2025-2026 Edition Highlights

New developments covered in *Antitrust Law Handbook, 2025-2026 Edition* include, among many others:

- Mixed messaging from the Trump administration as to how it plans to use the federal antitrust enforcement agencies and how this might impact traditional enforcement activities. *See* § 1:1.
- A Ninth Circuit decision affirming a jury verdict against Google in the "Fortnite" restraint of trade and monopolization case, despite an earlier verdict for Apple in a parallel case, *In re Google Play Store Antitrust Litigation* (9th Cir. 2025). *See* §§ 1:2, 9:12, 9:26.
- A Seventh Circuit decision vacating a preliminary injunction in a rule of reason case, holding that the plaintiff's sparse evidence of the relevant market and anticompetitive effects failed to establish a likelihood of success on the merits, *Fourqurean v. National Collegiate Athletic Assn.* (7th Cir. 2025). *See* §§ 1:2, 2:10.
- A Ninth Circuit case providing helpful guidance on what is required for algorithmic pricing tools to violate the Sherman Act as price fixing, *Gibson v. Cendyn Group* (9th Cir. 2025). *See* §§ 1:2, 2:10, 2:11, 2:12.
- A Ninth Circuit decision affirming denial of preliminary injunctive relief in one of the few vertical merger cases to appear in recent years, illustrating the significant burdens facing U.S. antitrust enforcers when attempting to challenge a vertical merger, *Federal Trade Commission v. Microsoft* (9th Cir. 2025). *See* §§ 1:4, 6:7, 7:2.
- A Ninth Circuit decision employing patent law principles to dismiss antitrust claims that a patentee engaged in illegal tying by conditioning sales of its patented modem chips on purchasing licenses for its portfolio of standards-essential patents, *Key v. Qualcomm* (9th Cir. 2025). *See* §§ 1:2, 2:18.
- A Fourth Circuit decision holding that price-related conduct could be combined with other exclusionary conduct to find a Section 2 violation despite *Brooke*

Group, and that pretextual refusals to grant competitors access to a necessary facility could constitute a Section 2 violation under *Aspen Skiing, Duke Energy Carolinas v. NTE Carolinas II* (4th Cir. 2024). *See* §§ 1:3, 3:5, 3:12, 3:13, 8:6.

- A First Circuit decision explicitly adding a balancing requirement to the three-step burden-shifting framework for the rule of reason outlined by the Supreme Court in *Amex, United States v. American Airlines Group* (1st Cir. 2024). *See* §§ 1:2, 2:10, 2:22.
- A Ninth Circuit decision holding that evidence of a defendant's purpose in engaging in allegedly anticompetitive conduct remains a relevant factor in both rule of reason and modified per se tying analyses, *Sidibe v. Sutter Health* (9th Cir. 2024). *See* §§ 1:2, 2:10.
- A Ninth Circuit decision distinguishing stand-alone software products that complement one another from technologically or physically integrated software in rejecting rule of reason analysis of a tying claim in favor of the standard per se tying rule, *Teradata Corporation v. SAP SE* (9th Cir. 2024). *See* §§ 1:2, 2:10, 2:18.
- A Tenth Circuit decision looking beyond just the plaintiff's complaint allegations in dismissing a complaint that failed to plead the relevant market with reference to reasonable interchangeability of use and cross-elasticity of demand, *Assn. of Surgical Assistants to National Board of Surgical Technology and Surgical Assisting* (10th Cir. 2025). *See* §§ 1:3, 3:4.
- A Ninth Circuit decision employing the "political question" and "act of state" doctrines to dismiss antitrust claims against OPEC, Russia and President Trump during his first term for allegedly agreeing to cut oil production and raise global oil prices during the pandemic, *D'Augusta v. American Petroleum Institute* (9th Cir. 2024). *See* §§ 1:4, 8:10, 9:14.
- District court decisions reflecting a split on whether, and under what circumstances, the use of algorithmic pricing tools can constitute illegal price fixing. *See* §§ 1:2, 2:11.
- A Ninth Circuit decision holding that the in pari delicto and unclean hands defenses did not bar a plaintiff's standing to assert federal antitrust claims against its competitor, *PharmacyChecker.com v. LegitScript* (9th Cir. 2025). *See* §§ 1:4, 9:5, 9:6.

- A Fourth Circuit decision holding that the continuing violation doctrine did not preserve time-barred antitrust claims absent proof of new affirmative acts committed within the limitations period, *CSX Transportation v. Norfolk Southern Railway Company* (4th Cir. 2024). *See* §§ 1:4, 9:11.
- Second and Fourth Circuit decisions applying the fraudulent concealment doctrine to toll running of the statute of limitations and addressing differences between how various circuits define an act of fraudulent concealment, *Scharpf v. General Dynamics Corp.* (4th Cir. 2025) and *Phhhoto v. Meta Platforms* (2d Cir. 2024). *See* §§ 1:4, 9:11.
- A Second Circuit decision illustrating the importance of plus factors allegations when pleading a claim of parallel concerted action, together with limitations on the *Illinois Brick* indirect purchaser standing bar, *Mosaic Health v. Sanofi-Aventis U.S.* (2d Cir. 2025). *See* §§ 1:4, 9:9.
- A Ninth Circuit decision recognizing the potential viability of a claim of de facto exclusive dealing, *CoStar Group v. Commercial Real Estate Exchange* (9th Cir. 2025). *See* §§ 1:4, 2:19, 3:4.
- A Seventh Circuit decision rejecting a single-brand market theory in a case involving claims of per se tying, attempted monopolization, and *Kodak-style* locked-in customer monopolization, *In re Harley-Davidson Aftermarket Parts Sales Practices and Antitrust Litigation* (7th Cir. 2025). *See* §§ 1:4, 2:18, 3:4.
- A Seventh Circuit decision clarifying what constitutes actionable recoupment for a claim of predatory pricing, *United Wisconsin Grain Producers v. Archer Daniels Midland* (7th Cir. 2025). *See* §§ 1:4, 3:13.
- A Fourth Circuit decision holding that it was likely not an act of monopolization for a monopolist to require parties desiring to use its service to release it from possible liability for past antitrust violations, *2311 Racing v. National Association for Stock Car Auto Racing* (4th Cir. 2025). *See* §§ 1:4, 3:5.