims, and 9 with Section 2 claims.

Federal Antitrust Cases Filed from 2015 to 2024



815
Federal Cases
Total antitrust cases filed in federal court during 2024

60%
Annual Increase
Growth in case volume compared to 2023 filings

340
Class Actions
Highest number of antitrust class actions since 2015

33
Active MDLs
Multidistrict litigations pending at year-end

The notable spike in litigation activity was partly driven by several major class actions, including cases against RealPage, potato processors, and opt-outs in various protein class actions. While annual litigation spikes often result from one or more large MDLs, the overall activity appears to be trending upward across sectors.

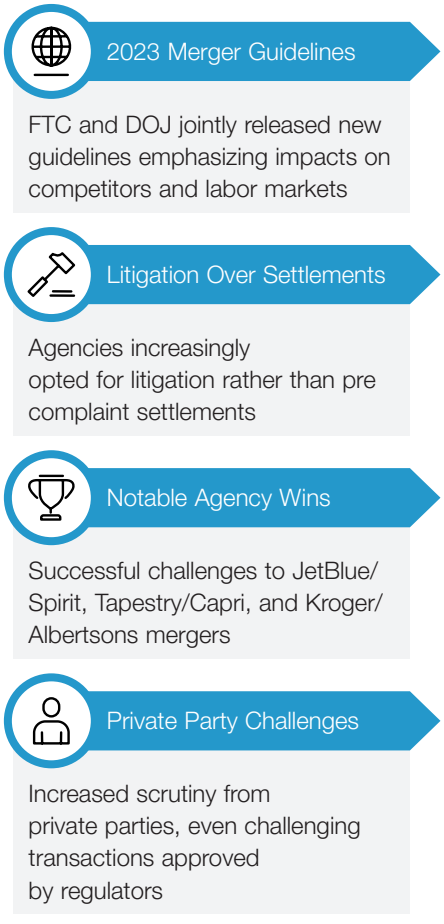
While 2024's heightened litigation levels reflect current regulatory and market dynamics, enforcement approaches may shift under the incoming Trump administration in 2025, potentially returning to more traditional economic analyses and increased reliance on negotiated remedies. And despite the change in administration, the Trump administration opted to retain both the 2023 Merger Guidelines and the substantially revised Hart-Scott-Rodino (HSR) notification form, signaling continued aggressive merger scrutiny for the foreseeable future.

I. Increased Rhetoric around Merger Enforcement

In late 2023, the FTC and the DOJ jointly released the 2023 merger guidelines, following the same approach as the draft that had been posted for review earlier that year. The new guidelines outline how agencies will assess competitive issues in mergers, emphasizing potential impacts on competitors and the labor market rather than focusing solely on consumer welfare. The guidelines, while not binding, outlined the arguments that would be tested in litigation throughout 2024, including serial acquisition and private equity, raised nonhorizontal theories of harm, and lowered the threshold for when a merger would be presumed anticompetitive. Despite the intensified rhetoric and ostensibly broad scope of the guidelines, enforcement was limited, and mergers persisted even in the most closely examined sectors. In FY 2023, there were about 1,805 HSR filings, nearly half of the previous year's total, with an intervention rate of around 0.5%.[1]

The substantial decrease in merger activity after FY 2022 raises the question of whether the heightened scrutiny and public attention surrounding merger reviews have discouraged companies from initiating transactions to begin with. In line with the trend of reduced reported merger activity, merger enforcement under the Biden administration has remained historically low. However, regulatory agencies under the Biden administration increasingly opted for litigation rather than resolving potential anticompetitive issues outside of court through pre-complaint settlements, resulting in a high percentage of merger investigations ending with abandoned transactions even when the government did not get its preliminary injunction.

In 2024, both agencies obtained some notable wins in merger litigation, including *JetBlue/Spirit*, *Tapestry/Capri*, *Kroger/Albertsons*, and *Novant Health/CHS.* Key takeaways from last year's merger decisions include (1) a willingness to accept the factors in *Brown Shoe Co. v. United States* to identify the presence of a narrowly defined market without needing extensive economic evidence; (2) a focus on the impact of mergers on labor markets and possible future standalone labor cases; and (3) limited acceptance of out-of-market benefits unless they pertain to an essential community service.



