

Anti-American Antitrust: How Foreign Governments Target U.S. Businesses

Before the Committee of the Judiciary
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

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Chairman Fitzgerald, Ranking Member Nadler, and Members of the Subcommittee, thank you for inviting me to testify today. I look forward to discussing with you the Anti-American Antitrust. I am a conservative populist antitrust scholar who teaches at Notre Dame Law School and was a former Principal Deputy Assistant Attorney General for the Department of Justice's Antitrust Division in the current Administration and Deputy Assistant Attorney General for International Affairs in the first Trump Administration. I am deeply concerned about Anti-American Antitrust enforcement, particularly enforcement that does not align with the populist America First antitrust agenda as reflected in the leadership of Assistant Attorney General Gail Slater.

I welcome the discussion of concerns regarding the politicalization of European antitrust enforcement. But I want to begin my remarks with the more pressing and urgent concern of the politicalization of United States antitrust enforcement.

The Politicalization of US Antitrust Enforcement

The DOJ Justice Manual is unequivocal: "The rule of law depends upon the evenhanded administration of justice. The legal judgments of the Department of Justice must be impartial and insulated from political influence. It is imperative that the Department's investigatory and prosecutorial powers be exercised free from partisan consideration. It is a fundamental duty of every employee of the Department to ensure that these principles are upheld in all of the Department's legal endeavors."¹ It further states that "The success of the Department of Justice depends upon the trust of the American people. That trust must be earned every day. And we can do so only through our adherence to the longstanding Departmental norms of independence from inappropriate influences, the principled exercise of discretion, and the treatment of like cases alike."²

On June 16, 2024, former prosecutor and current lobbyist Trey Gowdy stated that "Our justice system is the last thing that is holding us together.... No one is above the law, ... but no one is

¹ DOJ Justice Manual, Section 1-8.100, available at <https://www.justice.gov/jm/jm-1-8000-congressional-relations>.

² Id. at Section DOJ Justice Manual, Section 1-8.600, available at <https://www.justice.gov/jm/jm-1-8000-congressional-relations>.

beneath the law either. You should not be targeted because of your status, and you should not be rewarded because of your status. The woman wears a blindfold for a reason.... Lady Justice wears a blindfold. I wonder why that is? So she doesn't know who is in front of her. Whether it is a friend or a foe. Until we get back to that, we are going to struggle with this perception/reality of a politicized justice system.”³

Today, Trey Gowdy is playing a leading role in promoting a politicized justice system. On July 9, 2025, the Department of Justice's Antitrust Division charged Tim Leiweke with bid rigging “to benefit his own company and deprive a public university and taxpayers of the benefits of competitive bidding.”⁴ According to published reports, Gowdy lobbied senior leadership within the Department of Justice to get the case dropped, but to no avail. So Gowdy went above the heads of every senior official in the Department of Justice and appealed directly to President Trump.⁵ During a golf outing with President Trump on November 16, Gowdy convinced the President that Leiweke had been treated unfairly by Trump's own Department of Justice.⁶ Precisely what was unfair? The companies and other executives had secured immunity deals if they would cooperate and testify against the principal offender, Tim Leiweke.⁷ Two weeks later, Tim Leiweke received a preemptive pardon.⁸

While President Biden flagrantly abused the pardon power, Republicans should not pretend that what happened with Tim Leiweke was normal. There is no evidence that the pardon was given consistent with the pardon procedure of the Department of Justice,⁹ or indeed that antitrust leadership or other senior DOJ leadership briefed President Trump on the merits of the case. To my knowledge, it is the first preemptive pardon in the history of criminal antitrust enforcement. The only other possible example is President Trump's posthumous pardon of Zay Jeffries in October 2019, also a client of Trey Gowdy.¹⁰ Not surprisingly, Gowdy is now overwhelmed with calls from other indicted white collar criminals seeking special favors. Gowdy has not clarified how his lobbying efforts are consistent with his professed belief that justice is blind, and that no one should be rewarded because of their status.

