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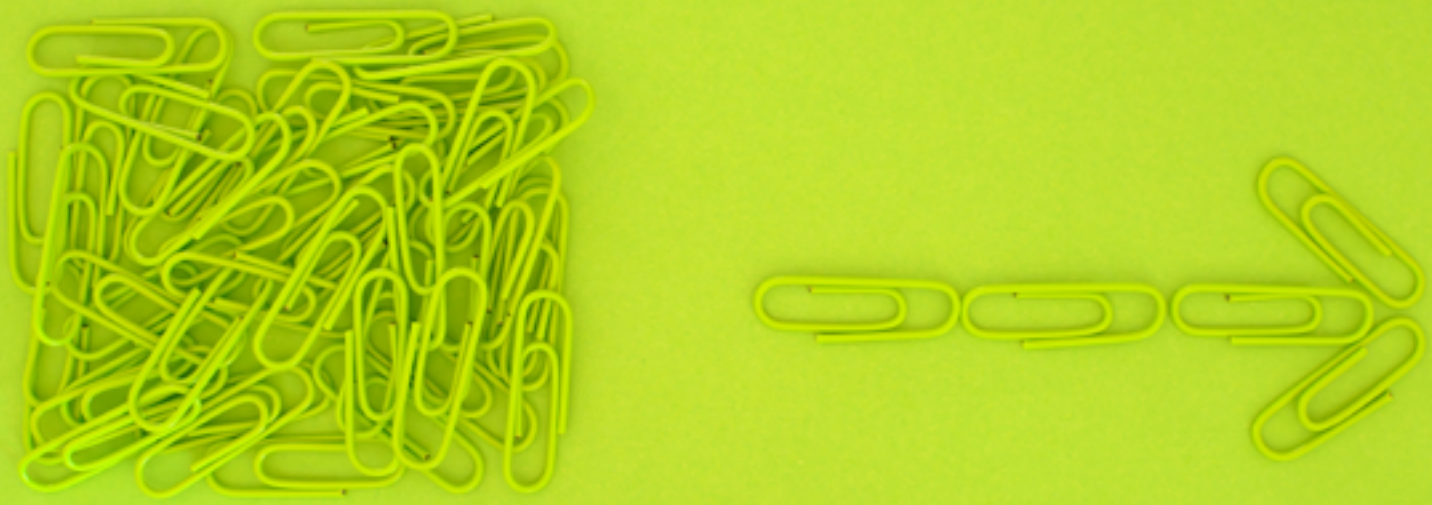

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RETHINKING BUY-SIDE ANTITRUST "GROUP BOYCOTTS"

By Craig Falls & Brendan McGuire

One of the more confusing questions of antitrust law pertains to when buyers choose not to buy something. Such activity, when done collectively, can violate antitrust law as a "group boycott." Boycotts, however, occur frequently for reasons unrelated to competition, such as when buyers seek to convince companies to change policies for a wide variety of social reasons, as exemplified by recent high-profile boycotts of Bud Light and Disney. Determining when such boycotts violate antitrust law is not often easy as such boycotts often have economic effects. Relatedly, in recent years, antitrust scrutiny has fallen on collective activity of buyers seeking improvements in their supply chain related to social welfare considerations when such improvements may require higher production costs. The application of antitrust law to buyer activity that is not intended to harm competition, yet which may have incidental economic effects, presents a risk that the group boycott doctrine will become unmoored from its competition-law foundations. This article explains the relevant case law and how the proper application of that law can keep antitrust law focused on harm to competition.

The social media platform "X" filed a lawsuit in 2024 alleging that advertising customers, with the encouragement of an industry association, engaged in an antitrust "group boycott" by reducing advertising purchases to pressure the platform to remove content the advertisers found objectionable when associated with their brands.[2] Just a year later, X's owner, Elon Musk, called for a boycott of Netflix, encouraging subscribers to cancel their subscriptions until Netflix removed content that Musk found objectionable.[3]

Buy-side boycotts pressuring companies to change how they do business span a range of social issues. Additional recent high-profile examples include boycotts of Bud Light[4] and Disney.[5] The effectiveness of such boycotts often lies in their ability to impose significant economic impacts on their targets. **Do economic effects convert boycotts grounded in social issues into antitrust violations? Does antitrust law treat boycotts differently in the B2B context than in the B2C context? If so, why?**

