Regulation Rollback and Market Competition: Summary of Spring Meeting 2026 Panel

by Andrea Okie; Analysis Group, Inc.

ABA Antitrust Law Section (June 25, 2026)

Andrea Okie

What happens when regulation and competition enforcement collide? How should regulation be designed to achieve policy goals and make room for the benefits of competition? How should federal and state regimes for these activities coexist and interact?

These were among the issues that emerged from a lively panel discussion at the 2026 American Bar Association (ABA) Antitrust Law Section Spring Meeting in Washington, DC. The panel, "Regulation Rollback and Market Competition," was sponsored by the ABA's Healthcare & Pharmaceuticals and Insurance & Financial Services Committees and moderated by Karina Lubell of the Brunswick Group, also the former chief of the Competition Policy and Advocacy Section at the US Department of Justice (DOJ) Antitrust Division. She was joined by panelists Alexis Gilman of Alston & Bird, Elinor Hoffmann of the Office of the New York State Attorney General, Diana Moss of the Progressive Policy Institute, and Sarah Scheinman of Sidley Austin.

The Panel Discussion

The panel began with an exploration of how regulation and competition policy intersect across federal and state systems, highlighting both institutional complexity and implications for practitioners on both sides. Panelists described how competition considerations are incorporated – often unevenly – into regulatory processes. Ms. Scheinman explained that at the federal level, rulemaking involves multiple actors, including the appropriate regulatory agency, the White House, the Office of Information and Regulatory Affairs, and competition authorities such as the Federal Trade Commission (FTC). Agency review involves cost-benefit analysis and, often, must consider the effects of competition.

Ms. Hoffmann pointed out that the process is less formalized at the state level. In New York, agencies may not be required to consider competition at all, and state attorneys general often play a supplementary role, stepping in to evaluate competitive effects. This creates a more patchwork system in which competition analysis depends heavily on the reviewing power of particular state departments.

Ms. Moss provided a comparative overview of recent executive approaches to competition policy. The Biden administration pursued an expansive, "whole of government" approach targeting dominant firms across multiple sectors, including tech, health care, and agriculture. By contrast, the second Trump administration, operating largely through executive orders, has emphasized deregulation, lowering barriers to entry, and removing what it called "distortions on the operation of the free market." Ms. Moss indicated that such executive actions are, by their nature, less resilient than lawmaking efforts. Mr. Gilman, though, pointed out that they can carry lasting effects, depending to some extent on resource limitations within enforcement agencies.

The discussion turned to the question of why pro-competitive reform can be difficult to achieve. Ms. Scheinman pointed out that the rulemaking process is time- and labor-intensive. Ms. Hoffmann added that the influence of businesses creates regulatory capture, in which agencies may be persuaded to preserve the status quo. Additionally, Ms. Moss pointed to a structural dimension behind regulatory inertia: Firms do not merely benefit from favorable regulations; some design their entire business models around them, further entrenching the regulatory framework and making it more difficult to displace.

Against the backdrop of these hurdles to reform, the panel considered strategies for competition advocacy and litigation outcomes. On the advocacy side, Ms. Moss highlighted that federal regulators operate under a "public interest" standard, which is broader than the "no harm to competition" standard familiar from antitrust. Ms. Scheinman and Mr. Gilman both emphasized that tying competition arguments to stated executive priorities can help those arguments gain traction.

On the litigation side, Ms. Hoffmann stated that practitioners must contend with constraints such as federal preemption and implied immunity. Mr. Gilman illustrated the practical stakes with two FTC hospital merger matters. Finally, the panelists explored the practical hurdles behind pro-competition litigation across several industries, including health care, telecommunications, and pharmaceuticals.

Takeaways

Four broad themes emerged from the panel discussion.

Fragmented Regulatory Frameworks Create Gaps in Competition Oversight

Competition policy operates within a fragmented regulatory landscape, particularly when it comes to the distinction between the federal and state levels. Federal rulemaking processes include multiple checkpoints where competition concerns may be raised, but these mechanisms are not uniformly applied, and state systems vary widely in how, or even whether, they incorporate competition considerations.

For practitioners, this fragmentation creates both challenges and opportunities. On one hand, inconsistent standards and procedures can lead to uncertainty and uneven enforcement. On the other hand, gaps in formal review processes create openings for targeted advocacy, particularly through public comments or direct engagement with agencies and officials.

Diverging Philosophies on Competition Policy but Limited Durability

The contrast between recent administrations underscores the extent to which competition policy is shaped by broader political agendas. An enforcement-driven approach focused on dominant firms differs significantly from a deregulatory approach aimed at reducing barriers to entry. While there are clear substantive differences between these approaches, they share common goals such as increasing market access and transparency, and both are constrained by institutional realities.

Structural Barriers Complicate Pro-Competitive Reform

Even when policymakers seek to promote competition, structural barriers often impede reform. Three such barriers are regulatory capture, entrenchment, and resource constraints. On the practitioner side, this means that advocacy strategies should account for both legal frameworks and the economic and political realities that sustain existing regulatory structures.

Practitioner Strategy Must Adapt to Regulatory Complexity

Finally, the panel made clear that effective practice in this area requires a sophisticated understanding of both competition law and regulatory policy. Advocacy efforts must be framed within the broader "public interest" standards adopted by agencies, incorporating considerations such as consumer protection, reliability, and affordability. Successful strategies often involve aligning competition arguments with current policy priorities and supporting them with empirical evidence. Evidence from several industries indicates that competition outcomes are frequently shaped as much by regulatory structures as by traditional antitrust analysis.

Final Thoughts

The panelists were asked for their final thoughts on this multifaceted set of topics. Mr. Gilman opined that there was bipartisan receptivity to the ideas of lowering barriers to competition and that pushing for this outcome might well be a matter of the resources needed to bring this strategy to the agencies. Ms. Moss hypothesized that our current situation is no longer defined by the simple opposition of pro- or anti-market regulation and advised keeping an eye on new business models and technologies as areas on which it may be easier to compete. Ms. Scheinman emphasized the importance of issues of transparency and affordability at both the federal and state levels and noted that while there is some fragmentation in the competition landscape, there are also areas of alignment.

Finally, Ms. Hoffmann, echoing Justice Brandeis's famous formulation, noted that the states have been laboratories for experimentation – more recently in areas such as algorithmic pricing and tech more broadly. She advised looking to state legislatures and agencies as important guidance for what's coming in the years ahead. All the participants agreed that these developments bear further observation and scrutiny.