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***Regulatory Oversight Podcast: 12 Days of Regulatory Insights - Day 11: State AGs on the Antitrust Frontline***

**Speakers: Ashley Taylor, Brad Weber, and Tim Bado**

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**Ashley Taylor:**

Hello and happy holidays. We are thrilled to bring you a special edition of our *Regulatory Oversight* podcast called the “12 Days of Regulatory Insights.” I'm Ashley Taylor, one of the hosts of the podcast, and the co-leader of our firm's State Attorneys General team, and a member of our Regulatory Investigations, Strategy, and Enforcement Practice Group. Before we get started today, I want to remind all of our listeners to visit and subscribe to our blog at [RegulatoryOversight.com](https://www.regulatoryoversight.com) so you can stay up to date on developments and changes in the regulatory landscape. Today, I'm joined by Brad Weber, co-chair of Locke Lord's Antitrust Practice Group, and my colleague Tim Bado, to discuss the increasing role of State Attorneys General in antitrust enforcement, highlighting the state AGs' unique strategy, significant cases from 2024, and the growing collaboration between state and federal authorities.

Brad is recognized by Chambers and the best lawyers in America and is known for managing government investigations, antitrust compliance, and high stakes litigation. He has extensive experience in antitrust litigation across various industries, class actions matters, multistate litigation, and representing clients in antitrust investigation and merger reviews with the FTC, DOJ, and state agencies. Tim is a member of our Regulatory Investigations, Strategy, and Enforcement practice group and our nationally-ranked State AGs team with experience in representing corporations and individuals in government investigations and enforcement actions across various industries. Brad and Tim, thank you for joining us.

**Brad Weber:**

Great to be here.

**Tim Bado:**

Yeah. Thank you, Ashley. I wanted to get started this morning and I thought it would make sense to provide just a brief historical background on antitrust enforcement. As Ashley alluded to, we know that the Federal Trade Commission and the Department of Justice's Antitrust Division have typically taken the lead on enforcing antitrust laws, and they do that primarily through two federal statutes, the Sherman Act and the Clayton Act. The Sherman Act prohibits monopolies and conspiracies that restrain trade, while the Clayton Act, specifically sections three, seven, and eight, are charged with preventing and eliminating unlawful tying of contracts, corporate mergers, and acquisitions. But as we know, states have their own antitrust laws and we are now seeing them being used more and more frequently. Ashley, the first question is for you. We have seen an increase in state AG enforcement in the antitrust space over 2024, and we've seen offices bolster their antitrust ranks. What do you think this means and what can we expect for state AGs in the antitrust space moving forward, and how will it differ, if at all, from a traditional federal antitrust enforcement?

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**Ashley Taylor:**

Well, there are two things to focus on, Tim, I think, for the end of 2024 and 2025. The first is that the states are going to continue the trend of developing strong bench teams in the antitrust space. Historically, they have partnered with the feds and you did not find as much expertise at the state level. That is, in fact, changing. They're working very hard to deepen their bench, to give them more flexibility, and the ability to set priorities rather than simply follow the federal government. I think you'll see a continuing collaboration with the federal government, but not a dependence on the federal government in order to take action. This is reflected in comments that the AGs are already making in various spaces, including the airline industry, college athletics, and the recent merger discussions around grocery stores. All of these are areas that the states have decided are priorities for them, and they did not have to wait for the FTC or DOJ in order to stake out their positions.

**Tim Bado:**

Thanks Ashley. You mentioned the Kroger Albertsons merger, which we now know has been abandoned.

That merger was first proposed a couple of years ago and would have created one of the largest grocery chains in the US and was valued at approximately \$25 billion.

So Brad, can you explain how the various legal actions that both the state and federal level ultimately stopped this merger?

