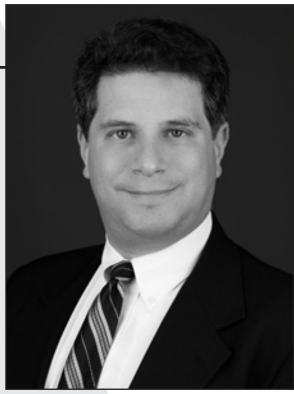
Transportation Antitrust and Unfair Trade Practices Developments, 2025



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This report summarizes selected court decisions and filings; agency actions; and legislative developments in 2025 which involved antitrust, unfair competition, or deceptive trade practices issues within the transportation and logistics industries. It updates the TLA Antitrust and Unfair Trade Practices Committee report published in April 2025 that reviewed developments in 2024.

As has been typical in recent years, many unfair competition and unfair trade practices developments in 2025 involved companies seeking to protect trade secrets and confidential information from being used by former employees and competitors when competing for existing customers. Many of these cases also include issues regarding the scope of non-compete and non-solicitation employment agreements. However, 2025 also saw its share of traditional antitrust claims in the transportation industry involving alleged restrictions on competition; refusals to deal; and attempts to monopolize. As indicated by the summaries below, alleged antitrust, unfair competition, and deceptive trade practices issues arose in a number of different modes, for a variety of different activities.

With respect to federal government policy, the Trump Administration returned to office in January of 2025 and immediately signaled potential changes to both the interpretation and enforcement of the antitrust laws. In a series of Executive Orders, the Administration highlighted areas where it believed that competition had been hindered or could be enhanced.

At the same time, the Trump Administration sought to impose significant changes on the independent regulatory agencies that regulate competition in the transportation industry. On August 27, 2025, the President fired Robert E. Primus, a Democratic member of the Surface Transportation Board. Similarly, on March 18, 2025, the President fired Alvaro Bedoya and Rebecca Kelly Slaughter, two Democratic members of the Federal Trade Commission. The President also fired members of other federal independent agencies.

All of the independent agency members fired by the President were Democrats. While the dismissals were challenged as being illegal, the Supreme Court reversed lower court rulings staying the firings. As this article goes to press it is currently considering whether to reverse a 1935 precedent that only allows a President to remove Senate-confirmed members of independent agencies for cause, not at will (<u>Humphrey's Executor v. United States</u>, 295 U.S. 602).

The firing of independent agency members that were previously appointed by prior Presidents and confirmed by the U.S. Senate may be the most significant competition law policy development of 2025. Should the action be found lawful it will allow President Trump–and all future Presidents–to remove independent agency members and replace them with individuals having similar policy goals. For example, STB Member Primus was the only STB member to dissent from the 2023 approval of the merger of the Kansas City Southern and Canadian Pacific Railroads. He was fired shortly after the July 29, 2025 announcement that the Union Pacific Corporation intended to acquire the Norfolk Southern Corporation.

The summaries provided below are a representative selection of 2025 developments that focus on the issues that involved antitrust and unfair competition law or deceptive trade practices. As such, other issues discussed or addressed in the agency actions or in the court cases, including some that may have been dispositive to their resolution, may not be addressed.

Executive Orders

- <u>Reducing Anti-Competitive Regulatory Barriers</u>, Executive Order No. 14267 (April 9, 2025); 90 Fed. Reg. 15629 (April 15, 2025). This EO instructed all Agency heads, in consultation with the Chairman of the Federal Trade Commission and the Attorney General, to complete a review of all regulations subject to their rulemaking authority and to identify those that:
    - Create, or facilitate the creation of, *de facto* or *de jure* monopolies;
    - Create unnecessary barriers to entry for new market participants;
    - Limit competition between competing entities or have the effect

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of limiting competition between competing entities;
  - Create or facilitate licensure or accreditation requirements that unduly limit competition;
  - Unnecessarily burden the agency's procurement processes, thereby limiting companies' ability to compete for procurement; or
  - Otherwise impose anti-competitive restraints or distortions on the operation of the free market.
- Revocation of Executive Order on Competition, Executive Order No. 14337 (August 13, 2025); 90 Fed. Reg. 40227 (August 19, 2025). This EO revoked President Biden's Executive Order 14036 of July 9, 2021 (*Promoting Competition in the American Economy*) which stated that Administration's priorities in enforcing the antitrust laws and sought legislative reforms targeting competition in the healthcare sector.

