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BLOG

The Tunney Act Under the Spotlight: Recent Settlements Reignite Calls for Reform of Antitrust Oversight

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Recent settlements in DOJ antitrust enforcement actions have raised concerns on Capitol Hill and beyond about the adequacy of current safeguards governing the settlement of federal antitrust cases. In response, members of Congress have introduced legislation that would significantly strengthen the half-century-old statute, known as the Tunney Act, that requires judicial oversight of DOJ antitrust consent decrees. This post provides an overview of the Tunney Act, discusses the circumstances of the two settlements that have prompted calls for reform, and summarizes the key provisions of the proposed reform legislation.

WHAT IS THE TUNNEY ACT?

The Tunney Act—formally known as the Antitrust Procedures and Penalties Act—was enacted in 1974 as a post-Watergate reform designed to bring transparency and judicial oversight to the settlement of federal antitrust cases.[1] The statute takes its name from its chief sponsor, Senator John Tunney. It was prompted in significant part by concerns arising from a settlement between the DOJ and International Telephone and Telegraph Corporation (ITT), in which the DOJ approved ITT's acquisition of Hartford Fire Insurance.[2] President Nixon had personally intervened to push the settlement through, and ITT had pledged $400,000 for the 1972 Republican National Convention.[3] Congress sought to remedy such "abuses in consent decree procedures," including "'judicial rubber stamping' by district courts of proposals submitted by the Justice Department."[4]

The Tunney Act establishes several key requirements that apply whenever the DOJ proposes a consent judgment (i.e., a settlement) in a civil antitrust case:

- **Competitive-Impact Statement.** The DOJ must file a "competitive-impact statement" simultaneously with any proposed consent judgment.[5] This statement must describe the nature of the proceeding, the alleged violations, the proposed relief and its anticipated competitive effects, available remedies for private plaintiffs, and a description and evaluation of alternatives to the settlement that the DOJ considered.[6]
- **Public Comment and DOJ Response.** The proposed consent judgment must be published in the *Federal Register* at least 60 days before it takes effect.[7] During that 60-day period, the public may submit written comments on the proposal, and the DOJ is required to receive, consider, and publicly respond to those comments.[8]

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- **Disclosure of Executive Branch Communications.** Within 10 days of the filing of a proposed consent judgment, each defendant must file with the court a description of "any and all written or oral communications" by or on behalf of the defendant "with any officer or employee of the United States concerning or relevant to" the proposed settlement.[9] Communications made by "counsel of record alone with the Attorney General or the employees of the [DOJ] alone" are excluded.[10] Each defendant must certify that its filing is "a true and complete description of such communications."[11]
- **Judicial "Public Interest" Determination.** Before entering any proposed consent judgment, the court must determine that "entry of such judgment is in the public interest."[12] Congress intended this to mean "the public interest as expressed by the antitrust laws,"[13] but prior to 2004, the statute did not require courts to consider a settlement's effect on competition. Congress amended the statute in 2004 to require such consideration and to focus the "public interest" standard more squarely on the protection of competition, rather than a more amorphous conception of "public interest.[14] Now, in making that determination, the court must consider the judgment's "competitive impact"—including the termination of the alleged violations, provisions for enforcement and modification, duration of relief, anticipated effects of alternative remedies, and any ambiguity in the terms—as well as "the impact . . . upon competition in the relevant market," among other factors.[15] To aid its determination, the court may (though need not) take testimony from government officials or experts, appoint a special master, authorize participation by interested persons or agencies (including as amici curiae or intervenors), and take any other action in the public interest that it deems appropriate.[16]

THE TUNNEY ACT IN PRACTICE

In practice, courts have generally not conducted searching analyses of DOJ antitrust settlements before approving them. Though some scholars have noted that the plain language of the statute does not contemplate judicial deference,[17] courts have nonetheless employed a deferential standard of review. (A notable exception was Judge Greene's wide-ranging Tunney Act review of the proposed settlement of the DOJ's monopolization case against AT&T.[18]) One scholar argues that, even after the Tunney Act's enactment, courts continued relying on pre–Tunney Act dicta and separation of powers concerns to defer to the Executive's assurance that a proposed settlement clears the "public interest" bar.[19] And even after Congress attempted "[t]o require a more exacting judicial review" through the 2004 amendment, courts continued to apply a more deferential standard of review.[20] In short, as one former senior DOJ official recently observed, "the Tunney Act has rarely served its intended purpose."[21] Although that deferential status quo may have some practical advantages, it may also be ripe for change.