The Tim Leiweke pardon is not the first or the last example of politicized antitrust enforcement in the past year. In Aspen this past August I spoke about the HPE/Juniper merger scandal and what I believed to be a perversion of justice by Associate Attorney General Stanley Woodward and Chief of Staff Chad Mizelle settling that case on the cheap as a result of influence peddling by lobbyists Arthur Schwartz and Mike Davis.¹¹ I am heartened that over a dozen state attorneys general have successfully intervened in that case and that a federal court is holding hearings,

³ Extra: Trey Gowdy on Hunter Biden, President, and the “Weaponization” of the DOJ, *Radio Fox News* (June 14, 2024) (Minute 14:) available at <https://radio.foxnews.com/2024/06/16/extra-trey-gowdy-on-hunter-biden-president-trump-and-the-weaponization-of-the-doj/>.

⁴ Press Release, *Live Entertainment CEO Indicted of Orchestrating Conspiracy to Rig Bidding Process for Public University Arena*, (July 9, 2025), <https://www.justice.gov/opa/pr/live-entertainment-ceo-indicted-orchestrating-conspiracy-rig-bidding-process-public>.

⁵ Dave Michaels, *A Round of Golf Changed Trump's Tone on the Concert Industry*, *Wall Street Journal* (Dec. 6, 2025).

⁶ Id.; Dave Michaels & Katherine Sayre, *Trump Pardons Stadium Developer Charged in Texas Arena Bid-Rigging Case*, *Wall Street Journal* (Dec. 3, 2025).

⁷ Dave Michaels, *A Round of Golf Changed Trump's Tone on the Concert Industry*, *Wall Street Journal* (Dec. 6, 2025).

⁸ Executive Grant of Clemency, (Dec. 2, 2025), <https://www.justice.gov/pardon/media/1419981/dl?inline>.

⁹ Office of Pardon Attorney, Department of Justice, available at <https://www.justice.gov/pardon/about-office>.

¹⁰ Statement from the Press Secretary Regarding the Pardon of Zay Jeffries, (Oct. 10, 2019), available at <https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-regarding-pardon-zay-jeffries/>.

¹¹ Roger P. Alford, *The Rule of Law Versus the Rule of Lobbyists*, (August 18, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5396537.

including one today, on the status of the state AG's efforts to hold the merging parties accountable for their corrupt process and their unlawful merger.¹²

Of course, the concerns go far beyond Trey Gowdy. The MAGA lobbyists are shameless in their self-promotion, aware that their window of opportunity is short and closing fast. Press reports reveal the pervasive practice of lobbyists attempting to corruptly influence antitrust law enforcement. The Global Competition Review reported that in the first half of 2025, lobbyists such as Ballard Partners and Miller Strategies are earning exponentially more revenue lobbying on competition matters than they received in previous years.¹³ The Wall Street Journal reported that in the midst of ongoing antitrust investigations, UnitedHealth has “spent more money on lobbying than it ever has in a comparable time frame.”¹⁴ Bloomberg reports that law firm partners describe it as “malpractice” to not enlist lobbyists because relationships with the White and DOJ front office can impact the outcome of a case.¹⁵ “It’s now on the menu in a way that it never has been,” said one partner.¹⁶ The Free Press confirms that lobbying is now a common strategy in a variety of ongoing antitrust investigations.¹⁷ The populist Steve Bannon said that “[w]e’re in a fight right now. The concentration of power comes from the lobbyists, the top law firms... and they are all over the White House, this administration, and the president.”¹⁸ As one expert put it, lobbying on antitrust matters is “the dirty secret that no one wants to talk about.”¹⁹

