

# 2023 Impact Report



# Welcome

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## FIGHTING FOR COMPETITION TO PROTECT CONSUMERS, WORKERS, AND SMALL BUSINESSES

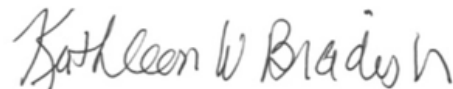
In 2023, the American Antitrust Institute continued its leadership in protecting and promoting competition for the benefit of American markets and the democratic principles that support them.

The snapshots in this 2023 Impact Report show that our rigorous legal, economic and policy analyses have delivered tangible results for consumers, workers, and businesses.

We look forward to serving the public interest again in 2024, but we need your help to continue our important work, grow our capabilities, and build for the future.

Please help us fulfill our mission by supporting AAI.

Sincerely,



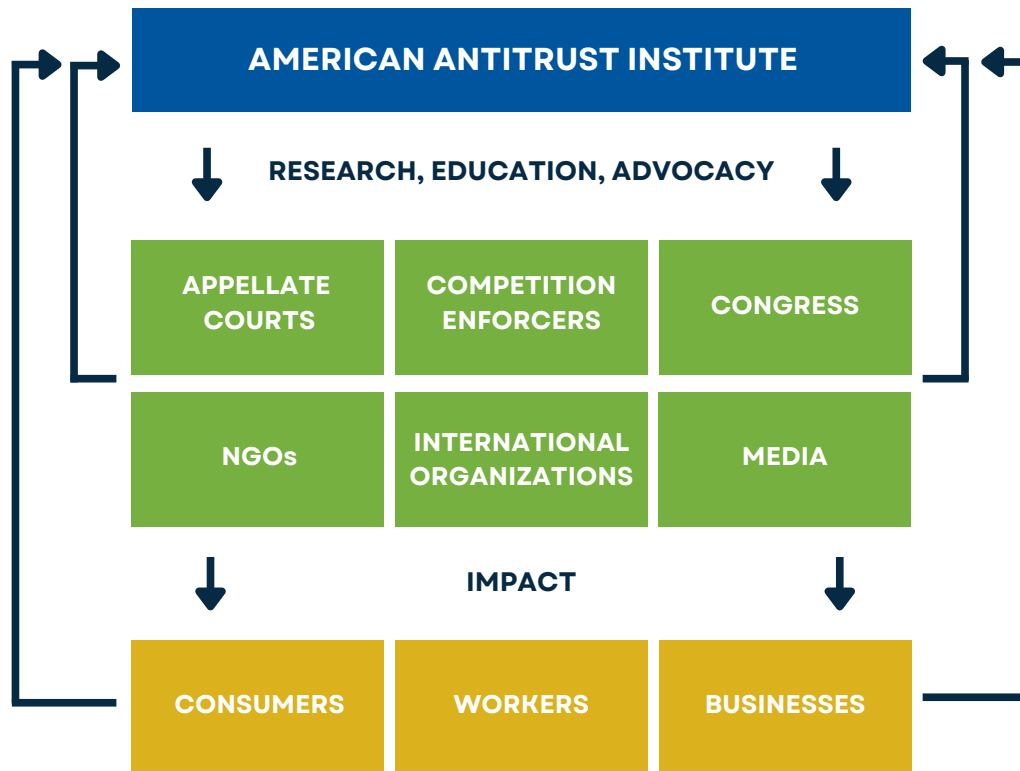
Kathleen W. Bradish  
Acting President, American Antitrust Institute

