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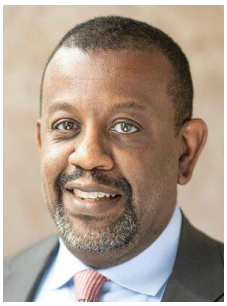
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

State AGs' Focus On Single-Firm Conduct Is Gaining Traction

By **Steve Vieux** (June 10, 2025, 2:46 PM EDT)


Steve Vieux

State antitrust enforcers have increased ther focus on monopolization cases involving single-firm conduct. This article highlights key points regarding this increased focus.

First, there has been an increased focus on enforcement. Both the federal antitrust agencies and state attorneys general have shown a greater interest in prosecuting monopolization cases. This trend has continued despite changes in administration.[1]

Additionally, these cases are often brought by bipartisan coalitions of state attorneys general and federal agencies, reflecting a broad consensus on the need to address monopolistic practices, particularly in the technology industry.[2]

Another element to note is that state attorneys general have shown a willingness to bring their own cases, either as part of multistate coalitions or independently, often focusing on state-specific antitrust laws and filings in state courts.

And there have been recent legislative initiatives, on both the federal and state levels, that can assist the state attorneys general in this area.

Looking to the future, we can expect a continued increase in state attorneys general bringing antitrust investigations and cases targeting single-firm conduct, with a focus on developing state antitrust laws that may differ from federal jurisprudence.

The recent enforcement track record supports this. From the first Trump administration back to the Biden administration, we have seen an increased number of government antitrust cases targeting monopolization or attempted monopolization brought under Section 2 of the Sherman Act, along with analogous provisions in state antitrust laws in some case, and most of the cases were brought by a bipartisan coalition of state attorneys generals and one of the federal agencies.[3]

Reflecting popular angst concerning the increasing power of technology in the modern economy, many, but certainly not all, of these enforcement actions have targeted technology companies.[4] However, the states have also exhibited a willingness to bring their own cases, either as part of a multistate coalition,[5] or even on their own — oftentimes, with only state claims and in state court.

Respective actions by California and the District of Columbia against Amazon.com Inc. for allegedly monopolistic conduct provide good examples.

In the 2022 California v. Amazon.com Inc. case, California sued Amazon in the Supreme Court of San Francisco alleging the company abused its market power in online retail sales to "stifle competition and cause increased prices across California through anticompetitive contracting prices in violation of California's Unfair Competition Law and Cartwright Act."[6]

The Amazon agreements with merchants, which were under scrutiny in this complaint, allegedly prevented the merchants from offering their products for lower prices on other platforms. Amazon was also accused of entering into agreements with wholesale suppliers that sought to penalize them for failing to prevent discounting by Amazon's rivals.

Interestingly, California alleged only state antitrust claims under its Cartwright Act[7] and Unfair Competition Law Act.[8] The court denied Amazon's demurrer to the complaint in 2023, allowing California's case to proceed.[9]

The U.S. District Court for the District of Columbia filed a similar case against Amazon based on its pricing agreements with retailers and suppliers in D.C. Superior Court. On Aug. 22. 2024, the D.C. Court of Appeals reversed the trial courts' dismissal and remanded for further proceedings.[10]

Outside of the technology industry, in the March 10 decision in New York v. Intermountain Management Inc., the New York attorney general succeeded in its New York State Supreme Court lawsuit against a ski resort owner, for violating the state's antitrust law with an acquisition that gave it a monopoly in a local market.[11]

The New York attorney general's monopolization claim under the New York Donnelly Act was based on the defendant, an operator of two local ski resorts, acquiring and then closing the closest competing ski resort. The court granted the New York attorney general's motion for summary judgment on liability. The New York attorney general is seeking divestiture of the acquired ski facility, that will be decided after a remedies hearing.[12]

We can expect a greater willingness on the part of state attorneys general to bring single-firm conduct cases on their own, strictly under their state antitrust statutes and in their state courts.

This strategy would further develop the states' antitrust laws, potentially distinguishing them from federal jurisprudence on Section 2, which some antitrust observers see as being applied too narrowly.

