SPEECH

Assistant Attorney General Gail Slater Delivers Remarks to the Ohio State University Law School

Friday, August 29, 2025

Location
Columbus, OH
United States

Remarks as Prepared for Delivery

Thank you for having me. It's an honor to be here at Ohio State. Thanks to the Federalist Society's Ohio State Law School Student Chapter and Columbus Lawyers Chapter for hosting me. While I have never been a card-carrying member of FedSoc, I appreciate the role your society plays as a convening platform for young conservative lawyers looking to find like-minded company and fellowship. Being a conservative at law school can sometimes be a lonely proposition. I can imagine that many of you have stories to share about being a student during the Great Awakening of the past five years. I spent those years living on Capitol Hill in D.C., and it was not always easy to be a faithful Trump supporter in a town run by establishments on the right and the left. But being here today with you all gives me great hope for the future that reinforcements are on the way, including to our nation's capital. I believe that young lawyers like yourselves, born so recently that your lives have been molded by President Trump and the movement he built, are the future, and I encourage you to think about public service when the time comes.

It is also a pleasure to visit the great state of Ohio. Ohio is a place that is dear to my heart.

Before this role, I served as an advisor to Vice President Vance when he was a Senator representing the people of Ohio. When I went to work in his office, many in D.C. asked me why I would want to work for the junior Senator from Ohio. After all, D.C. is a town in which seniority in Congress matters a great deal and working for a freshman Senator is often a frowned-upon career choice. My response to the question was always the same: "Have you met JD Vance?" Thankfully, it didn't take long for people to stop asking me the question, and Ohio's loss is the country's gain. And of course, let's also remember that another great Republican Senator from Ohio — Senator John Sherman — is the namesake of the Sherman Act, which the Antitrust Division has the duty to enforce.

This is an important time in antitrust enforcement. Americans are confronted with a new wave of economic and industrial change as technological innovations like AI transform our economy. At the same time, forces of economic consolidation across industries threaten the bottom line for American consumers and workers. As law students, you see the great potential and the risks from these forces in your daily lives. What you may not yet see, however, is that antitrust enforcement can and does interact with them in a meaningful way. This is where I come in.

Having been out in the world a little longer than you all, I firmly believe that vigorous antitrust enforcement can boost our economy, foster innovation, and help protect Americans on pocketbook issues by promoting more affordable housing, healthcare, food, and transportation. As President Trump said when he nominated me, antitrust can indeed "Make America Competitive Again."[1]

These are lofty policy goals, but at the end of the day they are only as good as the process and the people underpinning them. As with our legal system overall, our system of antitrust enforcement depends on good faith dealing and sound compliance. We are all stewards of the antitrust laws, and we should all care about how it is practiced. We owe this standard of care to future generations of Americans who will judge us harshly should we fall asleep on our watch. Unfortunately, we at the Antitrust Division have concluded that a few actors — many of them at Big Law firms — can undermine sound antitrust enforcement for everyone. Tactics designed to circumvent legal process and hinder our investigations are not just a disservice to the law and to the American people; they are also counterproductive, undermining a respectful and collaborative dynamic that would improve the system for all involved. Differently stated, the tactics of a few Big Law bad actors drive a race to the bottom for all, whether we like it or not.

So today, I would like to address some of these tactics and how we can work together to tackle them. I will also discuss what the Antitrust Division is already doing to combat and pursue them, including our new initiative, "Comply with Care." This initiative springs from a project led by two of our talented Front Office counsels, Alice Wang and Andrew Kline.

Starting some months ago, Alice and Andrew took the initiative to speak with the Antitrust Division rank and file so we could better understand the ways in which our process was being challenged by problematic tactics from outside lawyers and law firms. Their discussions, which for some felt a little like group therapy, led us to this speech and announcement today.

What exactly are the types of tactics Alice and Andrew reported back to us on? Two striking examples involving Big Tech companies represented by Big Law firms have been widely reported in the news. In April, a district court in California found that Apple had violated the court's injunction and engaged in an "obvious cover-up" to hide the truth.[2] In the underlying case, *Epic Games v. Apple*, Epic had prevailed at trial, and the court had issued an order enjoining Apple's anticompetitive conduct. Yet Apple flouted the injunction. For example, after the court found Apple's 30 percent commission anticompetitive, Apple decided to charge a new 27 percent commission on off-app purchases.[3]

When the court ordered Apple to produce all documents related to its compliance with the injunction, Apple engaged in delay tactics and privilege abuses, asserting privilege over more than a third of responsive documents.[4] The court even found that an Apple Vice President "outright lied under oath."[5] The district court held Apple in civil contempt.[6] And the court also referred the matter to the local U.S. Attorney "to investigate whether criminal contempt proceedings are appropriate," including for the vice president who it found to have lied under oath.[7]

A second well-publicized example involves Google. In fact, three different courts in Virginia, D.C., and California have now found that Google engaged in systematic behavior that led to the destruction of relevant evidence.[8]

The Antitrust Division has been aware of the increasing use of ephemeral messaging apps and the preservation issues they pose for many years.[9] Google's practice was to delete chat messages among employees within 24 hours, unless the employee took action to change the auto-delete default. Even after receiving document hold notices, Google did nothing to change this practice. Indeed, it took Google more than two years after the Google Search lawsuit was filed to take action.[10] The result was the willful deletion of years' worth of relevant information.

