Indirect Purchaser Antitrust Standing Heads In New Direction

By Christopher T. Micheletti and James S. Dugan

Competition Law360
July 3, 2020

Defendants in indirect purchaser price-fixing and market allocation cases in federal court frequently challenge plaintiffs' claims for lack of antitrust standing.

Relying on the U.S. Supreme Court decision in *Associated General Contractors of California v. California State Council of Carpenters,*[1] defendants assert that such plaintiffs' injuries are too remote from the defendants' unlawful conduct or are not the type of injury the antitrust laws were intended to prevent.

Since we last addressed this topic in a 2012 Law360 guest article,[2] courts have continued to grapple with whether the *Associated General Contractors,* or *AGC,* case should be applied to indirect purchaser state law claims and, if applied, how to do so.

This article reviews court decisions that may portend diminished application of *AGC* to state law and others that make clear that practitioners' grasp of what is required to plead antitrust injury under *AGC* in indirect purchaser cases remains essential.

**Applicability of *AGC* to State Law Antitrust Claims**

*AGC* directed federal courts to apply a five-factor test to "evaluate the plaintiff's harm, the alleged wrongdoing by the defendants, and the relationship between them to determine whether a plaintiff is a proper party to bring an antitrust claim."[3]

These factors are:

1. the nature of the plaintiff's alleged injury; that is, whether it was the type the antitrust laws were intended to forestall; (2) the directness of the injury; (3) the speculative measure of the harm; (4) the risk of duplicative recovery; and (5) the complexity in apportioning damages.[4]

Since the Supreme Court decision in *Illinois Brick Co. v. Illinois,* which limited indirect purchasers' claims for damages under federal antitrust law, indirect purchasers in federal court generally rely on state antitrust and consumer protection statutes, i.e., from states known as *Illinois Brick* repealers, when asserting damages claims.

While *AGC* is the product of federal law, antitrust injury or standing under state law is a matter of *state* law, and "[s]tates are free to expand antitrust standing under their laws beyond what federal law permits."[5] Thus, courts must first determine whether, and to what extent, *AGC* has any application under the state's antitrust laws.[6]
**AGC (still) does not automatically apply to state-law claims in federal court.**

We previously reported that the vast majority of courts have (1) questioned the broad application of *AGC* to indirect purchaser claims under state law, (2) held that the relevant state's rules of antitrust standing should be applied, and (3) held that *AGC* should not be applied in the absence of a clear directive from those states' legislatures or highest courts.[7]

With few exceptions, courts have continued to follow these guidelines in form or substance.[8] Recently, however, courts have gone further and drawn bright-line rules regarding the inapplicability of *AGC* to state-law antitrust claims.

**An Illinois Brick repealer alone may bar application of AGC or defeat antitrust standing challenges even if AGC is applied.**

Courts have recently recognized that, given the Supreme Court's decision in *California v. ARC America Corp.*,.[9] any state legislative or court decision to repeal *Illinois Brick* fundamentally conflicts with the application of *AGC* to state-law antitrust claims. These courts have held that *AGC* should not apply in *Illinois Brick* repealer states, while others have held that if applied, *AGC* does not defeat antitrust injury in *Illinois Brick* repealer states.

The most emphatic statement of this bright-line rule can be found in *In re: Broiler Chicken Antitrust Litigation*, a sprawling multidistrict litigation involving indirect purchaser classes from numerous states alleging that defendant producers of chicken meat conspired to fix prices.

The indirect purchaser plaintiffs alleged violations of state antitrust laws and defendants moved to dismiss for lack of antitrust standing. In analyzing whether *AGC* applied to these claims, the court reviewed decisions of the highest courts in four of the *Illinois Brick* repealer states at issue in the case.