1 FTC & DOJ, Hart-Scott-Rodino Annual Report (Oct. 1, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/fy2023hsrreport.pdf.

- The DOJ sued to block the completion of the transaction, arguing that the merger would cause travelers to face higher fares and fewer choices for their travel needs. JetBlue countered, claiming that the acquisition of Spirit would boost competition against the big four airlines, thereby lowering prices for everyone nationwide. The Court, supporting the DOJ's position that market consolidation and decreased head-to-head competition resulting from the transaction on individual routes should both be separately considered, determined that the increased concentration in relevant markets and other anticompetitive effects established a prima facie case of harm under Section 7.

- ***Tapestry/Capri***: The FTC sued to block Tapestry's $8.5 billion acquisition of Capri Holdings, alleging that the proposed merger would harm competition in the "accessible luxury" handbag market. The FTC alleged that the parties were head-to-head competitors in the sales of "accessible luxury" handbags, which kept prices affordable. The FTC argued that the transaction would harm competition in the "accessible luxury handbag" market. The Court accepted the FTC's narrow definition, noting that "accessible luxury" handbags are distinct due to their different production facilities, prices, industry recognition, and customer sensitivity to price changes, which differs from those of "true luxury" or "mass market" handbag companies. The Court concluded that, with respect to the concentration thresholds, it found the 2023 Merger Guidelines to be persuasive by utilizing the 2023 merger guidelines, The Court then agreed that post-merger Tapestry would have a 59% market share, well over the 30% threshold needed to create a presumption of anticompetitive effects and granted the preliminary injunction. This merger challenge demonstrated the government's willingness to target transactions involving niche markets that may not have received much scrutiny in the past.

- ***Kroger/Albertsons***: The FTC commenced an administrative proceeding to block the the merger of two major grocery chains and filed a complaint in federal court to enjoin the merger pending the result of the administrative proceeding. The Court accepted the plaintiff's argument that the product market was "traditional supermarkets and supercenters" as they had distinct characteristics, uses, customers, and other attributes not seen in premium, natural, and bulk-item stores. The Court issued the preliminary injunction due to the potential harm to competition among supermarkets but also considered the possible adverse effects on the labor market if the merger were to proceed, opining that Kroger and Albertsons "engage in head-to-head competition when hiring union grocery workers and negotiating [collective bargaining agreements]," and that the merger would "increase the market concentration of union grocery workers" in multiple regions." Ultimately, the Court did not reach a final decision on whether labor-market harms alone would justify blocking a merger, leaving the question open.

- ***Novant Health/CHS***: The FTC sued to block Novant's purchase of two hospitals, alleging that the deal would increase healthcare costs, reduce incentives to provide quality care, and allow Novant to negotiate higher rates with insurers. Novant claimed that buying the hospitals would restore essential services and healthcare to underserved communities, as the two financially struggling hospitals couldn't provide needed services without the transaction. Following a multi-day preliminary injunction hearing, the Court accepted Novant's argument and ruled in the company's favor,

JetBlue/Spirit

The Court supported DOJ's position that market consolidation and decreased head-to-head competition on individual routes should both be separately considered, establishing a *prima facie* case of harm under Section 7.

Tapestry/Capri

The Court accepted FTC's narrow "accessible luxury handbag" market definition, noting distinct production facilities, prices, and industry recognition. Post-merger Tapestry would have a 59% market share, well over the 30% threshold.

Kroger/Albertsons

The Court issued a preliminary injunction due to potential harm to competition among supermarkets but also considered possible adverse effects on the labor market, noting the merger would "increase market concentration of union grocery workers."

Novant Health/CHS

Even though the transaction technically increasing concentration, the Court accepted Novant's argument that buying two financially struggling hospitals would restore essential services to underserved communities, ruling in the company's favor.

determining that the acquisition served the public interest. The FTC filed a notice to appeal the decision, and following an extension granted by the Fourth Circuit for filing the appeal, the parties chose to abandon the transaction.

