

State attorneys general increase antitrust and consumer protection enforcement

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State attorneys general are increasing their antitrust and consumer protection enforcement, setting the pace and tone in merger review, conduct investigations, and enforcement actions.

On the antitrust front, this increase is significant because it shows that states can and do step into the enforcer role even when the federal government declines to do so. As to consumer protection, businesses are now required to navigate the potentially divergent priorities of multiple enforcers and the rapidly expanding patchwork of state consumer protection laws.

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Collectively, this increased enforcement was a central theme at the Spring Meeting of the ABA Antitrust Section.

States are taking the lead in conduct enforcement

As emphasized repeatedly throughout the conference, state attorneys general are exercising their distinct authority apart from the federal government to file independent actions and to further engage in interstate cooperation in such actions. They have sued independently to challenge a variety of conduct, such as algorithmic pricing, pharmacy benefit manager behavior, and no-poach agreements.

States are also embracing state court filings where possible, taking advantage of familiarity with local judges and procedures. This new trend will likely mean more and possibly speedier enforcement given that state courts may move more swiftly than their federal counterparts.

Notably, states have also demonstrated a willingness to continue with antitrust enforcement actions even when federal co-plaintiffs elect to settle pending litigation, as was the case in *U.S. v. Live Nation Entertainment*.

As Roger Alford, the former Principal Deputy Attorney General at the Department of Justice (DOJ) Antitrust Division, referenced during the March 25 “2026 Big Tech Lawsuits / Enforcement Update” panel, even though DOJ settled with Live Nation during trial, many state co-plaintiffs continued litigating (and, later, won) the case. Notwithstanding this fact, state enforcers continue to work with the DOJ and Federal Trade Commission (FTC) when opportunities present themselves, such as in *U.S. v. Agri Stats* and *U.S. v. Apple*.

To augment their antitrust staff in these high-profile and complex litigations, some states are hiring plaintiffs’ law firms to assist in litigation, as Thomas York, the Chief of the Antitrust Division for the Texas Attorney General, noted during the March 26 “Briefing with the State Enforcers” panel. For example, and as York noted, Texas has used outside counsel to litigate cases against big tech, including using a \$33 million allocation from the Texas Legislature to do so. Outside counsel can also fill gaps when Federal co-plaintiffs settle with defendants, as in the case of *Live Nation*.

States are forging their own path with merger enforcement

State attorneys general are also independently reviewing mergers and are more likely to pursue a merger challenge without federal co-plaintiffs. In particular, the enactment of Hart-Scott-Rodino (HSR) statutes in states such as Colorado, Washington, and California signal a significant shift in how states evaluate proposed transactions.

Modeled on the Uniform Law Commission’s July 2024 Uniform Antitrust Pre-Merger Notification Act, these laws require parties in certain situations to file copies of their federal HSR forms with state authorities, and state enforcers have reported a high volume of filings following the change, with Colorado receiving roughly 250 filings since August 2025.

In addition to reviewing mergers, states are initiating and litigating more of their own merger challenges, often in state

court, and without federal co-plaintiffs. For example, Colorado and Washington each filed separate actions to block the Kroger-Albertsons merger, choosing state forums that allowed them to tell focused stories about how consolidation would harm local communities in mountain towns and specific neighborhoods. Kroger and Albertsons abandoned the merger shortly after a federal court in Oregon and state court in Washington separately enjoined the merger on December 10, 2024. The Colorado challenge was dismissed as moot after the merger was abandoned.

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Most recently, a coalition of eight states sued to block the Nexstar-Tenga merger in the Eastern District of California. Compl., *State of California v. Nextstar Media Group, Inc.*, No. 26-at-0487 (E.D. Cal. filed March 28, 2026). The court issued a preliminary injunction pausing further integration and requiring Nexstar to maintain the Tegna business as a separate and independent entity pending resolution of the case.

As part of their increased merger enforcement, states are also pushing beyond traditional horizontal overlap analyses to pursue labor-market theories, cross-market leverage theories, and vertical foreclosure claims.

For example, in healthcare, a cross-market effects theory posits that mergers between non-competing hospitals can still harm competition by increasing bargaining leverage with insurers. California has successfully deployed this theory in three healthcare settlements, though it remains untested at trial. See, e.g., Compl., *State of California v. Sutter Health*, No. 18-cgc-565398 (Cal. Super. Ct. Mar. 29, 2018).

Labor-focused theories, included in the Kroger-Albertsons merger challenge, cite harm to workers as a basis for blocking transactions, which is significant because historically, they have been seldom used in merger challenges.

States are at the forefront of cutting-edge consumer protection issues

Spring Meeting highlighted increased state enforcement in consumer protection as well, most notably as it relates to minors' online privacy and safety, personalized algorithmic pricing, AI safety, and "drip" pricing.

Although children's privacy historically focused on children under 13, there has been an explosion of state laws seeking to protect both children and teens online, despite frequent constitutional challenges.

These laws generally fall into several categories: age-appropriate design codes; heightened requirements for minors as part of broader privacy laws; social media laws imposing age verification and parental consent requirements; and app store laws imposing age verification obligations.

State regulators are also increasingly focused on the use of algorithms applied to personal data to set individualized prices, often referred to as "personalized algorithmic" or "surveillance" pricing. A recent New York law requires entities to clearly and conspicuously disclose if they use algorithmic pricing based on personal data, and the California Attorney General has announced an investigative sweep into surveillance pricing. On Data Privacy Day, Attorney General Bonta Focuses on Surveillance Pricing, Compliance with California Consumer Privacy Act, Press Release, Jan. 27, 2026.

Several state legislatures, including New York and California, are considering legislation that would generally ban the practice altogether.

Despite White House concerns about state regulation of AI, several states have adopted AI safety laws. For example, California imposes transparency and governance requirements for developers of advanced AI systems (see the Transparency in Frontier AI Act), while New York mandates that large AI developers publish their safety protocols and notify government authorities within 72 hours of a qualifying safety incident. (See the Responsible AI Safety and Education Act.)

Texas has also enacted legislation restricting AI systems used for behavioral manipulation, discrimination, the creation or distribution of child pornography and unlawful deepfakes, and infringement of constitutional rights.

Finally, a growing number of state laws target so-called "drip" pricing or "junk" fees, in which mandatory fees are not disclosed until checkout. These laws require businesses to list the all-in price including all compulsory fees each time the price is displayed, with exceptions for taxes and shipping. Although the FTC adopted a junk fee regulation, its rule applies only to short-term lodging and live-event ticketing, unlike the broader state laws.

The above developments reflect a wider trend: As federal regulatory priorities shift and Congress remains stalled on new consumer protection legislation, state regulators are emerging as key drivers of policy, creating an increasingly complex patchwork of obligations.

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