Litigation

Aviation

- Star Marianas Air, Inc. v. Southern Airways Express, LLC, D.N.M.I. 24-CV-0010, 2025 WL 641442 (February 28, 2025). The Court held that the defendant, an air carrier which allegedly had conspired with the Commonwealth of the Northern Mariana Islands to monopolize inter-island air services, was not shielded from claims premised on § 1 of the *Sherman Act* by the state action immunity doctrine, but also held that the C.N.M.I. was a necessary party, and therefore dismissed the case with leave to amend.
- Endres v. Air Canada, D.C. Cir. 24-0883, 2025 WL 752605 (March 10, 2025). The Court dismissed a complaint which alleged that certain air carriers conspired to allocate slot assignments at U.S. airports, in violation of the *Sherman Act*, on the basis that the named plaintiff was the owner of a company that allegedly had an interest in allocating slots and not the company itself, and therefore did not have an actual or imminent injury-in-fact.
- Garavanian v. JetBlue Airways Corporation, 149 F.4th 95 (1st Cir. August 21, 2025). The Court affirmed that the plaintiffs, who had challenged the proposed merger between JetBlue Airways and Spirit Airlines under Section 7 of the *Clayton Act*, were not entitled to any attorneys' fees, because the merger had been abandoned after a negative ruling in a separate case brought by the Department of Justice, along with six states and the District of Columbia.
- In re Domestic Airline Travel Antitrust Litigation, D.D.C. no. 15-1404, 2025 WL 276034 (D.D.C. September 29, 2025). The Court previously held that the plaintiffs had alleged sufficient evidence of parallel pricing behavior, in violation of § 1 and § 3 of the *Sherman Act*, by the remaining defendants, Delta Air Lines and United Airlines, to survive a motion for summary judgement. The Court denied a motion for interlocutory appeal and for reconsideration, finding that no controlling issue of law was in dispute, nor had defendants identified any intervening change in the law.
- Yoshimoto v. Alaska Airlines, Inc., 9th Cir. No. 24-CV-0173, 2025 WL 2911144 (October 14, 2025). The Court upheld the dismissal of a challenge to the acquisition of Hawaiian Airlines by Alaska Airlines on standing grounds, finding that the plaintiff passengers and travel agents had not alleged an actual or imminent injury-in-fact, but further held that the plaintiffs should be allowed leave to amend their complaint.
- Emrich Aerial Spraying LLC v. City of Pawhuska, N.D. Okla. No. 25-CV-0115, 2025 WL 2987889 (October 23, 2025). The Court held that a crop-dusting operator which alleged that it had been denied access to an airport had failed to state claims against the airport and its municipal owner under § 2 of the *Sherman Act* or state antitrust law because they were not competitors in the provision of agricultural spraying services.
- Airlines for America v. Department of Transportation, 5th Cir. No. 24-60231, 127 F.4th 563 (January 28, 2025). The Court held that DOT had the authority to adopt regulations requiring air carriers to disclose information about their ancillary fees, but remanded the case on the basis that DOT had relied on data which had not been made available for public comment. The Court subsequently granted the Petitioner's motion for *en banc* review, to reconsider whether the regulations were within the scope of DOT's authority to regulate unfair and deceptive practices.
- American Airlines Group, Inc. v. United States, Supreme Court No. 24-938, 145 S.Ct. 2866 (June 20, 2025). The Supreme Court denied *certiorari* to American's request that the Court review prior rulings that its "Northeast Alliance" agreement with JetBlue violated § 1 of the *Sherman Act*. In addition, in January 2025 American and JetBlue agreed to pay nearly $2 million in attorney fees to six states and the District of Columbia, which along with the DOJ had challenged the alliance.