**Brad Weber:**

Sure, thanks Tim. Yeah, there were actually three primary cases filed that challenged the merger. There was a case filed in Oregon by the FTC and in some state AGS and that focused on the national market and how the proposed merger would have affected competition. Across the US, there were also two state court actions. One filed in the state of Washington and one filed in Colorado. Those actions focused more on the localized impact that the merger would have. In those states, so for example in Washington, the merger would have created a combined market share of over 50% of the traditional grocery stores located in that state. I think the reason that the Washington AG brought that is he wanted to make sure that those concerns were considered by a court and that they might have not been as significant in the federal action that was focused more on the impact of competition nationwide.

Similarly, in Colorado, the Colorado AG filed a state court action and really looked not only on competition in the grocery store market, but also how the merger might affect competition for labor markets workers who work in grocery stores. Also, there was concern in Washington, as in Colorado, that it would have a significant impact on certain rural areas where there might only be a Kroger and an Albertsons in a certain community that was of particular importance.

So those are some of the reasons I think that you may see especially in a merger challenge that states may decide to bring their own actions because of concerns that it may have an increased impact on competition in their states.

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**Tim Bado:**

Yeah, that makes sense. Thank you, Brad. I want to spend our last few minutes here looking into the crystal ball. I want you each to tell our listeners your predictions for 2025 and then your expectations of what we'll see in the state AG antitrust space next year.

**Ashley Taylor:**

Well, I'll start, Tim. I've got two predictions, both are grounded in an anticipation that there will be a lot of misunderstanding in the corporate community. That misunderstanding will arise in two contexts. The first is that companies continue to view AG, state attorneys general, as political animals, and in the context of antitrust work, that analysis is fundamentally flawed. It's not a partisan analysis. You can't simply line up the Rs and the Ds and then develop a strategy around an antitrust case. Every state attorney general in the country is now expected to be active in the antitrust space when appropriate, and in the consumer protection space, when appropriate, whether they're an R or a D. My prediction is that companies will continue to try to apply a federal government political analysis to state AGs and get it wrong. They'll misunderstand the office. You start from the premise that it's not partisan, but it's based on the inclination and the philosophy of the attorney general in that particular state, mark through the R of the D and analyze the office holder, particularly in the context of antitrust work.

Point number two, I can predict that I don't know what the Trump administration is going to do and I don't think the state AGs know what the Trump administration is going to do. I think they are all watching and they will react, but I think that's something that has yet to really clarify itself one way or the other. My prediction is that people will make assumptions, they will be wrong, and the smart companies will analyze it after the Trump administration starts its stake out positions, and then they will see which states are coordinating with the Trump administration, which states are going their own way, which states are developing a middle ground approach. Those are my two predictions, both grounded on misunderstandings and assumptions, and I think the smart companies will actually analyze AG offices and the attorney general, his or herself, on an individual basis and not apply the wrong partisan analysis.

**Brad Weber:**

I'll add to that. I agree with Ashley. I think it is difficult to predict what will happen in the antitrust division and the FTC under the Trump administration. One thought is that there may be funding cutbacks, budgetary cutbacks, which will strain the resources of the two agencies even more. For example, if the FTC or DOJ is unable to bring a case involving some alleged anticompetitive conduct, the states may step in. One thing I've been seeing, I think more of, is that the states are aligning themselves with private law firms. For example, just last week, there was a case filed in Texas against some large fund managers, and in addition to the 11 state AGs that filed the case, there were two law firms. That may be a way for the states to leverage some of the work to private firms to make up for the lack of budgetary and other resources that they would need to enforce these laws.

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**Tim Bado:**

That is really interesting, and certainly exciting, and something that we'll need to pay attention to for 2025. Ashley and Brad, I want to thank you both for your insights on today's podcast.

**Ashley Taylor:**

Thanks a lot. I want to thank our audience for tuning in to this session of the "12 Days of Regulatory Insights." Tune in tomorrow as we continue our 12-day series and rise, and please make sure to subscribe to this podcast via Apple Podcasts, Google Play, Stitcher, or whatever platform you may use. We look forward to seeing you next time.

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