# FTC Focus: Testing Joint Enforcement Over Loyalty Programs

**Law360** on **February 3, 2026**

*This article is part of a monthly column that considers the significance of recent Federal Trade Commission announcements about antitrust issues. In this installment, we look at boundaries in loyalty programs.*

Loyalty programs — such as discount incentives, rebate programs and bundled packages — have occupied a contested space under the eye of U.S. antitrust regulators.

On the one hand, courts have repeatedly recognized that loyalty discounts can be pro-competitive, benefiting customers through lower prices and competition based on the merits of a product and its market.[1] On the other, regulators have periodically tested the boundaries of that acceptance, particularly where dominant firms deploy loyalty programs in ways that may foreclose rivals.

Initiated during the Biden administration, the Federal Trade Commission's case against Syngenta Crop Protection AG and Corteva Inc. has continued unabated despite a materially different political environment. The case can be understood not just as a canary for further scrutiny over loyalty-discount practices, but as a signal of the durability of joint antitrust enforcement. An overview of the case, the court's decisions and key takeaways for those facing similar actions follow.[2]

**Loyalty Programs, Pricing Problems and Structural Exclusion**

The 2022 complaint reflects a deliberate effort to reframe loyalty discounts not simply as pricing mechanisms, but as structural tools capable of cementing market power after patent or regulatory exclusivity has expired.

Filed in the U.S. District Court for the Middle District of North Carolina by the FTC and multiple state attorneys general, the complaint alleges that Syngenta and Corteva used rebate and incentive programs to induce distributors to limit or avoid purchases of competing generic pesticides and crop-protection products.

According to the enforcers, these loyalty arrangements distorted the normal course of the market during the postexclusivity period.

Simply put, in the market at issue here, patented or branded products are exclusively available for a period of time, which allows companies to reap the benefits of their innovation. Generic manufacturers are then expected to enter the market at the expiration of patent or regulatory protection, often driving down prices of products containing the same active ingredient.

The enforcers allege that the challenged loyalty programs delayed or effectively eliminated that generic entry, which allowed the defendants to maintain monopoly power over certain products even after exclusivity ended. Specifically, these programs conditioned rebates and provision of pesticides and crop-protection products to distributors with an obligation not to purchase equivalent products containing the same active ingredient as the defendants' products.

The FTC argues that these pay-to-block schemes are the functional equivalent of exclusive dealing arrangements, despite the absence of express exclusivity provisions.[3] This framing matters. It allows the agency to argue that foreclosure can occur even by economic pressure alone, without contractual exclusivity, and that loyalty discounts can be condemned even in scenarios — like here — where prices remain above cost.

The court agreed, as detailed in its 2024 decision denying the defendants' motion to dismiss.

**A Court Denial of the FTC's Request for a Stay**

Separate from signaling the FTC's scrutiny over loyalty programs, the Syngenta case suggests that joint federal and state antitrust enforcement can withstand changing administrations and political priorities. The court's evaluation of the FTC's request for a stay during the federal government shutdown illustrates this tension.

On Oct. 1, the day after the FTC's funding ran out and the federal government shutdown of fall 2025 began, the FTC filed a motion to stay the litigation.

The FTC's motion requested a stay on the entire proceedings, except for the upcoming deadline to submit rebuttal reports, set for a few days later. The motion noted that counsel for the states take no position on the motion.

The defendants, however, pointed out that this request effectively allows the states — which were not shut down — to review the defendants' rebuttal reports and provide them with an indefinite time to continue working on any reply reports or related motions.

The defendants cited orders that stayed entire cases in light of the shutdown in support of their position to stay the entire case, including their deadline. The FTC replied that same day, pointing out that the defendants similarly would benefit from putting off the deadline to file reply reports.

The court denied both the FTC's initial motion to stay and a renewed motion to stay it filed days later. In the court's view — expressed in two text-only orders — the discovery schedule had been carefully negotiated, and a delay would affect not only this action, but a related multidistrict litigation involving private plaintiffs.

That decision underscores a critical point for practitioners: Joint federal-state enforcement fundamentally alters the litigation dynamic. Once state plaintiffs are in the case, the litigation no longer turns on federal priorities, resources or political will alone. The states, along with the benefit of any deadlines coordinated with a related multidistrict litigation, can carry the case forward.

This also helps explain the case's continuity across administrations. Although filed under one set of political assumptions, it has persisted through a sharp ideological turn without any apparent reassessment.

In practical terms, this means that businesses cannot safely assume that a change in administration will halt or soften ongoing antitrust scrutiny, particularly where states are co-plaintiffs.

**Why This Case Matters and What Practitioners Should Take Away**

Though summary judgment briefing in FTC v. Syngenta is underway, the course of this case provides important notes for practitioners and those subject to regulatory antitrust scrutiny alike.

***Economic pressure can substitute for formal exclusivity.***

The FTC's pay-to-block theory underscores that the absence of explicit exclusivity provisions will not insulate loyalty programs from challenge if they are alleged to functionally foreclose rivals.

***Joint enforcement changes the risk calculus.***

Federal-state partnerships create enforcement momentum that is difficult to slow or stop. Political transitions, funding disruptions and shifting agency priorities may not materially affect the trajectory of a case once states are involved.

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[1] Virgin Atl. Airways Ltd. v. Brit. Airways PLC, 257 F.3d 256, 265 (2d Cir. 2001) ("These kinds of agreements allow firms to reward their most loyal Rewarding customer loyalty promotes competition on the merits.").

[2] McWane v. F.T.C., 783 F.3d 814, 833 (11th Cir. 2015) ("[T]he Commission's theory is that McWane's Full Support Program was an exclusive dealing policy designed specifically to maintain its monopoly power 'by impairing the ability of rivals to grow into effective competitors that might erode the firm's dominant position.'").

[3] FTC and State Partners Sue Pesticide Giants Syngenta and Corteva for Using Illegal Pay-to-Block Scheme to Inflate Prices for Farmers | Federal Trade Commission. https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-state-partners-sue-pesticide-giants-syngenta-corteva-using-illegal-pay-block-scheme-inflate.



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