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Antitrust & Competition Update April 13, 2026

Texas Antitrust 2026 First-Quarter Update

Gibson Dunn is lead counsel or strategic counsel on several significant Texas antitrust matters—spanning advertiser boycotts, ad-tech monopolization, energy-sector competition, Business Court proceedings, and appellate challenges.

Texas is quickly becoming an active venue for important antitrust disputes involving emerging technologies and novel issues. 2025 was a very active year for antitrust and competition litigation in Texas. Gibson Dunn's Texas antitrust group is publishing quarterly Texas antitrust updates to ensure clients are familiar with important regulatory and litigation developments this year. Gibson Dunn is lead counsel or strategic counsel in several of these significant Texas antitrust matters—spanning group boycotts, ad-tech monopolization, energy-sector competition, Business Court proceedings, and appellate challenges. Gibson Dunn's Texas antitrust team is integrated with its preeminent national and global antitrust practice and led by Dallas partners **Scott Hvidt, Ashley Johnson, Betty Yang, Russ Falconer, and Liz Ryan** as well as Houston partner and former Fifth Circuit Judge **Gregg Costa**. Gibson Dunn's Texas antitrust team also earned the highest honors ("Elite") by Global Competition Review in its most recent review.

Below we identify recent updates from the first quarter of 2026:

FIFTH CIRCUIT DECISIONS

Endure Industries v. Vizient: In January, the Fifth Circuit affirmed summary judgment for defendant Vizient with respect to claims of monopolization by exclusive dealing, unilateral refusal to deal, essential facilities monopolization, and vertical rebate agreements in restraint of trade. The Cour reasoned that plaintiff failed to define a legally sufficient antitrust market because its

proposed definitions—limited to sales through Group Purchasing Organizations (GPOs) or a single-brand market specifically through Vizient—excluded the reasonably interchangeable non-GPO sales channels. The court cited evidence that nearly 30% of hospitals have abandoned the GPO model entirely to purchase directly from suppliers, proving that non-GPO channels are a viable alternative for consumers. And the court found no evidence of structural barriers or switching costs that prevented Vizient members from using other GPOs or buying directly from suppliers, reaffirming the general rule that a single brand cannot constitute a relevant market absent lock-in. 164 F.4th 405 (5th Cir. 2026).

Why It Matters: The decision reaffirms that it is a challenge to establish that a market should be defined as a single brand.

Rx Solutions v. Caremark: In January, the Fifth Circuit affirmed dismissal of federal and state antitrust claims brought by a Mississippi retail pharmacy alleging that Caremark and its affiliated CVS pharmacies unlawfully excluded it from Caremark's pharmacy-benefit-management network. The court held that the plaintiff failed to support its proposed product- or geographic-market definitions with factual allegations. The court also held that the plaintiff had failed to articulate an antitrust injury because it alleged only "harm to a competitor, not harm to consumers." The court remanded two state-law claims for the district court to consider in the first instance. 164 F.4th 436 (5th Cir. 2026).

Why It Matters: The decision reaffirms that difficulty competing or exclusion from a distribution network, without consumer harm, is not a recognizable antitrust injury.

Megatel Homes v. City of Mansfield: In March, the Fifth Circuit reversed the dismissal of Sherman Act claims brought by a land developer alleging that a Texas city had unlawfully blocked its access to water services needed for a new development. The district court had dismissed the claims on state-action immunity grounds, concluding that Texas law authorized the City's conduct. The Fifth Circuit disagreed, holding that even though Texas law "clearly articulates and affirmatively expresses" that utilities may use their powers anticompetitively, Texas law does not grant the same authority to municipalities. The court passed no judgment on the merits of the developer's antitrust claims. No. 25-11006 (5th Cir. Mar. 26, 2026).

Why It Matters: The decision reinforces the narrow scope of state-action immunity and the requirement that states clearly authorize anticompetitive conduct before municipalities can claim protection from federal antitrust law.

DISTRICT COURT DECISIONS

X Corp. v. World Federation of Advertisers: In March, a federal district court dismissed this lawsuit alleging that advertisers orchestrated a horizontal group boycott of X. The court found that X had not alleged a cognizable antitrust injury, emphasizing that X did not plausibly allege that the defendants' conduct restrained competition. The court also dismissed X's claims against several foreign defendants for lack of personal jurisdiction (without prejudice), denied transfer, and dismissed the remaining claims with prejudice, leaving no surviving claims. No. 7:24-cv-114 (N.D. Tex. Mar. 26, 2026).

Why It Matters: The decision underscores the importance of establishing or refuting that the

claimant has been harmed by the challenged conduct as a result of a harm to the competitive process.

X/xAI v. Apple & OpenAI: In January, a federal district court denied X's bid to gain access to ChatGPT's source code in this suit alleging that Apple and OpenAI are unfairly excluding generative AI models other than OpenAI's ChatGPT—including X's Grok—from integration with the iPhone operating system (iOS). In its recently denied motion to compel, X argued that accessing ChatGPT's source code was necessary for X to establish that it is feasible for Apple to integrate Grok into iOS alongside other providers' AI products. The court concluded that ChatGPT's source code was not clearly relevant to whether Apple unlawfully excluded Grok from integration into its products and conspired with OpenAI to create a monopoly. The court further noted that X had not shown that "it had attempted to gather the necessary information for developing the claim or defense underlying its request without reference to [the] highly sensitive" source code. No. 4:25-cv-914 (N.D. Tex. Jan. 22, 2026).

Why It Matters: The decision highlights a practical challenge for antitrust plaintiffs in platform exclusion cases: courts will expect plaintiffs to first build their case through less sensitive discovery before compelling production of highly confidential materials. The decision underscores the importance of explaining to the court why discovery requests are proportionate to the need to develop relevant information.

Chamber of Commerce v. FTC: In February, a federal district court vacated and set aside a 2024 rule promulgated by the Federal Trade Commission that added approximately twenty new categories of information and documents to its premerger disclosure regime. The FTC estimated that after the Final Rule, it would take financial institutions an average of 105 hours to complete the premerger-notification form, up from an average of 37 hours. The court concluded that the FTC failed to show that the Final Rule's benefits reasonably outweighed its significant costs, as required by the Hart-Scott-Rodino Antitrust Improvements Act. The FTC appealed the district court's decision. After granting a temporary administrative stay, the Fifth Circuit denied a stay pending appeal. Accordingly, the FTC has returned to its prior premerger disclosure rule. No. 6:25-cv-9 (E.D. Tex. Feb. 12, 2026).

Why It Matters: The decision sets aside a burdensome FTC rule purportedly intended to help the agency determine whether proposed transactions would violate federal antitrust laws.

The following Gibson Dunn lawyers prepared this update: Scott Hvidt, Ashley Johnson, and Gregg Costa, with contributions from Arjun Ogale, Warren Bloom, and Jed Greenberg.

Gibson Dunn lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm's Texas Antitrust and Competition team:

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