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Tech Antitrust Litigation:
Battles Sharpen as Courts Probe Venue, Class Risk, and Remedies

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TECH ANTITRUST LITIGATION:
BATTLES SHARPEN AS COURTS PROBE VENUE, CLASS RISK, AND REMEDIES

INTRODUCTION

Private antitrust litigation against technology companies has accelerated and matured in recent years, influencing where and how these disputes are fought. In this *Working Paper*, we review trends through the lifecycle of a case, including key patterns in venue, dispositive motion practice and class certification. We also see a unique pattern of remedies in these disputes. The key points that emerge are as follows:

- four venues predominate;
- the rule of reason increasingly prevails;
- judicial assessment of expert testimony is increasingly complex;
- class-certification fights are game changers; and
- remedies go beyond damages.

Together, understanding these trends is critical for all parties involved as they strategize throughout these dynamic cases.

I. FOUR FEDERAL COURTS PREDOMINATE

At the start, plaintiffs suing technology companies in antitrust choose a venue. Personal jurisdiction defines a court's authority over parties, anchored by constitutional due process and implemented by Federal Rule of Civil Procedure 4(k). These plaintiffs must initially bring suit where there is either *general* jurisdiction over a defendant—a corporation's place of incorporation or principal place of business—or where there is *specific* jurisdiction by virtue of a connection between the conduct at issue and the forum state.[1] But even then, once filed, courts may still transfer cases for

[1] *See, e.g.*, *Int'l. Shoe Co. v. Washington*, 326 U.S. 310 (1945).

convenience and in the interest of justice. Courts also consolidate multiple lawsuits to promote efficiency under Federal Rule of Civil Procedure 42(a) and nationwide through multidistrict litigation under 28 U.S.C. § 1407.[2] These venue considerations alone create aggressive battles among parties.

But looking at the last five years, just four US federal district courts, out of 94 in the United States, account for nearly 50% of these cases: the Northern District of California (N.D. Cal.),[3] the Southern District of New York ("S.D.N.Y."),[4] the Western District of Washington (W.D. Wash.)[5] and the Northern District of Illinois (N.D. Ill.).[6,7]

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[2] *See, e.g.*, *Hall v. Hall*, 584 U.S. 59 (2018).

[3] *See, e.g.*, *Epic Games, Inc. v. Apple Inc.*, 559 F. Supp. 3d 898 (N.D. Cal. 2021), *aff'd in part, rev'd in part and remanded*, 67 F.4th 946 (9th Cir. 2023); *Simon & Simon, PC v. Align Tech., Inc.*, 533 F. Supp. 3d 904 (N.D. Cal. 2021).

[4] *See, e.g.*, *Davitashvili v. Grubhub Inc.*, No. 20-CV-3000 (LAK), 2022 WL 958051, at *1 (S.D.N.Y. Mar. 30, 2022).

[5] *See, e.g.*, *Wolfire Games, LLC v. Valve Corp.*, No. 2:21-cv-00563-JCC, 2021 WL 5415305 (W.D. Wash. Nov. 19, 2021); *De Coster v. Amazon.com, Inc.*, No. 2:20-CV-00424-JHC, 2024 WL 4949037 (W.D. Wash. Dec. 3, 2024).

[6] *See, e.g.*, *In re Deere & Co. Repair Serv. Antitrust Litig.*, No. 3:22-cv-50188, 703 F. Supp. 3d 862 (N.D. Ill. 2023); *Giuliano v. Scientific Games Corporation et al.*, No. 1:20-cv-05262 (N.D. Ill.).

[7] We used Lex Machina's Summary Analytics to identify common venues for federal private tech antitrust cases by querying cases by their date of filing, requiring dockets with an antitrust case tag and at least 50 docket entries, excluding dockets tagged as MDL-associated and cases with a government plaintiff, and limiting party-industry tags to Biotechnology; Computer Hardware, Software and Services; and Technology and Telecommunications. We excluded MDL-associated dockets because they tend to skew venue counts. MDL proceedings often generate numerous individual member-case dockets that are, in substance, part of a single coordinated case overseen by one judge, so counting each docket separately would artificially inflate filings in the transferee court. The 50-docket entry threshold serves as a reasonable limit to identify substantively litigated matters, reducing noise from cases that were quickly dismissed, transferred or otherwise had minimal activity. We included an antitrust case tag and these party-industry tags and excluded cases with a government plaintiff to appropriately identify private tech antitrust cases. *See, e.g.*, *Lex Machina*, Cases – Summary Analytics (filters applied: case type: Antitrust; not with General: MDL Associated case tag; not with General: Government Plaintiff case tag; filed on or after Jan. 1, 2020; docket entries ≥ 50; party industries: Biotechnology; Computer Hardware, Software, and Services; Technology and Telecommunications), https://perma.cc/8M8N-CK77 (last visited Oct. 21, 2025).

Below are some reasons why.[8]

N.D. Cal. is a center of gravity. In the last five years, approximately one-fifth of all private technology antitrust cases were filed there[9]—roughly the same share of cases that were filed in this district from 2010–2020.[10] N.D. Cal. covers Silicon Valley, the global hub for technology innovation, and is home to many of the world's largest technology companies,[11] and so there is oftentimes general jurisdiction over defendants there.[12] Courts also transfer to or consolidate cases filed elsewhere in N.D. Cal. for convenience to parties and witnesses. For example, the Judicial Panel on Multidistrict Litigation in *In re Qualcomm Antitrust Litigation* consolidated antitrust actions involving cellular device licensing in N.D. Cal. (rather than S.D. Cal., where related litigation was pending) in part because many potential witnesses who worked for cellphone manufacturers were there.[13]

These inherent reasons to file or consolidate in N.D. Cal. contribute to the volume of cases there, and judges there have in turn gained substantial experience and expertise dealing with complex technologies.[14] This experience likely provides a better understanding of the technologies and claims at issue in these cases.[15] In fact, some

[8] Note: The Central District of California (C.D. Cal.) is also a common venue for private antitrust litigation against technology companies. We elected not to discuss C.D. Cal. herein because it is a frequent venue for similar reasons as N.D. Cal.

