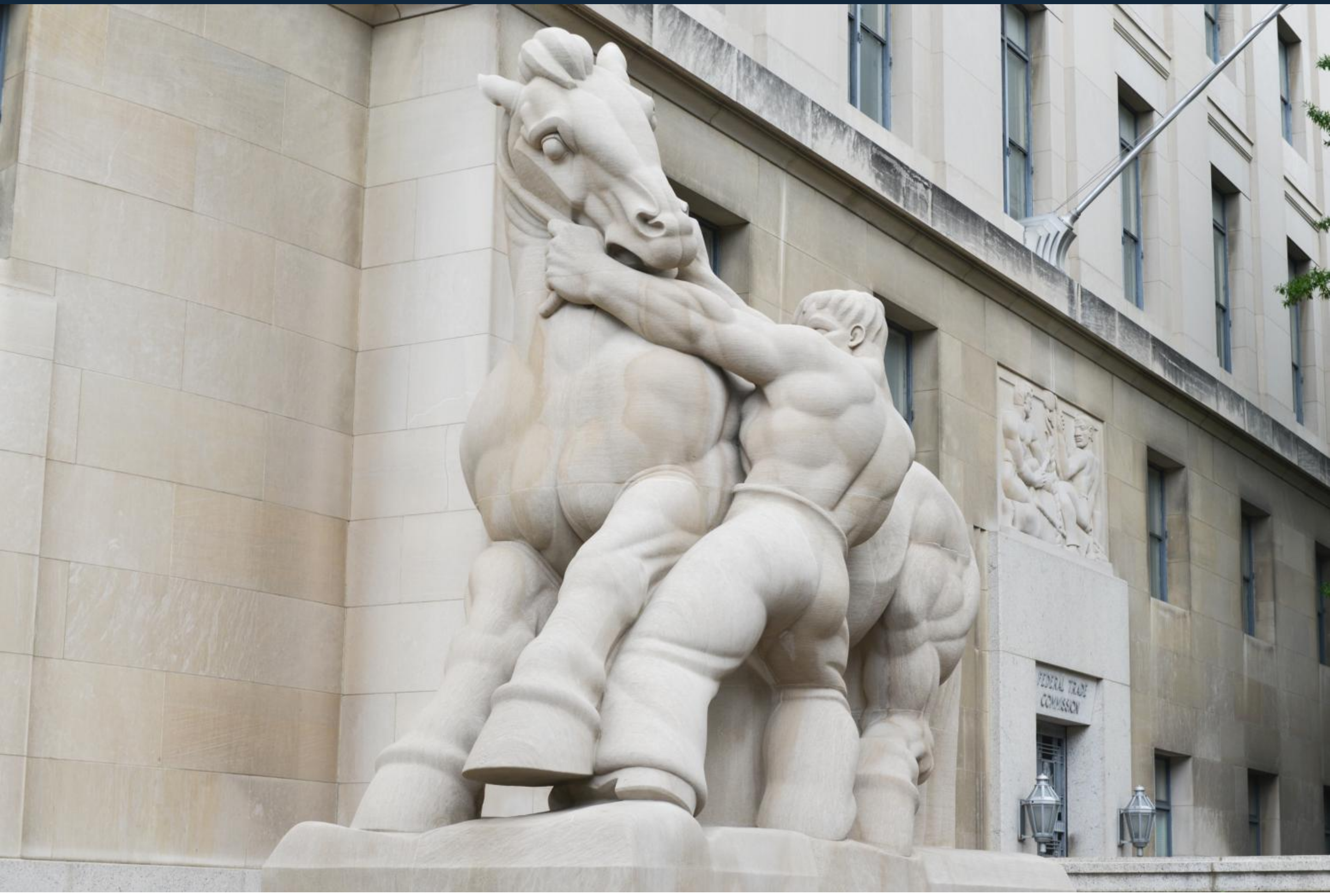
The Future of America First Antitrust Law

