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Antitrust Antidote: October-December 2025

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Welcome to the Antitrust Antidote—a quarterly publication analyzing significant U.S. antitrust decisions from legal and economic perspectives. Authored by former Federal Trade Commission (FTC) enforcer Koren W. Wong-Ervin with former FTC economist co-authors Jeremy Sandford and Nathan Wilson. The title of this series, “Antitrust Antidote,” while mostly meant to be humorous (perhaps limited to those who have heard Koren’s “let’s talk economics” as a cure for a bad day), also refers to the practical guidance we aim to provide throughout the series. We hope you enjoy it!

There were a number of decisions from October through December 2025, including: (1) *FTC v. Meta*, in which the court relied heavily on experimental field study research in concluding that Meta is not a monopolist; (2) *Bakay et al. v. Apple*, in which the Ninth Circuit affirmed dismissal of a putative consumer class action against Apple for lack of Article III standing as to the injunctive relief sought and for lack of antitrust standing; (3) a Sixth Circuit decision on antitrust injury and proximate cause; (4) a Seventh Circuit decision on tying and the separate products requirement; and (5) a monopsony case in which a lower court accepted essentially a single-player relevant market.

FTC v. Meta Platforms, Inc. (D.D.C.)

(market definition; monopoly power)

On November 18, 2025, following a lengthy bench trial, Chief Judge James Boasberg held that the FTC failed to prove that Meta unlawfully monopolized the market for “personal social networking” through its long-ago consummated acquisitions of Instagram (in 2012) and WhatsApp (in 2014). The court emphasized the dynamic nature of the market, with “apps surging and receding, chasing one craze and moving on from others, and adding new features with each passing year,” criticizing the FTC for continuing “to insist that Meta competes with the same old rivals it has for the last decade” and “holds a monopoly among that small set.”

Among other elements of interest may be the court’s reliance on expert testimony connecting traditional IO questions of demand with evidence gleaned from experimental methods, with the court describing a field experiment run by Professor John List involving payments to users as the “single best evidence of what consumers consider alternatives to Meta’s apps.” This evidence is discussed below.

Forward-Looking Standard

As a threshold issue, the court noted that the FTC is subject to the standard set forth under Section 13(b) of the FTC Act, pursuant to which the FTC can “seek to enjoin only conduct that currently violates the law or imminently will.” The court rejected the FTC’s argument that, “if Meta broke the law in the past and this violation is still harming competition, then the agency may seek an injunction to redress the lingering harm.” The court explained that “[w]hether or not Meta enjoyed monopoly power in the past” did not answer the relevant question, and that “the agency must show that [Meta] continues to hold such power now.”

Relevant Market

The court found that the FTC’s proposed relevant market failed to account for competitive realities and the dynamic nature of the market. The FTC argued that Facebook, Instagram, Snapchat, and MeWe compete primarily with one another in a market that the agency calls “personal social networking” (PSN). Meta disagreed, arguing that “if PSN apps were ever a separate economic unit, they no longer are,” and that “the company sees itself as competing in the broader field of social media, which at a minimum includes TikTok and YouTube, fierce competitors for users’ time and attention in this space,” and that “[a]dding those two companies to the relevant market ... diminishes Meta’s share below monopoly level.” The court agreed with Meta, stating that the landscape had “changed markedly” in the last five years from the time the FTC filed its suit, concluding that “[w]hile it once might have made sense to partition apps into separate markets of social networking and social media, that wall has since broken down.”

The court first examined empirical evidence of whether consumers treat TikTok and YouTube as substitutes for Facebook and Instagram, concluding that “[t]he evidence resoundingly shows that they do.” The court used the lens of the hypothetical monopolist test (HMT) to consider the validity of the FTC’s narrow personal social networking market. Recall that the HMT is a framework that aims to identify the smallest set of products that a hypothetical monopolist would need to possess in order to make it profitable to increase the quality-adjusted price of one of the products in the candidate market. If enough consumers would react to the price increase by switching to a product outside the candidate market that the hypothetical

monopolist would be worse off, then the candidate market would need to be expanded.