TWO SETTLEMENTS THAT TESTED THE TUNNEY ACT'S LIMITS

Two recent DOJ antitrust settlements have refocused attention on the Tunney Act and have raised questions from Congress and commentators about the sufficiency of the statute's procedures.

The first settlement, announced in July 2025, proposes to resolve a DOJ challenge to a merger between two firms that both offer enterprise-grade wireless local-area network ("WLAN") solutions in the United States. The DOJ initially alleged that the merger would risk substantial harm to competition because, among other things, it would result in just two companies controlling more than 70% of the U.S. enterprise-grade WLAN market.

The case proceeded quickly toward a summer trial, but less than two weeks before trial was scheduled to begin, the DOJ announced a settlement that would allow the deal to proceed. The circumstances surrounding the settlement drew scrutiny. Reportedly, the leadership of the Antitrust Division opposed the proposed settlement but was overruled by senior political appointees at the DOJ. Reports also indicated that politically connected lobbyists advocated on the merging parties' behalf, outside of the normal channels of the Antitrust Division.

In the end, two senior Antitrust Division officials—Principal Deputy Assistant Attorney General Roger Alford and Deputy Assistant Attorney General William Rinner—were fired after the affair, allegedly for their "insubordination" in opposing the settlement. Mr. Alford has alleged that senior DOJ officials "perverted justice" in pushing through a proposed settlement without the support of the Antitrust Division, and he has called for the federal judge overseeing the settlement in California to use its Tunney Act authority to "examine the surprising truth of what happened" and block the merger.[22] Members of Congress have raised similar concerns and have called for a robust Tunney Act proceeding in the case.

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In October 2025, a coalition of 13 state attorneys general moved to intervene in the Tunney Act proceedings to challenge the sufficiency of the settlement and probe the circumstances that led to it. The court granted the intervention request in November and heard the state intervenors' opposition to the settlement at a hearing last month.

The second settlement that has drawn scrutiny involves the DOJ's antitrust case against Live Nation Entertainment, the parent company of Ticketmaster. The case alleges that Live Nation's conduct in various live event markets harmed competition and consumers.

Last month, one week into a jury trial in the Southern District of New York, the DOJ and Live Nation announced that they had reached a settlement.[23] The deal, memorialized in a five-page "term sheet"[24] rather than the proposed final judgment normally submitted in such circumstances, was signed by Live Nation CEO Michael Rapino and acting Antitrust Division head Omeed Assefi and has raised similar concerns to the 2025 merger settlement.[25]

The settlement came only a few weeks after the departure of the Antitrust Division's Senate-confirmed leader, Gail Slater.[26] According to Senator Amy Klobuchar, Ms. Slater was removed in part because of her resistance to inappropriate pressure by DOJ leadership over antitrust matters, including the Live Nation case.[27] And, as in the 2025 merger case, there have been allegations of undue influence in the settlement process by politically connected consultants and lobbyists.[28]

Most of the DOJ's state co-plaintiffs chose not to settle the Live Nation case—a decision vindicated by an across-the-board liability verdict and damages award following a five-week trial. And even as the state plaintiffs separately marched forward with trial, the federal judge overseeing the case looked ahead to the Tunney Act proceedings for the settling parties, reminding them of their disclosure and document retention obligations.[29] As the case now moves into a remedies phase, the court will hold a hearing next week to address disputes among the parties about how the Tunney Act proceedings will unfold.[30]