Based on this review, the court held that "any state with an *Illinois Brick* repealer would reject application of *AGC* to this case."[10]

The court reasoned that *AGC*’s proximate cause analysis "borrows from *Illinois Brick*'s concern with the unwieldy nature of indirect purchaser damages suits" and that enactment of "*Illinois Brick* repealers work[s] to save indirect purchaser damages suits, even from application of the *AGC* factors."[11]

The court called out a statement by the Minnesota Supreme Court that: 
"[b]y expressly permitting indirect purchaser suits, our legislature has rejected the notion that Minnesota courts are not to be burdened with the complex apportionment inherent in those suits."[12]

The court further reasoned that harmonization statutes passed by some states (i.e., "laws that require a state's courts to interpret the state's antitrust statutes in harmony with federal law") are not a basis to apply the *AGC* factors because such statutes do "not prevent the courts in those states from recognizing that *Illinois Brick* repealers work to save the claims of true indirect purchasers, like the Indirect Plaintiffs in this case."[13]
A similar holding can be found in the U.S. District Court for the District of New Jersey matter, *In re: Liquid Aluminum Sulfate Antitrust Litigation*, in which indirect purchasers of liquid aluminum sulfate, or Alum, sued manufacturers of Alum for price-fixing under 33 states' antitrust and consumer protection laws.[14]

The court, relying on *ARC America* and without engaging in any state-by-state analysis of whether *AGC* should be applied, held that the indirect purchaser plaintiffs "have pled facts sufficient to support antitrust standing under each of the state-specific antitrust statutes."[15]

Courts that have applied *AGC* to state-law antitrust claims have recognized essentially the same bright-line rule, i.e., that application of *AGC* to state antitrust law should not preclude claims in repealer states.

The U.S. District Court for the Eastern District of Pennsylvania in the *In re: Suboxone (Buprenorphine Hydrochloride And Naloxone) Antitrust Litigation* rejected the defendants' claim that indirect purchasers of the drug suboxone lacked antitrust standing.

The court reasoned that in *Illinois Brick* repealer states, *AGC*'s directness of injury factor "must either carry significantly less weight or directness must be analyzed more generously than under federal law," as it "would be inconsistent for a state to allow indirect purchasers to bring antitrust claims, only for the courts to cursorily dismiss those claims on antitrust standing grounds simply because they have been brought by indirect purchasers."[16]

The court held that "even applying the *AGC* factors, the End Payors have standing to bring antitrust claims under the state laws that have passed *Illinois Brick* repealer statutes."[17] A similar analysis can be found in the U.S. District Court for the Northern District of California decision *In re: Lithium Ion Batteries Antitrust Litigation*.[18]

These decisions recognize the incongruity of applying federal antitrust standing rules that focus on the directness of injury to state laws enacted to protect indirect purchasers. While it remains to be seen whether these authorities have started a broader trend, they are positive news for indirect purchaser plaintiffs facing antitrust standing challenges in federal court.

**District courts increasingly refuse to apply AGC standards to California antitrust law.**

The Northern District of California has frequently addressed whether *AGC* should be applied to California antitrust law. While an early decision applied *AGC* to bar indirect purchaser claims under California law,[19] that decision was later rejected by other courts.[20] Since our last report, numerous cases within[21] and without[22] the Northern District of California have held that *AGC* should not be applied to California law.

In the *In re: Capacitors Antitrust Litigation*, for example, the Northern District of California refused to apply *AGC* to California law, rejecting defendants' argument that California's legislature or highest court has "indicated that federal antitrust law should be followed in determining standing."[23]

The court also emphasized recent California Supreme Court pronouncements that federal antitrust law interpretations are instructive at most, and not conclusive, as well as the U.S. Court of Appeals for the Ninth Circuit's recognition that it is no longer the law in California
that "the interpretation of California's antitrust statute [is] coextensive with the Sherman Act."[24]

**Umbrella damages are neither barred under California law nor too speculative under AGC.**

Another recent AGC-related development pertaining to California's antitrust laws is the recognition that so-called umbrella damages are not barred by California's Cartwright Act and that indirect purchasers seeking such damages may have antitrust standing under California law, whether AGC is applied or not.