Interview with Attorney Jeffrey Jacobovitz



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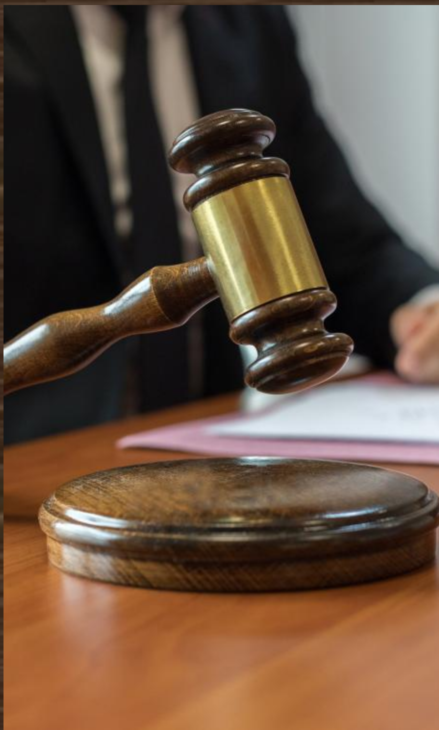


Antitrust enforcement in the United States is undergoing a notable change as technology reshapes how companies compete. Long-standing antitrust statutes remain the foundation, but their application is evolving due to new technologies such as artificial intelligence, digital platforms, and algorithmic decision-making. To understand how federal and state regulators are approaching these developments as well as the direction antitrust policy is heading, Washington CORE spoke with Jeff Jacobovitz, chair of the Antitrust Group at Arnall Golden Gregory LLP, former Federal Trade Commissioner attorney, and vice chair of the American Bar Association's Antitrust Law Section's Joint Conduct Committee.

Drawing on his insights, this article outlines the core U.S. antitrust framework and federal agency roles, examines the current administration's enforcement approach, and reviews Big Tech and algorithmic pricing cases and international responses.

Understanding the U.S. Antitrust Legal Framework

Modern U.S. antitrust enforcement rests on two foundational laws that shape the nation's competition policy. The Sherman Act targets direct threats to competitive markets: Section 1 bans collusive agreements among competitors that harm consumers, and Section 2 prohibits monopolization or attempts to monopolize. The Clayton Act builds on this by addressing anticompetitive practices before they inflict damage, particularly mergers, acquisitions, and certain exclusionary business arrangements. It also prevents individuals from serving as directors on competing corporate boards, reducing the risk of coordinated control across industries.

Enforcement of these laws is shared between two federal agencies that operate in complementary ways to try to ensure that markets remain open, competitive, and fair. The Department of Justice (DOJ) enforces both the Sherman and Clayton Acts through civil and criminal litigation, focusing on prosecuting cartels and challenging monopolistic conduct in court. The Federal Trade Commission (FTC), by contrast, enforces the Clayton Act and other statutes through civil and administrative processes, pairing legal enforcement with broader consumer protection and policy guidance.

Trump Administration DOJ and FTC Antitrust Stances

While this structure has remained consistent for decades, the priorities and philosophies of enforcement often shift with each new administration. These changes shape how the DOJ and FTC interpret their mandates and decide which industries or behaviors to target. Under the current Trump Administration, DOJ Assistant Attorney General Gail Slater and FTC Chair Andrew Ferguson have described the policy as "MAGA Antitrust" or "America First Antitrust".[1]

When asked what these slogans mean in practice, Jacobovitz explained that the approach reflects a strong enforcement posture focused on applying existing laws rather than creating new regulations. The DOJ and FTC have prioritized bringing individual lawsuits against specific instances of anticompetitive conduct using established statutes such as the Sherman and Clayton Acts, instead of issuing new rules that would broadly redefine permissible business behavior.

One of the clearest illustrations of this philosophy has been the administration's focus on Big Tech. Both agencies continue to direct significant resources toward high-profile investigations and litigation against large digital platforms, which they view as key arenas for testing the limits of current antitrust law. DOJ's landmark case against Google stands out as the most prominent example of this renewed emphasis on direct enforcement.