[9] *See supra* note 7.

[10] *See supra* note 7.

[11] *See* Itzhak Mashiah, *All We Need Is a Silicon Valley: Tech Place as a Strategic Branding Tool*, *Place Branding and Public Diplomacy* (Nov. 22, 2024), https://perma.cc/576G-VHB9.

[12] *See, e.g.*, 50Pros, *Fortune 500 Full List (2025)*, https://perma.cc/J7EF-WARX (last visited Oct. 21, 2025).

[13] 273 F. Supp. 3d 1373, 1376 (J.P.M.L. 2017).

[14] *See supra* note 7.

[15] The district has managed approximately 10% of cases since 2000 that involve a party in the tech industry, totaling over 5,000 cases. *See supra* note 7.

judges in N.D. Cal. are frequently among the top five overseeing this type of litigation.[16] Plaintiffs may also benefit from a potential jury pool comprising individuals who may have backgrounds in technology and work in highly technical fields.[17]

There also is law that is favorable to private antitrust plaintiffs in N.D. Cal. For instance, the Ninth Circuit differs in its approach to certain class-certification issues.[18] It is the only circuit that does not apply the same abuse of discretion standard to all class-certification rulings, and so it affords more deference to class certification by the district courts.[19] The Ninth Circuit also takes a different approach to expert challenges at the class certification phase. The Third, Fifth, Sixth, Seventh and Eleventh Circuits require full *Daubert* consideration at class certification if "challenged expert testimony is material to a class certification motion."[20] But the Ninth Circuit utilizes a limited *Daubert* inquiry, particularly where "an expert's model has yet to be fully developed."[21] This limited inquiry can benefit plaintiffs in evading scrutiny of expert damages models. Lastly, as described in "Courts dig in at the motion to dismiss stage," the Ninth Circuit will not reverse class certification because the classes include some uninjured members.[22]

S.D.N.Y. is second to N.D. Cal. for technology antitrust actions over the past five years.[23] Since 2010, it is the second most common venue with approximately 10% of

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[16] *See ibid.*

[17] *See ibid.*

[18] *See ibid.*

[19] *Hamilton v. Wal-Mart Stores, Inc.*, 2022 U.S. App. LEXIS 18213, at *8 (9th Cir. 2022).

[20] *In re Nissan N. Am., Inc. Litig.*, – F.4th –, 2024 WL 4864339, *9 (6th Cir. Nov. 22, 2024).

[21] *Lytle v. Nutramax Labs., Inc.*, 114 F.4th 1011, 1032 (9th Cir. 2024).

[22] *Davis v. Lab'y Corp. of Am. Holdings*, No. 22-55873, 2024 WL 489288, at *2 n.1 (9th Cir. Feb. 8, 2024) (citing *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 669 (9th Cir. 2022) (en banc)).

[23] *See supra* note 7.

all cases in federal court.[24] Like N.D. Cal., this is in significant part due to geography. The S.D.N.Y.'s jurisdiction includes Manhattan and is home to the world's largest financial institutions and many major corporations.[25] As a result, some of the largest technology companies have a significant presence in New York City.[26] For example, in *In re Digital Advertising Antitrust Litigation*, the cases were consolidated in the district, in part, because of the strong digital advertising and publishing presence in New York.[27]

Private plaintiffs likely find the quick times to verdict in the S.D.N.Y. appealing if they have a choice of venue. Discovery in the S.D.N.Y. moves quickly and many of its judges regularly adopt case management plans with short deadlines.[28] For example, many judges require parties to complete fact discovery within 120 days of their initial pretrial conference and some shorten that period further.[29] Based on 2024–2025 data, parties litigating civil cases in S.D.N.Y. also tend to reach disposition before trial faster than other district courts.[30] Plaintiffs in the S.D.N.Y. also benefit from the district's experience with antitrust litigation generally. Over the past two decades, the

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[24] *See supra* note 8.

[25] *See supra* note 12.

[26] Built In NYC, *Square Footage to Spare: These Are NYC's Biggest Tech Tenants, Built in NYC* (Feb. 27, 2019), https://perma.cc/H3UN-P5PX. *See, e.g., Davitashvilli v. Grubhub Inc.*, No. 20-CV-3000 (LAK), Dkt. No. 1 (S.D.N.Y. filed Mar. 15, 2020).

[27] 555 F. Supp. 3d 1372, 1379–80 (J.P.M.L. 2021).

[28] *Ibid.*

[29] *Ibid.*

[30] In particular, parties reach disposition before pre-trial in the district at a median time interval of 5.1 months and 13.9 months for dispositions during or after pretrial, which rank in the top 10 and top 20 fastest of all district courts, respectively. Admin. Office of the U.S. Courts, *U.S. District Courts—Median Time from Filing to Disposition of Civil Cases, by Action Taken (Table C-5)*, Statistical Tables for the Federal Judiciary (June 30, 2025), https://perma.cc/823M-EN2P (last visited Feb. 24, 2026).

S.D.N.Y. has been the second most common forum for antitrust litigation.[31]

In recent years, W.D. Wash. has become an increasingly popular venue for private antitrust litigation.[32] The district's jurisdiction covers the Seattle area, which is home to many large technology companies.[33] The pace of filing here appears to be increasing, too, as 84% of the antitrust suits against technology companies filed in W.D. Wash. in the last decade were filed in the last five years.[34] Also, in the Ninth Circuit, plaintiffs benefit from the relatively plaintiff-friendly rules on class certification.[35]

W.D. Wash. is also appealing to plaintiffs because litigants tend to reach briefing on motions to dismiss and summary judgment faster than the national average.[36] As judges in W.D. Wash. continue to gain more experience overseeing complex litigation involving elaborate technologies, it may become increasingly popular.

