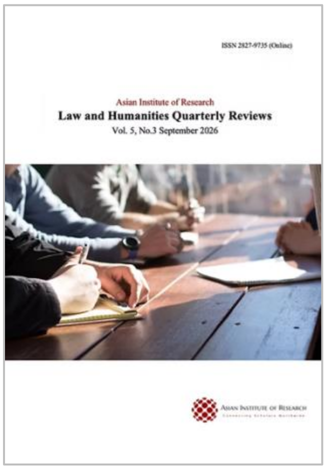

Law and Humanities Quarterly Reviews

Hunter, R. J. (Jr.), Lozada, H. R., & Shannon, J. H. (2026). A Comprehensive View of Antitrust Law in the United States: "Sports, Big Tech and Franchising Contexts" Part I: A Primer on Antitrust? *Law and Humanities Quarterly Reviews*, 5(3), 108-127.

ISSN 2827-9735

DOI: 10.31014/aior.1996.05.03.184

Published by:
The Asian Institute of Research

The Asian Institute of Research
Law and Humanities Quarterly Reviews
Vol.5, No.3, 2026: 108-127
ISSN 2827-9735

DOI: 10.31014/aior.1996.05.03.184

A Comprehensive View of Antitrust Law in the United States: "Sports, Big Tech and Franchising Contexts" Part I: A Primer on Antitrust

Richard J. Hunter, Jr.[1], Hector R. Lozada[2], John H. Shannon[3]

[1] Adjunct Professor of Legal Studies, University of Tulsa
[2] Associate Professor of Marketing, Seton Hall University; Director, Institute for International Business
[3] Professor of Legal Studies, Seton Hall University

Abstract
This article consists of two parts. Part I of this larger study is a comprehensive look at antitrust law in the United States, with a focus on the most important antitrust statutes, a detailed analysis of common antitrust violations, including price fixing, illegal market allocation, bid rigging, group boycotts, and monopolization. The article discusses antitrust enforcement under the Bush, Obama, Biden, and Trump Administrations as a prelude to answering a question: "Is antitrust law still relevant today?"

Keywords: Antitrust, Price Fixing, Market Allocation, Bid Rigging, Monopolization, Group Boycotts, Tying Arrangements

1. Introduction

Antitrust law can be described as the body of rules designed to protect and enhance competition and prevent businesses from gaining or abusing market power in ways that harm consumers, employees, or the competitive process itself (see Hunter, Shannon, & Amoroso, 2023). At its core, antitrust law targets practices such as price-fixing, market allocation, monopolization, and anticompetitive mergers. Antitrust analysis heavily relies on the definition of the market, market power, barriers to entry, and effects on the market from other anticompetitive conduct. Courts often apply the rule-of-reason, weighing procompetitive benefits (Newman, 2019) against anticompetitive harms of an alleged anticompetitive practice or restraint.

The overarching goal of antitrust law lies in preserving competitive markets, ultimately resulting in lower prices for consumers, providing better quality of goods and services, and more consumer choices. Hovenkamp (2026) writes that "The Supreme Court has stated the goals of the antitrust laws consistently since the Sherman Act was passed. Antitrust should bring us lower prices that are reasonably close to the competitive level, competitive rates of market output, and unrestrained innovation."

Modern antitrust doctrine often highlights these goals through the "consumer welfare standard," which evaluates whether conduct harms consumers or the competitive process. Ashton (2022) notes "The consumer welfare standard has been the backbone of antitrust policy for over 40 years and provides a consistent basis for the enforcement of antitrust law." However, Greenfield, Lange and Callan (2020) argue:

> "Others argue that antitrust has a broader role to play in U.S. society; rather than focusing, as it now does, on anticompetitive conduct, these populists argue that antitrust should address a broad range of social ills, including wealth and income inequality, the influence of money in American politics, the erosion of privacy, and systemic threats posed by firms that are "too big to fail.""

That policy debate rages today.
Steinbaum and Stucke (2020) offer a "cautionary tale" relating to antitrust enforcement today, as they write:

> "America's failing antitrust system is, in large part, to blame for today's market power problem. Lax antitrust law and enforcement have allowed troubling trends like corporate consolidation to remain unchallenged, further embedding our skewed economy. In highly concentrated markets, individuals have limited choice and little power to pick their price, quality, or provider for the goods and services they need; workers are met with powerful employers and have little agency to shop around or bargain for competitive wages and benefit; and suppliers can't reach the market without paying powerful intermediaries or succumbing to acquisition."

2. U.S. Antitrust Statutory Law

There are five federal statutes relevant in determining if there has been an antitrust violation. These include:

2.1. The Sherman Act (1896)

The Sherman Act of 1896 prohibits "every contract, combination, and conspiracy in restraint of trade" (Section 1); Section 2 bans "monopolization, attempts to monopolize, or conspiracies to monopolize" (see Stigler, 1985). Practices such as price-fixing, bid-rigging, and market division are *per se* illegal under the Sherman Act, meaning that such practices are illegal under all circumstances once the action or conduct is proven to have taken place. Other alleged restraints will ordinarily be judged by the rule-of-reason.

2.1.1. Penalties Under the Sherman Act

The Sherman Act imposes both criminal (Bial & Evans, 2024) and civil penalties. Violations—especially horizontal price-fixing between competitors, bid-rigging, and market allocation—can lead to felony charges, massive fines, and the award of treble damages (see Melamed, 2009). However, as Snyder and Sokol (2025) argue "Evidence in recent years points to a fraying of criminal antitrust enforcement. Aggregate criminal penalties have fallen dramatically, and a series of recent acquittals has reduced Department of Justice (DOJ) win rates in (Sherman Antitrust Act) Section 1 cases from previously stratospheric levels."

Criminal penalties are enforced by the Department of Justice and apply to willful violations of Section 1 (illegal agreements) and Section 2 (monopolization) in such cases as price fixing or bid-rigging (Federal Trade Commission, 2026a).

Fines for violations of the Sherman Act may be imposed on corporations (up to $100,000,000 per offense); on individuals (up to $1,000,000); and may result in imprisonment under certain circumstances for a term up to 10 years in a federal prison.

Civil enforcement (by the Department of Justice or the Federal Trade Commission) can result in civil fines and penalties for illegal restraints or for monopolization; disgorgement of profits gained through anticompetitive conduct (Buggs, 2023); or the issuance of an injunction or other "behavioral remedies" (discussed below), designed to stop or prevent anticompetitive practices.

Both civil and criminal penalties may be imposed together, at the court's discretion.
Concerning the issue of the issuance of an injunction, Koob and Kazanoff (2004) write:

> "A private plaintiff can also seek an injunction "against threatened loss or damage by a violation of the anti-trust laws" (section 16, Clayton Act). Unlike section 4, actual injury is not required in a section 16 proceeding; the threat of injury is sufficient. To obtain a preliminary injunction, a plaintiff typically must show all of the following: a likelihood of success on the merits; a threat of irreparable harm with no adequate remedy at law; [and] the granting of the injunction is in the public interest. Courts consider the last three factors in determining whether to issue a permanent injunction."

A unique feature of antitrust enforcement lies in the ability of an injured party to file a private lawsuit. Private plaintiffs—competitors, consumers, or other "injured parties"—can bring suit under the Sherman Act and recover treble damages (three times actual damages) (Wham, 1954; Hayes, 2026). Courts are also empowered to award attorney's fees to prevailing plaintiffs. However, as Kelly (1972, p. 1656) notes: "Although the "reasonable attorney's fee" provision plays a key role in this scheme, Congress has not established criteria for determining a reasonable fee. Trial courts, left to their own discretion, have applied many different theories of "reasonableness" when making fee determinations. Indeed, it seems there are almost as many notions of what is reasonable as there are judges."

2.2. The Clayton Act (1914)

Section 7 of the Clayton Act (1914) prohibits mergers and acquisitions where the effect "may be substantially to lessen competition, or to tend to create a monopoly" (Lande, Newman, & Slaughter, 2025). The Clayton Act targets specific practices likely to reduce competition, including certain anticompetitive mergers, exclusive dealing contracts, illegal tying arrangements, and predatory pricing. It also bars interlocking directorates between competing firms with sales of each firm exceeding $1,000,000 (see Lemley & Van Loo, 2025). Unlike the Sherman Act, however, the Clayton Act explicitly excludes labor unions from antitrust scrutiny, protecting workers' rights to organize, termed the "statutory labor exemption."

Justice Harlan Stone in *Apex Hosiery v. Leader* (1940) commented on the importance of Section 6:

> "Since the enactment of the declaration in Section 6 of the Clayton Act that the "labor of a human being is not a commodity or article of commerce . . . nor shall such [labor] organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the antitrust laws," it would seem plain that restraints on the sale of the employee's services to the employer, however much they curtail the competition among employees, are not in themselves combinations or conspiracies in restraint of trade or commerce under the Sherman Act."

2.3. The Federal Trade Commission Act (1914)

The Federal Trade Commission Act (1914) bans "unfair methods of competition" (Rothman, 2018) and "unfair or deceptive acts or practices" (see Werden, 2024). Sherman Act violations also violate the Federal Trade Commission Act. The Federal Trade Commission, more commonly referred to as the FTC, undertakes actions to "stop and prevent unfair business practices that are likely to reduce competition and lead to higher prices, reduced quality or levels of service, or less innovation" (Federal Trade Commission, 2026b).

