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The Washington Antitrust and Digital Markets Forum

Navigating New Frontiers in Competition Policy

POLICY PULSE AND KEY INSIGHTS

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This document has been produced to provide policy signals and sentiment based on the discussions held at the event.
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Policy Pulse

SIGNALS FROM THE WASHINGTON ANTITRUST & DIGITAL MARKETS FORUM

Criminal antitrust enforcement has shifted from fines to incarceration

Senior DOJ officials pointed to a sharp increase in prison days imposed and described a landmark criminal wage-fixing conviction. Personal accountability, speakers argued, is again central to the Antitrust Division's enforcement posture.

Structural remedies are back on the table - on both sides of the Atlantic

The Live Nation/Ticketmaster settlement was cited as a notable return of structural relief to US monopolization enforcement. In Europe, speakers pointed to the Google AdTech case, where structural separation remains a live remedy question.

AI risks replicating the winner-takes-all dynamics of search

Participants drew direct parallels between AI concentration and the data feedback loops that entrenched dominance in search. Several speakers warned that a small number of firms could accumulate insurmountable advantages through data and compute.

Algorithmic pricing is the new frontier for collusion enforcement

Federal and state enforcers identified AI-driven pricing algorithms as capable of producing collusive outcomes without traditional agreements. Hub-and-spoke theories - where a shared algorithm coordinates pricing - are being tested in litigation.

State attorneys general are no longer junior partners in antitrust enforcement

Several major state offices have built deep antitrust capabilities and are bringing independent digital markets cases. Speakers described a 'community of enforcement' rather than deference to federal agencies.

The US and EU are converging on harms - but diverging on tools

Both jurisdictions are pursuing overlapping theories of harm in search and advertising technology. But the EU's Digital Markets Act provides ex ante regulatory tools with no US equivalent, and US participants were skeptical of similar legislation.

Interim measures are gaining traction in digital markets enforcement

Brazil's competition authority upheld an interim measure against WhatsApp's new terms. The European Commission notified Meta of possible interim measures in a parallel investigation. Speakers argued that traditional case timelines are increasingly mismatched with digital market dynamics.

A new whistleblower program may reshape cartel detection

The DOJ's Antitrust Division Whistleblower Rewards Program, launched in July 2025, offers rewards of up to 30% of qualifying recoveries. Speakers suggested it could become a significant detection tool.

■ Momentum - consensus, forward progress, political support
disagreement, uncertain direction

■ Watch - emerging tensions, genuine

Enforcement priorities sharpen

The Washington Antitrust and Digital Markets Forum opened with a recalibration of enforcement priorities. In the opening keynote, one speaker characterized antitrust as a relay race, each generation of regulators persuading its successors that the baton is worth carrying. The difficulty of sustaining enforcement ambition across political cycles framed the day's discussions.

The closing keynote turned from institutional history to operational detail. Senior DOJ officials described a shift toward incarceration as an enforcement priority, citing a sharp increase in prison days imposed and what the forum heard described as a landmark criminal wage-fixing conviction. Personal accountability, speakers argued, is again central to the Antitrust Division's posture.

The DOJ's Whistleblower Rewards Program, launched in July 2025 and offering up to 30% of qualifying recoveries, was cited as a potentially significant detection tool. Several speakers suggested that cartel enforcement now operates on the assumption that the cost of silence is rising faster than the cost of compliance.

The return of structural remedies

The civil enforcement agenda showed comparable ambition. The Live Nation/Ticketmaster settlement was presented as a notable return of structural and conduct relief to US monopolization enforcement, including reported venue divestitures, access measures, and limits on certain service fees. The Google search remedy targets exclusive distribution contracts while opening certain search data to rivals.

Senior DOJ officials framed the current moment as a Section 2 revival, citing a pipeline of monopolization cases - involving search, advertising technology, mobile platforms, payments, and property technology - that speakers described as the most sustained period of single-firm conduct enforcement in over two decades.

In Europe, speakers pointed to the Commission's Google AdTech case as one in which structural separation remains a live remedy question. Several speakers framed structural relief as proportionate where market structure itself sustains anticompetitive conduct - a notable shift from the long-standing reluctance to contemplate breakups.

Algorithms, collusion, and the limits of existing doctrine

The application of competition law to algorithmic pricing surfaced a significant doctrinal tension. Academic research presented at the forum showed that algorithms designed to maximize revenue - not to coordinate - can independently converge on supra-competitive pricing at speeds no human arrangement could match.

Where competitors adopt independently developed algorithms that yield collusive outcomes without direct communication, the traditional requirement of an "agreement" under Section 1 of the Sherman Act is strained. Hub-and-spoke theories, in which a shared pricing platform serves as the coordinating mechanism, offer one route forward and are being tested in litigation in housing and other consumer markets. But the harder case - where genuinely independent algorithms learn to cooperate without shared infrastructure - remains doctrinally unresolved.

