

# 2024 Impact Report



# Welcome

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

In 2024, 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 2024 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 2025, 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,



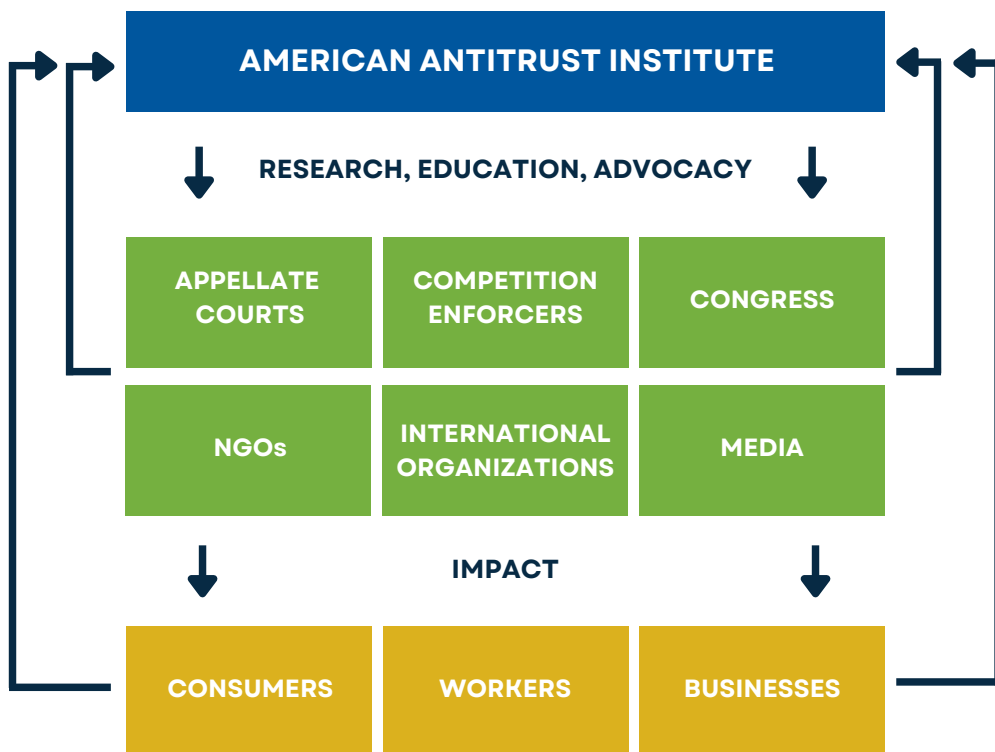
Randy Stutz

President, American Antitrust Institute

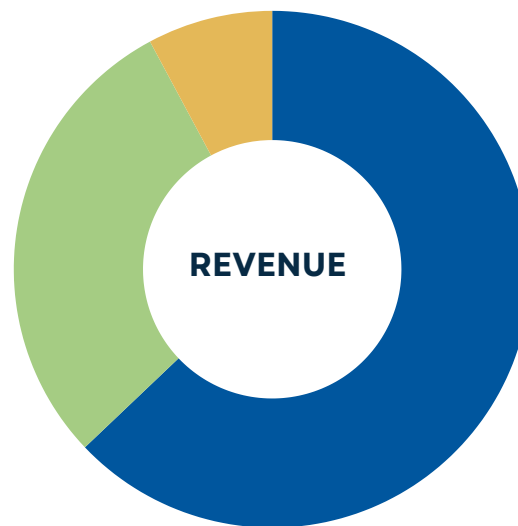
# About AAI

**EFFECTIVE, EFFICIENT, AND IMPACTFUL**

## HOW AAI WORKS



## 2024 FINANCIALS

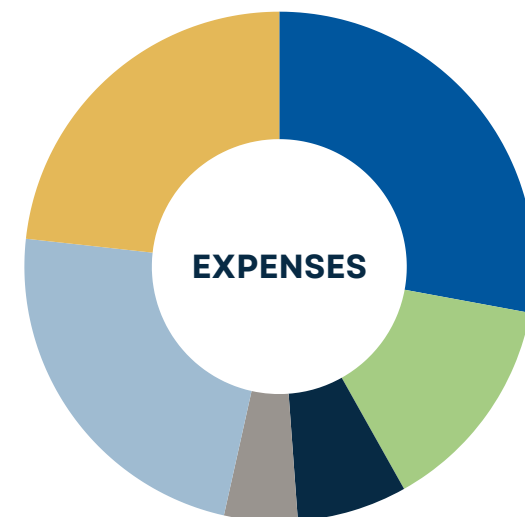


**REVENUE**  
**\$938K**

- Sponsorships: 63%
- Foundation & Cy Pres Grants: 29%
- Event, Donations & Misc.: 8%

**EXPENSES**  
**\$1.2M**

- 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 Urges Second Circuit to Overturn Dismissal of Conspiracy Claims Involving Low-Income Patients' Access to Insulin (*Mosaic Health v. Sanofi*)**

AAI filed an amicus brief supporting low-income health clinics in their Section 1 suit alleging that four major insulin manufacturers colluded to restrict insulin sales through a federal program providing affordable drugs to low-income patients. AAI argued that the District Court misapplied pleading standards and adopted a rigid definition of parallel conduct that, if left uncorrected, could provide cartelists with a blueprint to avoid private enforcement.

### **AAI Urges Ninth Circuit to Overturn Summary Judgment Ending Dentists' Refusal-to-Deal Claim Against Invisalign Manufacturer (*Simon & Simon v. Align*)**

AAI filed an amicus brief supporting dentists in their Section 2 suit alleging Align unlawfully terminated its interoperability agreement with 3Shape, its competitor in the market for dental scanners. Instead of holding Align to its evidentiary burden under the rule of reason, the District Court accepted as “presumptively valid” its justification that it terminated interoperability in order to undermine 3Shape’s potential defenses in a separate patent litigation, despite evidence to the contrary. AAI urged the Ninth Circuit to clarify that the defendant carries the burden of establishing, as a matter of fact, that its justification is non-pretextual and procompetitive.