Umbrella damages may be claimed "when a group of conspirators sets the price of a product at an artificially high level, a price umbrella is created that spreads throughout the market," and "nonconspirator sellers uninvolved in the anticompetitive conduct correspondingly raise prices."[25]

In *County of San Mateo v. CSL Limited*, the plaintiff alleged that manufacturers of blood plasma products conspired to restrict product supply and caused inflated prices for those products sold both by defendants and by nondefendants not alleged to have participated in the conspiracy.[26]

On the defendants' motion for partial summary judgment, the court ruled that umbrella damages sought by an indirect purchaser several steps down the chain of distribution from the defendants are not too speculative under California's Cartwright Act and, for the same reasons, are not too speculative under the criteria set out in AGC.[27] A similar recent holding can be found in the U.S. District Court for the Eastern District of Pennsylvania decision *In re: Domestic Drywall Antitrust Litigation*.[28]

**Harmonization provisions have been questioned as a sole ground to apply AGC, but courts continue to rely on them.**

Since our last report, courts have more broadly recognized "that AGC should [not] be applied to a repealer statute based solely upon a general harmonization provision therein."[29] For example, the court in *Lithium Ion Batteries* recognized that "simply because a state statute encourages reference to federal law does not impose a mandate on state courts to conform in fact to federal law."[30]

Nevertheless, as more courts have taken on the task of deciphering dozens of states' laws on antitrust standing, some have applied AGC based solely on a harmonization provision.[31]

**AGC as Applied in Federal Court**

While courts have developed bright-line rules precluding the application of AGC to antitrust claims premised on state law, others have applied some form of AGC to certain states' antitrust laws or have simply assumed, *arguendo*, that AGC applies. These cases shed light on what product and market characteristics should be addressed to plead or prove antitrust standing under AGC.
**Stand-Alone Products**

Where an allegedly price-fixed stand-alone product travels essentially unchanged through the chain of distribution to indirect purchaser plaintiffs, defendants' arguments that the indirect purchasers are participating in a separate market and have no standing, generally, have continued to be unavailing.[32]

One exception to this broader conclusion is the U.S. District Court for the Southern District of New York decision *In re: Keurig Green Mountain Single-Serve Coffee Antitrust Litigation* case, which involved Keurig Dr. Pepper Inc.’s K-cups that remained unchanged through the chain of distribution.[33] Notably, that decision appeared to hinge on a lack of detailed allegations about the chain of distribution and pass-through.[34]

**Component Products**

Where the indirect purchaser plaintiffs purchase allegedly price-fixed component products subsumed within another product, antitrust standing under AGC continues to be found when one or more of the following key product or market characteristics are alleged:

- The markets for the components and end products:
  - Are "inextricably linked and intertwined" in that the component products "have no independent utility and have value only as components for other products;"[35] and/or
  - Are linked such that the demand for the components directly derives from the demand for the end products.[36]

- The component parts can be physically traced through the supply chain.[37]

- Component part prices can be traced to show that changes in the prices paid by direct purchasers of the component affect prices paid by indirect purchasers of products containing the components.[38]

- The component parts, while used in different end-product markets, provide essentially the same functionality in those different markets.[39]

In addition, the sprawling U.S. District Court for the Eastern District of Michigan decision *In re: Automotive Parts Antitrust Litigation* repeatedly addressed antitrust standing at the pleading stage and established that the fact that a component represents a small portion of the value of a finished product does not defeat antitrust standing.[40]

Finally, at least one decision analyzing the risk of duplicative recovery has cited the defendants' guilty pleas as support for standing.[41]

As shown above, the applicability of AGC to antitrust standing under state antitrust law continues to evolve. Practitioners prosecuting or defending antitrust actions should carefully consider these recent trends and their impact on what is required to meet this threshold requirement under state laws.
Chris Micheletti is a partner and James Dugan is an associate at Zelle LLP.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.