Private parties also stepped up merger scrutiny, even challenging transactions approved by regulators, prolonging deal timelines or increasing transaction costs. Companies should anticipate continued private challenges even following regulatory clearance.

Baker v. Capital One Financial Corporation, et al: This proposed class action seeks to enjoin the merger of Capital One and Discover, alleging that it will lead to a substantial decrease in competition in both the General Credit Card Market and the Credit Card Payment Processing Market. On July 22, 2024, a federal judge in Virginia paused the case, agreeing with the companies that it was best to let federal regulators complete their review of the transaction before going forward with the private litigation.

Dale et al. v. Deutsche Telekom AG, et al: This proposed class action alleges that T-Mobile's merger with Sprint in 2020 permitted the providers to raise prices. The class alleges that the merger is anticompetitive and is asking the court to dissolve it and establish another key competitor in the market.

Key Takeaways

- Courts displayed increased receptivity to narrowly defined markets without exhaustive economic evidence.
- Labor market impacts increasingly factored into antitrust analyses.
- Agencies succeeded by targeting niche markets historically overlooked.

II. The Evolution of Antitrust Conduct Litigation as Traditional Antitrust Principles are Applied to Modern Markets

The year 2024 marked a time of innovation, as both government enforcers and private plaintiffs attempted to make an old law do new tricks.

Heightened Scrutiny of Information-Sharing and Artificial Intelligence

During the 2023-2024 period, enforcement actions focused on examining AI-driven tools and data-sharing practices. The primary concern was that these technologies, even if not deliberately misused, could potentially restrict competition and harm consumers.

U.S. v. AgriStats: The DOJ, along with six states, filed a lawsuit against a company that provides data analysis for the agriculture sector. The suit, which follows several private class actions relating to the same conduct, alleges a violation of Section 1 of the Sherman Act, claiming that the company's benchmarking reports containing industrywide data on outputs, pricing, and production costs enabled coordination among companies. AgriStats—which primarily serves the poultry and pork markets, making this case significant for agricultural practices—argues that the data shared



U.S. v. AgriStats

The DOJ alleged that AgriStats' benchmarking reports containing industrywide data enabled coordination among companies in poultry and pork markets.



U.S. v. RealPage

The DOJ claimed RealPage collected nonpublic information for rental software, providing pricing recommendationsthat allowed owners to coordinate rental prices.



Cornish-Adebiyi v. Caesar's Entertainment, Inc.

The DOJ clarified that direct communications aren't necessary to demonstrate an agreement, as Section 1 includes both tacit and express agreements.



Future Precedents

These cases will establish how courts interpret antitrust laws' application to AI and other information-sharing tools across all sectors.

through the reports has increased productivity and lowered costs, by promoting efficiency across the supply chain. The Court has since denied AgriStats' motion to dismiss. While this is more of a traditional information-sharing case, it shows that the agencies are interested in the anticompetitive effects of exchanging data.

U.S. v. RealPage: In 2024, the DOJ, along with eight states, filed a lawsuit alleging that RealPage collected nonpublic information for its rental software, which provided pricing recommendations, allowing owners to coordinate their rental prices. This system is also under fire in an MDL in the Middle District of Tennessee. Both demonstrate how parties are considering not only the exchange of information but also the tools available to facilitate that process.

In 2024, the DOJ filed two statements of interest in private civil antitrust MDLs, examining algorithmic pricing software. In March 2024, the DOJ addressed algorithmic pricing in support of the plaintiffs in *Cornish-Adebiyi v. Caesar's Entertainment Inc*. The DOJ clarified that direct communications are not necessary to demonstrate an agreement among competitors, as Section 1 includes both tacit and express agreements. Moreover, delegating key aspects of pricing decision-making to a third party can also raise antitrust concerns, even if the competitors do not communicate directly with each other. The district court dismissed the complaint, stating the hotels neither shared information directly nor committed to follow the algorithm's recommendations, thus failing the concerted-action requirement under Section 1 of the Sherman Act. Months later, on October of 2024, the DOJ filed a statement of Interest in *In Re Pork Antitrust Litigation*, an MDL in the District Court of Minnesota, once again clarifying the "correct application" of Section 1 as it applies to the plaintiff's information sharing claim.