To understand the question of the relevant market in which Meta competes, and whether it includes TikTok and YouTube in particular, Professor List complemented non-experimental data showing that use of Meta's platforms was inversely correlated with TikTok's entry with experimental and quasi-experimental data specifically examining what consumers would do when the relative cost of Facebook or Instagram increased. Most compelling to the court was an experiment that Professor List conducted himself in which he offered thousands of Meta platform users a small amount of money to not use a Meta platform, measuring what they used instead. Professor List found even more substitution to YouTube and TikTok than would have been predicted by those applications' share of consumers' time overall. These results echoed those found by complementary analyses that exploited "natural experiments" as outages that fully removed an option from consumers' choice sets for a discrete amount of time. Like Professor List's experiment, these consistently showed that YouTube and TikTok were close substitutes for consumers. Overall, the Court found this evidence to strongly corroborate Meta documents and testimony indicating that the firm competes in a market broader than just firms offering personal social networking services.

After reviewing the quantitative analysis, the court then considered the Brown Shoe qualitative factors as a "proxy for substitutability," concluding that, even when considered qualitatively, the apps' "similarities outweigh their differences." In the course of discussing the qualitative indicia, the court noted that the Brown Shoe factors are relevant insofar as they help with the appropriate delimiting of the relevant market, expressly disavowing the possible relevance of "submarkets." This point is made bluntly: "The only relevant concept is the product market, indivisible as an atom... By definition, the product market is already the smallest grouping of products on which a hypothetical monopolist could profitably impose an SSNIP... If a subcomponent of that market meets that test, then it is not a "submarket" but a product market in its own right... If a subcomponent flunks that test, then it is legally irrelevant, and dignifying it with the name "submarket" adds only confusion."

The Role of Profit Margins & Differential Pricing

The court rejected the FTC's arguments that there was direct evidence of monopoly power based on, among other things, Meta's persistent profits that exceed its cost of capital. The court noted that while such evidence "may indeed suggest monopoly power," it "can also imply any of the other reasons why one firm is more profitable than its rivals: shrewd management, exceptional efficiency, booming demand, or risk investments that hit big." The court cited caselaw on the dangers of relying on profit margins, stating: "As Chief Judge Richard Posner has written for the

Seventh Circuit, “[I]t is always treacherous to try to infer monopoly power from a high rate of return[.] . . . there is not even a good economic theory that associates monopoly power with a high rate of return.’ Unsurprisingly, then, ‘[m]any courts have disparaged the evidentiary value of high profits to indicate monopoly power.’” The court then noted that “[t]he record here is a case study in why. It reveals several other factors that could be driving Meta’s handsome profits, none of which the FTC has foreclosed.” The possible factors included Meta’s “impressive technology that helps advertisers create engaging ads and target them to exactly the right users” and the fact that Meta “could simply be exceptionally well managed”—neither of which the FTC’s experts assessed. “The agency did not even show that Meta’s profits are greater than other successful tech firms.”

The court also rejected the FTC’s assertion that Meta charges a higher quality-adjusted price to a subset of users by showing them more ads, explaining that “price discrimination reveals only what economists call market power—the power to price a good above marginal cost,” which is different from monopoly power. “Price discrimination shows only that a firm is not the undifferentiated fiction earning zero profits that scarcely exists outside the pages of an Econ 101 textbook. It does not prove that the market is monopolized.”

Academy of Allergy & Asthma v. Amerigroup Tennessee, Inc. (6th Cir.)

(antitrust injury and proximate cause)

On October 10, 2025, the Court of Appeals for the Sixth Circuit affirmed the dismissal of indirect purchaser claims for lack of standing for failing to show that Defendants proximately caused the antitrust injury. The Sixth Circuit concluded that Plaintiff is an indirect seller because it is two steps removed from the insurers in the distribution chain, with the insurers the ones who “directly bought from (and harmed) the primary-care physicians by allegedly conspiring to fix their reimbursement rates and deny their claims.” According to the court, that conduct harmed Plaintiff “only indirectly because it led the physicians not to pay” Plaintiff’s fees and to end their relationship.

Plaintiff provides personnel and supplies to primary-care physicians so that the physicians may offer allergy testing and immunotherapy to patients. Plaintiff charges the physicians a set fee for its goods and services, and the physicians, in turn, charge medical insurers for their own allergy care. Plaintiff alleged that several insurers conspired with each other and with the predominant allergy-care medical group to drive Plaintiff and its contracting physicians from the market.