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[31] 2024 Antitrust Annual Report, https://llz8rh0l.cdn.imgeng.in/wp-content/uploads/2024-Antitrust-Annual-Report.pdf (last visited Feb. 24, 2026); Saul P. Morgenstern, Jennifer B. Patterson & Terri A. Mazur, *Antitrust Jurisprudence in the Second Circuit*, 85 Fordham L. Rev. 111, 112 (2016), https://perma.cc/3ENT-FWQK ("there is no question that the Second Circuit and the district courts within it often have led the way in developing the nation's antitrust jurisprudence").

[32] *See supra* note 7.

[33] Julie Weed, *As Big Tech Grows in the Pandemic, Seattle Grows with It,* N.Y. Times (Oct. 12, 2021), https://perma.cc/G92X-5WX5.

[34] *See supra* note 7.

[35] Howard M. Erichson, *CAFA's Impact on Class Action Lawyers*, 156 U. Pa. L. Rev. 1593, 1614 (2008).

[36] The median number of days until a motion to dismiss was 187 days and 482 days for summary judgment, noticeably less than the national average medians of 221 and 600 days, respectively. *See* Lex Machina, *Cases Analytics—Timing Tab* (filter: pending from Jan. 1, 2020; court: W.D. Wash.), https://perma.cc/6BVP-LSAX (last visited Oct. 21, 2025); Lex Machina, *Cases Analytics—Timing Tab* (filter: pending from Jan. 1, 2020; all district courts), https://perma.cc/6BVP-LSAX (last visited Oct. 21, 2025).

And, finally, N.D. Ill. remains a steady venue for national technology antitrust disputes.[37] In the last five years, the district has overseen approximately 5% of the private tech antitrust cases that were filed—the same percentage share it oversaw from 2010–2020.[38] The district covers Chicago, a commercial hub where many major corporations are headquartered[39] and, even when they are not, many technology companies have corporate offices or conduct substantial business in Chicago.[40] Like the Ninth Circuit, the Seventh Circuit has class action jurisprudence that is considered favorable to plaintiffs, discussed further below in Section II.

In sum, these four districts attract filings because of jurisdictional factors, judges who know how to manage complex cases, jurisprudence and efficiency considerations that tend to be favorable to plaintiffs. Defendants also may benefit from predictable procedures and case law and experienced judges.

II. COURTS DIG IN AT THE MOTION-TO-DISMISS STAGE

Moving through the litigation lifecycle, let's consider motions to dismiss. Across all types of antitrust litigation, the motion-to-dismiss phase is key: "It is one thing to be cautious before dismissing an antitrust complaint in advance of discovery, but quite another to forget that proceeding to antitrust discovery can be expensive."[41] Given the limited "success of judicial supervision in checking discovery abuse" and "the threat [that] discovery expense will push cost-conscious defendants to settle even anaemic

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[37] *See supra* note 7.

[38] *See supra* note 7.

[39] *See, e.g.,* Illinois Department of Commerce & Economic Opportunity, *Business Minded—Why Illinois*, https://perma.cc/2MWU-ZG7G (last visited Feb. 24, 2026). For instance, Motorola Solutions and Grubhub are headquartered in Chicago.

[40] Newmark, *Chicago's Unique Tech Market: What Sets It Apart from Its Competitors*, https://tinyurl.com/bdh3c874 (last visited Oct. 21, 2025); *Giuliano v. Scientific Games Corp.*, No. 1:20-cv-05262, Dkt. No. 74-2, at 13-14 (N.D. Ill. filed Aug. 10, 2021).

[41] *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

cases before reaching those proceedings," courts rigorously consider the relevant pleading standards.[42]

It is no different when courts address technology issues. Courts are often especially rigorous on motions to dismiss with private-litigant claims. In particular, courts rigorously consider the unique features of technology markets, such as rapid innovation or network effects. The Sherman Act and related antitrust statutes are designed to protect the competitive process, not to shield individual firms from aggressive competition.[43] So courts are especially vigilant in distinguishing between harm to competition (which is actionable under antitrust law) and harm to individual competitors (which is not, by itself, sufficient) when evaluating claims involving technology. This distinction is critical at the pleading stage, where plaintiffs must allege facts showing that the challenged conduct negatively affects the competitive process.[44] Because new technology can disrupt more traditional markets and quickly gain market relevance, courts are careful to ensure that claims of exclusion or disadvantage are not simply complaints about losing out to a more efficient or innovative rival.[45]

For instance, in *Malden Transportation v. Uber*, the court considered a traditional taxi company's claim that a digital platform's low-cost taxi service (in which passengers could hire non-professional drivers for rides in their personal cars) enabled it to scale rapidly, subsidize rides and disrupt the regulated taxi market by pricing below cost in an effort to drive taxi companies out of business and ultimately monopolize the ride-hailing market. However, the court dismissed the plaintiff's antitrust claims, finding that the complaint failed to allege the necessary elements to

[42] *Id.* at 559.

[43] *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977).

[44] *Id.* at 488.

[45] *See Malden Transp., Inc. v. Uber Techs., Inc.*, 286 F. Supp. 3d 264, 280 (D. Mass. 2017).

support a predatory pricing theory, specifically that Uber's prices were below its own costs and that there was a dangerous probability Uber could recoup its losses after eliminating competition.[46] The court scrutinized whether the use of technology resulted in actual harm to the competitive process—such as reduced output, higher prices or diminished consumer choice—rather than simply enabling Uber to compete more effectively.[47] Ultimately, the court's decision reflects a careful application of antitrust standards to a novel technology-driven business model, requiring plaintiffs to meet the same rigorous pleading requirements regardless of the disruptive nature of the technology platform.