WHY RECENT SETTLEMENTS RAISE TUNNEY ACT CONCERNS

Together, these two settlements highlight several potential shortcomings in the existing Tunney Act framework. As with the ITT settlement that contributed to the passage of the Tunney Act following the Watergate scandal, both recent DOJ settlements have involved allegations that the DOJ's decision to settle was influenced by considerations other than the "public interest" in protecting competition. Both involved questions about the adequacy and completeness of the disclosures required under the current statute. And both prompted state attorneys general to oppose the settlements. Given those parallels, the DOJ's recent settlements have generated calls to shore up the Tunney Act to realign it with its original purpose of ensuring that government antitrust settlements further the public interest in protecting competition.

THE ANTITRUST ACCOUNTABILITY AND TRANSPARENCY ACT: PROPOSED REFORMS

In direct response to these events, Senator Amy Klobuchar and others recently proposed the Antitrust Accountability and Transparency Act, which would make several significant changes to the Tunney Act.[31]

EXTENDING COVERAGE TO THE FTC AND VOLUNTARY DISMISSALS

Currently, the Tunney Act applies only to the DOJ. The proposed legislation would extend Tunney Act review to settlements by the Federal Trade Commission (the DOJ's sister federal antitrust enforcer), both in federal court and in the FTC's administrative proceedings.[32]

The bill would also extend Tunney Act procedures to voluntary dismissals of antitrust cases.[33] This provision is noteworthy because, under current law, the DOJ can simply walk away from an enforcement action by voluntarily dismissing it, thereby avoiding the Tunney Act's requirements. For example, in July 2025 the DOJ voluntarily dismissed its challenge to a proposed merger between American Express Global Business Travel and CWT, two business-travel providers, without having to comply with the Tunney Act.[34] Under the proposed legislation, such voluntary dismissals would first need to be published in the *Federal Register* and be stayed for 45 days, during which time state attorneys general could step into the DOJ's shoes.[35]

EXPANDING DISCLOSURE REQUIREMENTS

The proposed legislation would significantly expand what the DOJ and FTC must disclose to obtain judicial approval of a settlement. Key new disclosure requirements would include the following:

- An explanation of "any commitments made by the parties to the United States or Federal Trade Commission not memorialized in the proposal related to the proceeding"—in other words, any side deals beyond the four corners of the consent decree.[36]
- A description and evaluation of "any settlement offers, divestitures, or other remedies, including the process through which these proposals were considered."[37]
- A requirement that the government explain "how the proposal remedies any material risk that the antitrust laws may be violated."[38]

The requirement to disclose all settlement proposals and "the process through which those proposals were considered" is especially noteworthy.[39] Under current practice, enforcers typically keep all settlement negotiations confidential and disclose only the terms of the final accepted proposal. Requiring disclosure of all settlement offers and the process for considering them would give courts and the public much more insight into how a settlement was negotiated—and whether it was negotiated in the public interest.

STRENGTHENING THE "PUBLIC INTEREST" STANDARD

The bill would add teeth to courts' review of whether a settlement "is in the public interest" by introducing two new considerations that the court must weigh before approving a consent decree:

1. The settlement must not permit any "course of conduct that creates a material risk of violating the antitrust laws."[40]
2. The settlement must be "reasonably tailored to the violations of the antitrust laws alleged in the complaint."[41]

The "material risk" language would represent a potentially significant change in Tunney Act practice. Depending on how that language is construed, it may require much more judicial scrutiny of whether a settlement actually remedies the competitive harms alleged in the government's complaint—a question that courts have historically declined to examine closely.