Google also abused attorney-client privilege under its "Communicate with Care" initiative. Under "Communicate with Care," Google instructed employees to add in-house lawyers and "ask the lawyer a question" whenever they dealt with a sensitive issue.[11] Google also taught employees to avoid using certain "antitrust buzzwords" in their communications.[12] Ultimately, tens of thousands of documents were found to be improperly withheld.[13]

The district court in California imposed sanctions on Google for its failure to preserve chat communications, noting there was "intentionality manifested at every level within Google to

hide the ball with respect to Google Chat."[14] The district court in D.C. said that it was "taken aback by the lengths to which Google goes to avoid creating a paper trail for regulators and litigants."[15] The district courts in D.C. and Virginia declined to impose sanctions, not because sanctions were not warranted, but because they had already found Google liable for violating the antitrust laws.[16]

These Big Tech examples are particularly egregious conduct, and they illustrate the serious consequences for parties that play games to circumvent legal requirements. But these examples are just the tip of the iceberg. The vast majority of the problematic conduct the Antitrust Division sees takes place below the surface.

By way of example, I wanted to highlight two types of tactics that Antitrust Division staff encounter in investigations.

First, violations of the Hart-Scott-Rodino Antitrust Improvements Act (HSR Act). The HSR Act is table stakes for the antitrust agencies since it creates a fair and balanced framework for merger reviews. Under the HSR, Congress requires companies to notify the antitrust agencies and provide relevant information about mergers that meet a certain size threshold. This is so that the agencies can meaningfully investigate whether the transaction may violate the antitrust laws and, if appropriate, sue in court to block the transaction before it is consummated.[17] Congress established significant daily penalties to ensure that companies comply with the HSR Act. A company that fails to comply with any of its provisions is liable for a civil penalty for each day it is in violation, up to $53,088 per day.[18]

While honest clerical mistakes can happen when submitting HSR filings, recently the Antitrust Division has been focused on pursuing very troubling violations of the HSR Act. Just earlier this month, the Division reached a proposed settlement to resolve a challenge to UnitedHealth Group's acquisition of Amedisys. In addition to broad divestitures, the settlement includes a $1.1 million civil penalty for Amedisys's false certification that it had provided "true, correct, and complete" responses under the HSR Act when it had failed to produce many documents in response to a Second Request.[19]

In the same vein, earlier this year, the Antitrust Division filed a lawsuit against KKR & Co. and over a dozen of its investment advisors and funds for failing to comply with the HSR Act and repeatedly flouting the premerger antitrust review process over the course of at least 16 separate transactions.[20] As detailed in the complaint, we alleged that KKR violated the HSR Act by altering documents in HSR filings for at least eight transactions; failing to make *any* timely HSR filing for at least two transactions; and systematically omitting required documents in HSR filings for at least 10 transactions.[21]

Second, privilege abuses and privilege log gamesmanship. The Division respects the attorney-client privilege, the work product doctrine, and other forms of privilege. But

preserving the legitimate operation of these privileges requires that parties not abuse them.

We expect parties to make well-founded assertions of privilege and to provide privilege logs that comply with the Division's requirements and guidelines and provide adequate bases for their privilege claims, and many do. But simply listing the company's "Legal Department" as the basis of attorney-client privilege will not do. My staff shared with me one instance where the attorney whose name was used to justify privilege would have been in high school at the time of the communication!

Privilege abuses are grounds for enforcement actions and sanctions motions. For example, in the Antitrust Division's investigation of the Visa/Plaid transaction in 2020, the consulting company Bain asserted broad privilege in response to a Civil Investigative Demand (CID) that required the company to answer interrogatories and produce documents about Visa's pricing strategy and competition against other debit card networks. Bain claimed blanket privilege over almost all of these documents. The Division filed a petition in district court to enforce compliance with the CID.[22]

Now, why does this matter? It matters because tactics of obstruction and gamesmanship erode the integrity of antitrust enforcement. These are not just ticky-tack fouls or minor infractions that do not affect the ultimate outcome of the game. Neither are they mere misunderstandings between honest brokers. Rather, they can and do skew the fair and efficient enforcement of the antitrust laws. The American people rely on the Antitrust Division to enforce the antitrust laws, and we take that mission and responsibility extremely seriously.