[7] See Emerging AGC Trends, n.5 (citing, among other cases, Stanislaus Food Products Co. v. USS–Posco Industries, 782 F. Supp. 2d 1059, 1070-72 (E.D. Cal. 2011) ("Stanislaus Food Products") (applying principles of antitrust standing under California's Cartwright Act to indirect purchaser claims); In re Cathode Ray Tube (CRT) Antitrust Litig. ("CRTs"), 738 F. Supp. 2d 1011, 1024 (N.D. Cal. 2010) (application of AGC is a question of state law); In re Flash Memory Antitrust Litig. ("Flash"), 643 F. Supp. 2d 1133, 1151-53 (N.D. Cal. 2009) (holding that the applicability of AGC is a question of state law and questioning whether "a state's harmonization provision, whether created by statute or common law, is an appropriate means of predicting how a state's highest court would rule regarding the applicability of AGC"); In re: TFT-LCD (Flat Panel) Antitrust Litig. ("TFT-LCD (Flat Panel)"), 586 F. Supp. 2d 1109, 1123 (N.D. Cal. 2008) ("it is inappropriate to broadly apply the AGC test to plaintiffs' claims under the repealer states' laws in the absence of a clear directive from those states' legislatures or highest courts"); In re Graphics Processing Units Antitrust Litig., 527 F. Supp. 2d 1011, 1026 (N.D. Cal. 2007) ("Standing under each state's antitrust statute is a matter of that state's law. It would be wrong for a district judge, in ipse dixit style, to bypass all state legislatures and all state appellate courts and to pronounce a blanket and nationwide revision of all state antitrust laws"); D.R. Ward Constr. Co. v. Rohm and Haas Co., 470 F. Supp. 2d 485, 494-96 (E.D. Pa. 2006) (the court "finds that it need not use the AGC factors as the framework for analyzing whether federal prudential considerations permit standing under [state] antitrust statutes, unless relevant state law adopts these factors"); In re Aftermarket Filters Antitrust Litig., No. 08 C 4883, 2009 WL 3754041, at *7 (N.D. Ill. Nov. 5, 2009) ("any
decision on whether a state has adopted the use of federal precedent in general, and the AGC factors in particular, to determine antitrust standing must be made on a state by state basis).

[8] See, e.g., In re Broiler Chicken Antitrust Litig., 290 F. Supp. 3d 772, 814-15 (N.D. Ill. 2017) ("In deciding whether to apply AGC to state-law antitrust claims, the Court will look to whether the relevant state high court or state legislature has spoken on the issue."); Los Gatos Mercantile, Inc. v. E.I. DuPont De Nemours and Co. ("Los Gatos Mercantile"), No. 13–cv–01180–BLF, 2015 WL 4755335, at *18-19 (N.D. Cal. Aug. 11, 2015) (holding that "this Court will apply AGC to claims brought under state antitrust laws whenever the state's legislature, highest court, or intermediate court expressly has adopted AGC," and will not apply AGC based on "state court decisions indicating generally that federal law is consistent with or may inform interpretation of state antitrust statutes," or based on "a general harmonization provision in the state statute."); In re Pool Prod. Distribution Mkt. Antitrust Litig. ("Pool Prod. Distribution Mkt."), 946 F. Supp. 2d 554, 564 (E.D. La. 2013) (rejecting defendants' argument that "federal courts and inferior California courts" applied AGC and holding that "AGC factors apply to standing inquiries under state antitrust laws only to the extent that a state has adopted them.").

[9] The Supreme Court in California v. ARC America rejected a preemption challenge to Illinois Brick repealer provisions, and affirmed the right of the states to provide indirect purchasers with economic redress for their antitrust injuries. 490 U.S. 93 (1989).


[11] Id. at 815.

[12] Id. at 815 (quoting Lorix v. Crompton Corp., 736 N.W.2d 619, 628 (Minn. 2007)).

[13] Id. at 816 n.17.


[15] Id. at *19-20.


[17] Id.