Rail

- Coalition to Stop CPKC v. Surface Transportation Board, D.C. Cir. No. 23-1165, 2025 WL 1720672 (June 20, 2025). The Court upheld the Surface Transportation Board' order approving the merger of the Canadian Pacific and Kansas City Southern railroads, rejecting the argument advanced by a coalition of suburban Chicago communities that the environmental consequences of the transaction had not been sufficiently considered.
- In re: Rail Freight Fuel Surcharge Antitrust Litigation, D.D.C. No. 07-MC-

00489, 2025 WL 1784519 (June 27, 2025). The Court granted the defendants' motions for summary judgement in a long-running case which alleged that they had conspired to fix fuel surcharges for freight shipped on those railroads, in violation of § 1 of the *Sherman Act*. The Court held that plaintiffs had not demonstrated that the defendants acted in a parallel fashion, and thus that there was no circumstantial evidence, much less direct evidence, of a conspiracy. Multiple plaintiffs have appealed the decision (D.C. Cir. Nos. 25-7103, 25-7104, 25-7105, 25-7107 and 25-7108).

- Commuter Rail Div. of the Regional Transportation Authority v. Union Pac. R.R. Co., N.D.Ill. No. 25-CV-02439, 2025 WL 1787514 (June 27, 2025). The Court denied a commuter rail system's request for an injunction against the conditions imposed by Union Pacific for the use of certain of its rail lines, explaining that the dispute over pricing and other terms was within the jurisdiction of the Surface Transportation Board and not the Court, but also opining that Metra had not demonstrated that it was suffer irreparable injury.

- Grand Trunk Corp. v. Surface Transportation Board, 143 F.4th 741 (7th Cir. July 8, 2025). The Court vacated regulations adopted by the Surface Transportation Board, which allowed shippers and receivers to request a "reciprocal switching agreement" to enable competing carriers access particular traffic on a line monopolized by another carrier, without any demonstration that the incumbent's service was inadequate. The Court explained that the regulation exceeded the STB's authority under the *Staggers Rail Act* of 1980.

- CSX Transportation, Inc. v. Norfolk Southern Railway Company, Supreme Court No. 24-591, 145 S.Ct. 1921 (April 21, 2025). The Supreme Court denied certiorari to CSX's request that the Court review prior rulings that it could not use the "continuing violation" rule to bring an antitrust case based on rate changes made nine years earlier by Norfolk Southern.

Trucking

- Town of Colo. City v. Centennial Park Disposal, Inc., Ariz. App. No. 1 CA-SA 25-0035, 2025 WL 1304201 (May 6, 2025). The Court affirmed that the defendant, which was alleged to have required residents to pay for municipal garbage collection services, was not entitled to summary judgement. The Court explained that the City had not documented an accrual date for the claims that would be a basis for a limitations defense, nor had it shown that it was entitled to immunity under state statutes or the state action immunity doctrine.

Brokers/Forwarders

- Total Quality Logistics, LLC. V. Medellin, W.D. Tex. No. SA-23-CV-0033-XR, 2025 WL 3771435 (September 30, 2025). The Court granted partial summary judgment to a defendant broker, on claims by a competing plaintiff freight broker, that the defendant and former employees of the plaintiff had breached non-compete agreements and the Texas *Uniform Trade Secrets Act*. The plaintiff alleged that the defendant broker had been engaged to work with it to provide food product transport services to a "key customer" on U.S.-Mexico shipment lanes but had commenced providing services directly to the customer after the defendant hired the plaintiff's employees. The Court found that the plaintiff's allegations were insufficient to support its claims that information had been improperly disclosed regarding the prices that the plaintiff had charged to the key customer and the requirements the customer had placed on the plaintiff. The defendants' summary judgment motion was otherwise denied as to the plaintiff's other claims.

- Americana Worldwide Corp. v. Protrade Logistics Corp., N.D. Ill. No. 22-CV-3095, 2025 WL 1836045 (July 3, 2025). A freight broker with a specialty niche in brokering shipments for trade show exhibitions and displays brought suit against a former employee and its new employer for allegedly improperly taking and using confidential information and trade secrets to solicit the plaintiff's clients and interfere with its business relations. The court granted summary judgment to the former employee and refused to enforce a five-year non-compete and confidentiality agreement because it was overbroad. The court found that there were sufficient disputed facts to deny the defendants' motions for summary judgment on the employer's claims of violation of the federal *Defend Trade Secrets Act*; the Illinois *Trade Secrets Act*; and claims of Tortious Interference with Business Relations.

