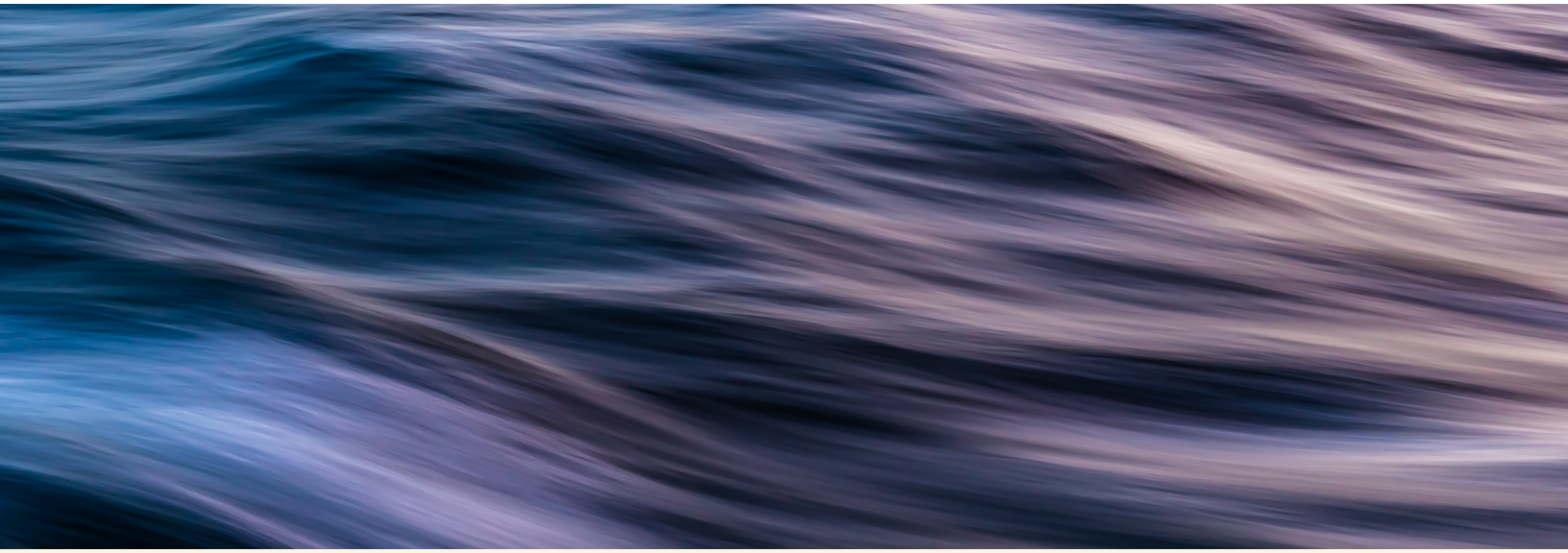
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2026 BATES WHITE ANTITRUST SYMPOSIUM

Summary of panel discussions

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September 2026

Table of contents

I. Panel 1: What's streaming? Antitrust and economic challenges in the media industry 1

I.A. Summary 1

I.B. Market definition 1

I.C. Distribution and bundling 2

I.D. Vertical integration 3

I.E. Sports 3

II. Panel 2: Lessons learned from recent high-profile monopolization litigation 4

II.A. Summary 4

II.B. Market definition 5

II.C. Remedies 6

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On September 24, 2026, Bates White hosted its Antitrust Symposium, bringing together distinguished antitrust practitioners, legal experts, and enforcers to hear two panels covering topics at the frontiers of antitrust enforcement. The first panel explored how streaming services, digital platforms, and emerging content packages are changing the competitive landscape of the media industry. The second panel examined recent matters involving monopolization in the digital platform arena. A summary of the discussions can be found below.[1]

I. Panel 1: What's streaming? Antitrust and economic challenges in the media industry

I.A. Summary

The first panel at the conference discussed how streaming, digital platforms, and novel content bundles are reshaping competition in the media industry. The panelists included Nicholas Hill, Partner at Bates White; Jared A. Hughes, Acting Chief of the Media, Entertainment & Communications Section at the US Department of Justice Antitrust Division; Robert Lepore, Partner in Willkie's Antitrust & Competition Practice; and Andrea Murino, Antitrust and Competition Partner at Kirkland & Ellis. Aparna Sengupta, Partner at Bates White, moderated the discussion.