Relatedly, antitrust attention has fallen on industry coalitions in which buyers collectively convey desired non-price improvements to their supply chain counterparties. These initiatives have at times been characterized as group boycotts of companies that do not meet the standards sought, as conspiracies to reduce output or increase price when the standards are more difficult or costly to achieve, or as "artificial" interference with "normal market forces."[6] State legislators have passed "anti-boycott" laws to ban such activity, and many of these laws in turn prohibit state agencies from contracting with the offenders.[7] There is also scrutiny of third parties who rate companies on such dimensions under the theory that these ratings are used to coordinate boycotts.[8] **When does it violate antitrust law for customers to *collectively* tell suppliers what they want or choose not to buy from suppliers that do not meet their standards? Are social welfare considerations "anticompetitive" if they are associated with higher production costs?**

Antitrust law pertaining to group boycotts is murky. As the Supreme Court observed, there "is more confusion about the scope and operation of the per se rule against group boycotts than in reference to any other aspect of the per se doctrine."[9] Recent attempts to expand antitrust scrutiny to boycotts based in social concerns and related collective buyer activity not intended to harm competition—but which may have incidental economic effects—creates even more uncertainty. This article explains the relevant case law and offers an analytical framework to ground a doctrine that is at risk of becoming unmoored from its foundations.

I. GROUP BOYCOTT FOUNDATIONS

- ***Unilateral vs. Coordinated Refusals to Deal:*** Except in limited circumstances, antitrust law permits an economic actor to refuse to sell, buy, or otherwise deal with any third party if such a decision is made independently.[10] Antitrust law, however, treats "group

2 Complaint, *X Corp. v. World Fed'n of Advertisers*, 7:24-cv-00114 (N.D. Tex. Aug. 6, 2024), Dkt. No. 1.

3 Fazian Farooque, *Netflix Dips After Elon Musk Calls for Boycott*, Yahoo! Finance (Oct. 3, 2025), https://finance.yahoo.com/news/netflix-dips-elon-musk-calls-130453498.html.

4 Jura Liaukonyte et al., *Lessons from the Bud Light Boycott, One Year Later*, Harv. Bus. Rev. (Mar. 20, 2024) https://hbr.org/2024/03/lessons-from-the-bud-light-boycott-one-year-later.

5 Patricia Battle, *Disney suffers alarming loss after massive consumer boycott*, TheStreet (Oct. 22, 2025) https://www.thestreet.com/entertainment/disney-suffers-concerning-loss-after-massive-boycott.

6 Press Release, *Attorney General James Uthmeier Leads Multi-State Coalition Putting Corporations on Notice Over Involvement with Anticompetitive Environmental Groups* (Feb. 10, 2026) (Characterizing buyer coalitions seeking more sustainable packaging as "pressuring companies into artificially changing their output and quality of their goods and services in way[s] that normal market forces would not otherwise bring about."); *see also* Complaint, *In re Omnicom Grp. Inc. and The Interpublic Grp. of Cos., Inc.*, Docket No. C-4823, ¶¶ 18-21 (F.T.C. Sept. 26, 2025) (In a settled merger challenge, the FTC alleged that industry associations were organizing a "concerted refusal to deal" among companies that buy advertising when the associations flagged web-publisher content that "could tarnish [the advertisers'] brands").

7 See *Am. Sustainable Bus. Council v. Hegar*, 1:24-cv-01010-ADA (W.D. Tex. Feb. 3, 2026) (enjoining a Texas law that banned boycotts of fossil fuel companies and that required state entities to engage in their own boycott of companies that refuse to deal with fossil fuel companies). For other examples, see JustVision Anti-Boycott Legislation Tracker, https://justvision.org/boycott/legislation-tracker.