But let me be clear on another reason why this matters: fair dealing is a two-way street. Rules of the road are only meaningful if they are respected by both sides. At the Antitrust Division, we are open to engaging frankly and fairly with parties. But we expect the same fair dealing in return.

When President Trump nominated me, he entrusted me with the responsibility of ensuring that "our competition laws are enforced, both vigorously and FAIRLY, with clear rules that facilitate, rather than stifle, the ingenuity of our greatest companies."[23] That has been the guiding principle of my enforcement philosophy.[24] The Division's job is to call balls and strikes and let the free market do its job, not to decide which companies win and which companies lose. In my tenure at the Division, we have worked to expedite our review of transactions, and we have reintroduced early terminations. The vast majority of mergers do not give rise to competitive concerns, and in those cases, we aim to get out of the way quickly. If you want to learn more about how we are stepping up to expedite reviews in the merger arena, go to my X feed @AAGSlater and check out a recent short video on the topic.[25]

Parties and counsel that respond promptly, provide the required information, and proactively communicate with Division staff demonstrate that they approached the issues thoughtfully, want to expedite review, and are willing to resolve issues. Early communication sets the tone for the rest of the investigation and paves the way for a smooth, efficient process. Division staff are open to working with companies on legitimate concerns and reasonable requests to avoid unnecessary burdens.

But when parties and counsel fail to comply and try to delay, obstruct, or play games, they lose credibility. If a party and its counsel cannot comply with legal obligations to preserve relevant communications, how can we trust their representations and their advocacy about the transaction?

But enough of the problem. What is the Division doing to address the issues and improve the process? I'm pleased to announce today that we are creating a task force within the Division dedicated to combatting these issues. I've been calling that effort "Comply with Care." The Comply with Care team will work with colleagues across the Division to tackle abuses that arise in our investigations and take decisive action to address them. The benefit to practitioners of having a group dedicated to this work means that the Division will have a uniform and efficient response rate in discovery disputes. We look forward to rolling out this initiative in the coming months.

In conclusion: this is a time for choosing. We can choose to game the system, or we can choose to play fairly and act as responsible stewards of the antitrust laws. For parties that choose to push the boundaries of fair play or even flout them outright, we will not shy away from pursuing them, taking advantage of the full range of available penalties. And we will not hesitate to bring issues to court. But for the majority of companies that do comply with our process and engage with the Division in good faith, we look forward to working with you. And I personally look forward to continuing to pursue our shared responsibility to vigorously and fairly enforce the antitrust laws. Finally, to those of you in the audience considering joining our ranks, although I am a Longhorn Mom, I still love Ohio and will always welcome you into my office.

Thank you, and best of luck with the Big Game. Hook 'em Horns.

[1] Donald J. Trump (@realDonaldTrump), Truth Social (Dec. 4, 2024, 12:21 PM), https://truthsocial.com/@realDonaldTrump/posts/113595703893773894.

[2] *Epic Games, Inc. v. Apple Inc.*, No. 4:20-CV-05640-YGR, 2025 WL 1260190, at *1 (N.D. Cal. Apr. 30, 2025).

[3] *Id.*

[4] *Id.* at *8.

[5] *Id.* at *1.

[6] *Id.* at *38.

[7] *Id.* at *1, *47.

[8] *See United States v. Google LLC*, 778 F. Supp. 3d 797, 872-73 (E.D. Va. 2025); *United States v. Google LLC*, 747 F. Supp. 3d 1, 185-87 (D.D.C. 2024); *In re Google Play Store Antitrust Litig.*, 664 F. Supp. 3d 981 (N.D. Cal. 2023).

[9] *See* Press Release, U.S. Dep't of Justice, Justice Department and the FTC Update Guidance that Reinforces Parties' Preservation Obligations for Collaboration Tools and Ephemeral Messaging (Jan. 26, 2024), https://www.justice.gov/archives/opa/pr/justice-department-and-ftc-update-guidance-reinforces-parties-preservation-obligations.

[10] *Google*, 747 F. Supp. 3d at 186.

[11] *Id.* (internal quotation marks omitted).

[12] *Id.*

[13] *Id.*

[14] *In re Google Play Store Antitrust Litig.*, 664 F. Supp. 3d 981, 993 (N.D. Cal. 2023).

[15] *Google*, 747 F. Supp. 3d at 187.