The lower court held that Plaintiff failed to allege both antitrust injury and that Defendants proximately caused the injury. The Sixth Circuit opted to “avoid” the antitrust-injury question, saying that it “find[s] this question difficult,” yet

ultimately unnecessary to address given the court's conclusion that the suit fails on the proximate-cause grounds. The Sixth Circuit did, however, state that, on the one hand, Plaintiff in "many ways" resembles a supplier to the primary-care physicians and operates in a distinct market vertically upstream of the affected one, which "might suggest" that Plaintiff did not suffer antitrust injury "because a supplier does not suffer an antitrust injury when competition is reduced in the downstream market in which it sells goods or services." On the other hand, "when a plaintiff sells to a third party and the two businesses together compete with an integrated defendant, both the plaintiff and the third party are the defendant's 'competitors' in 'every relevant economic sense'" (citing *Areeda & Hovenkamp*).

With respect to proximate cause, the court explained that the doctrine "sometimes bars a suit when the defendant could not reasonably foresee the type of injury the plaintiff suffered," while at other times it bars a suit if a "superseding cause" stood between the defendant's conduct and the plaintiff's injury. "And most relevant here, the doctrine sometimes bars a suit if a 'direct relation' does not exist 'between the injury asserted and the injurious conduct alleged.'" The Sixth Circuit relied on the Supreme Court's 2019 decision in *Apple v Pepper*, to say that, in the antitrust context, the Supreme Court has turned the "general directness element into a specific 'rule' that applies when antitrust violators harm multiple parties along a vertical chain of distribution. The rule permits only 'direct purchasers' (not 'indirect purchasers') to sue a cartel or monopolist."

The court noted that Plaintiff's horizontal agreement "caused two basic harms: the insurers denied claims for completed sales (in which physicians had already provided allergy care services to patients) and the insurers caused the market to suffer from lost sales (by incentivizing the physicians to stop seeing patients because they knew they would not get paid)." The court then concluded that the "complaint leaves no doubt that the physicians—not [Plaintiff]—directly suffered these harms," pointing to (as one example) the fact that physicians directly sold to the insurers and so directly suffered the undercharge, noting that at least one physician identified in the complaint sued to recover the full amount of his "unreimbursed" claims (i.e., the entire undercharge).

The court also reasoned that, even apart from the Supreme Court's Illinois Brick indirect purchaser rule, Plaintiff seeks "highly speculative" damages, pointing to "its request to recover lost profits for the sales it might have made to prospective physicians who refused to contract with it because of the insurers' anticompetitive conduct." According to the court, Plaintiff would have to prove that the physicians refused to enter the market as "the result of the alleged" anticompetitive conduct. The court noted that "the physicians could have refrained from doing so 'for any number of reasons unconnected to that conduct.'"

The court rejected Plaintiff’s arguments, including that its request for “lost profits” (rather than for undercharge damages) eliminates the concerns with “duplicative recovery” that drove the Illinois Brick decision. The court stated that, while the duplicity risk “might arise here if, for example, physicians ... could recover the full undercharge for denied claims on completed sales,” it agreed that the concern would not arise if courts limited both direct and indirect victims only to their lost profits. “Here, for example, if the primary-care physicians could seek only the lost profits from both completed and lost sales, their damages would exclude their costs” (which would include Plaintiff’s set fees on these sales). Nevertheless, the court rejected Plaintiff’s argument that Illinois Brick does not apply, stating that the decision “categorically bars suits by indirect purchasers or sellers; it does not bar them from only specific types of remedies.” “Besides, Illinois Brick did not establish its rule just because of the risk of duplicative damages. It also established its rule because of the “uncertainties and difficulties in analyzing price and output decisions ‘in the real economic world rather than an economist’s hypothetical model’”. The court concluded that these concerns remain even if an indirect seller labels its claim as one for “lost profits” rather than an undercharge.

Lazarou v. American Board of Psychiatry and Neurology (7th Cir.)

(tying)

On October 29, 2025, the Court of Appeals for the Seventh Circuit affirmed a dismissal of the case with prejudice, rejecting Plaintiffs’ psychiatrists’ tying claim against the American Board of Psychiatry and Neurology. Plaintiffs alleged that the Board uses its monopoly over specialty certifications to force them to purchase the Board’s “maintenance of certification” (MOC) product. The court concluded that Plaintiffs failed to satisfy the separate products requirement for Sherman Act Section 1 tying claims by showing that psychiatrists and neurologists view Defendant’s MOC product as a viable alternative to other continuing medical education (CME) offerings.