Conversely, courts considering motions to dismiss have grappled with the ways in which new technology can be leveraged to potentially restrain trade in new and different ways. In *In re Tether and Bitfinex Crypto Asset Litigation*, the court confronted a putative class action alleging that the operators of the Bitfinex crypto-exchange and the issuers of the Tether "stablecoin" conspired to exclude competing exchanges and manipulate the crypto-exchange market to simulate organic demand, establish artificial price floors and inflate prices during a massive market bubble.[48] Central to the court's analysis was a granular understanding of how the exchanges' trading infrastructure facilitated the alleged scheme: because the defendants were the sole issuer of Tether and Bitfinex was the only exchange to which the defendants directly transferred the stablecoin, Bitfinex served as the exclusive gateway through which Tether entered the broader crypto-economy; the defendants, in turn, permitted Bitfinex to reuse the same deposit addresses—contrary to ordinary customer practice—and had full visibility into the volume, timing and counterparties of every

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[46] *Id.* at 279–80.

[47] *Ibid.*

[48] *In re Tether & Bitfinex Crypto Asset Litig.*, 576 F. Supp. 3d 55, 70–84 (S.D.N.Y. 2021).

trade on their platforms, which the court found plausibly established their knowledge of the manipulation.[49]

Applying the *Twombly/Iqbal* plausibility standard, the court granted in part and denied in part the motions to dismiss, sustaining claims for monopolization and attempted monopolization under Sherman Act section 2, unlawful restraint of trade under section 1, market manipulation under the Commodity Exchange Act (under both price manipulation and manipulative device theories) and common-law fraud.[50] The decision illustrates how a court can rigorously apply established antitrust, commodities-fraud and racketeering standards to a technologically novel market by first developing a detailed factual picture of the underlying digital infrastructure—blockchain transparency, exchange deposit-address protocols, stablecoin issuance mechanics and intra-exchange order visibility—and then mapping traditional legal elements onto that architecture without either lowering pleading thresholds or dismissing well-pleaded claims simply because the competitive dynamics at issue are unprecedented.

Technology-platform cases also raise distinctive standing questions at the motion to dismiss stage. In *Frame-Wilson v. Amazon.com, Inc.*, consumers alleged that Amazon's pricing policies—a former price-parity provision and a successor "fair pricing" policy—constituted price-fixing and monopolization by preventing third-party sellers from offering lower prices on competing platforms.[51] Amazon argued that plaintiffs were indirect purchasers barred by *Illinois Brick Co. v. Illinois*,[52] because

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[49] *Id.* at 75–84.

[50] *Id.* at 91–132. The case is ongoing. The court recently certified a class pursuant to Federal Rule of Civil Procedure 23 but limited the proposed class to individuals who purchased cryptocurrency commodities with fiat currency or stablecoins. *In re Tether & Bitfinex Crypto Asset Litig.*, 2026 WL 629826, at *31 (S.D.N.Y. Mar. 6, 2026).

[51] See *Frame-Wilson v. Amazon.com, Inc.*, 591 F. Supp. 3d 975, 982 (W.D. Wash. Mar. 11, 2022).

[52] 431 U.S. 720 (1977).

they bought from sellers on non-Amazon platforms.[53] The court disagreed, holding that plaintiffs qualified as direct purchasers from Amazon's alleged co-conspirators—its two million third-party sellers—under Ninth Circuit precedent that "[w]hen co-conspirators have jointly committed the antitrust violation, a plaintiff who is the immediate purchaser from any of the conspirators is directly injured."[54] The decision shows how courts must, early in a case, map traditional standing doctrines onto platform-mediated markets where plaintiffs purchase from entities other than the named defendant.

Ultimately, the courts' analyses in these cases show how district courts dig into tough and highly technical issues, framed by the plaintiffs' allegations, on motions to dismiss—sometimes to the benefit of private plaintiffs and sometimes to the benefit of defendants.

III. THE RULE OF REASON OFTEN PREVAILS

Considered at the motion to dismiss stage, but also downfield at summary judgment and trial, is the standard that applies to evaluation of the complained-of conduct. Courts' recognition of the unique dynamics associated with technology plays a role in the standard of review applied. Courts often favor a rule-of-reason analysis—which does not receive a presumption of anticompetitive conduct—over the *per se* rule for several reasons.[55]

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[53] *Id.* at 983.

[54] *Id.* at 984 (quoting *In re Nat'l Football League's Sunday Ticket Antitrust Litig.*, 933 F.3d 1136, 1157 (9th Cir. 2019)).

[55] *See*, *e.g.*, *Epic Games Inc v. Apple Inc.*, 67 F.4th 946 (9th Cir. 2023) (evaluating App Store distribution and in-app payment rules under the rule of reason); *FTC v. Qualcomm Inc.*, 969 F.3d 974 (9th Cir. 2020) (assessing SEP licensing and "no license, no chips" policies under the rule of reason); *Wolfire Games, LLC v. Valve Corp.*, No. 2:21-cv-00563 (W.D. Wash. 2023) (analysing alleged platform MFN/price-parity and distribution restraints as subject to the rule of reason); *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Practices and Antitrust Litig.,* 545 F. Supp. 3d 922, 1012-13 (D. Kan. 2021) (evaluating rebate agreements with pharmacy benefit managers under the rule of reason).

First, the complexity and rapid-innovation characteristics of technology markets make it difficult to apply blanket rules.[56] Products and services in the technology industry are often interconnected, evolve quickly and rely on network effects, making the competitive impact of any given conduct highly context-dependent.[57] For example, in *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Practices and Antitrust Litig.*, the court granted summary judgment for the defendants on the theory that a pharmaceutical company's rebate agreements with pharmacy benefit managers constituted unlawful exclusive dealing that foreclosed competition from rival pharmaceutical product manufacturers.[58] In so ruling, the court recognized that product innovation—such as the introduction of new safety features, improved usability, and enhanced reliability—was a key driver of competition in the relevant product market.[59] This complexity made it inappropriate to apply the *per se* rule and deem the rebate agreements categorically unlawful; instead, the court required a nuanced, evidence-driven inquiry into the actual effects of the challenged conduct on competition, consumer choice and innovation.[60]

Second, courts are generally reluctant to chill innovation by condemning conduct that may be aggressive but ultimately benefits consumers or drives technological progress.[61] The risk of deterring legitimate business strategies is

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[56] *See, e.g.*, *Ohio v. American Express Co.*, 585 U.S. 529, 539 (2018) (noting that two-sided platforms require analysis that accounts for interconnected demand); *United States v. Microsoft Corp.*, 253 F.3d 34, 49 (D.C. Cir. 2001) (acknowledging the rapid pace of innovation).