Google Case: Big Tech Enforcement

The DOJ's lawsuit against Google, brought under Section 2 of the Sherman Act, accused the company, among other things, of maintaining an illegal monopoly in online search.[2] The case centered on Google's use of exclusive contracts with device manufacturers and service providers, which the government argued prevented competitors from gaining a foothold in the search market.

Jacobovitz emphasized the case's significance in terms of its duration and outcome. Having a case of this scale go all the way to judgment rather than be settled is rare in modern antitrust enforcement and provides a detailed legal record that will shape how future cases are interpreted. Judge Amit Mehta eventually ruled that Google had engaged in monopolistic conduct, but did not require the company to divest its Chrome browser. Jacobovitz said Judge Mehta's ruling on remedies will likely establish a framework for addressing dominance in technology markets without necessarily requiring structural breakups.

The Google antitrust case is not an isolated instance. Ongoing cases against Apple, Amazon, and Google's advertising business also provide examples of the DOJ and FTC applying long-standing antitrust statutes to the competitive dynamics of large digital platforms.

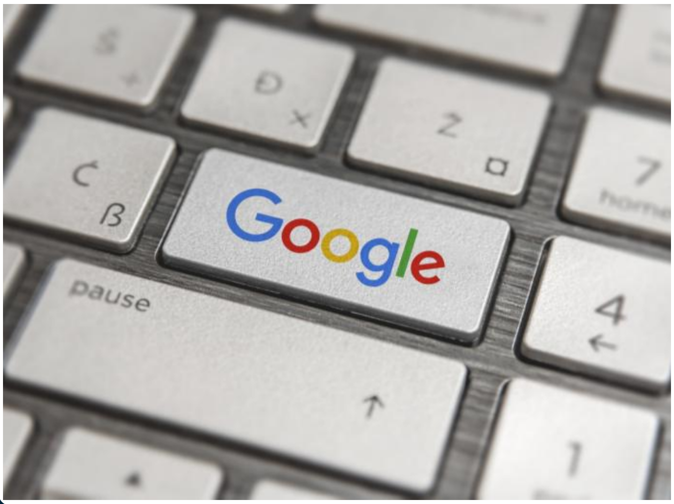
Algorithmic Pricing

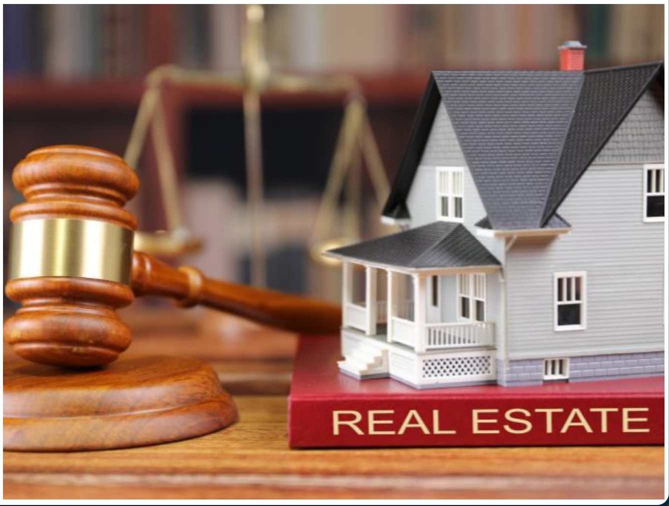
Alongside Big Tech, a major target of U.S. antitrust enforcement is algorithmic pricing, which has gained national attention. Algorithmic pricing refers to the use of software or artificial intelligence to adjust prices based on market data. While the practice can improve efficiency and responsiveness, legal concerns arise when competing firms rely on the same data or algorithmic systems, allowing prices to align without direct communication.

Jacobovitz highlighted the RealPage and Greystar cases as key examples of how enforcers are addressing this challenge. RealPage, a property management software company, was accused of using confidential rental data from landlords to generate coordinated pricing recommendations across markets.[3] The DOJ and several state attorneys general argued that this effectively allowed multiple landlords to set rents through a shared algorithm.