[18] In Batteries, the court articulated a narrow view of when AGC should be applied, reasoning, in part, that "even where some states' courts have specifically invoked AGC, they have perceived in their respective legislatures' passage of Illinois Brick repealer statutes an intent to extend antitrust standing to indirect purchasers and, accordingly, modified, or indicated they would modify, their application of AGC principles to accommodate indirect-purchaser suits more readily." 2014 WL 4955377, at *9; see also Los Gatos Mercantile, 2015 WL 4755335, at *18 (noting that the Batteries court took "a narrower approach" than requiring "clear direction from the state's legislature or highest court" when it held that AGC could be applied "only when it can be determined that the state's legislature or highest court would apply AGC in the same manner as it is applied by the federal courts").


[21] Batteries, 2014 WL 4955377, at *10-11 (stating after detailed analysis that "the Court cannot conclude on the authorities now before it that California applies AGC in the manner urged by defendants"). See also Sidibe v. Sutter Health, No. C 12-04854 LB, 2013 WL 2422752, at *16 (N.D. Cal. June 3, 2013) (noting that courts in N.D. Cal. have reached different results, but that "[t]he court's view is that the cases that do not require [application of the AGC] factors are persuasive.").

[22] See Broiler Chickens, 290 F. Supp. 3d at 816 n.15 (holding that AGC's requirements are not applicable to California antitrust law because its Supreme Court has recognized that "California's antitrust statute is 'broader in range and deeper in reach that then [sic] Sherman Act") (quoting In re Cipro Cases I & II, 61 Cal. 4th 116 (2015); In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig. ("Keurig"), 383 F. Supp. 3d 187, 258 (S.D.N.Y. 2019) ("Although Vinci favorably cites AGC, subsequent cases from the Supreme Court of California cast doubt on the applicability of the AGC factors under California law. ... I cannot conclude, therefore, that the Supreme Court of California would apply the AGC factors in accordance with federal precedents, if at all, to determine indirect purchaser antitrust standing under the Cartwright Act."); Pool Prod. Distribution Mkt., 946 F. Supp. 2d at 564 ("These authorities cannot overcome the California Supreme Court's decision in Clayworth to allow suit by indirect purchasers under the Cartwright Act and the UCL without applying the AGC factors."); but see In re Dairy Farmers of America, Inc. Cheese Antitrust Litig. ("Dairy Farmers"), No. 9 CV 3690, 2015 WL 3988488, at *8 (N.D. Ill. June 29, 2015).

[23] 106 F. Supp. 3d 1051, 1072 (N.D. Cal. 2015) ("Clayworth is not at all a definitive decision that AGC applies to California antitrust claims").

[24] Id. at 1073 (quoting Samsung Electronics Co. v. Panasonic Corp., 747 F.3d 1199, 1205 (9th Cir. 2014)).


[27] The court first reasoned that "[t]he California Legislature, unlike the United States Supreme Court, does not believe that a plaintiff's attempt to estimate overcharges incurred through a multi-tiered distribution chain is unacceptably speculative and complex; rather, the California Legislature has expressly allowed such claims." Id. at *5. The court then explained that because "umbrella damages ... are calculated the same way as indirect purchaser non-umbrella damages," they "cannot be categorically barred under the Cartwright Act for failing to meet Illinois Brick's benchmark for speculation and complexity." Id. The court then held that, even assuming AGC applies, "for the same reasons it is possible for Plaintiff to produce
non-speculative evidence that Defendants' conduct caused a price umbrella, the Court concludes that the speculative nature of the alleged harm does not warrant a finding that Plaintiff lacks standing." Id. at *6.

[28] MDL No. 13-2437, 2019 WL 4918675 (E.D. Pa. Oct. 3, 2019). In Drywall, indirect purchasers of drywall alleged price-fixing claims under the California Cartwright Act against the defendant co-conspirators, and also sought damages for drywall purchased from non-conspirator manufacturers. Id. at *2. The court held that "[t]he Cartwright Act does not bar umbrella damages as a matter of law," rejected application of AGC, and held that the plaintiffs had antitrust standing. Id. at *9 (analyzing Cty. of San Mateo, CRT, and In re TFT-LCD Antitrust Litig., No. 07-1827, 2012 WL 6708866, at *8 (N.D. Cal. Dec. 26, 2012)). The court reasoned that "the Cartwright Act does not expressly prohibit umbrella damages (indeed, at least two federal courts interpreting the Act have concluded it does not, as a matter of law, bar plaintiffs from pursuing this theory), and . . . California judicial construction of the harmonization doctrine does not require application of the federal rule barring umbrella damages." Id. at *9-10.