According to the website of Federal Trade Commission (2026b),"unfair methods of competition" may include the following:

- "Price fixing — Agreements among competitors to set prices rather than compete;
- Market allocation — Competitors dividing customers or territories to avoid competing;
- Bid rigging — Collusion to predetermine winners of competitive bidding processes;
- Group boycotts — Competitors collectively refusing to deal with a supplier or customer to suppress competition;

- Exclusionary exclusive-dealing contracts — Contracts that lock up key suppliers or customers to prevent rivals from competing;
- Monopolization — A dominant firm using unreasonable tactics to maintain or acquire monopoly power (e.g., blocking entry, coercive conduct);
- Unfair rebate schemes — Practices that distort pricing and exclude rivals, such as the insulin rebate practices challenged in FTC actions (Federal Trade Commission, 2022) ; and
- Restricting the right to repair — Using contractual or technological barriers to prevent independent repair markets" (see *Federal Trade Commission v. Deere & Company*, 2026).

2.4. The Robinson-Patman Act (1936)

The Robinson-Patman Act (1936) prohibits certain forms of price discrimination that harm competition and is designed to protect smaller businesses from the illegal actions of large corporations (see Holyoak & Mufarrige, 2026).

Examples include:

- Discriminatory wholesale pricing: Charging small retailers *drastically higher* prices for the same goods than large chains, without a legitimate cost justification. In *Federal Trade Commission v. Southern Glazer's Wine and Spirits, LLC.* (2024), the FTC alleged that the distributor sold wine and spirits to small "mom-and-pop" stores at much higher prices than Costco, Kroger, and Total Wine for identical bottles, creating insurmountable competitive disadvantages (see also Kearns, 2025).

- Unequal access to discounts or rebates: Offering rebates, promotional allowances, or "back-end discounts" only to favored retailers. In *Glazer*, the FTC also argued that the distributor had allegedly deprived small retailers of rebates routinely offered to large chains in violation of Section 2(a) of the Act.

- Preferential promotional payments (Section 2(d)): Paying one retailer for advertising, shelf placement, marketing services, or promotional payments without offering the same support on *proportionally equal terms* to competing retailers (see *Federal Trade Commission v. Pepsico, Inc.*, 2025).

- Providing special services or facilities to favored retailers (Section 2(e)): Giving one retailer free display racks, stocking services, marketing materials, or other sales-related support not offered equally to competitors (see Kearns, 2025).

- Tiered wholesale pricing without cost justification: Using a tiered price list that gives large retailers better prices *without* real cost-based reasons such as volume efficiencies (see *Federal Trade Commission v. Morton Salt Co.*, 1948).
- Favoring large retailers with exclusive rebates or promotional support: Manufacturers offering special pricing or rebates to Costco, Sam's Club, or other "big-box chains" while charging higher prices to wholesalers serving convenience stores and small retailers (Brenner, 2026).

2.5. The Hart-Scott-Rodino Act (1976)

The Hart-Scott-Rodino Act (1976), as amended in 2001, requires pre-merger notification (Greco, 2016) for transactions above certain thresholds, so that the Department of Justice and the Federal Trade Commission can review prospective mergers to ensure they do not "substantially lessen competition" in the U.S. market.

Hart-Scott-Rodino gives antitrust agencies (the FTC and the Department of Justice) time to review transactions before they occur, allowing these agencies to assess potential anticompetitive effects, request additional information, or challenge or negotiate remedies, if necessary.

Pre-merger notification is required when a transaction meets specific "size-of-transaction" (currently \$119.5 million, rising to \$126.4 million in August of 2026) and "size-of-person thresholds" (Lubyansky, 2026). Parties must file a *Hart-Scott-Rodino Form* with the FTC and DOJ, pay a filing fee, and wait for a statutory review period (usually 30 days) before closing on any merger.

Parties may not "close the deal" until both parties to the merger have filed the required documentation and the waiting period has expired or been terminated by the government.

3. Types of Antitrust Violations

Antitrust violations may be seen as either *horizontal*, that is, between competitors in the market or those involving any concerted action between firms operating at the same market level (e.g., retailer-to-retailer, manufacturer-to-manufacturer) (Legal Guide Team, 2026); or *vertical*, that is within a "marketing chain" or business organization. Vertical restraints are agreements between firms at different levels of the supply chain—such as between manufacturers and distributors, or between wholesalers and retailers (see generally Posner, 2005; Joseph, 2011). In the area of franchising, alleged violations may occur in the relationship between the franchisor and the franchisee. In the arena of sports, vertical restraints may occur within a league structure, between members of an athletic conference, or within the organizational structure of the NCAA (Hunter, Delle Donne, & Shannon, 2021; Karlan, 2025).

Common types of horizontal restraints (described in detail below) include:

- Price Fixing : Where competitors agree on prices or discounts;
- Bid Rigging: Where competitors coordinate bids to predetermine a "winning" bid;
- Market Allocation: Where firms divide territories, customers, or product lines;
- Output Restrictions: Where competitors agree to limit production in order to raise prices; or
- Group Boycotts: Where competitors collectively refuse to deal with a supplier or customer or other parties.

Common vertical restraints include resale price maintenance (minimum or maximum resale prices) (Mathewson & Winter, 1998); certain exclusive dealing contracts where a distributor agrees to carry only one supplier's products (Gilbert, 2000); tying arrangements where a seller requires that in order to purchase product "A," the buy must also buy product "B"; territorial or customer restrictions imposed by manufacturers or franchisors; and non-price restrictions (e.g., service requirements, display standards).

4. Rules Used to Judge Alleged Antitrust Violations: An Overview

Courts employ two rules in order to evaluate possible antitrust violations: the *per se r*ule and the "*rule-of-reason*" (see Bork, 1965). The per se rule involves conduct that is *automatically illegal* once the conduct or action is proven to have occurred. Horizontal agreements among competitors are far more likely to be judged as per se illegal. Under a per se analysis, courts do not examine market power, actual harm, any business justifications, or the procompetitive impact of an alleged antitrust violation. The law assumes the conduct is so predictably harmful such that further analysis is unnecessary. Classic per se violations include horizontal price fixing between competitors, bid rigging, market allocation, and some types of tying arrangements (although alleged illegal tying arrangements are generally subject to the rule-of-reason).

Under a rule-of-reason analysis, court will inquire whether the conduct *actually harms* competition. Vertical arrangements will usually be judged under a rule-of-reason analysis (Joseph, 2011). Courts will weigh the purpose of the alleged restraint, market power, market structure, any procompetitive effects, consumer impact, any business justifications, and the existence of any less restrictive alternatives. Today, the great majority of antitrust cases—especially those involving technology, vertical restraints, and tying—will utilize the rule-of-reason analysis. The application of the rule-of-reason is essentially a balancing test of harm vs. benefit of any alleged restraint.

5. Common Antitrust Violations: A Detailed Analysis

5.1. Price Fixing

In its most basic form, price fixing occurs when competitors agree on a price instead of competing in the market on the basis of price in order to "maintain or elevate price levels" (Nicole, 2024). What actions can amount to price fixing between competitors, termed as "horizontal price fixing"?

Price fixing results from any agreement among competitors—explicit, implicit, written, verbal, or inferred—to raise, lower, stabilize, peg, or otherwise control or set prices rather than letting market forces determine prices. The key element of price fixing lies in coordination among competitors in the market, not the specific price level. Actions that amount to illegal price fixing involve:

- Setting uniform prices, where competitors agree on a fixed price, minimum price, maximum price, or price range for a product or service;
- Coordinating price changes, where competitors agree to raise prices together, end a "price war," or "stabilize" prices;
- Using common pricing formulas, where competitors agree on algorithms (*In re Realpage, Inc., Rental Software Antitrust Litigation,* 2023), markups, or pricing methods instead of specific numbers (Brubaker, 2025);
- Standardizing terms of sale, where competitors agree on credit terms, discounts, rebates, trade-in allowances, or surcharges that affect price;
- Limiting or coordinating discounts, where competitors agree not to undercut each other or to maintain a minimum advertised price;
- Fixing purchase prices, where competing buyers agree on the maximum price they will pay for inputs (e.g., competing entities agree not to pay above a certain amount for supplies);
- Reducing output to raise prices, where competitors coordinate to limit production or supply so that prices will rise;
- Sharing markets or customers, where competitors divide territories or customers to avoid competing on price, a practice which indirectly fixes prices; and
- Cooperative price advertising, where competitors agree to advertise prices uniformly or restrict price advertising (see Bhattacharyya, 2025).

5.1.1. Predatory Pricing

Predatory pricing is an especially pernicious form of price fixing where a seller sets a price *below cost* to drive rivals out of the market, then raises prices with impunity. Kirkwood (2022) comments:

> "Predatory pricing is an antitrust paradox. In concept, the conduct is plainly anticompetitive. A dominant firm cuts its price below its incremental costs, losing money on every additional sale, solely to injure a significant rival. The rival, unable to withstand the assault, exits the market or abandons its expansion plans, enabling the predator to raise its price to supracompetitive levels. This two-step maneuver – a price reduction followed by a larger or longer lasting price increase – enhances the dominant firm's profits and reduces the welfare of consumers."

