

Federalism

Most states have their own antitrust laws, and states can also enforce federal antitrust laws. State-level antitrust enforcement has been praised for addressing local antitrust problems overlooked by federal enforcement agencies, but has also been accused of parochialism. State attorneys general may bring their own case when they disagree with federal enforcement (as in Valero), and they can also collaborate with one another to bring cases affecting multiple states (as in the T-Mobile/Sprint merger and the Google search case). This has been common in antitrust litigation against technology platforms. States sometimes have their own, stricter, antitrust laws and also have the ability to protect local conduct from federal enforcement. In this module, we will look at state-level antitrust enforcement.

Reading

Required Reading

FTC v. Phoebe Putney Health Sys., 568 U.S. 216 (2013)

Columbia v. Omni Outdoor Advertising, Inc., 499 U.S. 365 (1991)

Richard A. Posner, *Federalism and the Enforcement of Antitrust Laws by State Attorneys General*, 2 GEO. J. L. & PUB. POL'Y 5, 8–9 (2004).

Renata B. Hesse, *Protecting Competition Across 50 United States: Advocacy and Cooperation in Antitrust Enforcement* (2016)

New York v. Actavis, 787 F.3d 638 (2d Cir. 2015)

Recommended Reading

[Statement of the Federal Trade Commission *In the Matter of Cabell Huntington Hospital, Inc.*, Docket No. 9366, July 6, 2016](#)

Comments of Stephen D. Houck and Kevin J. O'Connor on the States' Role in the Microsoft Case Re: Working Group on Enforcement Institutions (2019).

Big Tech's Unlikely Next Battleground: North Dakota, N.Y. TIMES (Feb. 14, 2021)

Background Reading

United States v. Long Island Jewish Med. Ctr., 983 F. Supp. 121 (E.D.N.Y. 1997)