2026-2027 Edition Highlights

New developments covered in *Antitrust Law Handbook, 2026-2027 Edition* include, among many others:

- A Supreme Court decision holding that the executive powers of President Trump included the power to fire the two Democrat Commissioners of the Federal Trade Commission without cause, even though a removal protection clause in the FTC Act stated otherwise, *Federal Trade Commission v. Slaughter* (U.S. 2026). See §§ 1:4, 7:2.
- Recent government antitrust enforcement activity reflecting a growing split between federal and state enforcers regarding appropriate remedies and a heightened state involvement in antitrust enforcement. See § 1:4.
- Two Fifth Circuit decisions providing guidance on how to plead a relevant market, including insights into the basic concepts of product interchangeability and cross-elasticity, the Brown Shoe market criteria, and pleading "single brand" and "cluster" markets, *Rx Solutions v. Caremark* (5th Cir. 2026) and *Endure Industries v. Vizient* (5th Cir. 2026). See §§ 1:2, 2:10, 3:4, 9:6, 9:14.
- A Third Circuit decision reversing dismissal of a "hub-and-spoke" claim of algorithmic price fixing involving room rates at hotel-casinos in Atlantic City, *Cornish-Adebiyi v. Caesars Entertainment, Inc* (3d Cir. 2026). See §§ 1:2, 2:4, 2:6.
- A Federal Circuit decision affirming a jury verdict of liability in a patent tying case, rejecting defense arguments that the defendant's conduct was protected from antitrust scrutiny by the Patent Act and immune from antitrust challenge under the Noerr-Pennington doctrine, *Ingevity Corp. v. BASF* (Fed. Cir. 2026). See §§ 1:2, 2:18, 8:8, 9:25.
- A Seventh Circuit decision affirming dismissal of a tying case for failing to plausibly plead the element of separate products but creating uncertainty as to how to decide the issue, *Lazarou v. American Board of Psychiatry and Neurology* (7th Cir. 2025). See § 1:2.

- A Seventh Circuit decision affirming dismissal of claims of illegal tying, attempted monopolization, and Kodak-style aftermarket monopolization for failure to plead plausible claims, *In re Harley-Davidson Aftermarket Parts Marketing, Sales Practices Antitrust Litigation* (7th Cir. 2025). See §§ 1:2, 2:18, 3:4, 9:22.
- A Ninth Circuit decision affirming dismissal of a monopolization case, but arguably raising the pleading bar to survive a motion to dismiss to an exceedingly high level, *Malheur Forest Fairness Coalition v. Iron Triangle* (9th Cir. 2026). See § 1:3.
- A Ninth Circuit decision discussing overlaps between exclusive dealing as a Sherman Act § 1 restraint of trade and as a § 2 act of monopolization and providing an abbreviated analysis for handling cases brought under both provisions, *CoStar Group v. Commercial Real Estate Exchange* (9th Cir. 2025). See §§ 1:3, 2:19, 3:4.
- A Ninth Circuit decision holding that it was not an "essential facilities" violation for Apple to change the algorithm used to compile heart rate data for users of its smart watches and to discontinue providing competitors with older algorithm data, *AliveCor v. Apple* (9th Cir. 2026). See §§ 1:3, 3:5, 3:12.
- A Federal Circuit decision reviving a Walker Process claim of attempted monopolization involving alleged enforcement of a fraudulently-procured patent, together with a related inequitable conduct defense, *Global Tubing v. Tenaris Coiled Tubes* (Fed. Cir. 2026). See §§ 1:3, 3:5.
- A Fourth Circuit decision rejecting an argument that it was an illegal act of monopolization for an alleged monopolist to condition access to its service on releasing it from liability for possible past antitrust violations, *2311 Racing v. National Association for Stock Car Auto Racing* (4th Cir. 2025). See §§ 1:3, 3:5.
- A Seventh Circuit decision explaining what constitutes recoupment for purposes of a Sherman Act Section 2 claim of predatory pricing, distinguishing the antitrust definition from the common dictionary definition, *United Wisconsin Grain Producers v. Archer Daniels Midland Company* (7th Cir. 2025). See §§ 1:3, 3:13.
- A Second Circuit decision explaining the differences between Article III constitutional standing and

statutory antitrust standing to uphold the constitutional standing of a distributor allegedly terminated after it refused to pay the defendants' inflated fixed price, even if it lacked statutory standing, *DirecTV v. Nexstar Media Group* (2d Cir. 2025). See §§ 1:4, 9:6, 9:7.

- A Third Circuit decision equating the standing and merits concepts of what constitutes antitrust injury to affirm dismissal of an antitrust case for lack of standing, *McLoughlin v. Cantor Fitzgerald* (3d Cir. 2025). See § 1:4.
- A questionable Tenth Circuit decision interpreting the efficient enforcer requirement for antitrust standing as a search for the party in the best position to assert a claim, and holding that for tying claims, this means purchasers of the tied item and not purchasers of the tying item, even though they have clearly incurred injury, *North Brevard County Hospital District v. C.R. Bard* (10th Cir. 2025). See §§ 1:4, 9:8.
- A Sixth Circuit decision applying Illinois Brick to deny standing to an upstream supplier of a service indirectly injured by the defendants' downstream boycott of customers using its service, even though it was the intended target of the boycott, *Academy of Allergy & Asthma in Primary Care v. Amerigroup Tennessee* (6th Cir. 2025). See §§ 1:4, 9:9.
- Fourth and Fifth Circuit decisions addressing claims of state action immunity in the context of local municipal bodies, rejecting a market participant exception and highlighting the importance of identifying precisely who is asserting the immunity, *Cherry Grove Beach Gear v. City of Myrtle Beach* (4th Cir. 2025) and *Megatel Homes v. City of Mansfield* (5th Cir. 2026). See §§ 1:4, 8:7.
- A Ninth Circuit decision ruling that the import commerce exception to the FTAIA did not apply to price-fixed foreign components of an imported product, but remanding the case to determine whether the domestic effects exception might apply, *Seagate Technology v. NHK Spring Co.* (9th Cir. 2025). See §§ 1:4, 9:3, 9:9.