# About AAI

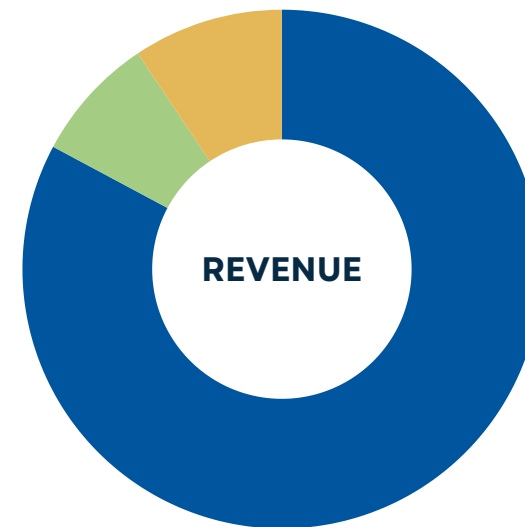


## EFFECTIVE, EFFICIENT, AND IMPACTFUL

### HOW AAI WORKS



### 2023 FINANCIALS

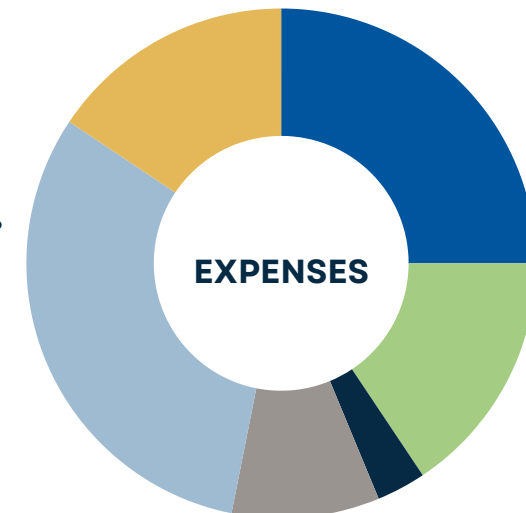


**REVENUE**  
**\$947K**

- Sponsorships: 83%
- Event, Donations & Misc.: 9%
- Foundation & Cy Pres Grants: 8%

**EXPENSES**  
**\$943K**

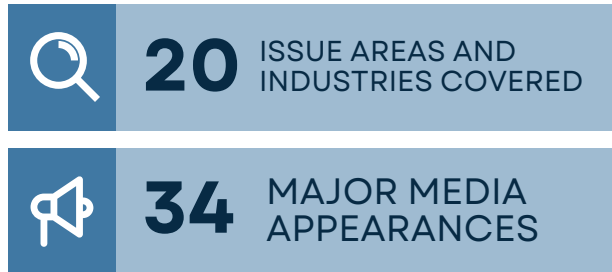
- Amicus Briefs: 28%
- Comments & Filings: 14%
- Legal Analysis: 7%
- Economic & Policy Analysis: 5%
- Podcasts: 23%
- Events: 23%



# Our Impact



## THE NATION'S LEADING PROGRESSIVE COMPETITION RESEARCH, EDUCATION, AND ADVOCACY ORGANIZATION





### **AAI and Brookings Fellow William Baer Ask U.S. District Court for DC to Adopt Proper Framework for “Litigating the Fix” in Merger Cases (*In re Assa Abloy AB/Spectrum Brands Holdings, Inc.*)**

AAI and Baer filed an amicus brief urging the Court to require that defendants in a Section 7 case bear the burden of showing any remedy they propose will restore competition. The brief follows AAI’s brief in the Illumina/Grail matter, arguing for a standard in so-called “litigating the fix” cases that enables effective Section 7 enforcement.

### **AAI Warns Court in Google Case that Grant of Summary Judgment in Favor of Google Could Open Up Significant Loopholes in Section 2 Enforcement (*State of Colorado, et al v. Google*)**

AAI’s brief argues against Defendant Google’s motion for summary judgment on claims by the DOJ and several State Attorneys General that Google has monopolized markets for search and search advertising in violation of Section 2 of the Sherman Act. The brief argues against Google’s claim that there can be no violation because each of its restrictions, viewed in isolation, does not meet the criteria for Sherman Act Section 2 liability. AAI’s brief points out that Google’s argument mischaracterizes the precedent, which present a danger to effective Section 2 enforcement.

### **AAI Urges Fourth Circuit to Correct District Court’s Erroneous Readings of Supreme Court Precedent that Risk Giving Free Pass to Monopolists in Regulated Industries (*NTE Carolinas v. Duke Energy*)**

AAI filed an amicus brief in support of NTE Carolinas’ appeal of the District Court’s grant of summary judgment on its Section 2 claims against Duke Energy. The brief argues that the District Court made two crucial mistakes in its analysis that mandate reversal—failing to consider the cumulative anticompetitive effects of Duke Energy’s conduct in thwarting development of NTE’s competing electricity generating plant and applying an incorrect and overly stringent test for NTE’s refusal to deal claim.

### **AAI Tells Second Circuit that Pharma Bro’s Lifetime Ban from the Pharmaceutical Industry is Appropriate and Necessary to Ensure Effective Relief (*FTC v. Shkreli*)**

AAI filed an amicus brief in support of the FTC in Martin Shkreli’s appeal of the District Court’s injunction. The brief describes why the Second Circuit should reject Mr. Shkreli’s request to drastically narrow the scope of his lifetime ban from the pharmaceutical industry and uphold the District Court’s injunction in full. The brief identifies a set of factors that caselaw and agency experience have shown to be necessary to an effective antitrust remedy and explains why each of these factors support upholding the injunction as issued.

### **AAI Asks Third Circuit to Apply Practical Approach to Ascertainability Requirement for Class Cert. (*In re Niaspan Antitrust Litigation*)**

AAI filed an amicus brief in the Third Circuit in support of Appellants’ request for reconsideration or rehearing en banc in a case alleging brand and generic manufacturers of Niaspan engaged in an illegal pay-for-delay agreement. The brief argues the Third Circuit panel erred by deviating from the practical approach to the “administrability” requirement that other Third Circuit decisions apply, and notes that the Third Circuit failed to give due weight to the extensiveness of prescription drug data in considering whether a person or entity meets the class definition.

