

State Antitrust Reform:

How States Can Strengthen Antitrust Laws To Revitalize Communities, Lower Prices, and Support Small Businesses and Working People

The Problem

Most industries across the U.S. economy are highly concentrated. Americans depend on a handful of corporations for groceries, health-care and prescriptions, travel, and more. The absence of competition is a leading driver of consolidation. It has allowed corporations to raise prices, impose hidden fees, degrade quality, and abandon communities — both rural and urban — altogether. Consolidation has allowed megacorporations to drive small businesses out, suppress wages, and degrade working conditions.

In the past, our federal and state antitrust laws have helped ensure that no one company or set of companies can dominate an industry to the point that it can unfairly crush its smaller competitors or bully suppliers, workers, or customers.

Today, there are barriers to effectively enforcing these laws. Over the last four decades, misguided court rulings made proving anticompetitive violations of the law almost impossibly difficult. Regulators stopped enforcing the laws on the books and allowed harmful mergers.

There is now widespread recognition among policymakers and the public that the economy has become too concentrated to function effectively and we need to restore competition.



Credit: Em McPhie

The Solution

States are looking to reinstate the principles and legal standards crucial to robust antitrust enforcement. Over the past two years, several states have proposed new or reformed standards that would put clear guardrails in place to define what constitutes market dominance and detail which kinds of corporate conduct are anticompetitive and violate the law. Rather than leaving judges to decide, this stronger monopoly standard — first proposed in New York's 21st Century Antitrust Act — makes clear that some acts by a dominant company always or usually break the law.



A reformed monopoly standard would usher in much-needed improvements to states' existing antitrust laws by:

Establishing clear market thresholds. The new standard would establish clear rules identifying which companies are considered dominant. These market-share thresholds are a key feature of any antimonopoly reforms, aiming to hold the largest corporations, not small or medium-sized firms, accountable for their anticompetitive behavior. For example, the New York bill proposes that corporations that control more than 40 percent of a market for products they sell (think of manufacturers and suppliers) and more than 30 percent of a product they buy (such as retailers or, in the context of labor, powerful employers) will be subject to more assertive monopoly enforcement. These thresholds are far more realistic than the current standard, under which judges typically identify a monopoly as a corporation that controls well more than half of a given market.

Streamlining and simplifying enforcement. A major barrier to enforcing antitrust law today is that cases have become long, complex, and prohibitively expensive. They typically hinge on costly economic experts and legal standards that are vague and difficult to both follow and administer. A crucial component of reform is ensuring that the law is clear and straightforward to enforce.

Reform should clarify what kinds of behavior violate the law once a corporation's dominance is established, giving attorneys general and judges clear standards and guardrails. This would create clarity for companies and ensure the law only targets harmful, abusive conduct, not legitimate business activity. Wrongful

State Action

As states pursue broader antitrust reform, many have already enacted targeted measures, such as:

- Lawmakers in Minnesota approved new restrictions on hospital mergers that threaten to cut off healthcare access to residents.
- New York, California, and Minnesota passed "right to repair" laws, targeting the control massive electronics firms like Apple held over repairing their devices.
- Colorado and Washington both increased the fines companies face for breaking antitrust laws.

conduct — such as the ability to set prices unilaterally or dictate terms to workers or suppliers — should be enough to prove a corporation's dominance and expose it to corrective action for its illegal behavior.

Ensuring small businesses have an opportunity to be heard in court. Independent businesses must be able to band together in class action lawsuits to sue abusive monopolists for their abusive conduct. Monopoly reforms should allow those harmed by anticompetitive conduct to sue as a class and, if successful, collect triple the damages. A strong private right of action allows small businesses and others to sue monopolists for the very real harm they cause and acts as a strong deterrent to prevent abuses of corporate power. Private lawsuits also ensure that antimonopoly laws can be enforced as intended, without relying on limited government resources.

Bottom Line

States have the opportunity to strengthen our antitrust laws and create downstream, positive impacts on communities across the country. States are leading the way to rebuild a just and fair economy for small businesses, workers, and consumers.

For more information and resources, check out our [State Antitrust Resource Hub](#).