In another case, Gibson v. Cendyn, Las Vegas hotels were accused of similar coordination through pricing software.[4] The Ninth Circuit Court of Appeals dismissed the claim for lack of evidence of direct data sharing, but the DOJ's amicus brief urging further scrutiny underscored its growing interest in this area.

Jacobovitz also noted a surge in state-level action. In 2025 alone, twenty-four states introduced more than fifty bills targeting algorithmic or AI-based pricing practices. He compared this trend to the Reagan era, when states stepped up enforcement the amid perception that federal regulators were not acting aggressively enough.





Global Picture

The rise of the scrutiny of Big Tech and algorithmic pricing are not unique to the U.S. As Jacobovitz emphasized, antitrust enforcement has become increasingly global, with regulators worldwide confronting similar challenges in digital markets and computational antitrust.

For example, the Japan Fair Trade Commission (JFTC) recently issued a cease-and-desist order against Google, targeting the same dominance and exclusionary practices that the U.S. Big Tech cases addressed. Jacobovitz explained that the DOJ and FTC often collaborate with foreign counterparts like the JFTC, and even when direct cooperation does not occur, international decisions are closely analyzed to inform U.S. enforcement strategies.

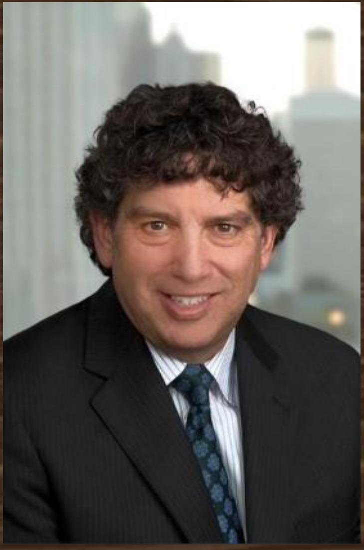
Algorithmic pricing has also drawn widening international scrutiny. At the International Bar Association conference in Florence in September 2025, Jacobovitz spoke on the challenges of algorithmic pricing alongside panelists and moderators from Brazil, United Kingdom, and Germany, and heard from a fellow lawyer about Israel's first algorithmic pricing criminal case.

Adapting Laws to New Markets

The global focus on algorithmic pricing and Big Tech enforcement shows that the challenges of antitrust enforcement in the digital age will continue to evolve and expand around the world. Cases like Google's and RealPage's will require regulators to continually interpret traditional antitrust laws to address behaviors enabled by new technologies and complex digital platforms, while keeping a close eye on global enforcement approaches.

Endnotes

[1]https://www.civitasinstitute.org/research/what-is-maga-antitrust;
https://www.justice.gov/opa/speech/assistant-attorney-general-gail-slater-delivers-first-antitrust-address-university-notre
[2]https://www.justice.gov/opa/pr/department-justice-wins-significant-remedies-against-google
[3]https://www.justice.gov/atr/case/us-and-plaintiff-states-v-realpage-inc;
https://www.justice.gov/opa/pr/justice-department-reaches-proposed-settlement-greystar-largest-us-landlord-end-its
[4]https://www.justice.gov/atr/case/richard-gibson-et-al-v-cendyn-group-llc-et-al



Jeffrey S. Jacobovitz serves as senior counsel in the Litigation practice at Arnall Golden Gregory LLP, where he leads the firm's Antitrust & Competition group. He is widely recognized for his work in antitrust law, white-collar defense, and complex civil litigation. His practice spans advising companies, trade associations, and organizations in sectors such as healthcare, life sciences, and sports on antitrust compliance, government investigations, and enforcement actions involving the FCPA, RICO, and related statutes. Before entering private practice, Jacobovitz worked at the Federal Trade Commission, where he gained deep experience with federal enforcement and competition policy. Jacobovitz teaches a seminar on criminal antitrust as an adjunct associate professor at American University's Washington College of Law and has been a guest lecturer at Georgetown and Howard. Within the American Bar Association's Antitrust Law Section, he currently serves as vice chair of the Joint Conduct Committee and previously served as vice chair of the International Cartel Task Force.