### **AAI Urges Ninth Circuit to Overturn Dismissal of Suit Alleging Algorithmic Price-Fixing on the Las Vegas Strip (*Gibson v. Cendyn Group*)**

AAI filed an amicus brief supporting hotel guests in their Section 1 suit alleging that six hotels colluded with an algorithmic pricing provider to raise hotel prices. Relying on the absence of “plus factors” indicative of human collusion, the District Court held that there was no concerted action because the hotels started using the algorithm at different times, did not share information with each other, and did not commit to accepting the algorithm’s prices in all cases. AAI argued that these factors are not helpful in identifying algorithmic collusion, since AI allows firms to collude tacitly on price without communicating directly or making express agreements with each other, and that courts should adapt their “plus factor” analysis to the realities of AI.

### **AAI Asks Ninth Circuit to Reject FTAIA Interpretation that Would Exempt Certain International Cartels from Liability to U.S. Consumers (*Seagate v. NHK*)**

AAI filed an amicus brief supporting a U.S. manufacturer and its foreign affiliates who purchased price-fixed hard drive suspensions used in electronics sold to U.S. consumers. The District Court ruled that the suit was barred under the FTAIA because defendants sold the price-fixed products to plaintiffs’ foreign subsidiaries. AAI explained how this overbroad interpretation exempts a whole category of international cartels from private civil liability, creating a two-tiered enforcement framework for international cartels that harm U.S. consumers.

### **AAI Joins Consumer Advocacy Groups in Urging Second Circuit to Maintain Preliminary Injunction Against Anticompetitive Live Sports Streaming JV (*FuboTv v. Disney*)**

AAI joined an amicus brief filed by the Sports Fans Coalition and other groups supporting Fubo in defendants' appeal of a preliminary injunction order barring a proposed joint venture between Disney, ESPN, Fox, and Warner Bros that would drive Fubo and others out of business while allowing the JV partners to monopolize the market for "skinny" sports streaming bundles. The brief explained how the JV would reduce consumer choice, raise prices, and decrease quality and innovation by discouraging new entry and preventing the defendants from developing their own skinny bundles.