8 See e.g. *Media Matters for America v. FTC*, Civ. Action No. 25-1959 (SLS) (D.D.C. Aug. 15, 2025), Dkt. 34 (discussing investigations of Media Matters by Texas, Missouri, and the FTC for facilitating "advertiser boycotts" of social media platforms by reporting on which platforms spread misinformation or have antisemitic content); Press Release, *Attorney General Bailey Applauds S&P's Announcement to Halt Use of ESG* (Aug. 14, 2023) (Discussing multistate antitrust investigations of credit rating companies that scored companies on ESG ratings).

9 *Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co.*, 472 U.S. 284, 294 (1985).

10 *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919 (holding that antitrust law "does not restrict the long-recognized right of a trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to the parties with whom he will deal."); *see also Verizon Commc'ns Inc. v. Law Office of Curtis V. Trinko, LLP*, 540 U.S. 398, 408 (2004) ("We have been very cautious in recognizing [] exceptions because of the uncertain virtue of forced sharing and the difficulty of identifying and remedying anticompetitive conduct by a single firm.").

boycotts" or "concerted refusals to deal" differently in part because coordination among competitors is more suspect than unilateral action under antitrust laws and because a refusal to deal among multiple competitors, at least in a fragmented market, tends to have a greater ability to foreclose a boycotted entity than a single firm's refusal to deal.[11]

- ***Sell-Side Antitrust Boycotts are Common***: The paradigmatic cases of antitrust group boycotts are sell-side boycotts. For example, a powerful company may pressure its suppliers to refuse to sell products or materials to another buyer who is a price cutter, a new entrant, or other competitor that threatens the incumbent competitor's sales. What makes this a "group" boycott is that the sellers agree to the boycott only "on the condition that their competitors would do the same" because they might otherwise lose sales and market share to non-participating competitors. Other activity frequently challenged as an antitrust "group boycott" includes competitors in a trade group refusing to admit other competitors, and standard setting organizations or industry certification programs managed by competing companies that exclude a competitor's offerings from a standard or certification. In each case, a competitor is being denied access by *its competitors to* something it needs to compete.
- ***Buy-Side Antitrust Boycotts are Infrequent and Counterintuitive***: Buy-side group boycotts can also violate antitrust law. For example, an incumbent manufacturer may convince multiple distributors not to purchase the products of a new manufacturer entering the market. Such buy-side cases, however, are less common for several reasons. First, buyers are typically not concerned about their market share of p*urchases* and thus have little reason to condition their refusal to buy on their competitors doing the same unless the foregone purchase provides some advantage in downstream sales. As such, refusals to buy are frequently analyzed individually as exclusive dealing with the incumbent supplier rather than as group boycotts. Second, while sellers rarely have legitimate reasons to discuss their customers with competing sellers, buyers regularly share customer testimonials and reviews of common suppliers with each other as a means of more efficiently conducting diligence on suppliers, and this buy-side activity is welcomed and promoted by suppliers who are well-rated. Characterizing such activity as an antitrust group boycott of poorly rated suppliers could significantly chill efficiency-enhancing activity. Third, there is reason to be skeptical that a poorly rated supplier is a victim of an antitrust boycott as opposed to a victim of its own poor performance.
- ***Per Se vs. Rule of Reason Boycotts:*** For much of the twentieth century, group boycotts were considered per se unlawful, meaning that such boycotts were condemned without consideration of their impact on competition. Yet, noting that activity characterized as a group boycott is often **"**designed to increase economic efficiency and render markets more, rather than less, competitive," the Supreme Court now limits per se treatment to "cases in which firms with market power boycott suppliers or customers i*n order to discourage them from doing business with a competitor*." All other alleged group boycotts are analyzed via the rule of reason under which harm to competition must be shown and can be rebutted by demonstrating procompetitive justifications.
- ***Political vs. Economic Boycotts:*** The Supreme Court has attempted to distinguish political boycotts from antitrust boycotts. In *NAACP v. Clairborne Hardware*, for example, the Court reviewed claims that a boycott of white-owned businesses in Mississippi by citizens to convince elected officials to support racial integration was found to be outside the scope of antitrust laws. Despite finding that the boycotted "merchants would sustain economic injury," the Court held that the "purpose of the petitioners' campaign was not to destroy legitimate competition" and instead was "designed to force governmental and economic change and to effectuate rights guaranteed by the Constitution itself." Although the Court's framing suggests that the lack of intent to harm competition is the most critical factor, the Court's holding also relied heavily on First Amendment principles and the boycotters' intention to influence government policy, which is less likely to apply in a boycott designed to pressure a private company to change its policies. As one student note recently observed, courts have struggled to distinguish between economic and political boycotts as the latter often have economic effects that can benefit some competitors at the expense of others.