MAGA lobbyists reportedly are liberally pitching their services to clients, starting at a mere \$225,000 a month—more than the annual salary of senior DOJ officials. When asked what services they provide beyond what the law firms offer, these lobbyists will openly say that they will go above and around the Antitrust Division to lobby their case, and even seek to have Gail Slater removed from her Senate-confirmed position.²⁰ The risks of obstruction of justice are obvious, just as they were obvious when lobbyists sought to influence the decision to have Slater’s deputies removed in July. But the lobbyists remain undeterred and even appear emboldened. One is reminded of the maxim: “Their destiny is destruction, their god is their stomach, and their glory is in their shame.”²¹

These lobbyists proudly proclaim that they fight every day for President Trump and his America First agenda. But at the exact same time, they accept extraordinary lobbying fees to represent corporations that oppose and even despise the Trump Administration. They trumpet their MAGA credentials while lining their pockets with bags of anti-MAGA booty. In truth, these lobbyists are

¹² Order Granting Motion for Intervention, *United States v. Hewlett Packard Enterprise Co.*, Case No. 25-cv-00951-PCP (Dec. 1, 2025).

¹³ Anna Langlois, “*Very Connected People*”: *The Trump Aligned Lobbyists Winning on Antitrust*, Global Competition Review, (Aug. 28, 2025), <https://globalcompetitionreview.com/gcr-usa/article/very-connected-people-the-trump-aligned-lobbyists-winning-antitrust>.

¹⁴ Josh Dawsey, Christopher Weaver and Anna Wilde Mathews, *UnitedHealth is Spending Big on Trump Allies to Fix its Washington Problems*, Wall Street Journal (Sept. 14, 2025), https://www.wsj.com/business/unitedhealth-is-spending-big-on-trump-allies-to-fix-its-washington-problems-8ca64351?st=GeapoW&reflink=desktopwebshare_permalink.

¹⁵ Katie Arcieri, *Law Firms Ponder Lobbying DOJ, White to Get Deals Through*, Bloomberg Law (Nov. 24, 2025), available at <https://news.bloomberglaw.com/antitrust/law-firms-ponder-lobbying-doj-white-house-to-get-deals-through>.

¹⁶ *Id.*

¹⁷ Gabe Kaminsky, *Feuding, Factions, and MAGA Operatives Drive Trump’s Antitrust Policy*, The Free Press (Sept. 29, 2025), <https://www.thefp.com/p/feuding-factions-and-lobbyists-drive-trump-antitrust-policy>.

¹⁸ *Id.*

¹⁹ Anna Langlois, “*Very Connected People*”: *The Trump Aligned Lobbyists Winning on Antitrust*, Global Competition Review, (Aug. 28, 2025), <https://globalcompetitionreview.com/gcr-usa/article/very-connected-people-the-trump-aligned-lobbyists-winning-antitrust>.

²⁰ Joshua Steinman, (Nov. 8, 2025) available at <https://x.com/joshuasteinman/status/1987345016310931486?s=46> (“Want to know how much it PAYS in Washington to try and stop something like this? \$225k a month. That’s how much certain folks are offering around town to try and take out Gail Slater.”)

²¹ Philippians 3:19 (NIV)

cowards, threatening their adversaries that “justice is coming” so “you better lawyer up,” but then running from a fair fight into the arms of their powerful friends in government whenever justice is coming for their own clients. The hypocrisy is apparent to almost everyone, but few are willing to state the obvious that the emperor lobbyists wear no clothes.

The future of the Republican Party is at stake in this battle. MAGA lobbyists are betraying President Trump’s populist antitrust agenda, pretending that we are the Republican Party of John D. Rockefeller rather than the party of Theodore Roosevelt and Roger Sherman. As I testified before the Senate Judiciary Committee at this time last year, President Trump’s Republican Party Platform ran on a policy of making housing more affordable, reducing the cost of higher education, promoting choice and competition in healthcare, and adopting economic policies that drive down the cost of living and prices for everyday goods and services.²² If the Antitrust Division does not have a free hand to address the affordability crisis that is plaguing the American people, what hope does the Republican Party have to be the party of the working class and the rural poor?