[57] *Microsoft Corp.*, 253 F.3d at 49.

[58] 545 F. Supp. 3d 922, 1012-13 (D. Kan. 2021).

[59] *Id.* at 949, 989-92, 1013.

[60] *Id.* at 1000-01.

[61] *See generally* Mark S. Popofsky, *Defining Exclusionary Conduct: Section 2, the Rule of Reason, and the Unifying Principle Underlying Antitrust Rules*, 73 Antitrust L.J. 435, 431-32 (2006) ("Even if economists could perfectly sort out the relatively short-run economic consequences of all marketplace conduct, they still could not accurately account for the important long-term effects of

particularly acute in fast-moving tech markets, where companies must constantly adapt and experiment. By applying the rule of reason, courts ensure that only conduct with demonstrable anticompetitive effects is penalized, preserving incentives for innovation.[62]

This weighs in favor of a rule-of-reason approach, so that courts can consider procompetitive justifications for conduct. In fact, procompetitive justifications are frequently credited in technology cases.[63] Conduct that may appear exclusionary—such as bundling, interoperability restrictions or channel limitations—may be justified by legitimate business needs like product quality, security or reliability.[64] For example, in *Simon & Simon, PC, et al. v. Align Technology, Inc.*, owners of dental practices alleged that a technology provider violated Section 2 of the Sherman Act by unlawfully terminating an interoperability agreement with its competitor. Though the court denied the defendant's motion to dismiss, the court granted its motion for summary judgment.[65] The court accepted the defendant's claimed procompetitive justification that it terminated the interoperability agreement to undermine its competitors' defenses in separate patent infringement litigation.[66] In so ruling, the court recognized the need for technology companies to protect against intellectual property threats,

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any remedial action on incentives for innovation and risk-taking—the twin engines of our prosperity.").

[62] See *Verizon Communs., Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 407 (2004).

[63] See *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001) (considered and partly credited IP/technical integration justifications); *see also Viamedia, Inc. v. Comcast Corp.,* 951 F.3d 429 (7th Cir. 2020) (noting that cognisable procompetitive justifications include higher output, improved quality, market penetration and cost-reducing innovations).

[64] III Phillip E. Areeda & Herbert Hovenkamp, Antitrust Law ¶651b (explaining that certain exclusionary conduct, including "improved product quality," "successful research and development", "cost-reducing innovations, and the like" ought "not to be considered exclusionary for §2 purposes even though they tend to exclude rivals[.].").

[65] 2024 WL 710623, at *2 (N.D. Cal. Feb. 21, 2024).

[66] *Id.* at *3.

which is necessary to encourage innovation.[67]

Frame-Wilson also illustrates this tendency. The court twice dismissed plaintiffs' Section 1 *per se* claims, finding that Amazon's pricing policies reflected a vertical relationship—Amazon was "not competing with third-party sellers, but rather setting requirements as a condition for platform access."[68] Even if the agreements contained a horizontal element, such a "hybrid arrangement" would be analyzed under the rule of reason.[69] On the second motion to dismiss, the court reaffirmed that the complaint did not allege facts "supporting a horizontal agreement, a 'meeting of the minds,' or conspiracy between" third-party sellers.[70] The analysis reflects a broader reluctance to apply *per se* treatment to platform pricing arrangements where the platform's dual role as retailer and marketplace host makes competitive dynamics highly context-dependent.

Finally, because legal and economic understanding of technology markets is still evolving, courts prefer to encourage that development by applying the rule of reason. Courts recognize that antitrust law must adapt to new business models, technical architectures and market structures.[71] Rigid application of the *per se* rule risks misapplying antitrust principles to novel contexts where the competitive

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[67] *Ibid.*

[68] 591 F. Supp. 3d at 987; *Frame-Wilson*, 2023 WL 2632513, at *5 (W.D. Wash. Mar. 23, 2023).

[69] *Id.* (citing *Dimidowich v. Bell & Howell*, 803 F.2d 1473, 1481 (9th Cir. 1986).

[70] 2023 WL 2632513, at *5 (citing *Twombly*, 550 U.S. at 557).

[71] *See, e.g.*, *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 899 (2007) ("From the beginning the Court has treated the Sherman Act as a common-law statute. ... Just as the common law adapts to modern understanding and greater experience, so too does the Sherman Act's prohibition on 'restraint[s] of trade' evolve to meet the dynamics of present economic conditions.") (brackets in original); Elias Deutscher, *Reshaping Digital Competition: The New Platform Regulations and the Future of Modern Antitrust,* 67 Antitrust Bull. 302-340 (2022).

dynamics are not yet fully understood.[72]

IV. KEY CLASS-ACTION ISSUES

Next, we consider what is often the most consequential point in private antitrust litigation in the technology space: class certification. The nature of technology industries presents unique considerations and challenges.

A. Avoiding Class Litigation: Arbitration Clauses and Class-Action Waivers

Many companies, including many technology companies, use arbitration to resolve disputes with customers and therefore include arbitration clauses in their terms of use or licensing terms. Importantly, in 2011, the US Supreme Court held in *AT&T Mobility LLC v. Concepcion* that the Federal Arbitration Act (FAA) protects the enforceability of class action waivers within arbitration agreements.[73] Arbitration agreements have become commonplace in customer agreements,[74] and courts typically enforce them.[75] However, courts have also become attentive to state-law unconscionability arguments due to plaintiffs' lawyers' claims about the purported

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[72] *See also X Corp. v Apple Inc.*, No. 4:25-cv-00914-P (N.D. Tex. filed Aug. 25, 2025) (alleging Apple's exclusive integration of OpenAI's ChatGPT into iOS operating systems constitutes unlawful exclusive dealing and monopolization under Sherman Act Sections 1 and 2, foreclosing rival generative AI chatbots from accessing iPhone users).