In addition, the bill expressly provides that courts need "not defer to the United States' predictions about the efficacy of its remedies."[42] While this provision would promote judicial independence in reviewing settlements, it would come at a cost to the deference that federal antitrust enforcers—subject-matter experts in antitrust—have historically enjoyed in Tunney Act proceedings. Courts would also be authorized to order production of additional information, including all communications that must be disclosed under the statute, and information and testimony about any "benefit or concession by any party in the proceeding to the Government or an employee or officer thereof, including payments, donations, or alterations in policy or business practices."[43]

HOLD-SEPARATE REQUIREMENTS

The proposed legislation would require merging parties to remain separate (just as if they were subject to a waiting period under the Hart–Scott–Rodino Act) until at least 15 days after the government responds to public comments on the settlement.[44] This would change current practice, under which courts may allow merging parties to begin combining during the Tunney Act review period, which can create a practical obstacle to rejection of a settlement: Once a merger is consummated and assets are combined, courts are understandably reluctant to order parties to "unscramble the egg."[45]

EMPOWERING STATE ATTORNEYS GENERAL

The proposed legislation would also facilitate greater involvement by state attorneys general. In addition to the ability of states to substitute for the federal government in the event of a voluntary dismissal,[46] the bill would require the court to "take into account" any request by a state attorney general for an evidentiary hearing about a proposed

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settlement.[47] And if such a hearing is held, the legislation will require the court to allow the requesting state to intervene.[48] This is a meaningful change: Under the current statute, courts are expressly not required to permit anyone to intervene, and states seeking to participate must use their limited resources to litigate for intervention.

LOOKING AHEAD

Whether or not the Antitrust Accountability and Transparency Act becomes law, the circumstances surrounding the DOJ's recent antitrust settlements have already raised the prospect of a shift in the landscape of Tunney Act practice. Courts may look more closely at federal antitrust settlements, and state attorneys general have shown a willingness to intervene aggressively when they believe that the federal government's settlement is not in the public interest. And if the proposed reforms are enacted, the settlement process for antitrust cases will look substantially different, with broader disclosure obligations, more rigorous judicial review, and a significantly enhanced role for state attorneys general, among other changes. Companies involved in antitrust enforcement actions should monitor these developments closely.

This post is for informational purposes only and does not constitute legal advice or create an attorney-client relationship.

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[1] Pub. L. No. 93-528, 88 Stat. 1706 (1974).

[2] Ciara Torres-Spelliscy, *The I.T.T. Affair and Why Public Financing Matters for Political Conventions*, Brennan Ctr. for Just. (Mar. 19, 2014), https://www.brennancenter.org/our-work/analysis-opinion/itt-affair-and-why-public-financing-matters-political-conventions.

[3] *Id.*; *see also* E.W. Kenworthy, *The Extraordinary I.T.T. Affair*, N.Y. Times, Dec. 16, 1973.

[4] H.R. Rep. No. 93-1463, at 6, 8 (1974).

[5] 15 U.S.C. § 16(b).

[6] *Id.* § 16(b)(1)–(6).

[7] *Id.* § 16(b).

[8] *Id.* § 16(d).

[9] *Id.* § 16(g).

[10] *Id.*

[11] *Id.*

[12] *Id.* § 16(e)(1).

[13] S. Rep. No. 93-298, at 5 (1973).

[14] *See* Pub. L. No. 108-237, § 221, 118 Stat. 661, 668–69 (2004).

[15] 15 U.S.C. § 16(e)(1)(A)–(B).

[16] *Id.* § 16(f)(1)–(5).

[17] *See* Alexandra P. Clark, *Leaving Judicial Review with the Judiciary: The Misplaced Role of Agency Deference in Tunney Act Public Interest Review*, 78 Wash. & Lee L. Rev. 925, 942 (2021) ("[T]he plain language of the Tunney Act does not require, or even contemplate, deference to the DOJ in mandating the judicial 'public interest' review."); *see also* Lloyd C. Anderson, *Mocking the Public Interest: Congress Restores Meaningful Judicial Review of Government Antitrust Consent Decrees*, 31 Vt. L. Rev. 593, 593–94 (2007) ("The plain language of the Tunney Act appeared to require judges to make a de novo determination of whether a proposed antitrust consent decree was in the public

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interest, without giving deference to the executive branch's view that the public interest would best be served by a proposed settlement.").