It is all so disheartening, given the hopes and dreams many of us had at the start of the Trump Administration for a populist antitrust agenda. When I reread my Senate Judiciary Testimony from one year ago today about the emerging America First antitrust agenda and the Republican realignment, one cannot help but wonder what might have been.²³ Meanwhile, AAG Gail Slater and her amazing team press on, reminding themselves daily of Sir Thomas More’s admonition: “You must not abandon the ship in a storm because you cannot control the winds.... What you cannot turn to good, you must at least make as little bad as you can.”²⁴

How to Address the Politicalization of Antitrust Enforcement?

What is to be done about the politicalization of antitrust enforcement? Among the best responses to address lobbyists’ efforts to antitrust enforcement at the federal level is greater involvement of state attorneys general. When federal enforcers stand alone, there is a risk of a single point of political failure. The diffusion of power makes successful lobbying more difficult. For the sake of the federal enforcers seeking to resolve cases on the merits without political interference, state AGs should expand their role in partnering with federal enforcers.²⁵ It is encouraging that Tennessee Republican Attorney General Jonathan Skrmetti confirmed that state AGs will continue the lawsuit against Live Nation and Ticketmaster if the DOJ settles.²⁶

A second response is reform within the antitrust bar. Many blue chip law firms are complicit with their clients in hiring corrupt lobbyists to circumvent traditional antitrust enforcement. Just as the

²² Roger P. Alford, *Continuing a Bipartisan Path Forward for Antitrust Enforcement and Reform*, Senate Judiciary Committee, Subcommittee on Competition Policy, Antitrust, and Consumer Rights (Dec. 17, 2024), available at https://www.judiciary.senate.gov/imo/media/doc/2024-12-17_pm_-_testimony_-_alford.pdf, quoting 2024 Republican Party Platform, (July 8, 2024), available at <https://www.presidency.ucsb.edu/documents/2024-republican-party-platform>.

²³ Roger P. Alford, *Continuing a Bipartisan Path Forward for Antitrust Enforcement and Reform*, Senate Judiciary Committee, Subcommittee on Competition Policy, Antitrust, and Consumer Rights (Dec. 17, 2024), available at https://www.judiciary.senate.gov/imo/media/doc/2024-12-17_pm_-_testimony_-_alford.pdf, quoting 2024 Republican Party Platform, (July 8, 2024), available at <https://www.presidency.ucsb.edu/documents/2024-republican-party-platform>.

²⁴ Sir Thomas More, *Utopia*,

²⁵ See also Ron Knox, *Empower State Attorneys General to Strengthen Antitrust*, INSTITUTE FOR LOCAL SELF-RELIANCE (Jul. 16, 2025), <https://ilsr.org/article/independent-business/empower-state-attorneys-general-to-strengthen-antitrust/>.

²⁶ Khushita Vasant, *Ticketmaster Monopoly Suit to Proceed Should US Drop Out, Tennessee AG Says*, MLEX, (Dec. 11, 2025).

ABA addressed procedural fairness concerns when global government enforcers fell short,²⁷ they should now address procedural abuses within their own ranks. Lawyers have ethical obligations not to obstruct justice, improperly influence government officials, act with dishonesty or deceit, or engage in conduct that is prejudicial to the administration of justice.²⁸ ABA Antitrust Section Chair Renate Hesse understands the gravity of the current situation. Has she stepped up yet? Will she step up soon? If she doesn't, will Chair-Elect Melanie Aitken do so?

Third, more transparency is critical. Reporters on the antitrust beat across the political spectrum are playing an invaluable role in highlighting the unethical behavior of lobbyists, lawyers, and senior government officials. The lobbying disclosure requirements should be enforced, and lawyers who act as lobbyists should disclose their role. FOIA requests regarding the activities of specific lawyers and lobbyists are obvious sunshine measures that can help expose shadowy conduct.