### **AAI Urges Third Circuit to Recognize an Independent Misrepresentation Exception to Noerr-Pennington Immunity (*In re Merck Mumps Vaccine Antitrust Litig.*)**

AAI filed an amicus brief seeking en banc rehearing of a case claiming that Merck violated Section 2 by misrepresenting the potency of its mumps vaccine to the FDA, which prevented competing vaccines from showing equivalency. Relying on Third Circuit law, the District Court reasoned that Merck's misrepresentations were protected by the First Amendment even if they were intentionally false. AAI urged the court to join the majority of circuits in declining to grant antitrust immunity for knowingly false statements to regulatory bodies.

## **AAI SUCCESS IN THE COURTS**

### **Second Circuit Agrees with AAI on Pleading Standards for Market Definition in Monopolization Cases (*Regeneron v. Novartis*)**

The Second Circuit drew from an AAI amicus brief in reinstating Regeneron's *Walker Process* counterclaim against rival Novartis in a patent-infringement case involving pre-filled syringes. In its amicus brief, AAI explained that the District Court was wrong to reject Regeneron's market definition as suspect just because it was coterminous with the underlying patent, and that its pleading standard was at odds with the requirement that a *Walker Process* plaintiff show that a fraudulently procured patent is the source of the defendant's monopoly power. Citing to the same portions of cases that AAI cited, the Second Circuit held that both the relevant market and the market significance of the fraudulent patent are questions of fact.

### **AAI Helps Deliver Important Fourth Circuit Victory on Monopolization Standards for Refusal-to-Deal and Course-of-Conduct Claims (*Duke Energy v. NTE Carolinas*)**

The Fourth Circuit embraced AAI's arguments when it reversed summary judgment for Duke on NTE Carolinas' claim that Duke engaged in a complex multi-pronged strategy to exclude NTE as a competitor in energy generation. The court agreed with AAI that the District Court incorrectly required each of Duke's actions to individually meet Section 2 liability requirements, ignoring their cumulative impact, and that it misapplied *Trinko* and *Aspen Skiing* by demanding that NTE demonstrate a voluntary prior course of conduct and refusal to sell at a retail price.

# Our Work

## AAI ANALYSIS, REPORTS, AND CONGRESSIONAL AND REGULATORY FILINGS

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

The report, published in 2023, 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 addenda provide additional data and more detailed information regarding metropolitan statistical areas that had a private equity firm with 30+% or 50+% market share in 2021 for one or more of the ten physician specialties analyzed in the report.

### **Key Findings and Takeaways from Battleground Polling of Voter Attitudes Toward Aggressive Antitrust Enforcement**

AAI released the results of polling it conducted with the Committee to Support the Antitrust Laws (COSAL) and Lake Research Partners demonstrating that a majority of voters across the political spectrum are very concerned about anticompetitive conduct and the power held by large, monopolistic firms, and that they strongly support both government and private antitrust enforcement. An important signal to enforcers and policymakers, the polling shows that antitrust enforcement is an important issue for voters and has broad public support.

### **Statement on the Department of Justice's Lawsuit to Break Up Ticketmaster and Live Nation**

AAI applauded the DOJ's suit to break up Ticketmaster and Live Nation, which settled a merger challenge in 2010 by agreeing to behavioral remedies that, notwithstanding a 2020 enforcement action, proved ineffectual. In 2023, several high-profile concerts were marred by bot infestations, site crashes and dynamic pricing snafus, leading to fan outrage. AAI convened an expert roundtable, testified in Congress, repeated its calls for a breakup, and expressed its support for the DOJ's lawsuit.