[18] *See United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982).

[19] *See* Clark, *supra* note 17, at 948 § II.

[20] *Id.* at 949 § III.B; *see, e.g.*, *United States v. SBC Commc'ns*, 489 F. Supp. 2d 1, 11 (D.D.C. 2007) (explaining that "a close reading of the law demonstrates that the 2004 amendments effected minimal changes," and its scope of review "remains sharply proscribed by precedent").

[21] Roger P. Alford, *The Rule of Law Versus the Rule of Lobbyists*, Remarks Before Technology Policy Institute Aspen Forum (Aug. 18, 2025), https://techpolicyinstitute.org/wp-content/uploads/2025/08/TPI-Aspen-Final.pdf.

[22] *Id.*

[23] Notice of Settlement, *United States v. Live Nation Enter. Inc.* (*Live Nation*), No. 1:24-cv-03973 (S.D.N.Y.), Dkt. 1171.

[24] Term Sheet, *Live Nation*, Dkt. 1172.

[25] Dana Mattioli, Rebecca Ballhaus & Josh Dawsey, *The Threats and Bare-Knuckle Tactics of MAGA's Top Antitrust Fixer*, Wall St. J. (Mar. 20, 2026), https://www.wsj.com/us-news/law/lobbyists-antitrust-trump-davis-f6a02e04?gaa_at=eafs&gaa_n=AWEtsqcOt2-lGiAvqrIlD2iTXa5BLjshnf4AOW_wMN_-QxHaaiSI92OKOzVV&gaa_ts=69c223fc&gaa_sig=7apCbISPrfH0Rm04L1eJ_ScongMvWaykgn1PMwS3UqGpv406WsGPS254CFMDme_uBbwCX3_WGt3VA_zIxzjwRg%3D%3D; Leah Nylen & Josh Sisco, *A Secret Deal to Avoid Ticketmaster Breakup Sparks Frantic Week*, Bloomberg (Mar. 13, 2026), https://www.bloomberg.com/news/articles/2026-03-13/a-secret-deal-to-avoid-ticketmaster-breakup-sparks-frantic-week.

[26] Nylen & Sisco, *supra* note 25.

[27] Press Release, Off. of Sen. Klobuchar, After Weak Live Nation-Ticketmaster Antitrust Deal, Klobuchar Introduces Legislation to Ensure Antitrust Settlements Benefit Consumers, Workers, and Small Businesses—Not Special Interests (Mar. 17, 2026), https://www.klobuchar.senate.gov/public/index.cfm/news-releases?ID=CABF0412-1D6A-4FC6-BB19-048E0CF72B7F.

[28] Nylen & Sisco, *supra* note 25.

[29] *Live Nation*, Dkts. 1231, 1294.

[30] *Live Nation*, Dkt. 1473.

[31] Antitrust Accountability and Transparency Act, S. 4107, 119th Cong. (2026).

[32] *See, e.g., id.* §§ 2(1)-(2).

[33] *Id.* § 2(9).

[34] Press Release, Off. of Sen. Blumenthal, Senators Ask for Information About Political Consultants Hired to Influence Business Travel Mega Merger (Aug. 13, 2025), https://www.blumenthal.senate.gov/newsroom/press/release/senators-ask-for-information-about-political-consultants-hired-to-influence-business-travel-mega-merger.

[35] S. 4107 § 2(9).

[36] *Id.* § 2(2)(B).

[37] *Id.* § 2(2)(C).

[38] *Id.* § 2(2)(B).

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[39] *Id.* § 2(2)(C).

[40] *Id.* § 2(5)(A)(ii).

[41] *Id.*

[42] *Id.* § 2(5)(C).

[43] *Id.* § 2(6)(D).

[44] *Id.* § 2(4)(C).

[45] Press Release, Off. of Sen. Klobuchar, *supra* note 27.

[46] S. 4107 § 2(9).

[47] *Id.* § 2(5)(B).

[48] *Id.* § 2(5)(C).

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