These cases will establish precedents for how the courts will interpret antitrust laws' application to AI and other information-sharing tools. This scrutiny towards new technologies across all sectors—as we saw in 2024—will likely continue going forward.

Increased Concern around Pricing Practices in Healthcare

In May 2024, the DOJ announced the creation of the Antitrust Division's Task Force on Health Care Monopolies and Collusion, intending to "identify and root out monopolies with collusive practice that increase costs, decrease quality and create single points of failure in the health care industry." The formation of this team followed ongoing discussions about drug pricing and the quality of care, which had already become major concerns within the antitrust community. Antitrust agencies eyed "roll-up strategies" used by private equity firms, scrutinized the role of pharmacy benefit managers (PBMs) and their impact on the price of drugs nationwide, and other exclusionary practices in healthcare. Private entities also investigated the healthcare sector, leading to 8 out of the 32 MDLs focusing on healthcare-related matters.

Health insurance also gained additional attention through several private class actions when Blue Cross Blue Shield (BCBS) reached a $2.8 billion settlement with the provider class, consisting of physicians, hospitals, and other health care providers. The case involved BCBS entities allegedly dividing geographic markets, restricting competition, and controlling reimbursement rates for medical providers. MultiPlan, a tech firm that provides data analytics and other services to health insurance companies, has faced a



Task Force Formation

The DOJ created the Antitrust Division'sTask Force on Health Care Monopolies and Collusion to identifyand root out monopolies with collusive practices.



FTC PBM Litigation

The FTC filed complaints against three largest Pharmacy Benefit Managers alleging unfair rebate schemes artificially inflating insulin prices.



FTC v. USAP

FTC sued U.S. Anesthesia Partners alleging roll-up strategy for inpatient anesthesia services enabled monopoly power and price increases.



BCBS Settlement

Blue Cross Blue Shield reached a $2.8 billion settlement with provider class over allegations of dividing geographic markets and restricting competition.

large number of lawsuits since May 2024. These lawsuits have thrust health insurance further into the spotlight the case. For instance, in the case In Re MultiPlan Health Insurance Provider Litigation, the plaintiffs asserted that MultiPlan's pricing tools enabled collusion among major insurers, resulting in reduced reimbursement rates for out-of-network providers.

- ***FTC v. U.S. Anesthesia Partners***: The FTC filed a lawsuit against the private equity firm that previously controlled U.S. Anesthesia Partners (USAP) and USAP itself under Section 13(b) of the FTC Act. The suit alleges that USAP employed a roll-up strategy for inpatient anesthesia services in Texas, which enabled USAP to gain monopoly power, raise prices, and reduce the quality of care for its patients. The Court dismissed the private equity firm from the litigation, since the firm had not had majority control in USAP since 2017, stating that the FTC is not permitted "to bring a claim based on long-past conduct without some evidence that the defendant 'is' committing or 'is about to' commit another violation." Despite the dismissal, the FTC continued its administrative proceeding against the firm. The dismissal was a major setback for the FTC, indicating that courts are skeptical about whether minority investors without decision-making power can violate antitrust laws by merely providing financial support.

- ***FTC PBM Litigation***: The FTC filed an administrative complaint against three of the largest Pharmacy Benefit Managers (PBMs)—Caremark Rx, Express Scripts, and OptumRx—along with their affiliated group purchasing organizations. The complaint alleges that these entities engaged in an unfair rebate scheme that artificially inflated the price of insulin drugs. The PBMs allegedly control 80% of U.S. prescriptions, and the government claims that pharmaceutical companies compensate them to have their medications listed as a favorable formulation. This practice allegedly incentivizes PBMs to prefer drugs with higher list prices, thereby increasing costs to consumers.