### **Statement on the District Court's Ruling in *United States v. Google***

After the DOJ achieved a landmark trial victory in its monopolization case against Google, which focused on exclusionary distribution agreements with browsers and mobile device manufacturers, AAI looked ahead to the challenges of crafting and securing a remedy. AAI warned that many monopolization cases have been undone at the remedy stage and urged the DOJ to consider whether structural relief is necessary, as no behavioral remedy alone has managed to move a platform market from monopoly to competition when the platform owner is a monopolist protected by network effects.

### **Comments on USDA's Proposed Rulemaking on Fair and Competitive Livestock and Poultry Markets**

AAI supported USDA's proposed rule defining "unfair practices" under § 202(a) of the Packers & Stockyards Act as conduct that harms either the market or market participants. AAI explained that § 202(a) is concerned with market abuses in addition to competitive injury, and court opinions imposing a competitive-injury requirement conflict with Supreme Court precedent and core principles of statutory interpretation. AAI also suggested that USDA clarify that business justifications cannot excuse per se offenses or deceptive practices; specify that, where efficiencies are relevant, defendants carry a burden of persuasion to show efficiencies are specific, verifiable, and cognizable; and insulate judges from engaging in multi-market balancing.



# Our Work

## AAI EVENTS AND “RULED BY REASON” PODCAST

### EVENTS

#### **Lunch & Learn: I Won the Motion to Dismiss, Now How Do I Get the Discovery Train Down the Tracks?**

In this virtual webinar, an expert panel explored key steps to initiate discovery, including proving claims, initial disclosures, written discovery, depositions, settlements, ESI protocols, protective orders, and other procedural considerations.

#### **Lunch & Learn: Discovery Has Started, How and When Do I Involve My Experts?**

In this virtual webinar, an expert panel discussed retaining and deploying experts, setting schedules, trial preparation, engaging industry experts, managing costs, and handling class certification hearings and motions.

#### **25th Annual Policy Conference: New Thinking on the Antitrust Treatment of Collective Action – Organized Labor, Countervailing Power, and Algorithmic Price Setting**

AAI’s annual conference gathered competition experts to discuss the law and economics of countervailing power, recent developments involving labor-market competition, and current litigation involving digital information sharing and algorithmic pricing.

#### **Lunch & Learn: Massive Data Discovery and Disputes**

In this virtual webinar, an expert panel delved into data management and review, leveraging AI, avoiding data overload, connecting evidence to trial narratives, and optimizing discovery.

#### **Lunch & Learn: Planning, Preparing, and Taking Important Fact Depositions in an Antitrust Case**

In this virtual webinar, an expert panel covered starting an antitrust complaint, naming defendants and co-conspirators, addressing class allegations and plaintiff-specific issues, fraudulent concealment, per se vs. rule-of-reason approaches, and expert involvement.

#### **18th Annual Private Antitrust Enforcement Conference**

This flagship forum gathered leading private enforcers and experts to explore issues, including conservative and progressive cases for private enforcement and private antitrust enforcement in the sports world. The event also featured the annual 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

#### **Default Status/De Facto Exclusion: What does a Rival Search Company Have to Say About the Google Case?**

**A Conversation with Kamyk Bazbaz, VP of Communications and Public Affairs at DuckDuckGo**

#### **International Update: Checking in with Leah McCoy, Juan Correa, Louise Baner, and Grant Chamberlain at the International Competition Network’s Cartel Working Group**

#### **How Exactly Does Common Ownership Harm Competition? A Conversation with Florian Ederer, Jerry S. Cohen Award Winner for Antitrust Scholarship**

#### **Competition, Fairness, and Regulation in Food & Agriculture: A Conversation with Andy Green, Senior Advisor for Fair and Competitive Markets at the USDA**

#### **How the Agri-Stats Case Can Help Shape Treatment of Anticompetitive Information Exchanges: A Discussion Between Emily Bridges of the Food and Agriculture Impact Project and Professor Peter Carstensen**



# 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.

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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.