The conversation highlighted the growing difficulty of defining antitrust markets and assessing competitive effects in media. Analysis is complicated by the fact that consumers subscribe to several services at once, substitute among qualitatively distinct forms of entertainment, and pay not only through subscription fees but also through advertising exposure, data, and attention. The discussion also emphasized the importance of "must-have" content, such as live sports, and the question of whether future market power will reside with content owners, distributors, or the platforms that control the customer relationship.

I.B. Market definition

The panel opened by considering how to define antitrust markets in streaming. Panelists discussed that market definition should begin with demand: What do consumers view as substitutes?

[1] Views expressed by panelists represented their personal perspectives and not the views of any institutions. This summary does not attribute views to any individual panelist or other participants.

Companies' billing records and exit surveys can help identify alternative services to which consumers turn after cancelling a subscription. Internal documents, such as rights-bidding materials and strategic plans, provide complementary evidence on whether observed switching is consistent with companies' understanding of competition.

Analytical challenges remain, however, even with high-quality switching data. Consumers often subscribe to several nominally competing services at the same time, a practice known as "multi-homing." Consumers may also substitute among qualitatively distinct media products, such as streaming television and video games. Neither behavior neatly fits the historical antitrust conception of "switching." Yet some panelists cautioned against treating a catch-all "attention market" as the solution: one panelist observed that an agency should think carefully before bringing a case premised on such a market, while another suggested that competition for attention may speak more to competitive effects than market definition. Boundaries are blurring; consumers now switch between traditional television programming and YouTube on the same screen, despite those products' substantial differences in content and business models.

Conversely, the panel considered the analytical challenges posed by narrow, genre-based markets. There's no conceptual problem with genre-based markets, such as a market for comedy television. But to establish such a market, one panelist noted, a plaintiff would need to present strong documentary and empirical evidence—particularly if the proposed market appears inconsistent with common sense. Sports represent an important special case here, as evidenced by historical case law and agency practice. Their special treatment seems to be consistent with economic evidence: sports attract passionate fans, command higher fees than scripted programming, and support related products such as sports betting.

I.C. Distribution and bundling

The discussion then turned to bundling and distribution. Bundling is the practice of offering multiple products or services in one package. A cable TV subscription, for example, provides access to many channels for a single price.

Panelists discussed how consumers have varied preferences for bundling. On one hand, bundling delivers tangible consumer benefits, such as consolidating monthly bills and providing a more streamlined interface. On the other hand, many consumers prefer à la carte offerings, where they pay only for content they expect to watch. The practical question is not, therefore, whether bundling is inherently good or bad, but what consumer needs a particular bundle serves. If a company cannot name a concrete benefit, or if rivals cannot offer consumers a viable alternative, closer scrutiny may be appropriate.

Panel members also recognized how streaming devices and smart TV platforms have profoundly altered the subscription experience. It's easier to swap one inexpensive dongle for another than to migrate between legacy cable and satellite systems. Digital distribution has not, however, altogether eliminated bottlenecks. Switching costs may increase as consumers invest in specific device and service ecosystems. Furthermore, streamers can promote "stickiness" in consumers' subscriptions in other ways. That may help explain streamers' recent collaborations to offer bundled subscriptions and engage in co-marketing: consumers may find it more difficult to disentangle from a bundle than a single service (although those arrangements may also have procompetitive rationales and effects).