Interestingly, Sharpes (2012) adds:

> "Predatory pricing occupies a strange position in the antitrust laws. Normally, low prices are one of the major goals of antitrust law because they reflect competition and are generally beneficial to consumers. However, in some situations, the antitrust laws condemn prices that are too low as predatory: a company may be able to set prices arbitrarily low to gain monopoly power by excluding rivals or forcing them to acquiesce to its price leadership, and the company may then charge monopoly prices to the detriment of consumers."

5.1.2. Vertical Price Fixing

Vertical price fixing, accomplished within a "marketing chain," involve manufacturers, wholesalers, retails, and customers (Dobson & Waterson, 2007). In the area of franchising, vertical price fixing may occur between the franchisor and the franchisee (Nadler, 2026). In the area of sports, vertical price fixing can occur within a league or conference structure or on the basis of rules established by the NCAA (*Smart et al. v. National Collegiate Athletic Association,* 2025). A typical example of vertical price fixing occurs when a manufacturer forces a retailer to sell at a set price or prohibits discounts through a practice termed "resale price maintenance," or where a conference policy requires all teams in the conference to charge the same price for game tickets.

All actions within a marketing chain relating to prices do not automatically amount to illegal price fixing. Situations that do not amount to price fixing include where prices "match" because of normal market conditions or where competitors independently choose similar pricing without any agreement to do so.

5.1.3. Active Exhortation

In the area of franchising, the existence of "active exhortation," resulting from extreme pressure tactics on the part of the franchisor, may warrant consideration under rules relating to price fixing, especially if raised by franchisees and framed as de facto resale price maintenance or coercive price coordination. Franchisors may use active exhortation in order to maintain brand consistency, improve franchisee performance, increase franchisee engagement and trust, drive systemwide growth, and ensure compliance with franchisor standards (Collier, 2023). Improper "active exhortation" in a franchise relationship generally occurs when a franchisor pushes, pressures, manipulates, or directs a franchisee to undertake actions that "cross the line" into coercive, intrusive, or de facto control over the franchisee's independently owned business (see Cooley, 2025), effectively rendering the franchisee's discretion relating to pricing illusory. At the same time, the franchisor may simultaneously warn the franchisee that "underpricing" will be treated as a breach of system standards. Evidence will often take the form of repeated phone calls, emails, required webinars, franchisor-sponsored advertising campaigns featuring franchise-wide "suggested" retail pricing, imposition of sanctions or contractual penalties, or mandatory attendance at promotional meetings organized by the franchiser where pricing is a main topic—rather than to quality or legitimate brand-standards violations. If these types of communications or actions are paired with threats of reduced territorial protection, denial of marketing funds, or heightened compliance audits for franchisees who discount prices or fail to follow pricing suggestions, a court could view this as a pattern of coercive price control rather "mere suggestion."

Active exhortation is *not* inherently improper—franchisors can encourage compliance with brand standards, including cross-brand uniform pricing. Nadler (2026) notes that "Competition law permits a franchisor to fix prices for short-term promotions (generally two-six weeks) coordinated across the franchise network. If a franchisor wants to fix prices for short-term promotions, this right must be included in the franchise agreement." It becomes improper when the franchisor's conduct effectively controls the franchisee's operations and undermine the franchisee's independence.

In order to reduce antitrust risk, many franchisors qualify national price advertising with such phrases as **"At participating locations"** and maintain written policies affirming the franchisee's ultimate right to set retail prices. However, these steps do not immunize a franchisor if its actual conduct contradicts the stated policy, although they are frequently cited as evidence of price autonomy.

In litigation, allegations of improper active exhortation often function as "plus factors" supporting an inference of coordinated pricing under the theory of conscious parallelism described below. Franchisee testimony about repeated pressure campaigns, internal email chains emphasizing "system-wide" price adherence, and documentation linking franchisee discipline to price deviations can all bolster a claim that what appears to be independent pricing is actually the product of coercive franchisor direction.

5.1.4. Conscious Parallelism

When products are similar in quality, price may become one of the most powerful differentiators. If other factors are not present, price matters more when quality is perceived to be equal. If two products are perceived by purchasers feel as interchangeable or where products are considered as "ordinary" or common, buyers will naturally gravitate toward the cheaper option because the perceived risk is low and price often becomes the primary decision factor for consumers.

Vaska (1986, p. 508) noted that direct evidence of price fixing is often difficult to obtain, and "courts must often rely on indirect or circumstantial evidence of conspiracies to fix prices." Conscious parallelism, a variant of price fixing, describes a situation where competitors adopt parallel or similar pricing, output levels, or other strategic decisions *with awareness of their rival's conduct but without proof of an explicit agreement*. Courts recognize that such parallel behavior may be rational in concentrated markets, yet they remain alert to the possibility that "parallelism" masks tacit collusion.

Competitors often adopt parallel pricing in order to avoid price wars, or in order to match the pricing of a dominant competitor rather than to engage in competition based on pricing (Boyd, 2021), or in order to maintain a higher price than the market would otherwise dictate.

Similar or parallel pricing may become the object of judicial scrutiny when accompanied by certain "plus factors" (Leslie, 2021) such as sudden uniform pricing undertaken after a history of price independence. Commonly cited "plus factors" include:

- Sudden uniform price increases following a history of divergent pricing, especially where firms had previously undercut one another;
- Evidence that competitors exchanged sensitive price information, participated in closed-door meetings, or used trade associations as venues to coordinate future pricing strategies;
- Adoption of pricing that appears to be against individual self-interest absent coordination, such as matching a supracompetitive price that yields short-term customer losses; and
- Unusual market stability – long periods of identical pricing across competitors despite cost changes, "demand shocks" (sudden, unexpected events that causes a significant and often temporary increase or decrease in the demand for goods or services in an economy), or innovation that would spur price dispersion.

In order to make out a prima facie of conscious parallelism, courts will inquire about three factors: *common knowledge* of pricing among competitors; *motivation* to keep prices higher than independent pricing decisions would ordinarily dictate in the market; and *general uniformity* of prices within a narrow range, although there is no judicially recognized "range of uniform pricing" for conscious parallelism (*Williamson Oil Company, Inc., et al. v. Philip Morris USA, R.J. Reynolds, Tobacco Co., et al.*, 2003). When these factors are accompanied by credible "plus-factors," parallelism can support an inference of a concerted price-fixing agreement.

In franchising, concerns about conscious parallelism often arise when multiple franchisees in a region adopt virtually identical prices shortly after attending franchisor-sponsored meetings or receiving coordinated "suggested pricing communications, even where the franchisor disclaims control over retail prices. In sports, parallel increases in ticket prices, streaming fees, or sponsorship rates across teams or conferences – especially where those entities share common revenue consultants or closed negotiating groups – may invite scrutiny under a conscious parallelism framework, although certain statutory exemptions can alter the analysis.

In both conscious parallelism and active exhortation cases, matching a dominant rival's price or avoiding destructive price wars in an economic sense can be rational, particularly in markets with homogeneous products and high fixed costs. The challenge for antitrust enforcement lies in distinguishing lawful, independent adaptation to market realities from unlawful tacit coordination that artificially maintains supracompetitive prices and suppresses competition.

5.2. Illegal Market Allocation

Illegal market allocation refers to agreements among competing businesses to divide markets instead of competing in them (see Bona, 2024ba). Under Section 1 of the Sherman Act, these agreements are treated as per se illegal, meaning the government does not need to prove actual harm – the agreement itself is unlawful (Federal Trade

Commission, 2026c). Illegal market allocation can eliminate regional competition, prevent customer choice, remove competitive cross-product rivalry, suppress worker mobility, and corrupt the competitive bidding process.

Market allocation may take the form of:

- Territorial division or geographical boundaries — Competitors agree not to sell or solicit customers in each other's geographic areas, eliminating geographic competition;
- Customer allocation — Firms divide customers or customer types (e.g., one party will serve commercial clients, the other will serve residential clients), thus preventing customers from choosing among competitors;
- Product-line allocation — Competitors agree to limit themselves to certain product categories or agree not compete across product lines (see Lopienski, 2026);
- Labor-market allocation — Employers agree not to hire or solicit each other's employees ("no-poaching" agreements) (Altman, Rumbaugh, Voter, & Warner, 2018); and
- Bid-rigging allocations — Competitors decide in advance who will "win" certain contracts or bids, often rotating winners, termed as allocation in procurement.

Common features of illegal market allocation may include secret agreements, informal understandings, or more formalized mutual promises not to encroach on each other's territory/customers.

Illegal market allocation is subject to criminal prosecution by the Department of Justice and may result in up to 10 years imprisonment and fines up to \$1 million for individuals and \$100 million for corporations, or twice the gain/loss from the offense. The action may result in civil enforcement by the Federal Trade Commission where treble damages are available to victims under the Clayton Act (Hayes, 2026).