### **AAI Urges the Northern District of California in Google Play Store Case Not to Exclude Harms To Innovation and Consumer Choice from Recovery in Private Suits (*In re Google Play Store Antitrust Litig.*)**

AAI filed an amicus brief in support of Plaintiff States’ and Consumer’s Opposition to Google’s Motion to exclude certain expert merits opinions. The brief points out that harms to variety, innovation and consumer choice at issue in Dr. Marc Rysman’s damage models are not, as Google argues, the kind of personal injuries that have been excluded as compensable antitrust damages. Instead, these are core values that the antitrust laws are intended to protect. As a result, AAI argues, it is vital to antitrust enforcement efforts that private enforcers can seek redress for such injuries.

# Our Work

## AAI AMICUS BRIEFS, ANALYSIS, AND REPORTS

### **AAI Asks Ninth Circuit to Deny Google's Appeal of Class Certification in the Google Play Litigation and to Reject Any Special "Passthrough" Showing at Class Cert. Stage (*In re Google Play Store Antitrust Litig.*)**

AAI filed an amicus brief in the Ninth Circuit in support of plaintiffs-appellees in the interlocutory appeal of the consumer class certification. In the 23(f) appeal, Google argues that the consumer class should not have been certified because the app developers allegedly injured by Google's supracompetitive service fees did not "passthrough" the harm to consumers. The brief argues that Google's argument misconstrues the relevant precedent. The brief addresses Google's argument that the District Court judge improperly shifted to Google the burden on predominance under Rule 23 and explains why Google's argument is unfounded.

### **No Justifications for Franchise No-Poach: AAI Urges District of NJ Court to Apply Per Se Rule to Labor Market Allocations (*Jessica Robinson, et al v. Jackson Hewitt, Inc., et al*)**

AAI filed an amicus brief alleging that Jackson Hewitt and its franchises entered into illegal no-poach agreements. AAI's brief describes why no-poach agreements involving franchisors and franchisees should be evaluated as per se illegal. The brief notes that a claim that a restraint is ancillary to a procompetitive agreement is a defense, and that the defendants here do not seem to have made the necessary showings to support it.

## **ANALYSIS AND REPORTS**

### **Competition Enforcement, Private Actions & the Shipping Act**

This white paper describes the specialized area of private antitrust enforcement under the Shipping Act, takes a critical look at the current enforcement framework, and offers proposals about actions Congress and the Federal Maritime Commission can take to promote competition in ocean shipping by making private actions under the Shipping Act more common and more effective.

### **The Growth of Private Equity Ownership in the Home Healthcare Market**

This report takes a close look at the incursion of private equity into the home healthcare market and emphasizes the need for antitrust enforcers and regulators to engage early. It calls for significant reforms to ensure that the private equity industry discloses full and meaningful data that can be used to evaluate the impact of private equity ownership on competition.

### **The Cloud Technology Market: Storm of Innovation or Rainy Days for Competition?**

This report unpacks the structure of the cloud market and its implications for competition. It examines the top players and their business models, areas of cloud where acquisition and investment are particularly focused, and markets shares and concentration. The report lays the groundwork for assessing the competitive evolution of the cloud market.

### **Monetizing Medicine: Private Equity and Competition in Physician Practice Markets**

This report highlights private equity's voracious acquisition of physician practices over the last several years. It evaluates market penetration across 10 physician practice specialties within markets across the United States and its impact on market shares and concentration and on prices and expenditures. The report's findings should draw significant attention by competition enforcers and healthcare policymakers as well as the need to lower barriers to entry in concentrated physician markets and develop additional funding sources for capital investments. The report frames a set of immediate policy steps that would strengthen competition enforcement and healthcare policy in physician practice markets.

# Our Work

## AAI CONGRESSIONAL AND REGULATORY FILINGS

### **Comments to FTC on Competition Concerns Raised by the Proposed Kroger-Albertsons Merger**

AAI submitted comments providing new analysis on the likely anticompetitive effects of the proposed Kroger-Albertsons merger. The comments highlighted concerns about increased seller market power impacting consumers and the potential for enhanced buyer power—both monopsony and bargaining power—to alter trade terms with input suppliers.

### **Testimony before Senate Judiciary Committee on Live Entertainment Competition**

AAI's testimony described Ticketmaster-Live Nation as a monopoly with dominance across the supply chain, enabling it to stifle competition and protect its market position. It examined the failure of conduct remedies under the DOJ's 2010 Consent Decree and called for renewed enforcement action, emphasizing the need for effective structural remedies and a broader policy approach to address the monopoly.