I.D. Vertical integration

The panel next considered vertical integration, where one firm operates at multiple levels of the media supply chain. Content producers historically relied on a small number of traditional Multichannel Video Programming Distributors (MVPDs) to distribute their content to consumers. Vertical integration and streaming have opened more paths to the consumer, including direct ones. That disintermediation may reduce double marginalization, expand consumer choice, and shift bargaining power away from traditional distributors and toward content owners.

The panel also considered "closed-loop attribution." Amazon uses online shopping data to target advertisements on Prime Video, then tracks whether consumers purchased the advertised products. This enables Amazon to provide unusually direct evidence of advertising's effectiveness. Walmart's acquisition of Vizio aims to secure a similar combination of media, advertising, and commerce capabilities. Closed-loop attribution may be procompetitive: it's valuable to advertisers and incentivizes innovation by Amazon's competitors. Concerns may remain, however, if only one integrated platform can collect the necessary data.

I.E. Sports

The panel closed with a discussion of sports. Unlike a scripted television series, watching a single sports season may require multiple subscriptions. That fragmentation may increase the cost of following a season: fans must identify, and pay for, a bundle of subscriptions that covers all the games they want to see.

At the same time, fragmentation represents the partial unwinding of the traditional cable cross-subsidy. Historically, non-fans paid for sprawling channel bundles containing costly sports programming. That cross-subsidy seems to have shrunk in the streaming era. Exceptions remain, however: general-interest streaming subscribers sometimes pay for sports rights whether or not they watch sports, as is the case for Amazon's Thursday Night Football or Netflix's NFL Christmas Gameday.

The discussion highlighted that sports leagues command significant bargaining power relative to distributors. The NFL, in particular, benefits from extraordinary popularity and fan identification with the league as a whole. This enables the organization to divide games among multiple distribution partners while receiving free marketing from each. Other leagues, however, may not be able to spread their content as widely without diluting their audience or promotional support.

Regarding distribution, large technology platforms may enjoy an advantage in bidding for sports rights because they can monetize them across advertising, commerce, devices, and data. But important market forces work against excessive concentration on a single platform. Leagues, which retain significant control over their content's distribution, may benefit from using several partners. Platform competition also promotes innovation in presentation quality. For instance, distributors compete to offer integrated statistics and other enhancements.

The panelists ultimately offered different predictions about the likely locus of future media market power. Where some panelists emphasized scarce content (particularly sports), others saw distribution as a concern for scripted programming. Still others stressed control of the customer relationship, including device and platform operators' ability to observe behavior across services and content types.

II. Panel 2: Lessons learned from recent high-profile monopolization litigation

II.A. Summary

This panel brought together practitioners and economists with substantial experience in recent matters involving digital platform monopolization. The panel was moderated by Dennis McWeeny, a Principal in Bates White's Antitrust Practice. The panelists were Avantika Chowdhury, a Partner and Co-Head of the Antitrust Practice at Oxera; Aaron Panner, a Partner at Kellogg Hansen; Aaron Teitelbaum, a Partner at Orrick and former senior litigator at the US Department of Justice (DOJ); and Mathis Wagner, a Partner at Bates White.

At a high level, the discussion focused on two recurring issues in these cases: market definition and remedies. On market definition, some panelists emphasized that antitrust economists should begin their analysis by examining the products and customers most likely to be directly affected by the alleged exclusionary conduct and then examine those customers' substitution to other products using both qualitative evidence and empirical data. They described how digital platforms introduce additional complications for market definition because competition may need to be assessed on

multiple sides of a platform, and network effects, multi-homing, off-platform activity, and evolving product functionality can add further nuances.

On remedies, some panelists distinguished structural relief, such as a divestiture or breakup of the dominant firm, from behavioral relief. There was general agreement that courts are cautious about structural remedies in complex and rapidly changing technology markets, particularly when a proposed divestiture is not closely tied to the conduct found to be unlawful at the liability stage. At the same time, panelists recognized that behavioral remedies can be difficult to design, evaluate, and administer, especially when they require a company to take affirmative steps rather than simply prohibiting particular conduct.