- Epes Logistics Servs. v. De Piante, North Carolina Super. Ct, No. 19CVS008889-400, 2025 WL 249648 (March 11, 2025). Plaintiff, an international and domestic forwarder, claimed that former employees and a competitor engaged in tortious interference with prospective economic advantage with existing customers of the plaintiff; the claims were dismissed because the plaintiff had shown no existing or draft contracts with such customers. The Court stated that it was its "understanding of the transport industry … that each shipment is bid on and won by the company that presents the most competitive offer." The Court further issued a declaratory judgment that the non-solicitation provisions in the defendant's employment agreements were unenforceable. However, the court found that the plaintiff had alleged sufficient facts to allow its claims to proceed to trial under the North Carolina *Uniform Deceptive Trade Practices Act* and for civil conspiracy.

Buses

- Go New York Tours, Inc. v. Gray Line Tours, Inc., 2d Cir. 24-2392, 2025 WL 947083 (March 27, 2025). The Court affirmed the dismissal of a tour bus company's claim that competitors had conspired to limit its access to attractions in New York City on the basis of *res judicata*, because similar claims had been litigated previously, and additionally found that even without considering that issue, the plaintiff also had failed to state a claim under § 1 and § 2 of the *Sherman Act*. The Supreme Court subsequently denied *certiorari* (Supreme Court No. 24-1325, 2025 WL 2823851 (October 6, 2025)).
- Amigo Shuttle, Inc. v. Port Auth. of N.Y. & N.J., 2d Cir. No. 25-0083, 2025 WL 2618862 (September 11, 2025). The Court affirmed the dismissal of the plaintiff's claim that the Port Authority had entered into an unlawful agreement with a competitor to operate a shuttle service for airline employees, in violation of § 1 and § 2 of the *Sherman Act* in addition to state law. The Court concluded that the plaintiff had failed to adequately allege an agreement among the defendants, and that the complaint was also defective for other reasons, such as that it had failed to allege an antitrust injury because the Port Authority was not a competitor of the plaintiff.
- In the Matter of Investigation by Letitia James, Attorney General of the State of New York, of Twin America LLC, et al., Assurance No. 24-070 (https://ag.ny.gov/sites/default/files/settlements-agreements/big-bus-tours-limited-et-al-assurance-of-discontinuance-2025.pdf) (September 9, 2024) and Assurance No. 25-015 (https://ag.ny.gov/sites/default/files/settlements-agreements/twin-america-llc-et-al-assurance-of-discontinuance-2025_0.pdf) (April 10, 2025). The New York Attorney General closed administrative investigations of two hop-on/hop-off bus tour operators in New York City, which were predicated on § 1 of the *Sherman Act* in addition to state law, based on their commitment to discontinue collaborative agreements and the payment of $2.5 million in fines.

Rental/Ride-Share

- Eberhardt v. U-Haul Int'l, N.D.Cal. No. 24-CV-03183, 2025 WL 1294652 (May 5, 2025). The Court dismissed the plaintiff's claim that U-Haul had encouraged uninsured drivers to rent its vehicles, in violation of state unfair competition law, on the grounds that U-Haul had not been shown to engage in such advertising; general statements by U-Haul that insurance was not required for rentals was deemed insufficient to state a claim.
- Becky's Broncos, LLC v. Town of Nantucket, 1st Cir. No. 24-1649, 138 F.4th 73 (May 23, 2025). The Court affirmed the denial of a preliminary injunction that was requested by an unlicensed car rental company to allow it to continue to operate. To the extent one of the allegations was that local restrictions on car rentals violated federal and state antitrust law, the Court held that the claims were "nonspecific" and insufficient to show that the plaintiff was likely to succeed on the merits of its claim.
- Price v. City of Chicago, N.D.Ill. No. 25-CV-0791, 2025 WL 1755452 (June 25, 2025). The Court held that the plaintiff, who had challenged the City's licensing ordinance for ride-share drivers because it enabled certain data to be shared by Uber and Lyft, had failed to state a claim against the City under § 2 of the *Sherman Act* and other laws. In regard to the antitrust claim, the Court explained that the claim was "threadbare" and had failed to establish the relevant market. An amended complaint was also dismissed (2025 WL 3012659 (October 28, 2025)).