State enforcers reported that targeting specific industries has proved more productive than broad regulatory approaches. Legislative efforts at state and city level have focused on sectors such as rental housing, where harm is concrete and the algorithmic mechanism identifiable. Congressional participants drew a distinction between coordinated conduct and unilateral personalized pricing, with the latter raising consumer protection questions that sit uneasily within antitrust frameworks. Speakers favored case-by-case development of the law over sweeping federal legislation.

AI and the concentration question

The forum's most unsettled theme was whether artificial intelligence will reproduce the winner-takes-all dynamics that enforcement has spent a decade trying to dismantle in digital markets. The parallels were drawn explicitly: the critical inputs for AI - semiconductors, compute capacity, energy, talent, and data - are overwhelmingly concentrated in firms already subject to monopolization proceedings.

Concern focused on two mechanisms. Acqui-hires - where a dominant firm acquires a startup's key employees and intellectual property without triggering merger review thresholds - were identified as a growing structural risk. The European Commission's examination of one such transaction was cited as precedent, though jurisdictional constraints prevented a decision.

Interoperability barriers also emerged as a concern: the risk that vertically integrated firms use control over hardware, software, or data to foreclose competitors in adjacent markets.

The tension between caution and urgency ran through the discussion. Regulatory speakers acknowledged the risk of intervening too early and freezing market structures or deterring investment. But others argued that the arrangements which entrench dominance are typically established in the first twelve to eighteen months of a technology's commercial life - and that by the time a case reaches trial, the market may already have tipped. The morning's confidence in existing tools gave way, by the afternoon, to a more sober recognition that the speed of AI development may outpace the speed of enforcement.

A community of enforcement, not a hierarchy

A notable theme was the emergence of state attorneys general as independent, well-resourced actors in digital market enforcement. Several major state offices have recruited experienced antitrust lawyers and economists to build teams capable of leading complex technology cases without federal coordination. The filing of the first antitrust action against a major technology company in advertising technology by a state office - ahead of both the DOJ and the European Commission - was cited as a turning point.

The week before the forum, two state attorneys general had filed suit to block a broadcasting transaction that the DOJ had declined to challenge and the FTC had approved. State enforcers framed this not as divergence from federal policy but as a response to constituent demand. Technology companies now face simultaneous proceedings at state, federal, and international level - a structural change in litigation risk.

Converging diagnoses, diverging prescriptions

The forum revealed a transatlantic enforcement community that agrees on the diagnosis but disagrees, with increasing candor, on the prescription. The European Commission and US federal agencies are pursuing substantially identical theories of harm in search and advertising technology, and cooperation on remedies was described as active.

Yet the Digital Markets Act drew pointed criticism from US participants, who characterized it as penalizing firms for success rather than for anticompetitive conduct. European speakers countered that the DMA was a legitimate legislative response to the limits of case-by-case enforcement in markets that evolve between filing and judgment. Brazil offered a third model: amending existing competition law to create a dedicated digital markets unit.

Interim measures emerged as a point of procedural convergence. Brazil's competition authority upheld an interim measure against WhatsApp's new terms affecting third-party AI providers, and the European Commission notified Meta of possible interim measures in its own WhatsApp investigation - suggesting that agencies across jurisdictions are reaching for faster tools.

Intellectual property and the enforcement boundary

The intersection of competition enforcement with intellectual property rights ran through the day's discussions. Senior DOJ officials described a joint working relationship with the US Patent and Trademark Office on standard-essential patents, emphasizing the importance of preserving innovation incentives and of robust patent enforcement at the US border.

The division characterized non-price competition - including innovation, product choice, and competition in the market for ideas - as no less important than price competition. Speakers characterized antitrust and IP protection as complementary - a framing with implications for emerging disputes over AI training data, model weights, and platform interoperability.

What comes next

The forum left its audience with concrete decision points. The Google AdTech case in Europe will test whether divestiture can become a viable remedy in a major digital market case. The Google search remedy will determine whether opening distribution and data access can restore competition in a market migrating toward AI. The FTC and DOJ's public inquiry on updated guidance for collaborations among competitors, with comments due April 24, 2026, may clarify how enforcers approach algorithmic pricing and information sharing. Brazil's digital markets bill will reveal whether a competition-law amendment can deliver the benefits of ex ante regulation without the political costs of a standalone regime.

This Key Insights briefing was produced by Forum Global as a same-day summary of the Washington Antitrust and Digital Markets Forum held on March 23, 2026 in Washington, D.C. It is designed to capture the principal themes, areas of consensus, and points of disagreement that emerged from the day's proceedings. Forum Global's editorial content is produced independently.

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