Legislative Activity Supporting State Enforcement Efforts

The states have been encouraged and assisted in their aggressive posture towards single-firm monopolistic conduct by legislative initiatives, both federal and state.

In 2023, then-President Joe Biden signed into law the State Antitrust Enforcement Venue Act.[13] The Venue Act exempts antitrust cases brought by state attorneys general from the federal multidistrict litigation statute, preventing defendants from transferring such actions into a federal MDL with other cases brought by private plaintiffs.

This allows state attorneys general to select their favored venue for litigation, keeping matters in their states.

State attorneys general have already used the law in monopolization cases. For example, the attorney general of Arkansas successfully sought to keep its litigation against pesticide manufacturers' exclusionary agreements with distributors in Arkansas federal court under the act, despite the case being parallel to a Federal Trade Commission-led litigation against the same manufactures pending in U.S. District Court for the Middle District of North Carolina.[14]

The Texas attorney general also invoked the Venue Act to successfully remand the multistate litigation it is leading against Google over its alleged monopolistic conduct concerning advertising technologies back to Texas after it was consolidated in New York with similar private actions.[15]

On the state level, there are legislative reform efforts to give state enforcers more latitude in prosecuting monopolization cases, notably in the large and influential economies of California and New York. In California, the Law Revision Commission, or CLRC, is seeking to address the gap in the state's antitrust statute, the Cartwright Act, when it comes to single-firm conduct.

Claims under the Cartwright Act only can be brought against anticompetitive conduct involving an agreement between two or more firms.[16] The CLRC has recommended an amendment to the Cartwright Act that addresses anticompetitive unilateral conduct.[17]

The CLRC also recommended that any amendments ensure a distinction from federal jurisprudence on monopolization cases and clarify that the Cartwright Act is broader than Section 2.[18]

In New York, state legislators introduced the 21st Century Antitrust Act, expanding the state's Donnelly Act by prosecuting single-firm conduct using an abuse of dominance standard.[19]

Under the bill, sellers with over 40% market share and buyers with over 30% market share are presumed to have a dominant position. The bill also identifies specific conduct, such as exclusive dealing or tying, that is presumed to be illegal (per se) when engaged in by dominant firms.[20]

Takeaways

We can expect to see a continued increase in state attorneys general bringing antitrust investigations and cases targeting single-firm conduct and monopolization in the near future.

While we will see continued cooperation between state attorneys general and the federal government on key matters, observers should also be prepared to see states go it alone in many cases under their own state statutes.

When advising clients, antitrust counsel should become more familiar with the nuances in state antitrust statutes of the states their clients do a great deal of business in, which could be different from federal law.

Observers should also pay attention to any initiatives from the state attorney general and state legislature that would strengthen the ability of the state attorneys general to bring their own independent cases targeting monopolization.

Steve Vieux is senior counsel at Bartko Pavia LLP.

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[1] ABA Antitrust Section, State Enforcers' 2025 Priorities, starting at 16:35, with Gwendolyn J. Lyndsay Cooley, Elinor R. Hoffman, Elizabeth R. Odette, Lizabeth Brady and Paula L. Blizzard, Feb. 19, 2025 (https://www.americanbar.org/groups/antitrust_law/resources/on-demand/state-enforcers-2025-priorities/) (state enforcers, for their part, have expressed confidence that they will continue to see general cooperation from their federal partners).

[2] See, e.g., Statement from Letitia James on New York et al v. Meta, Dec. 9, 2020 (https://www.rev.com/transcripts/ny-attorney-general-press-conference-transcript-antitrust-lawsuit-against-facebook) ("This action is part of a renewed focus by my office and other state attorney generals on antitrust enforcement and the harms caused to consumers and the economy when market power is unchecked and unregulated.").