Several recent cases merit attention. In *Rx Holding Co. v. CVS Pharmacy, Inc.* (2026), Rx filed a class action against CVS Pharmacy alleging that CVS had conspired with affiliated and third-party entities to restrain competition in the retail pharmacy market in violation of Section 1 of the Sherman Act. The complaint alleged that CVS leveraged its vertically integrated control over pharmacy benefit management, reimbursement, auditing, and drug distribution through CVS Caremark in coordination with McKesson and its affiliates (CVS's largest supplier of pharmaceuticals, amounting to \$50 billion per year) in order to target and eliminate independent pharmacy competitors by imposing abusive audits, cutting off reimbursement flows, and restricting access to drug supply. Plaintiffs argued that this conduct foreclosed competition, preserved CVS's dominant market position, and contributed to the collapse of independent pharmacies, reducing patient access and choice while maintaining "supracompetitive conditions" in the pharmacy market (see Parduhn, 2026; Federal Trade Commission, 2026d).

In a second case, *Altenar Techs. Ltd. v. Sportradar Grp.* (2026), Altenar Technologies filed suit against Sportradar alleging attempted monopolization and denial of essential facilities in markets for official sports data and "turnkey" sports betting technology platforms in violation of the Sherman Act (McCann, 2026). The complaint alleges that Sportradar had leveraged exclusive agreements with major sports leagues to control access to critical data and refused to supply that data to Altenar in the United States, while simultaneously entering the "downstream market" with its own competing turnkey platform in order to suppress competition, raising competitor's costs, all leading to reduced innovation, higher prices, and limited choice for sportsbooks and consumers in the U.S. sports betting market.

Franchisor–franchisee territorial agreements are generally considered as vertical restraints and will be judged under a rule-of-reason analysis. Franchisors *can* legally impose vertical territorial restrictions, including granting exclusive territories or a protected geographic area to a franchisee (Peer, 2026), imposing location density controls on the number of franchises in an area, deciding how many units may operate in a region, and by imposing "operational restrictions" relating to hours of operations, product lines, and other "marketing rules" pursuant to its "Quality Control" obligations (see Siebert, 2021; Choudhary & Batra, 2025). However, agreements between franchisors to divide territories, circumstances where individual franchisees divide territories, or where the franchisor who operates "company- owned" stores within the same territory imposes territorial restrictions on franchisees may be considered as horizontal restraints between competitors and in most circumstances would be judged to be per se illegal.

In *Continental T.V., Inc. v. GTE Sylvania* (1977), involving a manufacturer who required franchisees to purchase its products only from approved locations, the United States Supreme Court held that location restrictions were not automatically illegal, but would be judged under the rule of reason. However, restrictions cannot result from entering into agreements with *competing franchisors* to divide markets which would then amount an illegal horizontal market allocation under Section 1 of the Sherman Act (see Anunobi, 2026). In *United States v. Topco Associates* (1972), the U.S. Supreme Court ruled that agreements in which cooperative associations (franchisee associations) who divided territories among its members were per se illegal because these actions were essentially horizontal in nature occurring between actual competitors in the market.

In *Palmer v. BRG of Georgia* (1990), in a case where two competing bar-review providers had agreed to divide the market, the United States Supreme Court held that this arrangement was per se illegal market allocation.

5.3. Illegal Bid Rigging

Illegal bid rigging is one of the most aggressively prosecuted forms of antitrust crime (Squire Patton Boggs, 2026). The Procurement Collusion Strike Force (PCSF) of the U.S. Department of Justice (2026) reports that “Since its founding, the PCSF has trained more than 46,000 agents and procurement officials; opened more than 195 investigations; obtained more than 75 guilty pleas and trial convictions; and secured more than $70 million in fines and restitution.”

Under Section 1 of the Sherman Act, bid-rigging agreements among competitors are treated as per se illegal, meaning prosecutors are not required to prove harm to the market—only that the agreement existed. Bid rigging eliminates competition in procurement markets, inflates prices, and harms taxpayers and private buyers.

Bid rigging occurs when competitors collude to manipulate or predetermine the outcome of a bidding process with respect to government contracts (Talbott & Whiddon, 2025), procurement auctions, or a private tender which is a procurement process initiated by a private company or organization to select a service provider or supplier, typically involving a limited, invited group rather than open public competition (Nichols, 2023). As stated on the website Complete Tenders (2026), while “There is no legal requirement to publish private sector tenders on a central noticeboard or make the opportunity public,” bid rigging may still be illegal under certain circumstances. Types of bid rigging include:

- Complementary (cover) bidding where losing bidders submit intentionally high or noncompetitive bids to “create the appearance of competition,” while ensuring that a chosen firm wins;
- Bid rotation where conspirators take turns being the winning bidder. Over time, each participant will win a share of the contracts subject to the bidding process;
- Bid suppression where one or more competitors agree not to bid at all, or to withdraw a bid, so another conspirator wins; or
- Subcontracting arrangements where a competitor agrees not to bid in exchange for being awarded a subcontract from the winning conspirator.

Bid rigging is a felony under antitrust law. Individuals face up to 10 years in prison and fines up to $1 million upon conviction. A corporation that engages in bid rigging faces fines up to $100 million, or twice the gain/loss from the conspiracy, and/or civil liability in the form of treble damages under the Clayton Act. Companies who engage in bid rigging on federal contracts may be barred from future government contracts (see Congressional Research Service, 2015).

An example of the seriousness with which the Department of Justice treats bid rigging cases, the Department brought suit against two individuals regarding fuel supply contracts (Quinn, 2025). On June 6. 2025, the Office of the Inspecter General of the U.S. Department of Justice (2025) announced that the former owner of fuel truck supply companies had been sentenced to twelve months in prison and a $20,000 fine for his role in various conspiracies to monopolize, rig bids, and allocate territories for fuel truck contracts over an eight year period. The various companies had assisted the U.S. Forest Service's efforts to battle wildfires in Idaho and the mountain west.

Stated Assistant Attorney General Abigail Slater:

> "This sentence sends a message that bid rigging—particularly bid rigging affecting federal agencies—will not be tolerated…. The Defendant's conspiracies struck at the heart of the competitive process. They damaged essential taxpayer-funded services critical to protecting the American public and its property from wildfires while profiting at the expense of American taxpayers. The Antitrust Division and its law enforcement partners will continue to ensure that individuals who cheat and deprive their communities of these essential services are incarcerated" (U.S. Department of Justice, 2025).

5.4. Illegal Monopolization

Not all monopolization is illegal. A natural monopoly may exist when one firm is the most efficient provider of goods or services in the market because the industry's cost structure makes competition impractical (see Carbonell-Nicolau, 2024; Posner, 2026). A natural monopoly may arise from "historic accident" or from the existence of superior products, innovation, effective advertising, reputation, or better management (see *National Reporting Company v. Alderson Reporting Company,* 1985). Traditional examples of natural monopolies include utilities and railroads.

Illegal monopolization under U.S. antitrust law refers to a single firm acquiring or maintaining monopoly power through exclusionary or anticompetitive conduct, rather than through any legitimate actions (U.S. Department of Justice (Office of Public Affairs), 2008).

Under Section 2 of the Sherman Act, monopolization, attempted monopolization, and conspiracy to monopolize are all prohibited.

In order to prove illegal monopolization, courts require two essential components:

- Monopoly power

A firm must possess "significant and durable" market power which involves the ability to raise prices or exclude competitors from the market over time. Courts often infer monopoly power from ≥70% market share (see Bona, 2024a) (or in some cases, such as *United States v. Von's Grocery Co*. (1966), a much lower market share amounting to 9.7% of the Los Angeles grocery market), plus the existence of "substantial entry barriers" which may include:

- Structural barriers involving high startup costs, limited access to distribution channels, or geographic limitations;
- Strategic barriers based on established firms' brand loyalty, customer relationships, or networking effects that deter new entrants into the market;
- Legal/regulatory barriers: The existence of patents, trademarks, or licensing requirements that create *patent thickets*, which are defined as "a dense, overlapping set of patents in a specific technology area, creating a complex web of intellectual property rights that can make it difficult or costly for innovators to develop or commercialize new products without infringing on multiple patents or restrict market access" (US Law Explained, 2026). The website Patent Brief (2016) notes that "The term was coined by economist Carl Shapiro in 2001 to describe situations in which any company trying to commercialize a product must first license rights from dozens or hundreds of patent holders whose patents all read on overlapping aspects of the same technology";
- Economies of scale: Large firms can produce goods at lower costs, making it hard for smaller entrants to compete on price (Kenton, 2026); and
- Capital requirements involving significant "upfront" investment needed to operate in the market.

The FTC notes that monopoly power does not require a literal monopoly; it means "long-term ability to control price or exclude rivals" (see Bona, 2024a).

- Exclusionary conduct

The firm must have obtained or maintained its dominance in the market through improper means, and not through legitimate competition or "historical accident." As Grimm (2008) notes: "Although many different kinds of conduct have been found to violate section 2, "[d]efining the contours of this element . . . has been one of the most vexing questions in antitrust law… The basic challenge lies in distinguishing between aggressive competition and anticompetitive, exclusionary conduct."

As the U.S. Court of Appeals for the District of Columbia Circuit explained in *United States v. Microsoft Corp.* (2001):

> "Whether any particular act of a monopolist is exclusionary, rather than merely a form of vigorous competition, can be difficult to discern: the means of illicit exclusion, like the means of legitimate competition, are myriad. The challenge for an antitrust court lies in stating a general rule for distinguishing between exclusionary acts, which reduce social welfare, and competitive acts, which increase it."