II. A SENSIBLE ANALYTICAL FRAMEWORK FOR BUY-SIDE ANTITRUST GROUP BOYCOTTS

Not all collective activity by buyers should be viewed as an antitrust concern due to incidental economic effects. Rather, to refocus the prohibition of "group boycotts" on the *harm to competition* they were intended to address, the following factors, consistent with the rule of reason framework, should control the analysis.

- ***Agreement: Is one buyer's refusal to buy conditional on another buyer's refusal to buy?*** Consider a rule limiting buy-side antitrust group boycotts to refusals to deal that are conditional on another buyer also refusing to buy from the seller (defining a "concerted refusal to deal" as a "*conditional* refusal to deal" as opposed to any "collective refusal to deal"). First, this rule would remove from antitrust scrutiny most boycotts in the B2C context because end consumers, who have no competitors, have little reason to care what other consumers purchase. Second, in the B2B context, this rule would help to distinguish vertical exclusive dealing

11 See e.g. *Fashion Originators' Guild of Am. v. FTC*, 312 U.S. 457, 465 (1941) (holding that a retailer boycott of purchases from manufacturers selling copied designs, and manufacturer boycott of sales to retailers who refused to join the boycott narrowed the outlets through which competing manufacturers could sell and from which retailers can buy textiles and thus had "both as its necessary tendency and its purpose and effect the direct suppression of competition").

agreements and unilateral refusals to deal from horizontal "toe-the-line" group boycotts. Third, the rule would allow procompetitive collaborations by buyers in the B2B context where members make no commitments to each other, either directly or indirectly, about what they will and will not purchase yet collectively convey to suppliers desired supply chain improvements. Such collective demand signals tend to be procompetitive because they avoid suppliers having to develop one-off solutions for each buyer and can create scale efficiencies that encourage supplier investment. Antitrust law should not prohibit multiple buyers from "agreeing" that they want the same things from suppliers.

- ***Anticompetitive Effects: Is there harm to competition?*** As with any rule of reason analysis, the focus should be on harm to competition, not harm to competitors or incidental economic effects.
    - Antitrust protects competition, not competitors: Buyers naturally prefer suppliers who address needs to those who do not. The exclusion of the latter is a function of competition on the merits, not competitive harm. Sound antitrust analysis demands skepticism where an alleged "boycott" is based on buyers not purchasing from a supplier that fails to meet the buyers' needs, as opposed to an effort to insulate from competition some other supplier or type of supplier.
    - Economic effects are not the same as harm to competition: Consider, for example, claims that buyer demand for more sustainable products is anticompetitive because sustainability improvements raise costs or reduce output.[12] This assertion risks putting the effects cart before the reduction in competition horse. Antitrust law does not require companies to maximize output or reduce costs at the expense of all other considerations. Otherwise, it could be unlawful to "Buy American" or to decline to deal with suppliers in hostile countries.[13] Quality improvements are not anticompetitive merely because they might be associated with higher costs or lower output.[14] Proper antitrust analysis requires a showing of competitive harm, and such harm should not be inferred from cost or output effects that may reflect procompetitive quality improvements.
    - Is the boycott organized by an entity that stands to benefit from a reduction in competition? Rather than focus on incidental cost and output effects, a proper analysis would focus on whether those organizing the boycott are seeking to shield themselves from competition. As the First Circuit explained, the classic anticompetitive boycott is a concerted action by competitors to exclude a non-group competitor, and while such boycotts have involved suppliers or customers of the boycotted firm, it is "the purpose to exclude competition" that makes the activity anticompetitive.[15] Where none of the organizers of the alleged boycott stand to benefit from the exclusion of a rival, attendant antitrust claims should be viewed with skepticism.
- ***Procompetitive Effects: Cognizable Social Welfare Justifications.*** The U.S. Supreme Court, in an oft-quoted holding, has found that "social justifications proffered for a restraint of trade do not make it any less unlawful." This statement, taken out of context, has been used to suggest that (a) courts must not consider social justifications under the rule of reason or (b) that any social or political activity that raises costs or reduces output is condemned by antitrust laws. Neither proposition follows from the Court's holding. Rather, as the Third Circuit explained in U*nited States v. Brown University* a case in which the district court refused to consider "social welfare justifications," appropriate invocation of the holding in S*uperior Court Trial Lawyers* (a) means that companies cannot complain that "competition itself" is an evil because of some social benefit that might occur if the defendants did not have to compete with each other on price, and (b) always applied only in cases in which the defendants had a "strong economic self-interest" to insulate themselves from competition via the challenged conduct. Indeed, the Third Circuit in Br*own University v*a*cated a* DOJ trial victory challenging an agreement among Ivy League schools to grant financial aid based only on need, not merit, and remanded the case to the district court to "fully investigate the procompetitive and noneconomic justifications proffered by [the schools]." One of the judges on the panel, who would have gone further and granted judgment for the defendant schools, questioned "why the heavy artillery of antitrust has been wheeled into position to shoot down practices that so obviously advance the public interest." Social welfare justifications often are procompetitive and must be considered insofar as they are not pretextual and not proffered to justify an argument that competition itself is a problem.