### **Testimony before Senate Commerce Committee on Enhancing Consumer Protections and Connectivity in Air Transportation**

AAI's testimony explored the impact of reduced competition in passenger air transportation markets, including higher fares, increased ancillary fees, and declining service quality. It questioned claims that airline mergers and joint ventures enhance connectivity for travelers, stressed competition as vital for consumer choice and system resilience, and underscored the importance of robust antitrust enforcement and coordinated regulatory oversight to protect consumers and promote competition.

### **Comments to FTC's Notice of Proposed Rulemaking on Labor Non-Compete Clauses**

AAI submitted comments to aid agencies in promulgating rules and guidance that support robust competition and make the best use of agency enforcement and policy tools for achieving pro-competition goals. AAI commended the FTC for exploring rulemaking as a means to address significant competition concerns in labor markets.

### **Comments to FTC on the Business Practices of Cloud Computing Providers**

AAI filed comments providing economic and policy analysis of the structure and evolution of the cloud market and implications for competition. The analysis highlights weak merger control as a serious concern for the digital sector and the need for stronger merger enforcement.



# Our Work

## AAI EVENTS AND “RULED BY REASON” PODCAST

### EVENTS

#### **Lunch & Learn: Investigating a New Antitrust Case**

AAI’s inaugural virtual webinar series tailored to both new and experienced lawyers seeking to enhance their fundamental skills. This webinar focused on investigating and building an antitrust case.

#### **24th Annual Policy Conference: Taking Stock of Antitrust’s Pro-Enforcement Movement**

AAI’s annual conference gathered competition experts to discuss challenges to more vigorous enforcement, expand the antitrust analytical toolkit by incorporating learning from disciplines outside law and economics, and assess opportunities and obstacles around private enforcement in the pro-enforcement era.

#### **Lunch & Learn: Crafting An Antitrust Complaint, The Necessary Building Blocks & More**

In this virtual webinar, an expert panel discussed crafting an antitrust complaint, including complaint handling, venue selection, multidistrict litigation, and leadership considerations.

#### **Lunch & Learn: Now I Filed My Complaint, What Can I Do as I Wait for the Inevitable Motion to Dismiss?**

In this virtual webinar, an expert panel explored laying the groundwork for success while awaiting defendants’ motions to dismiss.

#### **17th Annual Private Antitrust Enforcement Conference**

This flagship forum gathered leading private enforcers and experts to explore frontier issues including the role of AI to monitor and establish antitrust violations, the draft DOJ/FTC merger guidelines, private antitrust cases in the healthcare space, and learnings from multiple antitrust class actions in big tech. The event also featured the Young Lawyers Breakfast.

#### **AAI Antitrust Awards Night**

AAI recognized outstanding achievements in the antitrust community across a variety of contributions and categories, including the Antitrust Enforcement Awards, the Private Antitrust Enforcement Hall of Fame, and the Hollis Salzman Memorial Leadership Award.

### PODCAST EPISODES

**Antitrust Reform from Within the Federal Antitrust Agencies: Navigating Institutional Dynamics in Implementing Policy Shifts**

**Taking Stock of Merger Enforcement Under the Biden Agencies: A Conversation With Steven Salop**

**Airline Consolidation and Labor: A View From the Cockpit**

**Powerful Buyers and the Grocery Supply Chain: What Does it Mean for the Independent Grocer?**

**Private Equity’s Impact on Physician Practices: Unpacking Markets, Competition, and Prices**

**How Do We Fix the Competition Problem in Shipping? The Role for Private Actions under the Shipping Act**

**The Cloud Technology Market: Storm of Innovation or Rainy Days for Competition?**

**Unpacking the 2023 Revised Merger Guidelines: A Conversation With the U.S. Department of Justice**

**How Should Antitrust Tackle Antitrust’s “Duty to Deal” in the Tech Sector? A Conversation With Erik Hovenkamp, 2023 Jerry S. Cohen Award Winner for Antitrust Scholarship**

**Praise and Constructive Criticism: The Pro-Enforcement Community Weighs in on the Draft Merger Guidelines**



# Connect & Support

## THE ONLY WAY AAI CAN FULFILL ITS MISSION IS WITH YOUR SUPPORT

Promoting competition that protects consumers, businesses, and society is more important than ever. AAI is the leading progressive competition research, education, and advocacy organization in the United States. Our independent, expert, and highly respected work has significant impact and advances the case for strong enforcement and progressive competition policy. Please connect with AAI and give your support.

## SUPPORT AAI IN 2024



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AAI will not accept a sponsorship or donation from a single for-profit corporation or trade association in a calendar year in excess of 5-8% of AAI's operating budget.