Logistics

- Hogan v. Amazon.com, 9th Cir. No. 24-1893, 2025 WL 869202 (March 20, 2025). The Court affirmed the dismissal of claims brought against Amazon under § 1 and § 2 of the *Sherman Act*. The plaintiffs alleged that Amazon restrained competition by requiring certain third-party sellers to use its logistics services, but the Court explained that as consumers, they could not have suffered any injury in the market in which competition was allegedly restrained.
- In the Matter of the Investigation by William Tong, Attorney General of the State of Connecticut, of Fallon Moving & Storage, Inc. and Commercial Moving Services LLC (October 10, 2025) (https://portal.ct.gov/-/media/ag/press_releases/2025/20251010-falloncms-settlment-agreement-final.pdf). The Connecticut Attorney General closed an administrative investigation of bid-rigging, in violation of state antitrust law, for state contracts by two moving and storage companies, with sanctions including $90,000 in fines.
- Hoffenmer, Inc. v. Slesinski, N.D. Ill, No. 23-CV-03878, 2025 WL 1677497 (June 13, 2025). The Court found that when the plaintiff, a compliance agent and business consultant in the trucking and motor carrier industry, alleged unlawful access to and the uploading of confidential business information to the personal e-mail account of a former employee who left to form a directly competing company, sufficient facts had been alleged that the plaintiff's customer database, templates, and payment system qualified as trade secrets so as to support causes of action under the *Defend Trade Secrets Act*; the Illinois *Trade Secrets Act*; the *Computer Fraud and Abuse Act*; and the *Stored Communications Act*.

Ocean Shipping

- American President Lines v. Matson, Inc., 775 F.Supp.3d 379 (D.D.C. March 11, 2025). The Court held that the defendant was entitled to summary judgement against claims from a competitor that it had abused its dominant position in the U.S.-Guam shipping market. The Court elaborated that even though the claims previously had survived a motion to dismiss, American President Lines had failed to provide evidence to support its assertion of violations of § 2 of the *Sherman Act*.
- MSC Mediterranean Shipping Co. S.A. v. Federal Maritime Commission, 141 F.4th 222 (D.C. Cir. June 24, 2025). The Court upheld the Federal Maritime Commission's ruling that it had jurisdiction over a complaint that MSC Mediterranean had violated the *Shipping Act* of 1984 by failing to honor the terms of its service agreement with MCS Industries, and that the FMC was correct in entering a default judgment after MSC Mediterranean refused to provide discovery materials to MCS Industries.

Pipelines

- Ducere LLC v. Enbridge (U.S.) Inc., N.D. Ill, No. 1:24-CV-01217, 2025 WL 81373 (January 13, 2025). In a case alleging unlawful refusals to deal and a violation of the essential facilities doctrine in violation of Section 2 of the *Sherman Act* and the Illinois *Antitrust Act,* the court dismissed with prejudice an oil pipeline's allegations that a competing pipeline had engaged in an unreasonable refusal to deal because a third party company in which the defendant had an ownership interest terminated negotiations to build a competing terminal. The court also dismissed the plaintiff's allegations that the competing third party pipeline which plaintiff allegedly also controlled was actually essential to providing crude oil transportation services to certain markets, but granted plaintiff leave to file an amended complaint.