Fourth, congressional oversight is welcome, including at hearings such as this and similar hearings that focus more specifically on the politicalization of United States antitrust enforcement. One can assume that the MAGA lobbyists, lawyers, and their clients know that there are limits to what the public will tolerate, and our public representatives in Congress can and should hold MAGA lobbyists, lawyers, and their clients accountable for crossing certain ethical and legal boundaries. When the political winds shift, one hopes that Congress will hold them accountable. Congressional subpoenas could shed light on the scope of the problem.

Fifth, judicial oversight is crucial as well, both with respect to merger review and conduct cases. The federal court in the HPE/Juniper merger case appears willing to closely scrutinize the merits of the proposed settlement, and, where appropriate, the process by which the compromised settlement was reached. The scope of Tunney Act review is untested in the Ninth Circuit. If the scope of judicial review proves insufficient, Congress should explore Tunney Act reforms, including expansion to include the Federal Trade Commission.

Finally, reform from within the Department of Justice is essential. The Justice Manual states that trust must be earned every day, and mandates that the “legal judgments of the Department of Justice must be ... insulated from political influence.”²⁹ The government enjoys the presumption of regularity, with courts crediting certain facts to the government as to what happened and why they happened. This presumption narrows judicial scrutiny and widens executive discretion.³⁰ But the presumption of regularity can be rebutted,³¹ and the Department of Justice would suffer immeasurably if it were to lose the presumption that its conduct is normal. But it is not normal to have this degree of political influence on DOJ investigations and prosecutions. It is not normal for Deputy Attorney General Todd Blanche to say that the DOJ is at war with the judiciary, or for former Chief of Staff Chad Mizelle to threaten judges with impeachment.³² If the DOJ wants to

²⁷ ABA SECTION ON ANTITRUST L., ASSESSMENT OF GLOBAL COMPETITION AGENCY IMPLEMENTATION OF ABA BEST PRACTICES FOR ANTITRUST PROCEDURE (Apr. 29, 2019), http://www.americanbar.org/content/dam/aba/administrative/antitrust_law/sal-procedural-transparency2019-04-29.pdf; Christopher S. Yoo, Thomas Fetzer, Shan Jiang, and Yong Huang, *Due Process in Antitrust Enforcement: Normative and Comparative Perspectives*, 94 SOUTHERN CAL. L. REV. 843 (2021); Roger P. Alford, *Due Promoting International Procedural Norms in Competition Law Enforcement*, 68 KANSAS L. REV. 1165 (2020).

²⁸ ABA Model Rules of Professional Conduct, Model Rule 8.4.

²⁹ DOJ Justice Manual, Section 1-8.100, available at <https://www.justice.gov/jm/jm-1-8000-congressional-relations>.

³⁰ *The Presumption of Regularity in Judicial Review of the Executive Branch*, 131 Harvard L. Rev. 2431, 2432 (2018).

³¹ *Id.* at 2440.

³² *Id.* at 2440.

preserve the presumption of regularity, it is essential that the DOJ adhere to longstanding norms, minimize political influence, and restore public trust in their investigations and prosecutions.³³

The Politicalization of EU Antitrust Enforcement?

In my view, we should consider the current hearing as another manifestation of efforts to politicize antitrust enforcement. The charge is that Europe is discriminating against American Big Tech companies and that Europeans are enforcing their antitrust laws in an anti-American manner. Who is pushing that agenda before the White House and Congress? Of course, it is Big Tech companies and their lobbyists and surrogates. In truth, American companies are on both sides of European antitrust enforcement, seeking investigations and the subject of investigations. Big Tech lobbyists are asking the Trump Administration and Congress to preference American Big Tech companies over other American companies, including American Little Tech companies competing in Europe.