Plaintiffs alleged that Defendant’s MOC contains educational content and psychiatrists use MOC to meet state CME licensure requirements partially or in full. The court rejected Defendant’s argument that Plaintiffs “must establish a reasonable comparison between MOC and doctors’ state licensure,” stating that Plaintiffs must only “plead facts making it plausible that MOC is a substitute for other [CME] products.” According to the court, this requires allegations that allow an inference of cross-price elasticity between MOC and other CME offerings. “This means that ‘in a world without the tying arrangement—an increase in the price of other [CME] products relative to MOC would shift sales to MOC.’” The court concluded that it “cannot reasonably infer that doctors view MOC as reasonably interchangeable with

CME [...] because [...] MOC forces doctors to spend, as Plaintiffs allege, a ‘substantial cost in money, time, and effort.’”

As a matter of law and economics, the court’s analysis is puzzling. As the court noted, as a legal matter, the separate products requirement “is rooted in ‘prevent[ing] monopolists from leveraging power in one market to restrict competition in a second [market],’” which “can result ‘only where there is a sufficient demand for the purchase of the tied product separate from the tying product to identify a distinct product market in which it is efficient to offer the tied product separately from the tying product.’” Thus, the separate-products question “turns on ‘the character of the demand for the two items’ [...] before the alleged tying arrangement went into effect,” with courts looking to indicators of market demand such as “how the market participants have sold and purchased the [items];” “whether the two items are ‘separately priced and purchased;’” and “whether they are ‘distinguishable in the eyes of buyers.’” In other words, the analysis focuses on the demand for the tying and tied products, not—as the Seventh Circuit did here—whether there are substitutes for the tied product.

From an economic perspective, the harm from tying occurs when the tie forecloses competition between the tied product and other products in the tied market. At a minimum, this means that some customers who would have purchased other tied market products but for the tie instead purchased the tied product from the tying firm. Naturally, a tie cannot foreclose competitors if there are no competitors. Consider a hotel whose daily rate includes access to the hotel’s fitness center. Most guests will never use the fitness center, and the amenity has no value to these guests. Some guests will view it as an attractive feature, but are unlikely to travel to a local gym if the fitness center is closed, meaning that no guest views the hotel’s fitness center as a substitute for local gyms. Given the lack of substitution between hotel fitness centers and local gyms, the hotel’s pricing could not reasonably be said to foreclose competition for gyms, even if construed as a “tie.”

Bakay v. Apple (9th Cir.)

(Article III and antitrust standing)

On October 28, 2025, the Court of Appeals for the Ninth Circuit affirmed dismissal of a putative consumer class action against Apple for lack of Article III standing as to the injunctive relief sought and for lack of antitrust standing. Plaintiffs—individuals who purchased at least one iPhone from Apple—sought injunctive relief and damages based on inflated prices in the smartphone and smartphone operating system markets as a result of an unlawful restraint of trade in

both markets and a conspiracy to monopolize the smartphone operating system market.

With respect to Article III standing, the court held that Plaintiffs failed to satisfy their burden to show that “the injury would likely be redressed by judicial relief.” Plaintiffs alleged that, absent an injunction, Apple’s App Review Guideline, Software Requirement, § 2.5.6 (the “WebKit Agreement”), which requires all apps that browse the web to use Apple’s WebKit browser engine, will continue to harm competition in the smartphone and smartphone operating system markets. According to Plaintiffs, the WebKit Agreement means that any web browser, even a third-party browser app, is at its core Apple’s Safari web browser, and that Google would need to replace its WebKit-based Chrome browser with a Blink-based Chrome browser on Apple’s iPhone to allow for cross-platform Progressive Web Apps, which is what would result in competitive markets. The court concluded that, even accepting Plaintiffs’ allegations as true, Plaintiffs failed to plead any facts suggesting that Google would be likely to make this change if an injunction were in place and that, absent such allegations, the pleading is conclusory and speculative.

The court also pointed out that the “ultimate relief Plaintiffs seek—lower iPhone prices—depends also upon new market entrants overcoming the extensive barriers to entry in the smartphone operating system market that Plaintiffs detail in their complaint,” and that an injunction against Apple “is unlikely to eliminate the mobile ecosystem barrier to entry and result in increased competition such that iPhone prices will decrease.”

With respect to “the more demanding standard for antitrust standing,” the court cited the following factors that courts consider when making the determination: (1) “whether [plaintiff’s alleged injury] was the type the antitrust laws were intended to forestall; (2) the directness of the injury; (3) the speculative measure of the harm; (4) the risk of duplicative recovery; and (5) the complexity in apportioning damages.” The court explained that, in “assessing alleged antitrust injuries, courts must focus on anticompetitive effects ‘in the market where competition is [allegedly] being restrained.’” “Parties whose injuries, though flowing from that which makes the defendant’s conduct unlawful, are experienced in another market do not suffer antitrust injury.”

