



GIBSON DUNN

State Attorneys General (AG) Task Force

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NAAG 2026 Annual Conference: State AGs Focus on Surveillance Pricing, Pre-Merger Notification Laws, and Artificial Intelligence

Topics of note for clients include what the participants referred to as “surveillance pricing,” developments in state pre-merger notification laws, online scammers, and state use of artificial intelligence (AI) tools.

At the Annual Conference for the National Association of Attorneys General (NAAG) in April 2026, State Attorneys General (State AGs), their staff, and public and private sector stakeholders gathered to discuss pressing legal issues states are facing. Topics of note for clients include what the participants referred to as “surveillance pricing,” developments in state pre-merger notification laws, online scammers, and state use of artificial intelligence (AI) tools.

(1) So-Called “Surveillance Pricing”: *State AGs are seeking to further develop technical expertise to investigate and prosecute allegedly deceptive and unfair practices that utilize consumers’ own data to set prices (referred to as “surveillance pricing”).*

Utah AG Derek Brown moderated a panel discussion on data-driven, “surveillance” pricing, which included Drew Ambrogi (Policy Manager, Chamber of Progress), Sundeep Iyer (Executive Assistant Attorney General, New Jersey Attorney General’s Office), Tom McBrien (Counsel, Electronic Privacy Information Center (EPIC)), and Jason Straczewski (Group Vice President Government Relations and Political Affairs, National Retail Federation) as panelists.

At the outset of the conversation, Utah AG Derek Brown highlighted the imprecise language used to describe data-driven pricing, noting that different concepts of pricing are often conflated. New Jersey Executive Assistant AG Sundeep Iyer provided an overview of the regulatory landscape surrounding practices he referred to broadly as data-driven pricing. He described it as a “very fast-moving space,” with legislation being introduced in almost every state. While legislation is currently focused primarily on alleged rental price fixing, Iyer predicted that this focus will extend to other industries soon. Iyer categorized what he referred to as surveillance pricing restrictions as follows: (1) bans on certain types of surveillance pricing, which he argued includes Maryland’s Protection from Predatory Pricing Act, and contended prohibits grocers and third-party delivery services from using dynamic pricing or an individual’s personal data to set higher prices; and (2) laws requiring disclosure of surveillance pricing, which he argued includes New York’s Algorithmic Pricing Disclosure Act, N.Y. Gen. Bus. Law §349-a, and contended requires a one sentence disclosure that a price was set with an algorithm based on personal data. While Iyer and McBrien (EPIC) argued these laws provide valuable transparency to consumers, industry representatives Ambrogio and Straczewski argued that these mandatory disclosures create unnecessary confusion for consumers about how their data is being used.

Industry representatives also argued that corporations are not collecting data as a way to “surveil” consumers; rather, companies are using personalized data to deliver a better consumer experience. McBrien (EPIC) disagreed, speculating about concerns regarding transparency and the alleged use of so-called surveillance pricing to target low income groups and minorities.

During the panel, Iyer suggested that states will be playing a much more active role in enforcement, which he credited partially to what he perceives as a withdrawal by the Federal Trade Commission (FTC) in this space.

Iyer made a number of recommendations to other State AGs to stay current in this emerging area of law, in particular:

- Encouraging State AGs to hire technologists and allocate additional resources towards developing technical expertise to handle data-heavy investigations.
- Using existing data privacy laws and Unfair or Deceptive Acts or Practices (UDAP) statutes to enforce in this area.
- Advising State AGs to consider sending letters to companies inquiring about their practices and disclosures, pointing to recent letters issued by California AG Rob Bonta to grocers, hotels, and retailers.