Much of the antitrust enforcement in Europe parallels antitrust enforcement in the United States. And of course, there is bipartisan consensus in the United States that Big Tech companies are abusing their monopoly power and the Trump Administration as well as dozens of Republican state AGs all have brought antitrust cases against Big Tech companies for their abuse of power.³⁴ The real concern about Europe is not discriminatory antitrust enforcement but rather that something is fundamentally broken in the European market such that there are almost no European competitors successful enough to be described as Big Tech companies.³⁵

I am not suggesting that there are not real risks of discrimination against American companies with respect to antitrust enforcement abroad. Indeed, I specifically addressed the concern of *de jure* and *de facto* discrimination against American companies in antitrust enforcement at a speech I gave in Germany in May 2018.³⁶ And my principal focus during the first Trump Administration was to promote fundamental due process in antitrust enforcement. I was the lead negotiator with Assistant Attorney General Makan Delrahim on an international agreement promoting procedural fairness signed by over seventy-seven other antitrust enforcers around the world.³⁷ The first principle of that agreement is a national treatment rule, stating that competition enforcers “will ensure that its investigations and enforcement policies and Procedural Rules afford Persons in another jurisdiction treatment no less favorable than persons of its jurisdiction in like circumstances.”³⁸

In the first Trump Administration we witnessed discrimination by Korean enforcers against U.S. companies with respect to the extraterritorial application of global licensing remedies.³⁹ We

³³ Mattathias Schwartz, *The Federalist Society is Torn Between its Legal Philosophy and Trump’s Demands*, New York Times, (Nov. 22, 2025).

³⁴ Roger P. Alford, *The Bipartisan Consensus on Big Tech*, 71 EMORY L. J. at 925-27.

³⁵ See generally The Draghi Report on European Competitiveness, (Sept. 9, 2024), available at https://commission.europa.eu/topics/competitiveness/draghi-report_en.

³⁶ Roger Alford, *Public Interest Standard and the Dangers of Discrimination*, (May 8, 2018), available at <https://www.justice.gov/archives/opa/speech/file/1060791/dl>.

³⁷ Makan Delrahim, “*With a Little Help From My Friends*”: *Using Principles of Comity to Protect International Antitrust Achievements*, (Sept. 12, 2019), available at [https://www.justice.gov/archives/opa/speech/file/1201656/dl?inline=](https://www.justice.gov/archives/opa/speech/file/1201656/dl?inline=;); Press Release, Dep’t of Just., New Multilateral Framework on Procedures Approved by the International Competition Network (Apr. 5, 2019), <https://www.justice.gov/opa/pr/new-multilateral-framework-procedures-approved-international-competition-network>.

³⁸ ICN Framework on Competition Agency Procedures, available at https://internationalcompetitionnetwork.org/wp-content/uploads/2019/04/ICN_CAP.pdf.

³⁹ Roger P. Alford, *Antitrust Enforcement in an Interconnected World*, (Jan. 29, 2018), available at <https://www.justice.gov/archives/opa/speech/file/1034976/dl?inline=>.

engaged in formal consultations with our counterparts there to address such concerns.⁴⁰ In the second Trump Administration we also have witnessed China selectively targeting Big Tech companies in retaliation for the Trump Administration's imposition of tariffs on Chinese products.⁴¹ In such instances it is appropriate to address such discriminatory antitrust enforcement.

So the risks of discrimination are real, and I witnessed it first-hand. But the risks that Big Tech companies that have achieved gatekeeper status are abusing their monopoly power is also real. Other countries are not acting inappropriately if they are enforcing their laws in a fair-minded and nondiscriminatory way to address competition concerns in their markets, just as our federal enforcers are not acting inappropriately when we investigate foreign companies that are abusing their monopoly power, engaging in price fixing, or seeking to merge in a manner that is anticompetitive. If foreign competitors are harming United States markets with anticompetitive conduct, I hope and assume that federal enforcers will not hesitate to act. In assessing whether there is discrimination, each case should be taken on its own merits.

I look forward to taking your questions. Thank you.

⁴⁰ Wooyoung Lee and Choi Hyung-jo, *KFTC Plans to Revise Rules to Reflect Concerns with Competition Proceedings, Procedural Fairness*, MLEX Global Antitrust (Feb. 13, 2020).

⁴¹ Paresh Dave, *China is Investigating Google Over Trump's Tariffs*, Wired, (Feb. 4, 2025).