Administrative

Department of Transportation (DOT)

- An application was filed to add ITA Airways to the existing antitrust-immunized alliance between United Airlines, Air Canada, and Lufthansa (Docket No. DOT-OST-2008-0234).
- DOT terminated the antitrust immunity that previously been granted to Delta Air Lines and Aeromexico, premised on anticompetitive actions taken by the Government of Mexico (Docket No. DOT-OST-2015-0070); the airlines filed an appeal, and the Eleventh Circuit stayed the order pending further review (11th Cir. No. 25-13546).
- Spirit Airlines filed a complaint, requesting that DOT investigate the competitive implications of the "Blue Sky" joint venture between United Airlines and JetBlue Airways (Docket No. DOT-OST-2025-0138).

Surface Transportation Board (STB)

- The STB determined that Norfolk Southern's proposed acquisition of the Norfolk & Portsmouth Belt Line Railroad Company was a significant transaction requiring review (Docket No. FD 36836).
- The STB announced that it would enforce a condition of a 1988 merger agreement which required Union Pacific to grant Kansas City Southern (now a subsidiary of Canadian Pacific) haulage rights on certain tracks in Texas to ensure options for grain traffic (https://www.stb.gov/news-communications/latest-news/pr-25-24/).
- On December 19, 2025, the Union Pacific Corporation filed a major merger application with the Surface Transportation Board to acquire the Norfolk Southern Corporation. (STB Docket No. FD 36873).

Federal Aviation Administration (FAA)

- During the 2025 "shutdown," the FAA instructed air carriers to reduce their operations at certain airports, stating that the DOJ had advised that it "was not "inclined" to initiate any antitrust enforcement premised on action taken in compliance with the FAA's order. 90 Fed. Reg. 50884 (November 12, 2025).

Federal Maritime Commission (FMC)

- The FMC approved the "Premier Alliance Agreement" between HMM, Ocean Network Express, and Yang Ming, allowing them to share vessels between the United States and Asia, the Middle East, and Europe (FMC Agreement No. 201435).
- The FMC initiated an investigation of whether the "World Shipping Council Agreement" which authorized ocean common carriers to engage in joint trade association activities was within its jurisdiction and whether it should be cancelled (FMC Agreement No. 201349).

Federal Trade Commission (FTC)

- The FTC announced the modification of an order related to Enbridge's merger with Spectra Energy, because Enbridge no longer held an interest in competing natural gas pipelines (https://www.ftc.gov/news-events/news/press-releases/2025/04/ftc-approves-modification-enbridge-inc-final-order).
- The FTC closed an investigation of truck manufacturers after they agreed to cease coordinating engine emissions requirements with the California Air Resources Board (https://www.ftc.gov/news-events/news/press-releases/2025/08/ftc-resolves-antitrust-concerns-arising-clean-truck-partnership).
- The FTC voted 3-1 on September 5, 2025, to dismiss its appeals in Ryan, LLC v. FTC, No. 24-10951 (5th Cir.) and Properties of the Villages v. FTC, No. 24-13102 (11th Cir.) and to accede

to the vacatur of the Non-Compete Clause Rule that had been adopted during the Biden Administration in 2024.

Department of Justice (DOJ)

- DOJ announced that eight individuals had pleaded guilty to attempting to monopolize the "transmigrante" forwarding industry for motor vehicles from the U.S. to Latin America (https://www.justice.gov/opa/pr/eight-individuals-plead-guilty-wide-ranging-scheme-monopolize-transmigrante-forwarding). DOJ later provided details of some of the convictions that followed(https://www.justice.gov/opa/pr/texas-man-sentenced-11-years-prison-and-ordered-pay-2m-fine-conspiring-monopolize and https://www.justice.gov/opa/pr/three-defendants-sentenced-wide-ranging-scheme-monopolize-international-transit-industry-fix).
- A DOJ Deputy Attorney General in a public speech was critical of consolidation among other carriers, including the "Northeast Alliance" between American Airlines and JetBlue Airways that previously was invalidated by a court, and the antitrust-immunized agreement between Delta Air Lines and Aeromexico that is also discussed above (https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-dina-kallay-delivers-virtual-remarks-2025-chatham).

Endnotes

1 This report is submitted as a report of the Antitrust and Unfair Trade Practices Committee. Andrew M. Danas, Grove, Jaskiewicz & Colbert, Washington DC, and Jol A. Silversmith, KMA Zuckert, Washington DC, Co-Chairs.