

# MULTIJURISDICTIONAL ANTITRUST ENFORCEMENT: THE LONG AND WINDING *ILLINOIS BRICK ROAD*

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## *ABSTRACT*

In *Illinois Brick Co. v. Illinois*, the Supreme Court held that the federal private treble damages remedy was available only to direct purchasers, citing the need to avoid complexity, promote efficient judicial administration, and maintain incentives for private enforcement. Its decision to deny indirect purchasers (generally including final consumers) a federal remedy led many states to adopt conflicting legislation, enabling indirect purchasers to bring actions under state laws. The result, paradoxically, has been a “burgeoning current wave” of state indirect purchaser actions creating even greater problems than *Illinois Brick* sought to avoid, including the potential for inconsistent verdicts, multiple recoveries and duplicative proceedings. This article examines both *Illinois Brick*’s reasoning decision and the political process that undermined the decision, with the goal of developing useful insights into the issues raised by globalized antitrust enforcement.

Two general observations stand out. First, *Illinois Brick*’s assessment of the desirability of concentrating enforcement authority among direct purchasers illuminates the debate over allocating authority among global antitrust authorities. Second, and more significantly, the ensuing political struggle illustrates the enormous difficulty of allocating enforcement authority among sovereigns. The political backlash in the states was predictable, and neither the Court nor Congress could act to restore order.

The paradox of *Illinois Brick* results from the Court’s repeated refusal to focus on the political repercussions in the states. This underscores the importance of carefully assessing political realities, and the global system’s ability to address them, in allocating enforcement authority. Happily, current efforts at global antitrust convergence and cooperation are broadly consistent with these observations.