(2) State Pre-Merger Notification Laws: *As some States adopt the Uniform Law Commission’s (ULC) recent state pre-merger notification law, industry representatives identify potential burdens imposed by this new legislation.*

Another panel discussed states’ adoption of Uniform Antitrust Pre-Merger Notification Act (UAPNA), which provides access to Hart-Scott-Rodino Act (HSR Act) materials filed with the FTC in advance of certain mergers. This law has been adopted by California, Washington, and Colorado, as described below. In a conversation moderated by Michael Mackenzie (Antitrust Counsel of NAAG), Dan Robbins (Chair ULC Antitrust Premerger Notification Drafting Committee, Uniform Law Commission) and Emilio Varanini (Supervising Deputy Attorney

General, California Attorney General's Office) advocated for the benefits that this law provides to states, while Sean Heather (Senior Vice President, International Regulatory Affairs & Antitrust, U.S. Chamber of Commerce) raised challenges this law poses for businesses.

Under general pre-merger statutes, federal antitrust enforcement agencies are notified about mergers under the HSR Act. This merger information remains confidential, and states cannot access this information about proposed mergers without issuing their own investigative subpoenas or obtaining an HSR Act waiver from the parties. States that choose to adopt this new legislation purport to get access to information filed with the FTC if one of the merging parties (1) has their principal place of business in a state that has adopted the law or (2) has net sales in the state that are at least 20% of the HSR Act filing threshold (amounting to a state-specific requirement of just under \$27 million). In addition, states that are signatories to the UAPNA claim to have the ability to get information from other states that are signatories, subject to confidentiality and security protections.

Panelists expressed different viewpoints on proposed state HSR rules:

- **Raising benefits:** Robbins (ULC) described the goals of the law as seeking to improve state participation in merger review and facilitate enforcement with federal counterparts. Both Robbins (ULC) and Varanini (Supervising Deputy Attorney General, California AG) argued that this legislation benefits companies by improving deal certainty and decreasing duplicative litigation for parties through creating uniform requirements across states, and that the administrative burdens of the law are outweighed by its benefits.
- **Raising concerns:** Heather (Chamber of Commerce) voiced the concerns that some companies have with this legislation, brought on in part by what companies view as the adoption of the law without sufficient processes in some states. For example, in Washington and Colorado, the law was adopted without a buffer period in place, resulting in concerns regarding the adequacy of confidentiality policies and procedures. Other worries for businesses include lack of training in State AG offices, burdensome filing requirements, and filing fees.

(3) Combatting Online Scammers: *Global Head of Ad Safety at Google and a National Consumer League representative discussed Know Your Advertiser laws and the alleged dangers posed by cryptocurrency kiosks.*

In a discussion moderated by Illinois AG Kwame Raoul, David Caragliano (Global Head of Ad Safety, Google) and John Breyault (Vice President, Public Policy, Telecommunications & Fraud, National Consumer League) discussed ways that State AGs can crack down on AI and Internet scams in their states to protect consumers. While consumer education on these scams is important, both panelists emphasized that education alone is not enough. Caragliano (Google) pointed to Know Your Advertiser laws and signal sharing (i.e., platforms exchanging information about suspicious activity, bad actors, or fraud patterns to prevent scams and protect users) as two areas that State AGs can push platforms to make improvements. He asserted that advertiser identity verification should be industry standard, and that State AGs should urge platforms operating in their states to invest in this process. Breyault (National Consumer League) argued that many AI and Internet scams occur through cryptocurrency kiosks, and commended Indiana for being the first state to ban them. He recommended that other State AGs take similar action to deter scammers from using cryptocurrency kiosks to harm consumers in their states.

(4) States' Use of AI: *While states are looking to scale and leverage their use of AI tools, most states have not expanded their use of AI beyond administrative and internal support functions.*

Doug Robinson (Executive Director of the National Association of State Chief Information Officers (NASCIO)) provided an update to State AGs on the ways in which states are piloting, governing, and scaling AI tools. Robinson explained the challenges that many states face in adopting generative AI, including low funding, a lack of robust enterprise governance, poor data quality, and gaps in workforce readiness. He noted that while states often have access to vast amounts of data, they have very little insight into the data, limiting their ability to use it productively.

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