The court concluded that “Plaintiffs’ alleged restraint—Apple’s enforcement of the WebKit Agreement and Apple’s and Google’s conspiracy to monopolize by not deploying any other web engine but WebKit on the iOS operating system—does not restrain trade in the smartphone and smartphone operating system markets.” Instead, Plaintiffs’ factual allegations make clear that there is a distinct browser engine market that is impacted by the WebKit Agreement. For example, “Apple does not permit any other web engine to run on its devices,” whereas “Android devices are

generally configured to permit distribution through Google’s Play Store.” The court concluded that these allegations “suggest that browser engines are not exclusively tied to smartphone operating systems, meaning they operate in a distinct market,” pointing to the fact that smartphone and operating system consumers can, on Google’s Play Store, choose which browser and associated browsing engine to download and use. “Thus, Plaintiffs’ alleged injury is not in the same market as Plaintiffs’ alleged restraint of trade.”

While the court’s holding was based on Plaintiffs’ own allegations, as a matter of economics, the case ultimately centers around whether or not there should be a particular form of duty to deal. While duties to deal (and other interventions limiting firms’ ability to appropriate the returns from their investments) may lead to some consumer benefits in the short run, these benefits come at the cost of diminished incentives for the firm to make more investments. That is because the firms cannot be assured of being able to derive the benefits from those investments. Compounding these dynamic harms is the fact that other firms in similar situations may also fear that they may be subject to ex post hold-up, as well, and therefore rationally reduce the investments they would also make.

2311 Racing LLC v. NASCAR et al. (W.D.N.C.)

(market definition; monopsony power)

On November 4, 2025, a North Carolina district court granted Plaintiffs’ motion for partial summary judgment, holding that the relevant market is an “input market for premier stock car racing teams,” in which “NASCAR’s Cup Series is currently the only buyer,” and that NASCAR has monopsony power in that market. The parties have since settled the case.

Plaintiffs are two teams that participate in NASCAR’s Cup Series, “stock car racing’s highest level series.” They allege that NASCAR unlawfully acquired and maintained a monopsony position through acquisition of other racing circuits and racetracks, restrictions that require teams participating in the Cup Series to agree not compete in any other professional stock car racing series, agreements that restrict the availability of racetracks that are suitable for premier stock car racing, and rules regarding the exclusive use of specialized “Next Gen” cars.

On market definition, the court held that it did not need to decide whether NASCAR’s expert’s opinions criticizing Plaintiffs market definition create a triable issue of fact because, in the court’s view, NASCAR made a judicial admission when it asserted antitrust counterclaims (alleging that the Teams unlawfully conspired in selling their racing services) based on “effectively the same” relevant market as alleged by Plaintiffs. The court noted in a footnote that: “To be sure, the different choices available to buyers and sellers need to be considered in determining market,

monopoly or monopsony power, but it is still the same relevant market, regardless of whether the claim is being analyzed from a buyer’s or a seller’s perspective. [...] the different perspectives of buyers and sellers does not equate to different relevant markets.”

As a matter of economics, buyer and seller markets need not coincide as a general matter. Consider, for example, nurses selling nursing services to hospitals. It could be that if the nurses colluded in selling nursing services, they would get a higher wage. It could also be that if the hospitals colluded in buying nursing services, they would not meaningfully drive down wages if nurses have good outside options (e.g., nursing jobs outside of hospitals, or non-nursing jobs that pay roughly the same amount). As with most antitrust analysis, the assessment is highly fact-dependent.

NASCAR argued that the fact that NASCAR effectively has a 100% market share of the relevant market means that the alleged market is “gerrymandered.” The court found that this argument was incorrect. In reaching this conclusion, the court noted that while NASCAR is currently the only participant in the alleged market, this “does not mean that there could not be others,” and any other “buyers” of stock car racing teams would appropriately be included in the market. While the court does not rely on the hypothetical monopolist test in determining the relevant market, its reasoning appears to be consistent with a view that a second competitor in the buyer-side market for stock car racing teams would result in an increase in the price paid for stock car racing teams, i.e., that the current price is at least a SSNIP below the competitive level. However, this assessment does not appear to be backed by empirics or evidence of substitution to such a second competitor.

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