12 See Uthmeier letter n.6 *supra*; *see also Texas v. Blackrock, Inc.*, 6:24-cv-437-JDK (E.D. Tex. Aug. 1, 2025) (analyzing plausibility of claims that investor demands for lower carbon emissions would necessarily reduce output when applied to the coal industry and finding it a "close call" that antitrust claims were plausible because the investors stood to benefit financially if coal scarcity resulted in higher coal prices).

13 See *Allied Int'l, Inc. v. Int'l Longshoremen's Ass'n.*, 640 F.2d 1368 (1st Cir. 1981) (union's refusal to unload ships from Russia as a political protest was not an antitrust violation because it was not intended to drive plaintiff out of business or seek to protect anyone in competition with plaintiff).

14 See *Harrison Aire, Inc. v. Aerostat Int'l, Inc.*, 423 F.3d 374, 381 (3d Cir. 2005) ("Competitive markets are characterized by both price and quality competition, and a firm's comparatively high price may simply reflect a superior product."); *United States v. Google LLC*, 747 F.Supp.3d 1, 178 (D.D.C. 2024) ("Even a monopolist can increase prices to reflect improvements in quality without running afoul of the antitrust laws.").

15 *Allied Int'l, Inc.*, 640 F.2d at 1380 ("There is no allegation here that the ILA is engaged in an effort to drive Allied out of business or, indeed, that the ILA has any economic or commercial objective in pursuing the boycott of Russian goods."); *see also* the discussion of the "strong self-economic interest" in the *Brown University* case discussed *infra*.

III. CONCLUSION: COURTS SHOULD BE SKEPTICAL OF ALLEGED BUY-SIDE BOYCOTTS

The heavy artillery of antitrust is being wheeled into position to target allegedly anticompetitive group boycotts by buyers in addition to sellers. Courts generally have leeway to operate with skepticism of such claims in the buy-side context. To keep the "group boycott" violation focused on the conduct that excludes competitors from markets, courts may move toward insisting on proof of a reciprocal agreement among buyers, i.e., that none will purchase from the boycotted supplier only if the other buyers also refuse to make purchases. By contrast, courts may have less appetite to condemn collective demand signaling from multiple buyers revealing preferences they want from their suppliers. Moreover, harm to competition, not mere incidental economic effects of higher quality standards, must accompany any allegedly problematic group boycott that purports to amount to antitrust injury. Where the organizers of the alleged boycott are customers and not competitors of the boycotted firm, it is unlikely that there is harm to competition. It follows that boycott claims brought by suppliers that refuse to supply what customers demand may not pass muster without that necessary showing of harm. Finally, the rule of reason can appropriately credit social welfare justifications unless there is evidence that they are pretextual or based on an argument that the complained-of effects on social welfare are a function of competition itself.

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