[3] See, e.g., United States, et al., v. Google LLC, Case No. 1:23-cv-108, Judgment (E.D. Va. Apr. 17, 2025) (finding Google liable for monopolizing the ad server and ad exchange markets; United States, et al., v. Live Nation, Inc. and Ticketmaster, L.L.C., Case No. 1:24-cv-03973, Opinion and Order (S.D.N.Y. Mar. 14 2025) (denying motion to dismiss complaint brought by United States and 31 state AGs against Live Nation for allegedly using exclusive contracts with concert promoters and venues to protect its dominant position in the live music industry) United States, et al., v. Google LLC, Case No. 20-cv-3010, Order (D.D.C. Aug. 5, 2024) (bench trial in favor of plaintiffs in a lawsuit brought by a bipartisan coalition of Attorneys General and the United States alleging unlawful monopoly by Google on internet general search services and general search text ads);); United States, et al., v. Apple, Case No. 2:24-cv-04055, Complaint (D.N.J. Mar. 21, 2024) (the United States and 16 state AGs allege maintaining a monopoly over smartphones by imposing barriers on third party app developers and products ability to operate with iPhone); Federal Trade Commission et al. v. Syngenta Crop Protection, et al., Case No. 1:22-cv-828, Opinion and Order (M.D.N.C. Jan. 12, 2024) (denying motion to dismiss complaint brought by FTC and 10 states against two of the largest pesticide manufacturers operating in the United States for entering into exclusive arrangements with distributors that foreclosed the market to generic competitors).

[4] See, e.g., supra, Live Nation (concert promotion) and Syngenta (pesticides).

[5] New York, et al. v. Meta Platforms, Inc. (D.C. Cir. 2022) (affirming dismissal of complaint from 48 state AGs led by New York against Facebook [Meta] for alleged monopolization and unlawful acquisitions); In Re Google Play Store Antitrust Litigation, Case No. 3:21-md-02981-JD, Settlement Agreement and Release (N.D. Cal. Dec. 18, 2023) (Multistate coalition reached a settlement with Google for $700 million and injunctive relief resolving claims that Google monopolized the market for smartphone applications).

[6] Case No. CGC-22-601826, (San Francisco Superior Court September 15, 2022).

[7] California's Cartwright Act does not have an analogous provision to the Section 2 of the Sherman Act which can specifically address unilateral conduct. So, the Cartwright Act claim was based on Amazon's agreements with wholesale suppliers and merchants.

[8] The UCL claim is based on unlawful and unfair prongs of the UCL.

[9] Supra, Order on Amazon's Demurer to the Complaint (San Francisco Superior Court March 30, 2023).

[10] District of Columbia v. Amazon.com, Inc., District of Columbia v. Amazon.com, Inc., Judgment (D.C. Court of Appeals, Aug. 22, 2024).

[11] New York v. Intermountain Management Inc., Case No. 008588/2022, Decision (Supreme Court of the State of New York, County of Onandoga, Feb. 26, 2025).

[12] Law360, "NY AG Blasts Ski Resort Owner's Antitrust Fixes," Matthew Perlman, May 19, 2025.

[13] S. 1787, 117th Cong. (2021-2022).

[14] State of Arkansas v. Syngenta Crop Protection AG, et al., Case No. 4:22-CV-01287-BSM, Order (E.D. Ark Jan. 17, 2024).

[15] Reuters, "Judicial Panel Refuses to Pause Return of Texas Lawsuit Against Google," Diane Bartz, Aug. 3, 2023 (https://www.reuters.com/technology/judicial-panel-refuses-pause-return-texas-lawsuit-against-google-2023-08-03/).

[16] The California AG or a private plaintiff in California could still pursue single-firm conduct under California through the unfair (as an unfair business practice) and unlawful (violation of Section 2 Sherman Act) prongs of the state's UCL. However, the UCL only provides for injunctive relief and restitution, unlike the Cartwright Act which provides for civil penalties and damages, including treble damages.

[17] California Law Review Commission Staff Memorandum, Antitrust Law: Initial Recommendations for ACR 95 Questions, Study B-750, Jan. 13, 2025 (https://content.mlex.com/Attachments/2025-01-23_H53K8KQ5WUGREZX1%2FCLRC%20staff%20memorandum.pdf).

[18] Id.

[19] NY A.B. A2015 (https://www.nysenate.gov/legislation/bills/2025/A2015).

[20] Id.