Examples of potential improper conduct include:
- Exclusive dealing that forecloses rivals from key suppliers or customers;
- Tying arrangements (forcing purchase of a second product); (described in detail in Part II of this study)
- Predatory pricing (pricing below cost to drive rivals out);
- Refusal to deal when used strategically to suppress competition; and
- Other conduct that excludes rivals through means *other than* "superior product, business acumen, or historic accident."

Section 2 of the Sherman Act also prohibits attempts to monopolize as a distinct legal theory of liability (see *Spectrum Sports, Inc. v. McQuillen,* 1993). There are three elements of proof under Section 2 of the Sherman Act:
- "Dangerous probability of achieving monopoly power" (see *Savory Pie Guy, LLC v. Comtec Industries, Ltd.,* 2016);
- "Specific intent" to monopolize; and
- The existence of "overt exclusionary acts."

Hammer (2026), quoting the Department of Justice, noted: "Antitrust remedies under Section 2 are generally designed to "terminate the defendant's unlawful conduct, prevent its recurrence, and re-establish the opportunity for competition in the affected market." The Department of Justice and the Federal Trade Commission can bring civil or criminal actions, although criminal cases are rarely filed unless fraud can be proved. Other remedies include the issuance of an injunction, structural remedies (such as breaking up an entity or divestiture of a business asset or division) (Majumdar, 2021), behavioral restrictions, and damages (including treble damages in private suits).

The landmark case against AT&T (*United States v. American Telephone & Telegraph Co.,* 1984) stands out as the primary example of the imposition of structural remedies, resulting in the company's divestiture of its local telephone companies, creating seven independent Regional Bell Operating Companies (RBOCs) — the entities popularly called the *Baby Bells*—which included:
- Ameritech
- Bell Atlantic
- BellSouth
- NYNEX
- Pacific Telesis
- Southwestern Bell and

- U.S. West (see Pollack, 1984; Robinson, 1986; Swanson, 2014).

The Law Digest Hub (2024) notes:

> "Behavioral remedies in antitrust refer to regulatory measures designed to modify the conduct of firms to promote competition and prevent anti-competitive behavior. These remedies aim to address market dominance and ensure fair practices without necessitating structural changes like divestitures."
>
> "Commonly implemented behavioral remedies involve commitments that firms must adhere to, such as ensuring non-discriminatory access to essential facilities, establishing transparency in pricing, or altering restrictive contractual terms. They are often deemed less disruptive than structural remedies, allowing businesses to maintain their overall structure while addressing specific conduct issues."

5.5. Group Boycotts or Concerted Refusals to Deal

An individual business or entity generally has discretion to choose with whom it wishes to deal. However, this individual decision-making can be transformed into an antitrust violation when it amounts to a group boycott or a "concerted refusal to deal" (Glazer, 2002). Hsieh (2024) states: "This concept, while rooted in the notion of business freedom, can pose antitrust concerns when a refusal harms competition or facilitates monopolization." A group boycott or a concerted refusal to deal is an agreement among two or more independent businesses to collectively refuse to do business with a targeted firm, customer, supplier, individual, or other market participant. The key element is *coordination or collusion*, not unilateral choice or action, which would not ordinarily arise in a competitive market based on individual decision-making.

Under Section 1 of the Sherman Act, a group boycott can be judged to be per se illegal when competitors at the same level (horizontal agreement) use collective actions or exert untoward pressure on competitors to arrive at a decision. Courts presume that a group boycott is harmful without requiring detailed market analysis. However, a rule-of-reason analysis may be conducted when the action or conduct can be justified by a legitimate business reason (e.g., quality standards, safety) or where the courts employ a variant of the "business judgment rule," a rule which was developed to protect corporate directors and officers from being held liable for decisions *as long as* those decisions were made in good faith, with "reasonable care," and without any conflicts of interest (Lynch, 1981; Mantese & Fields, 2020; see also *Zapata v. Maldonado,* 1981).

In order to defend against the charge of an illegal group boycott against an individual, courts would look to such factors as business experience, financial ability, and moral character of the person claiming that he or she was the victim of an illegal boycott, especially as moral character relates to the element of "good will" in a business. When competitors (such as clubs in the NFL or schools within an athletic conference) refuse to deal with a prospective player, coach, business entity, or other personnel at all or only on certain restrictive terms, there may be an unlawful boycott, constituting a combination in restraint of trade, as was alleged by former NFL quarterback Colin Kaepernick in his grievance filed against the National Football League (Hunter & Shannon, 2019; Kinsey, Rhoads, & Thomas, 2020).

In the area of sports, the "playing ability of a player" would stand as a substitute for business experience or financial ability when a player alleges that he or she has been the victim of an illegal boycott. Kaepernick eventually agreed to settle his claim of an illegal group boycott against the NFL; however. the details of the settlement were sealed by mutual agreement of the parties without the NFL admitting to any illegal conduct (Robinson, 2019).

In a case relating to professional representation by an attorney, *FTC v. Superior Court Trial Lawyers Ass'n* (of the City of Los Angeles) (1990), trial lawyers collectively refused to take indigent defense cases until their fees were increased. The United States Supreme Court held that the actions amounted to a group boycott and were per se illegal because they were effected in an effort to raise prices of attorney services.

In the area of franchising, a review of relevant cases such as *360 Painting, LLC v. R. Sterling Enterprises, Inc.* (2024) (a franchisee was accused of underreporting sales and underpaying royalties), *EazyFoods Inc. v. 615241 Ontario Ltd.* (2026) (allegations that the franchisee had engaged in unauthorized closure of the restaurant and failed to meet disclosure obligations), and *Fetch! Pet Care, Inc. v. Atomic Pawz Inc.* (2026) (where the franchisee was accused of breach of contract, trademark infringement, and civil conspiracy) indicate circumstances where *franchisors* have refused to deal with a prospective franchisee, have moved to terminate or litigate against franchisees because of past conduct, or have barred individuals from re-reentering the franchise system. A case of an illegal boycott might arise if a decision to terminate or refuse to deal is alleged to have been made by a group of franchisors or a franchise association rather than an individual franchisor.

6. Antitrust Enforcement Under the Bush, Obama, Biden and Trump Administrations

What is the current status of antitrust enforcement in the United States?
Balto (2016) commented that:

> "The Bush Administration handled competition enforcement minimally if at all. Between 2001 and 2008, markets became more and more concentrated as companies merged without a problem. Risky mergers such as Whirlpool-Maytag were approved without so much as tacking on remedies. Rare litigation to block mergers was largely unsuccessful. During the Bush years, prices went up, quality went down, and consumers suffered. Facing no credible threat of enforcement, companies were restricted only by what the market would bear."

Antitrust enforcement in the Obama Administration (2009–2017) may be characterized as *conventional* (see Shughart & Thomas, 2013). The Obama DOJ and FTC operated within the consumer-welfare standard, focusing on price effects and market efficiencies. The Obama Administration challenged several mergers, but rarely pursued monopolization cases. Enforcement was certainly more active than in the Bush era, but was still cautious and technocratic, avoiding structural remedies and preferring settlements to litigation.

The Trump Administration (2017–2021) (Trump I) was more assertive than was expected (Keenan, 2024) but was still constrained by traditional antitrust enforcement philosophy. Interestingly, the first Trump Administration did file major monopolization cases: the DOJ sued Google and the FTC sued Facebook for monopolization.

In addition, the Trump Administration challenged several mergers, including AT&T/Time Warner (vertical merger challenge) and Visa/Plaid, Peabody/Arch Coal, Evonik/PeroxyChem, Altria/JUUL, and Axon/VieVu.

Trump Administration officials such as Assistant Attorney General Makan Delrahim disfavored behavioral remedies, arguing antitrust is "law enforcement, not regulation" (U.S. Department of Justice, 2017). Yet, despite high profile actions, the Trump Administration did not employ the consumer-welfare standard as described by Greenfield, Lange and Callan (2020). It can thus be said that the Trump administration (Trump I) "did not fundamentally reshape antitrust policy."

The Biden Administration (2021–2025) exhibited the most aggressive antitrust posture since the 1970s. Biden's antitrust leadership team, composed of Lina Khan, Jonathan Kanter, and Tim Wu, explicitly rejected the consumer-welfare standard, and restored the "original aims" of antitrust law including harms to workers, small businesses, innovation, and market structure.

Major "Big Tech" lawsuits were filed against Google, Amazon, Meta, and Apple. The Biden Administration issued new merger guidelines emphasizing structural concerns and market concentration. After the Supreme Court limited the FTC's authority to collect monetary penalties under the FTC Act in *AMG Capital Management v. FTC* (2021), the FTC increasingly relied on rulemaking as an enforcement tool.

The FTC engaged in aggressive rulemaking relating to junk fees, non-compete bans, illegal telemarketing, robocalls. and negative-option rules (referring to regulations that govern how companies can automatically enroll consumers in services or subscriptions unless the consumer explicitly opts out), opting for litigation rather than entering into settlements (Dryer, Krawiec, Kelly, & Kerlin, 2024).