[16] *Id.* ("The court's decision not to sanction Google should not be understood as condoning Google's failure to preserve chat evidence. Any company that puts the onus on its employees to identify and preserve relevant evidence does so at its own peril. Google avoided sanctions in this case. It may not be so lucky in the next one."); *Google*, 778 F. Supp. 3d at 873 ("Google's systemic disregard of the evidentiary rules regarding spoliation of evidence and its misuse of the attorney-client privilege may well be sanctionable," but "because the Court has found Google liable under Sections 1 and 2 of the Sherman Act," the court "need not adopt an adverse inference or otherwise sanction Google for spoliation at this juncture").

[17] The agencies need "a fair and reasonable opportunity to detect and investigate large mergers of questionable legality before they are consummated." H.R. Rep. No. 94-1373, at *5 (1976). To that end, Congress authorized the promulgation of rules requiring premerger filing notifications "be in such form and contain such documentary material and information

relevant to a proposed acquisition as is necessary and appropriate to enable" the antitrust agencies' review. 15 U.S.C. § 18a(d)(1).

[18] 15 U.S.C. § 18a(g)(1); 16 C.F.R. § 1.98(a).

[19] Press Release, U.S. Dep't of Justice, Justice Department Requires Broad Divestitures to Resolve Challenge to UnitedHealth's Acquisition of Amedisys (Aug. 7, 2025), https://www.justice.gov/opa/pr/justice-department-requires-broad-divestitures-resolve-challenge-unitedhealths-acquisition; *see also* Press Release, U.S. Dep't of Justice, Justice Department Sues to Block UnitedHealth Group's Acquisition of Home Health and Hospice Provider Amedisys (Nov. 12, 2024), https://www.justice.gov/archives/opa/pr/justice-department-sues-block-unitedhealth-groups-acquisition-home-health-and-hospice ("The complaint alleges that Amedisys violated the HSR Act because, at the time of its sworn certification, Amedisys failed to produce millions of documents or disclose the deletion of other documents.").

[20] Press Release, U.S. Dep't of Justice, Justice Department Sues KKR for Serial Violations of Federal Premerger Review Law (Jan. 14, 2025), https://www.justice.gov/archives/opa/pr/justice-department-sues-kkr-serial-violations-federal-premerger-review-law.

[21] *Id.*

[22] Press Release, U.S. Dep't of Justice, Justice Department Files Enforcement Action Against Bain & Company As Part of Its Investigation Into Visa Inc's Proposed Acquisition of Plaid Inc (Oct. 27, 2020), https://www.justice.gov/archives/opa/pr/justice-department-files-enforcement-action-against-bain-company-part-its-investigation-visa; *see also* Division Update, U.S. Dep't of Justice, Fair Play: CID Compliance and Avoiding Privilege Gamesmanship Continue to Be Enforcement Priorities (spring 2021), https://www.justice.gov/atr/division-operations/division-update-spring-2021/fair-play-cid-compliance-and-avoiding-privilege-gamesmanship-continue-be-enforcement-priorities.

[23] Donald J. Trump (@realDonaldTrump), Truth Social (Dec. 4, 2024, 12:21 PM), https://truthsocial.com/@realDonaldTrump/posts/113595703893773894.

[24] *See* Abigail Slater, Responses to Questions for the Record (Feb. 12, 2025), https://www.judiciary.senate.gov/imo/media/doc/2025-02-12_-_qfr_responses_-_slater.pdf.

[25] Abigail Slater (@AAGSlater), X (Aug. 22, 3:49 PM), https://x.com/AAGSlater/status/1958979832819150873.

Speaker

Assistant Attorney General

Topic

ANTITRUST

Component

Antitrust Division

Updated August 29, 2025

Related Content

PRESS RELEASE

Former New York City Department of Education Business Manager Sentenced in Bid Rigging Scheme

The owner of a New York-based budget and procurement consulting company was sentenced today to six months in prison for rigging bids submitted to dozens of New York City public...

August 19, 2025

PRESS RELEASE

Statement on Revocation of Biden-Harris Executive Order on Competition

Today, the Department of Justice's Antitrust Division salutes the President's decision to revoke Executive Order 14036. The Division will use this opportunity to continue its work to recalibrate and modernize...

August 13, 2025

PRESS RELEASE

Justice Department Reaches Proposed Settlement with Greystar, the Largest U.S. Landlord, to End Its Participation in Algorithmic Pricing Scheme

The Justice Department's Antitrust Division filed a proposed settlement today to resolve the United States' claims against Greystar Management Services LLC as part of its ongoing enforcement against algorithmic coordination...

August 8, 2025

Office of Public Affairs

U.S. Department of Justice

950 Pennsylvania Avenue, NW

Washington DC 20530

Office of Public Affairs Direct Line

202-514-2007

Department of Justice Main Switchboard

202-514-2000