[73] *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011).

[74] *See* Megan Leonhardt, *Lawmakers Want to Give Americans Back Their Right to Sue Companies*, CNBC (Sept. 10, 2019, 5:32 PM), https://perma.cc/VE68-ZQPX ("A recent academic study found that 81 of the biggest 100 companies in America have put legal clauses in the fine print of their customer agreements that bar consumers from suing them in federal court.").

[75] *See, e.g.*, *In re Juul Labs, Inc., Antitrust Litig.*, 555 F. Supp. 3d 932 (N.D. Cal. 2021) (finding an arbitration agreement and class action waiver enforceable and not unconscionable); *Peter v. DoorDash, Inc.*, 445 F. Supp. 3d 580 (N.D. Cal. 2020) (finding an arbitration clause enforceable where plaintiffs were on inquiry notice of DoorDash's terms and conditions); *La Force v. GoSmith, Inc.*, 2017 WL 9938681, at *4 (N.D. Cal. Dec. 12, 2017) (enforcing arbitration agreement where webpage "used to register contained a check box for indicating agreement to the Terms of Use").

unfairness of mandatory arbitration of antitrust claims.[76]

Overall, many technology companies continue to include arbitration and class waiver provisions in their user agreements and terms of service and seek to enforce them in antitrust litigation. Of course, such provisions, even when valid and enforced, do not eliminate liability exposure under the antitrust laws. First, because there is joint-and-several liability for multi-firm conduct that violates the Sherman Act and most state antitrust laws, a firm that has an iron-clad arbitration provision in its customer agreements can still be sued by the customer of its competitor who claims that the two conspired in violation of the antitrust laws. Second, in B2B markets where potential classes of purchasers include large, sophisticated buyers, many will opt to pursue their claims in arbitration.

Finally, even when claimants are ordinary consumers, "mass" arbitrations are becoming increasingly common, where one law firm purports to represent hundreds or thousands of clients in connection with arbitration demands. Most client intake for mass arbitrations is conducted through online advertising that follows the defendant's attempt to enforce its arbitration rights in court. The goal of mass arbitration is to use the threat of onerous arbitration fees and costs to coerce the company to settle. But most arbitration agreements include provisions to blunt that coercion, and, although there is a division of authority, many courts enforce those provisions.[77]

B. Defeating Class Certification: Class Size and Uninjured Class Members

The ubiquitousness of technology means that the size of proposed classes in private technology cases can be immense. In a recent case against a popular online

[76] *See generally* Mark A. Lemley & Christopher R. Leslie, *Antitrust Arbitration and Merger Approval*, 110 Nw. U. L. Rev. 1 (2015).

[77] *See, e.g.*, *McMahan v. Whaleco, Inc. d/b/a Temu*, 2026 WL 657449, *21 n.25 (E.D.N.Y. Mar. 9, 2026); *Davis v. Experian Info. Sols., Inc.*, 2025 WL 2998157, at *5 (N.D. Cal. Oct. 24, 2025).

shopping forum, the court certified a class of nearly 300 million consumers.[78] And whenever a proposed class is large—even if just in the thousands—the class could include individuals who have not been injured by the alleged conduct. In some courts, this can defeat class certification entirely because those courts require every class member to have Article III standing (i.e., that they have suffered injury which is traceable to the challenged conduct and redressable by the court) at the certification stage, while in others it does not.

In some circuits, namely the Second and Eighth Circuits, courts deny certification if there are *any* uninjured class members.[79] The Seventh and Ninth Circuits, on the other hand, allow for some percentage of the class to include individuals who have suffered no harm at all—although the threshold is undefined.[80] These courts reason that certification of a class of private individuals seeking monetary damages only requires that common questions predominate over individual questions; and thus, the need for an individualized inquiry to determine the standing of some or even many class members need not defeat certification.[81] In still other circuits, the inclusion of uninjured individuals does not by itself defeat certification, but the district court must consider the existence of that individualized

[78] *De Coster v. Amazon.com, Inc.*, 2025 WL 2836824, at *6-11 (W.D. Wash. Aug. 6, 2025).

[79] *See Denney v. Deutsche Bank AG*, 443 F.3d 253, 264 (2d Cir. 2006) ("[N]o class may be certified that contains members lacking Article III standing."); *Avritt v. Reliastar Life Ins. Co.*, 615 F.3d 1023, 1034 (8th Cir. 2010) (refusing to allow a single injured plaintiff to bring a class action on behalf of individuals who may not have been injured because "inconsistent with the doctrine of standing as applied by federal courts").

[80] *See, e.g.*, *Kohen v. Pac. Inv. Mgmt. Co.*, 571 F.3d 672, 677 (7th Cir. 2009) ("[A] class will often include persons who have not been injured by the defendant's conduct... . Such a possibility or indeed inevitability does not preclude class certification."); *Olean Wholesale Grocery Coop.*, 31 F.4th at 669 (rejecting the argument that "Rule 23 does not permit the certification of a class that potentially includes more than a de minimis number of uninjured class members").

[81] *Olean Wholesale Grocery Coop.*, 31 F.4th at 668-69 ("Nor can a district court decline to certify a class that will require determination of some individualized questions at trial, so long as such questions do not predominate over the common questions.").

question in determining whether common issues predominate over individualized ones, as required by Rule 23.[82] Not only does this approach to uninjured class members encourage private class litigation in certain circuits over others, it encourages those who must file in the Second and Eighth Circuits to carefully define a class to exclude potentially uninjured members, lest they risk denial of certification.