6.1. Trump II

Since returning to office in 2025, the Department of Justice and Federal Trade Commission pivoted toward a more "business-friendly" posture (Cooley, 2026). The Trump Administration has taken a strongly *deregulatory, anti-regulatory approach* to antitrust enforcement, focusing far more on eliminating *government-created barriers* to competition rather than on pursuing large private-sector mergers or monopolization cases (Abbott, 2025). The Trump Administration considers antitrust as a tool for dismantling regulations, not for policing or checking corporate market power, framing this as part of a "Golden Age of American economic prosperity" driven by deregulation.

The Trump Administration's posture since 2025 centers on the belief that regulations—not corporate conduct — are the main source of anti-competitive harm, marking a significant shift from traditional antitrust enforcement, which typically targets mergers, monopolization, and anticompetitive business behavior.

In support of this change in perspective, President Trump issued Executive Order 14267 (April 2025), "*Reducing Anti-Competitive Regulatory Barriers*," that directs agencies to identify and rescind regulations that create de facto or de jure monopolies, impose barriers to entry, limit competition, create burdensome licensing regimes, and distort markets through procurement rules. Going forward, the Trump administration mandated the rescission of ten regulations for every new regulation proposed by a regulatory agency. Lash (2026) comments that "President Trump's business-friendly deregulatory moves have sparked a sharp increase in corporate merger activity over the first thirteen months of his second term."

The DOJ and FTC have been tasked not primarily with investigating corporate conduct, but with reviewing federal and state regulations that allegedly stifle competition, focusing on regulatory barriers, not corporate conduct. In pursuit of this policy, the DOJ's Antitrust Division launched the *Anticompetitive Regulations Task Force* in March of 2025 (Stein & O'Hollaren, 2025) to identify laws and rules that impede competition in sectors like housing, transportation, agriculture, healthcare, and energy.

By the end of 2025, the DOJ and the FTC had identified over 125 "anti-competitive regulations" for potential rescission or modification, framing this new policy as "freeing innovators and entrepreneurs" by removing government-created obstacles.

While generally retaining Biden Administration FTC merger guidelines (Smith, 2025), the Trump Administration's (Trump II) merger policy has centered on making merger reviews faster, more predictable, and more open to negotiated remedies, while still pursuing select high-profile challenges, creating a more business-friendly environment for mergers. National security-sensitive industries, semiconductors, AI infrastructure, and health care remain priority areas for scrutiny.

Although the $110 billion merger between Paramount-Warner Bros. was approved in June of 2026, the merger has been delayed until at least June 2027 due to ongoing antitrust lawsuits from 12 U.S. states and the Writers Guild of America alleging that the merger would reduce competition in theatrical, cable, and streaming markets (see Mullin, McCabe, & Hirsch, 2026).

In addition, the Trump Administration has employed federal antitrust authority to challenge state-level regulations, signaling a more aggressive federal role in preempting state rules deemed anti-competitive (see Goodman, Robinson, & Savrin, 2025).

Part II of this paper will discuss current issues relating to franchising, "Big Tech," and sports in response to the question: "Is antitrust law still relevant today?

Author Contributions: All authors contributed to this research.

Funding: This study received no funding.

Conflict of Interest: The authors declare no conflict of interest.

Informed Consent Statement/Ethics Approval: Not applicable.

Declaration of Generative AI and AI-assisted Technologies: This study has not used any generative AI tools or technologies in the preparation of this manuscript.

References

Abbott, A. (2025). M&A enforcement easing under the Trump administration. Forbes (July 16, 2025), https://www.forbes.com/sites/aldenabbott/2025/07/16/ma-enforcement-easing-under-the-trump-administration/

Altman, M.H., Rumbaugh, E.H., Voter, B.T., & Warner, C.E (2018). DOJ guidance regarding no poaching agreements. National Law Review (March 14, 2018), https://natlawreview.com/article/doj-guidance-regarding-no-poaching-agreements

Anunobi, C. (2026). When market allocation becomes illegal: Antitrust law and territorial agreements. Anunobi Law PLLC (April 17, 2026), https://businessandfamilylawyers.com/business-litigation/when-market-allocation-becomes-illegal-antitrust-law-and-territorial-agreements/

Ashton, F. (2022). Why the consumer welfare standard is the backbone of antitrust policy. American Action Forum (October 26, 2022), https://www.americanactionforum.org/insight/why-the-consumer-welfare-standard-is-the-backbone-of-antitrust-policy/

Balto, D. (2016). President Obama's antitrust enforcement. The Hill (October 27, 2016), https://thehill.com/blogs/congress-blog/judicial/303065-president-obamas-antitrust-enforcement/

Bhattacharyya, R. (2025). Price fixing. Wall Street Mojo (February 28, 2025), https://www.wallstreetmojo.com/price-fixing/

Bial, J.J. & Evans, A.J. (2024). Criminal enforcement of Section 2: How significant is the threat? Journal of Corporation Law 49(2): 263-274.

Bona, J. (2024a). What are the elements for a monopolization claim under the federal antitrust law? The Antitrust Attorney (Blog) (Antitrust & Competition) (May 20, 2024), https://www.theantitrustattorney.com/what-are-the-elements-for-a-monopolization-claim-under-the-federal-antitrust-law

Bona, J. (2024b). Dividing markets and customers: Are market allocation agreements per se antitrust violations? The Antitrust Attorney (Blog) (Antitrust & Competition) (September 21, 2024), https://www.theantitrustattorney.com/dividing-markets-and-customers-are-market-allocation-agreements-per-se-antitrust-violations/

Bork, R.H. (1965). The rule of reason and the per se concept: Price fixing and market division. The Yale Law Journal 74(5): 775-847.

Boyd, J. (2021). Conspiracy theory: Is price-matching illegal? Siskinds Law Firm (December 16, 2021), https://www.siskinds.com/conspiracy-theory-is-price-matching-illegal/

Brenner, L.A. & Hobbs, S.C. (2026). Price discrimination litigation remedies hot (even as FTC enforcement cools down). Reinhart Law (March 16, 2026), https://www.reinhartlaw.com/pdf/entries/Price-Discrimination-Litigation-Remains-Hot-Even-as-FTC-Enforcement-Cools-Down.pdf

Brubaker, B. (2025). Game theory explains how algorithms can drive up prices, Real Clear Markets (December 5, 2025), https://www.realclearmarkets.com/2025/12/05/game_theory_explains_how_algorithms_can_drive_up_prices_1151595.html

Buggs, K. (2023). Gotta get those ill-gotten gains: Improving the FTC's authority to seek disgorgement in antitrust cases. Michigan Law Review 21(7): 1235-1267.

Carbonell-Nicolau, O. (2024). Natural monopoly revisited. Journal of Regulatory Economics 66(1): 52-61.

Choudhary, S. & Batra, B. (2014). Quality control in trademark licensing and franchising: A critical analysis. Journal of Emerging Technologies and Innovative Research 12(5): 289-345.

Collier, J. (2023). Mastering franchise marketing: Strategies for success. Active Campaign (November 29, 2023), https://www.activecampaign.com/blog/franchise-marketing