II.B. Market definition

The panel's market definition discussion began with the proposition that alleged conduct should guide the inquiry by identifying the focal products, customers, and potential competitive constraints of the alleged monopolist. One panelist cautioned that beginning with an overly broad concept—such as a generalized market for consumer "attention"—could lead the analysis away from the competitive mechanism implicated by the case. He stressed the importance of combining qualitative evidence with quantitative analysis to construct a holistic economic account of substitution and competitive harm.

Another panelist explained how this approach was applied in the FTC's case against Meta. In that case, the FTC's asserted market for personal social networking services was ultimately found to be too narrow. He noted that the defense team focused on evidence that YouTube, TikTok, and other services constrained Meta's applications and featured empirical evidence of substitution from an economic experiment and qualitative evidence of convergence toward short-form content. Although the traditional *Brown Shoe* factors remain part of the governing legal framework, panelists observed that judges often find strong, data-based evidence of actual customer substitution especially persuasive.

The discussion also explored the additional market definition challenges posed by two-sided platforms that often feature prominently in digital markets. One panelist explained that the Google Ad Tech litigation required the government to analyze both the publisher and advertiser sides of open web display advertising and to establish why that form of advertising was distinct from alternatives. The evidence and substitution questions differed between the two sides: publishers must determine how to monetize advertising inventory across websites and applications, while advertisers may consider a broader, more difficult-to-observe range of promotional options.

Another panelist described similar issues involving online travel agencies and emphasized that functionality alone does not establish a relevant market; substitution and competitive constraints should be examined on both sides of a platform. Useful evidence may include multi-homing patterns, switching behavior, and event studies, although off-platform conduct can be difficult to observe. Panelists also noted the analytical difficulty of separating market definition from the challenged conduct and of distinguishing efficiencies generated by network effects from market power reinforced by those same effects.

II.C. Remedies

Turning to remedies, some panelists emphasized that relief should be designed around the specific theory of harm and the findings at the liability stage. One panelist noted that economists may be cautious about structural relief because separating integrated assets owned by the monopolist can eliminate procompetitive efficiencies that benefit consumers or create other unintended consequences. European and UK authorities have more commonly adopted targeted behavioral measures, including restrictions on anti-steering provisions used by app stores and platform-specific "dos and don'ts" under the Digital Markets Act.

Panelists connected these principles to Epic's Google Play Store litigation, in which the requested behavioral relief followed relatively directly from the conduct and harms established at trial. Some suggested that prohibitions on identified conduct are generally easier to formulate than affirmative requirements compelling a platform to create or facilitate new competitive conditions.

Courts in the United States have rejected major structural relief despite findings of liability in several recent monopolization cases. In the Google Search matter, the DOJ sought a divestiture of the Chrome browser, while in the Google Ad Tech case, it pursued divestitures of Google's ad exchange and publisher ad server. The courts declined those requests after concluding (1) that the divestitures were insufficiently tailored to the adjudicated harms that were established in the liability phase, and (2) that plaintiffs had not shown that behavioral relief would be an inadequate solution. One panelist expressed some surprise that no structural remedy emerged and noted that the time that can elapse between the liability and remedies decisions can be especially consequential in fast-moving technology markets.

More broadly, some panelists viewed a major breakup as possible but subject to a very high bar. Structural relief may be most plausible in a case where monopoly power was obtained through acquisitions of competitors, but courts may still resist "unscrambling the eggs," particularly when the federal antitrust agencies previously allowed the acquisitions to proceed. Breakup is even less likely where a firm grew organically, and they characterized structural relief in private litigation as virtually unattainable.

The overall takeaway was that successful remedies, whether structural or behavioral, must be concrete, administrable, closely tied to the liability findings, and supported by evidence showing why less intrusive alternatives would not adequately restore competition.