The Supreme Court granted review to resolve this circuit split, but it dismissed the grant of certiorari after argument, apparently based on the plaintiffs' argument that the defendant had failed to appeal the operative class-certification order. Dissenting from the majority's refusal to address the merits, Justice Brett Kavanaugh stated: "Rule 23 requires that common questions predominate in damages class actions. And when a damages class includes both injured and uninjured members, common questions do not predominate" and therefore a damages class may not be certified.[83] He emphasized that the contrary rule leads to "overinflated" class sizes and creates undue pressure for defendants to settle.[84] The court in the online shopping forum case described earlier, for instance, certified the class of nearly 300 million consumers despite defendants' expert opining that 12.7% of class members were uninjured.[85] Allowing these cases to proceed as classes has a substantial impact and incentivizes private plaintiffs to choose certain venues over others.

The plaintiff's burden in an antitrust class action to show class-wide injury and damages can force plaintiffs to rely on novel theories of damages and competitive harm that may be susceptible to attack by the defendants at class certification. In *Klein v. Meta Platforms, Inc.*, for example, a class of Facebook users alleging that Meta had

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[82] *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1276–77 (11th Cir. 2019).

[83] *See Laboratory Corp. of America Holdings v. Davis*, 605 U.S. 327, 333 (2025) (Kavanaugh, J., dissenting).

[84] *Ibid.*

[85] *De Coster v. Amazon.com, Inc.*, 2025 WL 2836824 at *14.

monopolized a market for "personal social network services" claimed that in a competitive market, Meta would have paid them to use Facebook, a free service.[86] The district court excluded the plaintiffs' expert who had developed this theory as unreliable. The court reasoned he failed to demonstrate why Meta would compete by offering an unprecedented "negative price" to its users rather than improving service quality when faced with increasing competition.[87] Without admissible expert testimony establishing antitrust injury through common proof, the court held that the user plaintiffs could not satisfy Rule 23's requirements of commonality and predominance—since their overcharge theory of class-wide harm depended entirely on the excluded opinion—and denied certification.[88]

The decision underscores the distinctive challenge plaintiffs face in antitrust class actions against technology platforms that offer zero-price services: because competitive harm in such markets does not manifest as a conventional price overcharge, plaintiffs must develop novel damages theories that are nonetheless grounded in record evidence rather than abstract economic reasoning, and the failure to bridge that evidentiary gap at the class-certification stage can prove fatal to the entire litigation.

V. IMPACT OF EXPERT EVIDENCE IN TECH ANTITRUST

The global expert witness services market is experiencing significant growth, projected to expand from approximately US $670 million in 2024 to US $1.55 billion in 2033.[89] This growth is driven by increasing litigation complexity, the proliferation

[86] *Klein v. Meta Platforms, Inc.*, 766 F. Supp. 3d 956, 958–60 (N.D. Cal. 2025).

[87] *Ibid.*

[88] *Id.* at 967–68. This decision is pending on appeal to the Ninth Circuit at the time of this publication. *See Klein et al. v. Meta Platforms, Inc.*, No. 25-6858 (9th Cir.).

[89] *See Business Research Insights, Expert Witness Services Market Overview* (Feb. 2, 2026), https://tinyurl.com/yunscjj6.

of technology-related disputes and digital transformation within the legal industry.[90] And while credentials and qualifications used to be the most critical evaluation criteria for experts, there has been a shift towards preferences in an expert's practical experience and track record in recent years.[91]

As expert witnesses have played a greater role in civil litigation, courts have needed to increase their scrutiny of expert admissibility. The 2023 amendments to the Federal Rule of Evidence 702, which clarify the admissibility standards for expert testimony, has played a significant role in courts' increased scrutiny.[92] First, the amendments added "more likely than not" language to formally adopt the preponderance of the evidence standard for expert evidentiary determinations, which makes clear that a court must find expert testimony reliable by a preponderance of the evidence for the testimony to be admissible.[93] Second, the amendments changed the language of subsection (d) to require that "the expert's opinion reflects a reliable application of the principles and methods to the facts of the case."[94] This amendment "empowers the court to pass judgment on the conclusion that the expert has drawn from the methodology" and brings harmony between the rules and the Supreme Court's decision in *General Electric Co. v. Joiner*,[95] which held that trial judges must consider the expert's conclusion.[96] The amendments emphasise that "[j]udicial

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[90] AP Expert Group, *Expert Witness Testimony Trends in 2025: What's Changing and What's Coming Next* (May 20, 2025), https://tinyurl.com/4654rbfe.

[91] Courtroom Insights, *2023 Expert Witness Research and Selection Trends*, https://www.courtroominsight.com/resources/expert-witness-research-survey-2023.

[92] Fed. R. Evid. 702.

[93] *Ibid.*

[94] Fed. R. Evid. 702(d) (effective Dec. 1, 2023).

[95] 522 U.S. 136 (1997).

[96] *Report of the Advisory Committee on Evidence Rules, before the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States*, United States Courts (May 15, 2022), https://perma.cc/YUN3-RKLJ.

gatekeeping is essential" to ensure an expert's conclusions do not "go beyond what the expert's basis and methodology may reliably support."[97]

In tech antitrust cases in particular, courts have taken this "judicial gatekeeping" seriously. For instance, in 2022, US District Judge Yvonne Gonzalez Rogers (N.D. Cal.), who oversaw a high-profile tech antitrust trial in May 2022, noted that federal judges are more skeptical of experts being "hired guns" versus being truly independent and, as a result, attorneys should keep that in mind for bench trials, as compared to jury trials, where the key factor is the expert's ability to persuade.[98] This is especially important when the ability to exclude an expert through *Daubert* is increasingly more difficult.[99]

Other federal judges overseeing complex antitrust tech cases are taking this gatekeeping responsibility a step further, invoking Federal Rule of Evidence 706, which empowers judges to appoint independent expert witnesses to assist the court in understanding complex technical or specialized matters. These experts ensure a neutral perspective that can bridge conflicting expert testimonies and enhance the court's ability to reach informed decisions in the face of heavier workloads and thorny fact-finding challenges.[100] Because it is not easy to get a fair assessment of alleged monopolization in the tech sector, and the importance of expert credibility has featured prominently in high-profile monopolization litigation involving big tech defendants, judges are increasingly looking for creative solutions, such as Rule 706, to

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[97] Fed. R. Evid. 702 (advisory committee note).