Complete Tenders (2026). Tenders for private sector contracts. Complete Tenders, https://www.completetenders.com/private-sector-tenders (accessed August 4, 2026).
Congressional Research Service (2015). Procurement debarment and suspension of government contractors: Legal overview. Congressional Research Service (May 27, 2015), https://www.everycrsreport.com/files/20150527_RL34753_b03ffb412fc08224e614b62717922f8e424a46cf.pdf
Cooley, A. (2025). Active participation. Franchise Update Magazine 3: 84.
Cooley (2026). 2026 antitrust outlook: Learning from the first year of 'America first' enforcement. Cooley (February 19, 2026), https://www.cooley.com/news/insight/2026/2026-02-19-2026-antitrust-outlook-learnings-from-the-first-year-of-america-first-enforcement
Dobson, P.W. & Waterson, M. (2007). The competition effects on industry-wide vertical price fixing in bilateral oligopoly. International Journal of Industrial Organization 25(5): 935-962.
Dryer, A.J., Krawiec, M.E., Kelly, T.D., & Kerlin, P.M. (2023). FTC enforcement trends in consumer protection under the Biden administration. Skadden.com (December 13, 2023), https://www.skadden.com/-/media/files/publications/2024/01/ftc_enforcement_trends_in_consumer_protection_under_the_biden_administration.pdf
Federal Trade Commission (2022). FTC to ramp up enforcement against any illegal rebate schemes, bribes to prescription drug middlemen that block cheaper drugs. Federal Trade Commission (June 16, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-ramp-up-enforcement-against-illegal-rebate-schemes
Federal Trade Commission (2026a). The antitrust laws. Federal Trade Commission, https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws (accessed July 23, 2026).
Federal Trade Commission (2026b). Anticompetitive practices. Federal Trade Commission, https://www.bing.com/search?EID=MBSC&form=BGGCDF&pc=BG02&q=Federal+Trade+Commission+(2026b).+Anticompetitive+practices.&PC=U316&FORM=CHROMN (accessed July 23, 2026).
Federal Trade Commission (2026c). Market division or customer allocation. Federal Trade Commission, https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/dealings-competitors/market-division-or-customer-allocation (accessed July 23, 2026).
Federal Trade Commission (2026d). FTC secures major settlement with Caremark, resolving antitrust case against second drug middleman. Federal Trade Commission (July 14, 2026). https://www.ftc.gov/news-events/news/press-releases/2026/07/ftc-secures-major-settlement-caremark-resolving-antitrust-case-against-second-drug-middleman
Gilbert, R.J. (2000). Exclusive dealing, preferential dealing, and dynamic efficiency. Review of Industrial Organization 16(2): 167-184.
Glazer, K.L. (2002). Concerted refusals to deal under Section 1 of the Sherman Act. Antitrust Law Journal 70(1): 1-65.
Goodman, J.M., Robinsin, A.B., & Savrin, D.S. (2025). State attorneys general increase antitrust enforcement. Morgan Lewis (April 23, 2025), https://www.morganlewis.com/pubs/2025/04/state-attorneys-general-increase-antitrust-enforcement
Greco, A.J. (2016). An update on the premerger notification program in the United States. Journal of Advanced Research in Law and Economics 7(8): 1994-2009.
Greenfield, L.B., Lange, P.A., & Callan, N. (2029). Antitrust populism and the consumer welfare standard: What are we actually debating? Antitrust Law Journal 83(2): 393-428.
Grimm, K.L. (2008). General standards for exclusionary conduct. Federal Trade Commission (Working paper) (November 8, 2008), https://www.ftc.gov/system/files/documents/public_events/section-2-sherman-act-hearings-single-firm-conduct-related-competition/section2generalstandards.pdf
Hammer, E. (2026). Behavioral antitrust realism: Remedies and institutional design in United States v. Google. University of Chicago Law Review (Online): 1-12 (accessed August 8, 2026).
Hayes, A. (2026). Understanding treble damages: Definition mechanism, and examples. Investopedia (June 12, 2026), https://www.investopedia.com/terms/t/trebledamages.asp
Holyoak, M. & Mufarrige, C.G. (2026). From protecting competitors to protecting competition: The past, present, and future of the Robinson-Patman Act. Antitrust Law Journal 87(2): 487-546.
Hovenkamp, H. (2026). Google search and antitrust remedial goals. Boston University Law Review 106(2): 305-364.
Hsieh, T. (2024). Refusal to deal in antitrust law: Evolving jurisprudence and business justifications in the Align Technology case. Competition Policy International (September 27, 2024), https://www.pymnts.com/cpi-posts/refusal-to-deal-in-antitrust-law-evolving-jurisprudence-and-business-justifications-in-the-align-technology-case/
Hunter, R.J. & Shannon, J.H. (2019). "Taking a knee for the constitution:" The Kaepernick and Reid grievances may be settled but do they nevertheless raise important constitutional questions? Journal of Education and Social Policy 6(4): 86-100.

Hunter, R.J., Delle Donne, M., & Shannon, J.H. (2021). "The NCAA is not above the law": The changing landscape of college athletics changes once again. Journal of Business and Social Science Review 2(7): 1-25.
Hunter, R,J., Shannon, J.H., & Amoroso, H.J. (2023). A teaching note on antitrust and business. Education Quarterly Review 6(1): 476-489.
Joseph, R.T. (2011). Antitrust law, franchising, and vertical restraints. Franchise Law Journal 31(1): 3-13.
Karlan, P.S. (2025). The fix ain't in: Athletics and the university in the post-Alton era. Yale Journal on Regulation 42(3): 1010-1029.
Kearns, T. (2025). It's alive! – A divided FTC acts under the Robinson-Patman Act. Hausfeld (March 28, 2025), https://www.hausfeld.com/en-us/what-we-think/competition-bulletin/it-s-alive-a-divided-ftc-acts-under-the-robinson-patman-act
Keenan, A. (2024). Trump 1.0 was as tough on M&N as Biden. Trump 2.0 may not be different. Yahoo (Finance) (November 17, 2024), https://finance.yahoo.com/news/trump-10-was-as-tough-on-ma-as-biden-trump-20-may-not-be-different-090020769.html
Kelly, K.F. (1972). Attorneys' fees in individual and class action antitrust litigation. California Law Review 60: 1656-1682.
Kenton, W. (2026). Economies of scale: What are they and how are they used? Investopedia (March 16, 2026), https://www.investopedia.com/terms/e/economiesofscale.asp
Kinsey, D.F., Rhoads, J., & Thomas, D.B. (2020). Competing perspectives on the NFL national anthem controversy. The International Journal of Sport and Society 12(1): 1-16.
Kirkwood, J.B. (2022) The paradox of predatory pricing. CPI Antitrust Chronicle (January 2022), https://www.competitionpolicyinternational.com/wp-content/uploads/2022/01/3-The-Paradox-of-Predatory-Pricing-John-B-Kirkwood.pdf
Koob, C.E. & Kazanoff, P.E. (2004/2005). Private anti-trust remedies under US law. Simpson Thatcher & Bartlett LLP (Competition Law 2004/2005), https://www.stblaw.com/docs/default-source/cold-fusion-existing-content/publications/pub484.pdf?sfvrsn=2
Lande, R.H., Newman, J.M., & Slaughter, R.K. (2025). The forgotten anti-monopoly law: The second half of Clayton Act Section 7. Texas Law Review 103(4): 785-846.
Lash, S. (2026). The Trump Administration's relaxed view on mergers takes shapes. Law.com (February 13, 2026), https://www.law.com/2026/02/13/the-trump-administrations-relaxed-view-on-mergers-takes-shape/
Law Digest Hub (2024). Behavioral remedies in antitrust: Safeguarding competition. Law Digest Hub (Editorial) (August 14, 2024), https://lawdigesthub.com/behavioral-remedies-in-antitrust/
Legal Guide Team (2026). Horizontal restraints of trade: Key concepts, legal standards, and penalties. Legal Guide Team (July 3, 2026), https://thelegalguide.org/horizontal-restraints-trade-key-concepts-legal-standards/
Lemley, M.A. & Van Loo, R. (2025). Overlapping directors as a competition problem. Harvard Law School Forum on Corporate Governance (August 29, 2025), https://corpgov.law.harvard.edu/2025/08/29/overlapping-directors-as-a-competition-problem/
Leslie, C.R. (2021). Plus factors in price-fixing litigation. The CLS Blue Sky Blog (Columbia Law School) (November 24, 2021), https://clsbluesky.law.columbia.edu/2021/11/24/plus-factors-in-price-fixing-litigation/
Lopienski, K. (2026). How product allocation helps meet customer demands efficiently. ShipBob (July 30, 2026), https://www.shipbob.com/au/blog/product-allocation/
Lubyansky, A. (2026). HSR filing thresholds explained: Size-of-transaction and size-of-person tests. Acquisition Stars (April 18, 2026), https://acquisitionstars.com/blog/hsr-filing-thresholds-size-of-person-transaction
Lynch, J.J. (1981). The business judgment rule reconsidered. The Forum (American Bar Association, Section of Insurance, Negligence and Compensation Law) 17(2): 452-464.
Majumdar, S.K. (2021). Stick versus carrot: Comparing structural antitrust and behavioral regulation outcomes. The Antitrust Bulletin 64(3): 431-455.
Mantese, G.V. & Fields, E.S. (2020). The business judgment rule. Michigan Bar Journal (January 2020): 30-34.
Mathewson, F. & Winter, R. (1998). The law and economics of resale price maintenance. Review of Industrial Organization 13(1-2): 57-84.
McCann, M. (2026). Sportradar's antitrust suit from ex-partner faces challenges. Sportico (April 7, 2026), https://www.sportico.com/law/analysis/2026/sportradar-antitrust-lawsuit-market-live-sports-data-1234889297/
Melamed, A.D. (2009). The purposes of antitrust remedies. Antitrust Law Journal 76(1): 359-368.
Mullin, B., McCabe, D., & Hirsch, L. (2026). Paramount agrees to delay Warner Bros. merger for months. New York Times (July 24, 2026), https://www.nytimes.com/2026/07/24/business/media/paramount-warner-bros-merger-delayed.html
Nadler, S. (2026). What restrictions are placed on a franchisee in terms of pricing of their goods and services? What Franchise, www.what-franchise.com/questions/what-restrictions-are-placed-on-a-franchisee-in-terms-of-pricing-of-their-goods-and-services (accessed August 6, 2026).

Newman, J.W. (2019). Procompetitive justifications in antitrust law. Indiana Law Journal 94(2): 501-544.

Nichols, K. (2023). Blasting off with private sector tenders - A guide to winning bids in the industry. Mike Gingerich (Blog) (May 22, 2023), https://www.mikegingerich.com/blog/blasting-off-with-private-sector-tenders-a-guide-to-winning-bids-in-the-industry/

Nicole, A. (2024). What is price fixing? Types, examples, and legal aspects. Supermoney (March 25, 2025), https://www.supermoney.com/encyclopedia/price-fixing

Parduhn, R.P. (2026). CVS accused of shutting out rival pharmacy hubs in House Judiciary investigation. Healthcare Dive (January 26, 2026), https://www.healthcaredive.com/news/cvs-caremark-house-judiciary-pharmacy-antitrust-violations/810455/

Patent Brief (2026). Patent thicket. Patentbrief, https://patentbrief.org/patent-thicket (accessed July 23, 2026).

