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Texas Antitrust 2026 Second Quarter Update

This issue covers developments from April 1 through June 30, 2026. The second quarter was defined less by merits rulings than by enforcement initiative and procedural realignment.

Texas is quickly becoming an active venue for important antitrust disputes involving emerging technologies and novel issues. With the growth of Texas antitrust litigation, Gibson Dunn has begun publishing quarterly Texas antitrust updates to ensure clients are familiar with important regulatory and litigation developments throughout the year. Gibson Dunn is lead counsel or strategic counsel in several of these significant Texas antitrust matters—spanning group boycotts, 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.

The second quarter of 2026 was defined less by merits rulings than by enforcement initiative and procedural realignment. The main developments: a paused premerger-notification appeal, a trio of high-profile settlements, and a novel attempt to recast athletic-conference discipline as a per se group boycott.

I. Appellate Developments

Premerger-Notification Rule Litigation Paused Pending New Rulemaking. In May 2026, the federal government filed an unopposed motion asking the Fifth Circuit to hold in abeyance its appeal of the Eastern District of Texas's order vacating the FTC's 2024 Hart-Scott-Rodino premerger-notification rule. The court granted the motion on May 26, staying the appeal through December 31, 2026. *Chamber of Commerce v. FTC*, No. 26-40094 (5th Cir.), appeal from No. 6:25-cv-9 (E.D. Tex. Feb. 12, 2026). The pause follows the agencies' March 2026 request for public comment on revisions to the HSR Form, including the disclosures introduced by the vacated rule and targeted changes such as narrowing the "solely for the purpose of investment" exemption. That comment period closed May 26, 2026. While the appeal is abated, filers continue to use the pre-2024 Form and Instructions. The agencies expect to issue updated rules by year-end.

Why It Matters: The order gives dealmakers short-term certainty but signals that a new notification regime is likely by year-end rather than a return to the pre-2024 status quo. The district court's vacatur remains in force, the Fifth Circuit has not reached the merits, and the FTC retains the ability to reinstate the appeal. Parties to reportable transactions should prepare for a further round of rulemaking and continue to anticipate voluntary staff information requests in substantive deals.

II. Trial-Court Developments

FTC, Texas, and Seven Other States Sue and Settle with Major Ad Agencies. In mid-April 2026, the FTC, joined by Texas and seven other states, filed—and settled—a lawsuit in the Northern District of Texas against the largest U.S. advertising agencies. The suit alleged that the agencies unlawfully colluded through trade associations to deny ad revenue to publishers of purported misinformation. *FTC v. Dentsu US, Inc.*, No. 4:26-cv-469 (N.D. Tex.). The three defendants—Dentsu, GroupM Worldwide (d/b/a WPP Media), and Publicis—stipulated to final orders, which the district court entered, barring agreements with competitors or third parties to restrict or direct ad spend based on political or ideological viewpoints, on standards set by third parties, or on DEI commitments.

Why It Matters: The settlement reflects the growing use of antitrust law to reach alleged coordinated market conduct carrying an alleged political valence: the government invoked the Sherman Act's prohibition on concerted action to target competitors it viewed as politically biased.

FTC Reaches Agreement in Principle to Settle Long-Running Healthcare Monopolization Case. In late April 2026, the FTC and U.S. Anesthesia Partners (USAP) reached an agreement in principle to settle the FTC's 2023 charges that USAP ran a multi-year anticompetitive scheme to consolidate anesthesia services in Texas. *FTC v. U.S. Anesthesia Partners, Inc.*, No. 4:23-cv-3560 (S.D. Tex.). According to the FTC, "the terms of the settlement, if fully executed, will restore a competitive market structure."

Why It Matters: The settlement signals that private-equity sponsors and their healthcare portfolio companies remain in the FTC's sights for roll-up strategies. But by settling rather than litigating to judgment, the agency leaves its underlying legal theories untested.

Paxton and DOJ Settle Information-Exchange Claims Against Agri Stats. In early May 2026, Texas Attorney General Ken Paxton, together with the U.S. Department of Justice, announced a settlement with agricultural data broker Agri Stats. The settlement resolves allegations that the company facilitated the exchange of cost and other competitively sensitive information among meat processors in a manner that enabled coordinated price increases for chicken, pork, and turkey. The settlement requires Agri Stats to change both how it distributes information and what information it may distribute. The press release also disclosed that the office is pursuing multiple, nonpublic antitrust investigations involving agriculture, beyond the pending loyalty-program monopolization suit that Texas, eleven other states, and the FTC brought against pesticide manufacturers Syngenta and Corteva. *FTC v. Syngenta Crop Prot. AG*, No. 1:22-cv-828 (M.D.N.C.).

Why It Matters: Information-exchange theories remain a live enforcement priority. The Texas Attorney General continues to act in tandem with the federal antitrust agencies in agricultural markets. Companies that participate in benchmarking services or industry data pools should revisit the antitrust guardrails governing the granularity, timeliness, and anonymization of shared data.

Big 12 / Texas Tech: An Antitrust Theory at the Center of a College-Sports Governance Dispute. A novel application of antitrust law arose in June 2026 from a fight over college-football eligibility. A Texas state court granted a June 8, 2026, temporary injunction in *Sorsby v. NCAA*, No. DC-2026-CV-0791 (99th Dist. Ct., Lubbock County, Tex.), allowing quarterback Brendan Sorsby to play football for Texas Tech. Three days later, on June 11, the Attorney General's office sent the Big 12 Conference, of which Texas Tech is a member, a letter warning that any conference effort to sanction Texas Tech for playing Sorsby would amount to a horizontal agreement among competitors and per se unlawful conduct, exposing the conference and its members to treble damages potentially exceeding $200 million. The Big 12 responded by filing a 47-page complaint in the Northern District of Texas (Dallas Division) against Attorney General Paxton, Texas Tech, Texas Tech's president, Texas Tech's athletic director, the Texas Tech University System, and the system's chancellor. The complaint sought an injunction against state retaliation and a declaratory judgment that the conference may sanction a member institution under its own bylaws. The complaint also disputes the Attorney General's antitrust characterization. Days later, though, the controversy became largely academic: Sorsby announced he would forego the season and try to play professional football.

Why It Matters: The episode initiated a public dialogue around whether intra-association discipline by an athletic conference can be recast as a per se group boycott, and regarding a state Attorney General's willingness to deploy that theory offensively and preemptively against a private governing body. Though the underlying dispute appears moot for now, the competing framings—per se horizontal restraint versus a private association's good-faith bylaw enforcement—preview the antitrust arguments likely to recur as conference-governance and athlete-eligibility disputes keep landing in court.

The following Gibson Dunn lawyers prepared this update: Scott Hvidt, Ashley Johnson, Gregg Costa, 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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