[31] See, e.g., Keurig, 383 F. Supp. 3d at 264 (holding that the Nevada Supreme Court would apply AGC in accordance with federal precedent based solely on a so-called "mandatory" harmonization provision (i.e., "shall be construed in harmony . . ."), while rejecting reliance on a similar "mandatory" harmonization provision with respect to West Virginia, where legislative rules "suggest[] that the Supreme Court of Appeals of West Virginia would not apply AGC, or if it did, it would apply AGC more liberally than federal precedent would require."). See also In re Refrigerant Compressors Antitrust Litig., No. 2:09-md-02042, 2013 WL 1431756, at *10 (E.D. Mich. Apr. 9, 2013) ("This Court shall also apply the AGC test to the claims asserted under the laws of the three relevant states with harmonization provisions . . ."); Dairy Farmers, 2015 WL 3988488, at *5 ("the Court will follow the plain language of the states' harmonization provisions and adopt federal antitrust-standing law in applying the states' antitrust laws absent contrary authority").

[32] See, e.g., In re Propranolol Antitrust Litig., 249 F. Supp. 3d 712, 724-26 (S.D.N.Y. 2017) (applying AGC and holding that indirect purchasers of the drug propranolol had standing because, inter alia, "the chain of distribution in the pharmaceutical industry is short, direct, and well-understood: manufacturers sell to wholesalers, which in turn sell to the pharmacies from which the End–Payors' buy the drug," and while duplicative recovery was possible, "'[d]uplicative recovery is . . . a necessary consequence that flows from indirect purchaser recovery and no bar against standing.'"); Suboxone, 64 F. Supp. 3d at 697-98 ("The End Payors claim that they were overcharged when purchasing Suboxone due to the manufacturer's monopolization. These allegations are sufficiently direct to satisfy the second factor in states that allow indirect purchasers to bring antitrust claims."); In re Interior Molded Doors Antitrust Litig., Nos. 3:18-cv-00718-JAG, 3:18-cv-00850-JAG, 2019 WL 4478734, at *10 (E.D. Va. Sept. 18, 2019) (indirect purchasers of "standalone" interior molded doors who purchased from distributors or home supply outlets have antitrust standing under AGC).
[33] 383 F. Supp. 3d at 224.

[34] *Id.* ("The vague allegation that '[t]he distribution channel for Keurig K-Cups is not complex,' . . ., does not cure the speculative nature of the alleged harm. Moreover, if the allegation is accurate the IPPs should have provided the details of the distribution channel—including its length—with more specificity since the IPPs have had ample opportunities to do so.').

[35] *See In re Automotive Parts Antitrust Litig. (Fuel Senders) ("Auto Parts – Fuel Senders"), 29 F. Supp. 3d 982, 1002 (E.D. Mich. 2014) ("IPPs have alleged that the markets for Fuel Senders and cars are inextricably intertwined, that the demand for cars creates the demand for Fuel Senders, that the Fuel Senders must be inserted into vehicles to serve a function, that Fuel Senders remain identifiable, discrete physical products, unchanged by the manufacturing process or incorporation into vehicles, that Fuel Senders follow a traceable physical chain, and that their prices can be traced through the chain of distribution."); Batteries, 2014 WL 4955377, at *12 ("IPPs allege facts sufficient to conclude, for pleading purposes, that battery cells, batteries, and battery products reside in the same market, or inextricably linked markets"); see also TFT–LCD (Flat Panel), 586 F. Supp. 2d at 1123; Stanislaus Food Products, 782 F. Supp. 2d at 1070-72.

