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David Didn't Need a Bigger Sword:

What GCs Can Actually Do When Competing Against a Giant

BY MELISSA H. MAXMAN, MANAGING PARTNER, WASHINGTON D.C. OFFICE, COHEN & GRESSER

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For GCs who have not spent a great deal of time in antitrust, there is one premise that they need to be aware of: the law has effective tools for dealing with dominant competitors who abuse their market power, and the current enforcement environment is more receptive to using those tools than it has been in decades.

What does this actually mean with respect to which options are available, how to sequence them, and what makes the difference between a complaint that creates leverage and one that accomplishes nothing except making the filing party feel temporarily better?

I have spent most of my 38-year career litigating antitrust disputes on both sides of the "v", representing companies that have fought allegedly anticompetitive conduct and companies that have been accused of it. What I want to share here is a practical guide based on my years of experience.

Understand What You Are Dealing With

Section 2 of the Sherman Act prohibits the unlawful acquisition or maintenance of monopoly power, but not the acquisition of it through a "superior product, business acumen or historic accident." Instead, the antitrust laws prohibit conduct by a single firm that unreasonably restrains competition. Exclusionary or predatory acts may include such things as exclusive supply or purchase agreements; tying; predatory pricing; or refusals to deal.

The current wave of monopolization cases illustrates the range through which dominant companies engage in exclusionary conduct.

In August 2024 , a federal judge found that Google abused its monopoly power when, among other things, it paid browsers, including Apple, tens of billions of dollars annually to ensure that it remained their preselected default search engine. These payments were designed not to improve Google's product, but to deny rivals access to important distribution channels they need to fairly compete.

In April 2026, a federal jury in New York returned a verdict finding Live Nation and its wholly owned subsidiary, Ticketmaster, liable for leveraging their dominant positions in venues, promotion, and ticketing to disrupt attempts by competitors to break into the ticketing market. Specifically, the jury found that the defendant companies unlawfully monopolized primary concert ticketing services to major concert venues and large amphitheaters, all through exclusionary conduct. It further found that Live Nation controlled Ticketmaster's conduct in all three markets.

Finally, the California Attorney General's Office has sued Amazon for allegedly implementing pricing policies that disincentive vendors from offering discounts on competing platforms. Separately, the Federal Trade Commission ("FTC") has also sued, claiming that Amazon misrepresented how it calculates advertising costs, adding undisclosed surcharges to auction prices. This practice allegedly resulted in overcharging businesses that advertise on its platform. Both of these lawsuits allege that Amazon's anticompetitive actions resulted in consumers paying artificially inflated prices.

Each of these is a different example, in a different industry, producing a different kind of harm. What they share is a market position that gives the dominant company the ability to weaken rivals in ways that a company without that position simply could not.

If your company is on the receiving end of conduct like this, the first question is whether what you are experiencing rises to the level of actionable antitrust conduct, because, as noted, not everything that is unfair or commercially damaging qualifies. That assessment requires someone who knows the legal principles and the relevant industry, and can give you an honest answer rather than simply telling you what you want to hear.

Your Menu of Options, and Why Sequencing Matters

Assuming you have a real antitrust issue, the path forward is not to abruptly file an expensive and risky private lawsuit nor is it to simply file a complaint with the Justice Department ("DOJ") and wait (which is not likely to result in any desired outcome). It is a strategic decision about which avenue to pursue first, how to frame the issue for maximum effect, and how to sequence the available mechanisms to create the most leverage.

Federal agency complaints to the DOJ Antitrust Division or the FTC are one option. State Attorneys General are another, and an increasingly active one; the mass departure of experienced trial lawyers from the DOJ's Antitrust Division in recent years has coincided with a notable increase in state AG enforcement activity. **Private civil litigation is a third.** International regulators, particularly the EU, which has historically moved aggressively in technology markets, represent a fourth avenue that US-focused companies sometimes overlook. Legislative engagement is a fifth that is less openly talked about, but relevant and potentially effective.

These options are not mutually exclusive, but they are also not equal. Federal agency complaints take time, require the government to prioritize your issue among many competing demands, and give you limited control over the outcome. Private litigation is faster and puts you in control of the strategy, but is expensive and requires building a litigation-quality evidentiary record. State AG offices can move with more agility than federal agencies and are increasingly willing to take on major technology and media companies, but their reach can be somewhat limited by their borders.

The sequencing question matters because these tracks interact with each other. A well-framed complaint to a state AG can create momentum that affects how federal agencies assess the same conduct. An international regulatory proceeding can produce evidence and findings that support a private US litigation. A contemporaneous and targeted lobbying effort can tip the scales. The company that thinks through this architecture before making the first move is in a materially better position than the one that makes its initial decision based on which option feels most satisfying.

A Note for Companies on the Other Side of This Question

I recognize that not every GC reading this article is wondering how to challenge a dominant competitor. Some are wondering whether their own company's conduct might cross a line in a particular industry or market that they have not examined carefully enough.

That concern is worth taking seriously. Companies that have achieved significant market positions are operating under a different set of legal obligations than they were when they were small. Practices that are entirely unremarkable for a company with a 15% market share can become the basis for antitrust liability for a company with 70%. The compliance program designed for one does not adequately address the other.

Navigating a market dominated by someone else, and navigating your own market position responsibly, represent under-addressed problems in most corporate legal departments. Corporate legal departments customarily defend against complaints, not prevent or initiate them. Careful consideration of options can turn a legal department from being solely a line item expense to being a revenue generator, which business managers may appreciate.

Why This Matters, and How Cohen & Gresser Can Help

The current antitrust enforcement environment is more active, more willing to take on dominant technology and media companies, and more attentive to the competitive harm experienced by smaller rivals than at any point in recent memory. For GCs whose companies are experiencing anticompetitive conduct by a dominant player, the window to act (typically before cases are resolved and enforcement priorities shift) matters.

Cohen & Gresser represents both the companies harmed by anticompetitive conduct and the companies that need to understand and manage their own market position responsibly. We do not represent the major dominant technology and media companies that are the subject of the current wave of Section 2 litigation, which means we do not have the conflicts that prevent many larger firms from taking the other side of these disputes.

If you are a smaller company experiencing conduct that feels anticompetitive, or a growing company trying to understand how your market position changes your legal obligations, we would welcome the conversation.



Melissa H. Maxman is Managing Partner of Cohen & Gresser's Washington, D.C. office. She has decades of litigation experience at both the trial and appellate levels, primarily in antitrust, RICO, complex commercial disputes, and white collar defense. She is recognized by Chambers USA, The Legal 500, and Lawdragon as one of the leading antitrust litigators in the country.