Peer, A.G. (2026). Mapping the market: How franchise territory rights shape global expansion. Fran.News (March 17, 2026), https://fran.news/insights/mapping-the-market-how-franchise-territory-rights-shape-global-expansion/

Pollack, A, (1984). Bell system breakup opens era of great expectations and great concern. New York Times (January 1, 1984), https://www.nytimes.com/1984/01/01/us/bell-system-breakup-opens-era-of-great-expectations-and-great-concern.html

Posner, R.A. (2005). Vertical restraints and antitrust policy. The University of Chicago Law Review 72(1): 229-241.

Posner, R.A. (2026). Natural monopoly and its regulation. Washington, D.C: Cato Institute.

Quinn, C. (2025). Former fuel truck supply company owner sentenced for antitrust violations. MSN (June 9, 2025), https://www.msn.com/en-us/money/economy/former-fuel-truck-supply-company-owner-sentenced-for-antitrust-violations/ar-AA1GoE2Q

Robinson, C. (2019). NFL reaches financial settlement with Colin Kaepernick, Eric Reid. Yahoo Sports (February 15, 2019), https://sports.yahoo.com/article/sources-colin-kaepernick-withdraws-collusion-case-nfl-190149703.html

Robinson, K. (1986). Maximizing the public benefits of the AT&T breakup. Journal of Policy Analysis and Management 5(3): 572.

Rothman, H.S. (2018). Operationalizing the third prong of the Federal Trade Commission's 2015 statement regarding "unfair methods of competition." Columbia Journal of Law and Social Problems 52(1): 85-134.

Sharpes, D. (2012). Reintroducing intent into predatory pricing law. Emory Law Journal 61(4): 903-943.

Shughart W.F. & Thomas, D.W. Antitrust enforcement in the Obama Administration's first term: A regulatory approach. Cato Institute (Policy Analysis) (October 22. 2023), https://www.cato.org/policy-analysis/antitrust-enforcement-obama-administrations-first-term-regulatory-approach

Siebert, M. (2021). 4 essentials of quality control in franchising. Franchise Wire (May 25, 2021), https://www.franchisewire.com/4-essentials-of-quality-control-in-franchising/

Smith, J. (2025). Trump Administration retains Biden-era FTC merger guidelines. Law.com (February 20, 2025), https://www.law.com/nationallawjournal/2025/02/28/ftc-doj-keep-biden-era-merger-rules-under-trump/

Snyder, E.A. & Sokol, D.D. (2025). The fraying of criminal antitrust enforcement. Yale Journal on Regulation 42(3): 1239-1261.

Squire Patton Boggs (2026). Government contractors beware: DOJ antitrust division doubles down on procurement bid rigging. Squire Patton Boggs (May 21, 2026), https://www.squirepattonboggs.com/insights/publications/government-contractors-beware-doj-antitrust-division-doubles-down-on-procurement-bid-rigging/

Stein, G.A. & O'Hollaren, T.P. (2025). New DOJ-antitrust force accepting comments on anticompetitive laws and regulations. Washington Legal Foundation (April 8, 2025), https://www.wlf.org/2025/04/08/publishing/new-doj-antitrust-task-force-accepting-comments-on-anticompetitive-laws-and-regulations/

Steinbaum, M. & Stucke, M.E. (2020). The effective competition standard: A new standard for antitrust. University of Chicago Law Review 87(2): 595-623.

Stigler, G.J. (1985). The origins of the Sherman Act. The Journal of Legal Studies 14(1): 1-12.

Swanson, B. (2014). Lessons from the AT&T break up, 30 years later. American Enterprise Institute (January 3, 2014), https://www.aei.org/technology-and-innovation/lessons-att-break-30-years-later/

Talbott, S. & Whiddon, D. (2025). Promoting competition and protecting taxpayer dollars: A federal and state response to bid rigging in public procurements. Antitrust 39(2): 21-28.

U.S. Department of Justice (2008). Competition and monopoly: Single-firm conduct under Section 2 of the Sherman Act. U.S. Department of Justice, https://www.justice.gov/archives/atr/competition-and-monopoly-single-firm-conduct-under-section-2-sherman-act

U.S. Department of Justice (2017). Assistant Attorney General Makan Delrahim delivers keynote address at American Bar Association's antitrust fall forum. U.S. Department of Justice (November 16, 2017), https://www.justice.gov/archives/opa/speech/assistant-attorney-general-makan-delrahim-delivers-keynote-address-american-bar

U.S. Department of Justice (Office of Public Affairs (2025). Former owner of fuel truck supply company sentenced to prison for bid rigging and conspiracy to monopolize. U.S. Department of Justice (June 6, 2025), https://www.justice.gov/opa/pr/former-owner-fuel-truck-supply-company-sentenced-prison-bid-rigging-and-conspiracy

U.S. Department of Justice (Antitrust Division) (2026). Procurement collusion strike force. U.S. Department of Justice, https://www.justice.gov/atr/procurement-collusion-strike-force (accessed August 19, 2026).

US Law Explained (2026). The ultimate guide to patent thickets. US Law Explained, https://uslawexplained.com/patent_thicket (accessed July 27, 2026).

Vaska, M.K. (1985). Conscious parallelism and price fixing: Defining the boundary. University of Chicago Law Review 52(2): 508-538.

Werden, G.J. (2024). Unfair methods of competition under Section 5 of the FTC Act: What is the intelligible principle? Antitrust Law Journal 85(3): 819-876.

Wham, B. (1954). Antitrust treble-damage suits: The government's chief aid in enforcement. American Bar Association Journal 40(12): 1061-1064.

CASES CITED

360 Painting, LLC v. Sterling Enterprises, Inc. (2024). Case No. 20 C 4919 (District Court, Northern District of Illinois).

Altenar Techs. Ltd. v. Sportradar Grp. (2026 Pending) (United States District Court, New Jersey).

Amalgamated Meat Cutters v. Jewel Tea (1966). 381 U.S. 676 (United States Supreme Court).

AMG Capital Management v. FTC (2021). 593 U.S. 67 (United States Supreme Court).

Apex Hosiery v. Leader (1940). 310 U.S. 469 (United States Supreme Court).

Continental T.V., Inc. v. GTE Sylvania (1977). 433 U.S. 36 (United States Supreme Court).

EazyFoods Inc. v. 615341 Ontario Ltd. (2026). 2026 ONSC 504 (Ontario Superior Court of Justice).

Federal Trade Commission v. Deere & Company (2026 Pending). FTC Matter/File Number: 2110191 (United States District Court, Northern District of Illinois).

Federal Trade Commission v. Morton Salt Co. (1948). 334 U.S. 37 (United States Supreme Court).

Federal Trade Commission v. Pepsico, Inc. (2025 Pending). Case 1:25-cv-00664-JMF (United States District Court, Southern District of New York).

Federal Trade Commission v. Southern Glazer's Wine and Spirits, LLC (2024 Pending). Case Number 8:24-cv-02684 (United States District Court, Central District of California).

Federal Trade Commission v. Superior Court Trial Lawyers Ass'n (of the City of Los Angeles) (1990). 493 U.S. 411 (United States Supreme Court).

Fetch! Pet Care, Inc. v. Pawz Inc. (2026). No. 25-1638 (United States Circuit Court of Appeals, 6th Circuit).

In re Realpage, Inc. Rental Software Antitrust Litigation (2023). 709 F. Supp. 3d 469 (United States District Court, Middle District Tennessee).

National Reporting Company v. Alderson Reporting Company (1985). 763 F.2d 1020 (United States Circuit Court of Appeals, 8th Circuit).

Palmer v. BRG of Georgia (1990). 498 U.S. 46 (United States Supreme Court).

Rx Holding Co. v. CVS Pharmacy, Inc. (2026 Pending). Case Number 1:26-cv-00182 (United States District Court, Rhode Island).

Savory Pie Guy, LLC v. Comtec Industries, Ltd. (2016). Case Number 7:2014-cv-07627 (United States District Court, Southern District of New York).

Smart et al. v. National Collegiate Athletic Association (2025). Case Number 2:22-cv-02125 (United States District Court, Eastern District California).

Spectrum Sports, Inc. v. McQuillen (1993). 506 U.S. 447 (United States Supreme Court).

United States v. AT&T (1983). 552 F. Supp. 131 (United States District Court, District of Columbia).

United States v. Microsoft Corp. (2001). 253 F.3d 34 (United States Circuit Court of Appeals, D.C. Circuit).

United States v. Topco Associates (1972). 405 U.S. 596 (United States Supreme Court).

United States v. Von's Grocery (1966). 384 U.S. 270 (United States Supreme Court).

Williamson Oil Company, Inc., et al. v. Philip Morris USA, R.J. Reynolds, Tobacco Co., et al. (2003). 346 F.3d 1287 (United States Circuit Court of Appeals, 11th Circuit).

Zapata v. Maldonado (1981). 430 A.2d 667 (Supreme Court of Delaware).

EXECUTIVE ORDER

Executive Order 14267 (April 9, 2025). Reducing Anti-Competitive Regulatory Barriers, https://www.whitehouse.gov/presidential-actions/2025/04/reducing-anti-competitive-regulatory-barriers/