Ongoing Debate on Defining Harm in Modern Technology Markets

Courts continue to address the application of antitrust laws to advertising technology, social media, search engines, and app stores. These platforms often provide free services to consumers, posing unique challenges in a legal landscape where traditionally, high monetary costs to consumers have generally been the primary concern. In response to widespread concerns regarding industry concentration and the extensive data controlled by a limited number of companies, 2024 became a pivotal year for addressing potentially monopolistic practices within digital markets.

- ***U.S. v. Google (Search and Ad Tech)***: Google litigated challenges to two aspects of its business—Search and AdTech. In *U.S. v. Google (Search)*, a federal court in Washington, D.C. found that Google's practices violated Section 2 of the Sherman Act concerning its position in the search engine market. The court's 277-page opinion noted that Google "holds an 89.2% share of the market for general search services, which rises to 94.9% on mobile devices," allowing it to charge advertisers higher prices without necessarily enhancing the platform. A remedies hearing, scheduled for April 2025, will determine how best to resolve the violation. The DOJ is also litigating a case against Google concerning its digital advertising practices, alleging that Google maintained an unlawful monopoly in this sector by employing exclusionary tactics, such as tying and auction manipulation, to prevent publishers

and advertisers from effectively competing. The trial ended in December 2024 and a decision is expected this year. In both cases, Google has maintained that both tools promote innovation and make the experience better for the end user.

- ***FTC v. Meta Platforms***: On November 2024, a federal court in Washington, D.C. denied Meta's motion for summary judgment, allowing the case to move forward to trial. The case is scheduled for trial on April 14, 2025. FTC asserts that Meta maintained monopoly power in the personal social networking market through the acquisitions of Instagram and WhatsApp, which were emerging competitors. However, Meta argues that it competes in a dynamic landscape against companies like TikTok and Snapchat and will be able to show strong procompetitive reasons for acquiring Instagram and WhatsApp in the first place. The FTC is expected to encounter significant challenges in substantiating its allegations as the Court remarked in its opinion, "the [FTC] faces hard questions about whether its claims can hold up in the crucible of trial," noting that "its positions at times strain this country's creaking antitrust precedents to their limits." The case shows how difficult it is to prove that a product, which is free, is harming its users.

- ***U.S. v. Apple***: On March 2024, the DOJ, along with 16 states, sued Apple for monopolization and attempted monopolization of the smartphone market in violation of Section 2 of the Sherman Act. The complaint states that Apple maintains its monopoly by selectively imposing contractual restrictions, withholding critical access points for developers, and using other exclusionary practices, undermining innovation. Apple asserts that its policies are used to maintain a secure ecosystem for its consumers. Apple has filed a motion to dismiss, but the court has yet to rule on it.

- ***FTC. v. Amazon***: The FTC, along with 18 states and Puerto Rico, sued Amazon, alleging that the online retail and technology company used anticompetitive means to maintain its monopoly in the e-commerce space. Amazon's conduct allegedly consisted of blocking competitors from lowering prices, diminishing quality for shoppers, and favoring its business over third-party sellers.

Private companies also allege that major technology companies are using exclusionary conduct to prevent competition and consumer choice.

- ***Epic Games v. Google***: In October 2024, following a trial, the Court issued a permanent injunction against Google, requiring it to allow alternative app stores on Android and preventing exclusive deals with developers who release only through Google's product. Epic successfully argued that Google used aggressive deal-making to maintain Google Play Store, which disadvantaged competing products within Android's operating system.



U.S. v. Google

Federal court found Google violated Section 2 of Sherman Act regarding its search engine market position, noting it "holds an 89.2% share of the market for general search services." A remedies hearing is scheduled for April 2025.

FTC v. Meta

Court denied Meta's summary judgment motion, allowing the case to proceed to trial. The FTC alleges Meta maintained monopoly power through acquisitions of Instagram and WhatsApp. The trial is set for April 2025.

U.S. v. Apple

The DOJ sued Apple for alleged monopolization of smartphone market, claiming Apple maintains monopoly through contractual restrictions and exclusionary practices. Apple asserts policies maintain a secure ecosystem.

Key Takeaways

- Antitrust scrutiny increasingly addresses algorithmic coordination and indirect collusion.
- Pricing practices, especially in healthcare, are under rigorous investigation.
- Courts grapple with defining antitrust harm in zero-price digital markets.

