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Antitrust & Tech At The 2025 Antitrust Spring Meeting

Minding Your Business on **April 17, 2025**

Technology was a key focus of this year's ABA Antitrust Spring Meeting, one of the largest gatherings of antitrust professionals in the world. Over a dozen panels focused on cutting-edge technology issues as it pertains to antitrust, consumer protection, and privacy. Below are 5 key technology-related takeaways.

1. 2024 was a busy year for Big Tech cases, and 2025 looks to be on the same path.

One topic of conversation was the Big Tech antitrust cases that had seen developments in 2024 and 2025. For example, Apple filed a motion to dismiss in the *U.S. v. Apple* case, which is currently pending. In the *FTC v. Amazon* case, the FTC's Sherman Act Section 2 and FTC Act Section 5 claims survived Amazon's motion for dismissal. Panelists opined that there is a trend towards more high litigation risk cases from the government.

For tech-related updates coming down the pike, the panelists noted that Judge Mehta is expected to issue the remedies order in the *U.S. v. Google* search monopolization case, and the *U.S. v. Google* adsearch trial will begin later this year. Panelists also noted that Chair Ferguson of the FTC has publicly expressed interest in ensuring innovation in "Little Tech."

2. Increasing interest in regulating big data across the globe.

Big data was also on the mind as both a driver of innovation and a potential tool of market dominance. Panelists emphasized that data is not inherently valuable—it must be analyzed effectively; stale or contaminated data can impose real costs; and more data isn't always better since errors can be introduced.

For antitrust specifically, the panel noted big data issues come up in two contexts: 1) anticompetitive conduct like self-preferencing and refusal to deal and 2) as an important input in markets where no data means no competing. Additionally, big data often comes up in the context of barriers to entry, especially for smaller firms, considering how incumbents benefit from network effects and lower marginal costs. Panelists noted that some businesses are making essential facilities arguments about data. As such, companies may run into problems if they block access to big data through artificial impediments.

Panelists also touched on increasing scrutiny from regulators around the globe. In the EU, deals like Google/Fitbit have required data separation. The EU's Digital Markets Act (DMA) and the UK's Digital Markets, Competition and Consumers Act (DMCC) introduce obligations around data interoperability and access. While these interventions aim to prevent foreclosures and level the playing field, some panelists cautioned that preemptive regulation could stifle innovation. In the U.S., the panelists discussed DOJ's search monopolization case against Google, noting that one of the proposed remedies is that Google share certain data with competitors for decade.

3. Uncertainty about the benefits and harms of algorithmic pricing software.

Algorithmic pricing and machine learning tools continue to gain traction in all sorts of industries. These tools promise efficiency and competitive pricing, but also present potential risks of collusion allegations. One widely-attended panel moderated by Maureen Ohlhausen, who originally analogized algorithmic pricing software to a guy named "Bob," focused on these issues.

A central discussion point was the standard that courts are using to analyze algorithm-related price fixing claims. The prevailing view on the panel seemed to be that the rule of reason should apply, with analysis depending on factors like whether the data is public, forward-looking, or shared among competitors. On the flip side, other panelists suggested that use of an algorithmic pricing software could be likened to a hub and spoke conspiracy. As far as using the algorithms goes, the panel opined that using public data to feed the algorithm is probably safe territory although not an absolute safe harbor. Some panelists also suggested that courts look at how the software is being used, such as whether the user is blindly accepting the pricing recommendations, how much of the strategy is put up front in the prompts and programming, etc.

The panel also discussed how some jurisdictions are already experimenting with regulation of algorithm pricing software. For example, Germany has introduced AI-assisted gasoline pricing. Some evidence suggests in oligopoly situations, use of the algorithm seemed to lead to higher prices. However, many of the panelists cautioned against imposing blanket remedies before more research is done to understand any potential economic harms algorithm pricing software use may have.

Algorithmic pricing software also came up at the close of the Meeting during the Enforcers Roundtable. Elizabeth Odette, current chair of the NAAG Multistate Antitrust Task Force, noted that there was interest in regulating algorithmic software at the state and local level. For example, she stated that there were 4 cities in the U.S. that had banned algorithmic price software used in the housing context. However, she also noted that there was a concern with imposing wide bills banning use that ignores benefits to some competitors.

4. Tech cases are leading the charge in reviving refusal to deal claims.

Refusals to deal remain a hotly contested area in antitrust law, particularly as platforms and data gatekeepers exert growing control over digital ecosystems. One of the Spring Meeting's panels discussed the potential revival the doctrine, particularly in technology cases. Due to limitations in the doctrine, the panelists noted that plaintiffs increasingly frame alleged anticompetitive conduct under alternative theories, such as exclusive dealing or foreclosure, to varying degrees of success. Some panelists cautioned that plaintiffs cannot elevate form over economic realities to avoid refusal to deal doctrine.

5. Document preservation issues related to technology is keeping some attorneys up at night.

As digital communications and technology use diversify, so do the risks of spoliation and other discovery failures. Regulators are increasingly focused on how companies preserve (or fail to preserve) electronic records, especially when tools like Slack, ephemeral messaging, and generative AI complicate compliance. One of the panels, including an attorney from the FTC, focused on these issues.

Recent enforcement actions underscore the stakes. The panel flagged major gaps in recordkeeping in cases like the *U.S. v. Google* search monopolization case and the failed Kroger/Albertsons merger, where use of personal devices and auto-deletion policies hindered document production. The panel also noted that on April 1, 2025, a DOJ Antitrust Division press release revealed that an individual had pleaded guilty for deleting text messages after receiving a litigation hold notice in connection with an antitrust investigation.

The panel also noted the inevitability of discovery requests for AI-generated content or prompts. One panelist gave the example of potentially relevant evidence being a business person asking AI to generate an email to a competitor without the use of the word “competition” to show the person’s state of mind. Interrogatories may soon probe usage of large language models and related tools, especially in high-stakes investigations.

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