

SPEAKING ENGAGEMENT

Eva Cole Speaks on Competition Law and Digital Ecosystems at Inter-Pacific Bar Association Annual Meeting

APRIL 23, 2025 - APRIL 26, 2025

On April 24, 2025, Eva Cole, co-chair of Winston's Antitrust Practice, joined a panel discussion on the intersection of competition law and digital ecosystems, sponsored by the Inter-Pacific Bar Association (IPBA)'s Competition Committee, where Eva was appointed co-chair.

Panelists discussed global perspectives on data privacy and antitrust enforcement in the digital space, emphasizing the different approaches taken by the United States and key jurisdictions, including Singapore, Brazil, and Japan. Key takeaways from Eva's discussion about U.S. developments include:

LEGAL LANDSCAPE

- Unlike the EU's Digital Markets Act (DMA), the U.S. lacks a federal law to regulate digital platforms and ensure competitive markets. Enforcement currently relies on traditional antitrust laws, primarily the Sherman Act, Clayton Act, and FTC Act, which were enacted well before the emergence of the modern digital economy. Without sector-specific legislation, the FTC, DOJ, and private plaintiffs pursue enforcement through litigation, challenging digital platform practices on a case-by-case basis. This reactive approach has led to lengthy legal battles with uncertain outcomes as courts interpret how to apply century-old antitrust laws to modern digital markets.
- In the absence of federal legislation, states have also stepped in. State attorneys general have joined lawsuits against major platforms, reflecting bipartisan concern over digital market concentration.
- Bipartisan efforts for new legislation address antitrust challenges unique to our technological moment, including the American Innovation and Choice Online Act, which seeks to prevent Big Tech companies from self-preferencing at the expense of competitors. Despite gaining traction, the bill's passage remains uncertain, with concerns expressed by both Democratic and Republican Senators, and industry groups opposed to the legislation.

CHANGING ADMINISTRATION, CHANGING PRIORITIES

- Under the Biden Administration, we saw aggressive and expansive antitrust enforcement, with Lina Khan at the FTC and Jonathan Kanter at the DOJ's Antitrust Division both vocal critics of Big Tech. The agencies moved beyond traditional consumer price concerns, arguing that the accumulation and control of vast amounts of data

can harm competition, reduce innovation, and entrench incumbents. They were willing to litigate high-stakes cases, even at the risk of losing, to challenge allegedly anti-competitive conduct and mergers.

- Under Trump, antitrust enforcement priorities have shifted, but Big Tech remains under significant pressure. Regulators are attentive to Big Tech’s control over data. Enforcement under Trump may be more selectively applied, with investigations into perceived biases in content moderation or censorship practices, using antitrust claims to address broader concerns over platform conduct. State attorneys general, particularly from Democratic-led states, are also expected to continue pursuing Big Tech cases, maintaining pressure through bipartisan coalitions.

DATA AND ANTITRUST

- U.S. regulators are increasingly examining whether platforms leverage data advantages to maintain dominance, preventing new entrants from scaling up. The FTC and DOJ recognize that access to vast amounts of consumer data can provide companies with a significant competitive advantage. Data can improve products and services, refine algorithms, and generate insights that competitors without similar datasets cannot replicate. Agencies may view data as a barrier to entry or allege that platforms engage in self-preferencing, using proprietary data to give their own products an unfair advantage over competitors. The FTC has increasingly scrutinized mergers where data could be a key competitive asset, arguing that acquisitions may foreclose access to critical datasets.
- Network effects, data-driven market power, and the difficulty of defining markets create a complex landscape for antitrust enforcement. While the U.S. remains committed to applying its existing legal framework, these challenges are leading to growing debates about whether new approaches—or even new laws—are necessary.

Winston & Strawn was a proud sponsor of IPBA’s 2025 Annual Meeting and Conference held in Chicago on April 23-26, 2025. The IPBA is an international association of lawyers with more than 1600 members who practice in business and commercial sectors and who have a strong interest in the Asia-Pacific region. This conference is the IPBA’s premier event, attracting significant global interest, including attendees from over 65 legal jurisdictions throughout the world.

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Speaker

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