III. Antitrust Enforcement in 2025 – What to Expect?

Although the Biden administration has ended, its antitrust initiatives will continue to have a lasting impact. Under the second Trump administration, the antitrust landscape will likely continue to focus on healthcare and technology, but some changes are expected.

- The Trump administration has notably retained both the 2023 Merger Guidelines and the significantly revised HSR notification form, signaling ongoing rigorous merger scrutiny.
- The revised HSR form, effective February 10, 2025, imposes additional reporting burdens and detailed disclosures, indicating continued, intensive merger reviews.
- Emphasizing the resolution of disputes through negotiated settlements outside of court, rather than relying primarily on litigation
- Shifting the focus towards transactions that reduce direct competition, as opposed to vertical issues, leading to fewer transactions undergoing intense scrutiny.
- A return to traditional economic analysis, rather than broad, abstract theories of harm.
- States may increase their own enforcement efforts to fill in the gaps left by the more aggressive Biden administration.
- The emphasis on information sharing is expected to remain but might transition to different sectors.

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Our U.S. Antitrust team is recognized as a **Top 10 Global Elite Antitrust Practice** by Global Competition Review and ranked by Chambers USA and Legal 500.

- We have defended companies in more than two dozen antitrust matters in recent years and obtained exceptional results –defeating class certification, winning dismissal on the pleadings and summary judgment, and delivering victories at trial.
- Our team has deep and proven trial experience, litigating many of the highest-profile antitrust cases in recent years all the way to verdict.
- We are battle-tested trial lawyers who are prepared to take cases to trial and win.
- We bring both innovative thinking and well-tested strategies to bear in attacking complex antitrust claims from the outset.
- We leverage our team's collective experience –including, former high-level U.S. Department of Justice ("DOJ") and U.S. Federal Trade Commission ("FTC") officials, alongside seasoned antitrust trial lawyers –to bring diverse perspectives to criminal and civil litigation matters.

Selected Antitrust and Litigation Rankings

Global Competition Review 2024
- Global Elite: Antitrust and Competition

Chambers USA 2024
- Antitrust: Leigh Oliver, Joseph Ostoyich and Sharis Pozen
- Antitrust Litigation: Joseph Ostoyich
- Antitrust and Competition: DC
- Litigation: White-Collar Crime & Government Investigations: The Elite

The Legal 500 US 2024
- Antitrust: Civil Litigation/Class Actions: Defense: William Lavery
- Antitrust: Merger Control

Chambers Global 2024
- Multi-Jurisdictional Competition/Antitrust

GCR Chambers AND PARTNERS The LEGAL 500



Unique experience litigating cases against the FTC, DOJ, and private plaintiffs

Partners **Joseph Ostoyich**, **Leigh Oliver**, and **William Lavery** have successfully litigated dozens of antitrust class actions, competitor lawsuits, and mergers – including multiple high-stakes trial victories – in a wide range of industries.

Regional Managing Partner **Sharis Pozen** is the former Acting Assistant Attorney General at the DOJ, bringing unparalleled insight and strategic experience to complex antitrust litigation matters.

Partner **Peter Mucchetti** – the former Antitrust Chief of the Healthcare Section at the DOJ – directed numerous successful trial outcomes and oversaw some of the DOJ's most significant antitrust litigation victories during his tenure.



Successful track record

We are proud of our proven track record of achieving successful results, and efficiently so, for our clients. We have amassed an impressive win rate in federal, state and appellate courts nationwide, against private plaintiffs and high-stakes challenged brought by the FTC, DOJ and other administrative agencies.



Unparalleled reputation

Our excellent reputation with regulators, our win rate in federal courts, and our senior experience in both the public and private sectors, allows us to provide clients with unique insights into the mindset and workings of a competition enforcers and plaintiffs. This strength and experience means that we effectively represent our clients' interests from the outset of an engagement all the way through a trial when matters go to litigation.

"A good multi-level depth firm of antitrust attorneys, led by noted experts in the field of antitrust with multiple years of experience and junior partners and associates With an attention to detail."

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