

# *Antitrust Communications Action Plan:*

*Part One of a Three-Part Series*

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**BY JEFF GUTTMAN**



The Monopoly man got it wrong: Apparently, you can't own it all. The rise of mega-corporations has led to mounting concern about market fairness and competition and the [potential harmful effects on consumers](#). In response, [antitrust laws](#) were created to prevent companies from forming monopolies and obtaining more than their fair share of the market. And those requirements have only become more stringent over the last several years.

In this brief three-part series, we'll outline an action plan to strengthen your organization for today's antitrust environment. We'll begin with a quick background and move on to the first key issue: communication.

## Reacting to 'Underenforcement'

Though many of these laws have been in place for decades, we know that [politics play an integral role](#) in shifting policy with respect to the interpretation and application of the laws. [President Joe Biden made it clear](#) that his administration will take a more aggressive tack with American businesses: "We're now 40 years into the experiment of letting giant corporations accumulate more and more power...I believe the experiment failed." True to his word, the Department of Justice sought to block eight corporate mergers and an [alliance between JetBlue and American Airlines](#) by December 2022.

Biden additionally signaled his interest in antitrust enforcement by appointing [big tech critic](#) Lina Khan as Commission Chair of the Federal Trade Commission (FTC). In September 2022, [Khan testified before the Senate](#) that the evidence suggests an "underenforcement" of regulations has led to a more concentrated market. Khan [detailed the FTC's work](#) to halt that trend, committing to a reactivation of "the full set of authorities" granted by Congress.

And data shows she wasn't kidding. In the few months following her testimony, the federal government brought several major antitrust actions against tech giants [Microsoft](#), [Meta](#), and [Google](#).

## Proactive Communication

If the intensity of investigations [continues trending upward](#), organizations should focus on the factors they can control to be prepared for an investigation – or [risk severe penalties](#).

One thing we know for sure: Understanding the key players needed to respond to a regulatory inquiry is integral to a company's success. In addition to the governmental agencies above there are four primary stakeholders involved in a successful regulatory response effort: the company, its outside counsel, a data/eDiscovery provider, and a review service provider to analyze relevant documents. As Level Legal does, one organization might handle both eDiscovery and review.

With so many cooks in the kitchen, proactive communication between stakeholders is key. At the very least, [initial goal-setting meetings](#) and regularly scheduled follow-up meetings regarding the scope of the review, timing, budget, and pertinent legal issues involved are essential to ensure the trains are running on time. It's critical that all stakeholders are aligned on both strategy and tactics; big things are made up of little things – and it's the little things that most often create unexpected havoc. [ILTA](#)



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*Before earning a law degree from Rutgers University, Jeff lived a characteristically diverse and colorful life. Study of the great books in college. Cotillion marshal in South Carolina. Lawnmower repairman in suburban New Jersey.*