[98] Michael Acton, *US Federal Judges Skeptical of 'Hired Gun' Experts in Antitrust Cases, Judge in Epic-Apple Case Says* (Apr. 6, 2022), https://tinyurl.com/mv3ajuxf.

[99] *Ibid.*

[100] Federal Rule 706: Court-Appointed Experts for Impartial Insight, https://tinyurl.com/4urbnkt3.

assist with these complexities.[101]

VI. TRENDS IN SETTLEMENT AND REMEDIES

Finally, after class certification, summary judgment and occasionally trial, if plaintiffs are successful or manage to extract a settlement from defendants, there is the question of remedies. Technology industry antitrust settlements and remedies vary significantly, with courts and litigants alike struggling to find appropriate ways to address allegedly anticompetitive behavior.

Over time, class-action antitrust plaintiffs have begun to favor injunctive or behavioral relief, which involves requiring an entity to take, or precluding an entity from taking, a particular action.[102] In *Marchese v. Cablevision Systems Corporation*, for instance, a television cable company was found liable of violating the Sherman Act for tying its cable services to the rental of its proprietary cable boxes, rather than allowing customers to purchase their own cable boxes. In addition to awarding a final monetary settlement amount, attorneys' fees and expenses and class representative compensation, the court provided injunctive relief, requiring the defendant cable company to activate any cable boxes that consumers purchased from third parties and provide cooperation and "reasonable technical assistance" to third parties interested in manufacturing cable boxes compatible with the defendant's cable services.[103]

Though monetary damages would arguably have fully compensated the class members by reimbursing them for the prohibition on use of third-party cable boxes, the court believed that damages alone would have failed to remedy the

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[101] Chris May, *US Judge Encourages Greater Use of Independent Experts in Antitrust Cases* (Feb. 19, 2026), https://tinyurl.com/jxap2u49.

[102] *See Marchese v. Cablevision Systems Corporation*, Case No. 2:10-cv-02190-MCA-MAH, Doc. 202-1 (D.N.J., Dec. 11, 2015).

[103] *Marchese*, Doc. 202-1.

anticompetitive conduct prospectively.[104] Thus, injunctive relief precluded future anticompetitive conduct, protecting impacted class members and non-class members alike.[105]

A more recent case, *Binz v. Amadeus IT Group, S.A.*, illustrates how injunctive relief can be a useful tool for private plaintiffs asserting antitrust claims against tech companies. In *Binz*, the court found that three global distribution systems (GDSs), which served as conduits between airlines and travel agencies by exchanging information about fares and services, violated the Sherman Act by agreeing to impose contractual restrictions on airlines.[106] In particular, the contractual restraints required airlines to "make all of their content available on the Defendant GDSs" and prohibited the airlines "from offering lower fares through less costly distribution channels and surcharging for using a GDS rather than a less costly platform," effectively eliminating competition among GDSs.[107] All the *Binz* defendants ultimately settled for attorneys' fees, costs and injunctive relief, the latter of which required the settling GDSs to conduct annual antitrust compliance training and precluding the GDSs from requiring airlines to agree to the challenged contractual provisions.[108] According to plaintiffs, in addition to benefitting consumers by preventing inflated airline fares, the injunctive relief reinvigorated competition and innovation by enabling third-party platforms to contract with airlines.[109]

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[104] *Ibid.*

[105] *Ibid.*

[106] *Binz v. Amadeus IT Group, S.A.*, Case No. 1:15-cv-05457-KPF, Doc. 285, at 3 (S.D.N.Y., Apr. 5, 2018).

[107] *Ibid.*

[108] *Id.* at 8; *Binz*, Doc. 333, at 5-6, ECF 363.

[109] *Binz*, Doc. 333, at 5-6, ECF 363.

These recent technology antitrust cases demonstrate the use of injunctive relief in remedies. As technology, software and AI become ubiquitous across industries, litigants across sectors may find that injunctive relief is uniquely suited to remedying restrictive conduct and encouraging innovation.

CONCLUSION

Technology antitrust litigation strategy must consider the nuances of venue, motion practice, class certification and settlement trends. If, as is most likely, a case lands in the four predominant venues discussed here, strategy requires keeping pace with the substantive law, procedure and practice at that venue.

At the pleading stage, courts rigorously scrutinize motions to dismiss, distinguishing genuine harm to the competitive process from mere complaints about losing to a more innovative rival, ensuring that antitrust principles are properly applied to novel technology-driven business models.

The rule of reason has increasingly prevailed as courts recognize that the complexity and rapid innovation characteristic of technology markets make it inappropriate to apply blanket *per se* rules, thereby allowing for nuanced, evidence-driven inquiries that preserve incentives for innovation while condemning only conduct with demonstrable anticompetitive effects.

In addition, class certification remains a pivotal battleground, with arbitration clauses and class action waivers playing important roles, though courts have shown increased willingness to scrutinize such provisions for unconscionability. Moreover, circuit splits on the treatment of uninjured class members in massive proposed classes continue to influence venue selection and litigation strategy. Courts are also looking at creative ways to analyze expert witness testimony given their increased prominence in tech cases.

Finally, remedies in technology antitrust cases have evolved beyond traditional monetary damages, with injunctive and behavioral relief emerging as critical tools to address anticompetitive conduct prospectively and foster renewed competition and innovation.

As technology, software and artificial intelligence become ever more embedded across industries, understanding these trends will be essential for all parties strategizing throughout these dynamic cases.

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