[36] *In re Automotive Parts Antitrust Litigation (Bearings) ("Auto Parts – Bearings"), 50 F. Supp. 3d 836, 855 (E.D. Mich. 2014) (finding antitrust standing at pleading stage where, *inter alia*, plaintiffs allege "that the markets for Bearings and cars are inextricably intertwined, that the demand for cars creates the demand for Bearings, that the Bearings market exists to serve the vehicle market and bearings have little to no value outside the vehicle"); Batteries, 2014 WL 4955377, at *12 ("The cases, though not explicit on this point, appear to rest on the tacit premise that allegations which, if true, plausibly suggest cross-elasticity of demand between the component and finished-product markets, such that the two are economic complements, survive the pleadings stage"); see also TFT–LCD (Flat Panel), 586 F. Supp. 2d at 1123.

[37] *Auto Parts – Fuel Senders, 29 F. Supp. 3d at 1003 ("Similarly, the harm alleged becomes less speculative in light of IPPs' assertion that the component parts remain separate and traceable"); see also TFT–LCD (Flat Panel), 586 F. Supp. 2d at 1123 (same); In re Graphics Processing Units Antitrust Litig. ("GPU II"), 540 F. Supp. 2d 1085, 1092-93 (N.D. Cal. 2007) (same); CRTs, 738 F. Supp. 2d at 1024 (same).

[38] *Auto Parts – Fuel Senders, 29 F. Supp. 3d at 1002-03 ("Because IPPs asserted that the cost of the component was traceable through the product distribution chain, they have alleged a chain of causation . . . . Therefore, according to IPPs, they can trace overcharges through the distribution chain, and [the directness of the injury] AGC factor is satisfied."); Batteries, 2014 WL 4955377, at *14 ("The chain alleged is one that moves a distinct and identifiable overcharge nearly automatically through layers of a distribution structure to consumer IPPs. The Court finds that this is not too indirect to favor standing under AGC"); see also TFT–LCD (Flat Panel), 586 F. Supp. 2d at 1123 (same); GPU II, 540 F. Supp. 2d at 1092-93 (same); CRTs, 738 F. Supp. 2d at 1024 (same).

[39] *Batteries, 2014 WL 4955377, at *3, *12, *29 (holding that the market for allegedly price-fixed lithium ion batteries, which "have no use other than functioning as components in
lithium ion battery products," is inextricably linked to the markets for the finished products containing them, including "laptop computers, camcorders, smart phones, or power tools"); see also Flash, 643 F. Supp. 2d at 1154 (same with respect to NAND flash memory and the products in which it is used).

[40] Auto Parts – Bearings, 50 F. Supp. 3d at 851, 855 ("The Court is not persuaded that the allegations are too remote or contrary based upon Defendants' position that the price-fixed product does not make up a substantial portion of the finished good's costs") (emphasis added); Auto Parts – Fuel Senders, 29 F. Supp. 3d at 998, 1002-03 (noting and ultimately rejecting defendants' argument that "the number of other parts in a vehicle, . . . [and] the cost of a Fuel Sender relative to the final price of a vehicle containing thousands of component parts" precluded Article III and antitrust standing) (emphasis added); In re Automotive Parts Antitrust Litigation (Ceramic Substrates), No. 12-md-02311, 2017 WL 7689654, at *10-*11 (E.D. Mich. May 5, 2017) (rejecting the defendant's argument "that a part's negligible price relative to the vehicle" provides grounds for dismissal at the pleading stage) (emphasis added).

[41] Auto Parts – Fuel Senders, 29 F. Supp. 3d at 1003 (on the risk of duplicative recovery, the court noted that "IPPs bring claims against Defendants that have pleaded guilty to antitrust conduct" and that "the Court is cognizant that states that repealed Illinois Brick did so in order to allow indirect purchasers to bring claims"). Accord City of Rockford v. Mallinckrodt ARD, Inc., 360 F. Supp. 3d 730, 751 (N.D. Ill. 2019), reconsideration denied, No. 17 C 50107, 2019 WL 2763181 (N.D. Ill. May 3, 2019) (plausible allegations that "defendants had the specific intent to create anticompetitive effects through the conspiracy" established the "improper motive" AGC factor applied in the Seventh Circuit).