

Updated: November 11, 2011

FALL FORUM
ABA Section of Antitrust Law
NOVEMBER 17, 2011

7:45-8:15am **Registration and Continental Breakfast**

8:00-8:15 am **Welcome**

Speaker:

Richard M. Steuer, Chair, ABA Section of Antitrust Law, Mayer Brown LLP,
New York, NY

8:15-8:45am **Panel I: Update from the Antitrust Division**

A range of insights on current Division matters and policy priorities will be discussed.

Speaker:

Sharis A. Pozen, Acting Assistant Attorney General, U.S. Department of Justice, Antitrust
Division, Washington, DC

8:45-9:45am **Panel II: Economist Debate on Revised Horizontal Merger Guidelines**

More than a year has passed since the publication of the revised Horizontal Merger Guidelines. We will debate and critique, from an economic perspective, the impact of the HMG raising the following questions: What are the principal differences in the revised HMG? Are those differences being reflected in practice? How are the agencies approaching the issue of market definition? What has been the impact of the “upward pricing pressure” tool? How do the revised HMG compare with the merger guidelines in other jurisdictions? Have these developments been good for consumers?

Moderator:

Margaret E. Guerin-Calvert, Compass Lexecon, Washington, DC

Speakers:

Roger D. Blair, University of Florida, Gainesville, FL

Louis Kaplow, Harvard University, Cambridge, MA

W. Robert Majure, Director of Economics, U.S. Department of Justice, Antitrust
Division, Washington, DC

Damien Neven, Charles River Associates, Brussels, Belgium

Alison Oldale, Deputy Director, Bureau of Economics, Federal Trade Commission,
Washington, DC

9:45-10:00am **Break**

10:00-11:15am

Panel III: *Working with the FTC and CFPB*

Consumer protection in the United States is undergoing a dramatic change. In addition to the FTC and the State Attorneys General, there is a new sheriff in town - the Consumer Financial Protection Bureau. The CFPB has authority under 16 different consumer protection laws, and oversees consumer protection for both the 100 largest banks and other key actors in the financial sector, including credit reporting agencies, debt collectors, mortgage servicers, and companies offering debt and foreclosure relief services. What are the stated priorities at the FTC and CFPB in these areas? What should they be? How will these agencies engage the various industries in enforcement and policymaking, and how will they coordinate efforts?

Moderator:

John E. Villafranco, Kelley Drye & Warren LLP, Washington, DC

Speakers:

The Honorable Julie S. Brill, Commissioner, Federal Trade Commission, Washington, DC

Peggy L. Twohig, Assistant Director, Office of Nonbank Supervision, Washington, DC

J. Howard Beales, George Washington School of Business, Washington, DC

11:15-11:45am

Keynote Address: FTC Enforcement Policies and Priorities

A discussion of the agency's law enforcement actions and initiatives.

The Honorable Jon Leibowitz, Chairman, Federal Trade Commission, Washington, DC

11:45am-12:30pm

Luncheon

12:30-1:45pm

Panel IV: Innovation and Antitrust Enforcement in On-line Markets: *What Would Antitrust Analysis Look Like if Innovation Really Mattered?*

Economists typically find that specific innovations benefit society as a whole, far more than they benefit the firms that develop them -- especially in an economic downturn. How to encourage such innovation is a crucial question. Senior government enforcement officials will focus on the role of competition in fostering innovation and examine the ways in which merger and non-merger antitrust analysis address, or should address, the ability of firms to compete and innovate in today's market.

Moderator:

Susan S. DeSanti, Director, Office of Policy Planning, Federal Trade Commission, Washington, DC

Speakers:

Jonathan B. Baker, American University, Washington, DC

Joseph F. Wayland, Deputy Assistant Attorney General, U.S. Department of Justice, Antitrust Division, Washington, DC

Timothy L. Wu, Senior Policy Advisor, Office of Policy Planning, Federal Trade Commission, Washington, DC

1:45-2:45pm

Panel V: Behavioral Relief in Mergers and Other Enforcement Actions: “Getting to Yes: Remedies Old and New”

Crafting appropriate antitrust remedies, particularly in merger matters, remains a topic of considerable debate in the antitrust community. Questions persist as to when “behavior” or “structural” relief is appropriate; the administrability of particular remedies; and the fit between remedies and the competitive concerns they are designed to address. At the same time, the antitrust enforcement agencies recently have provided guidance on remedies. This guidance has appeared in public policy statements, as exemplified by the June 2011 Antitrust Division Policy Guide, and through enforcement actions, including LiveNation/Ticketmaster; Coke/Pepsi Bottlers; and NBC/Comcast. The theoretical and practical issues relating to selecting appropriate antitrust remedies against the background of these developments will be explored.

Moderator:

Mark S. Popofsky, Ropes & Gray LLP, Washington, DC

Speakers:

Leslie C. Overton, Special Advisor, U.S. Department of Justice, Antitrust Division,
Washington, DC

The Honorable Edith Ramirez, Commissioner, Federal Trade Commission,
Washington, DC

Howard A. Shelanski, Georgetown University Law Center, Washington, DC

2:45-3:00pm

Break

3:00-4:00pm

Panel VI: Healthcare: Accountable Care Organizations

Healthcare is one of the most important segments in our economy, both in terms of its size and its impact on our daily lives. The recently enacted healthcare reform seeks to improve access to healthcare while making the system more efficient. A key component of those reforms is the authorization of accountable care organizations that are intended to enable progress on both fronts. At the same time, ACOs present significant antitrust issues. For example, some have asked whether the same antitrust standards should apply or whether public policy concerns warrant a more lenient review. More generally, both agencies have been active in the healthcare industry with challenges to MFNs and monopolization cases as well as continued challenges and briefing on so-called Hatch-Waxman patent litigation settlements. Learn how the agencies are approaching ACOs and other competition issues in healthcare.

Moderator:

Seth C. Silber, Wilson Sonsini Goodrich & Rosati PC, Washington, DC

Speakers:

Fiona M. Scott-Morton, Deputy Assistant Attorney General, U.S. Department of
Justice, Antitrust Division, Washington, DC

The Honorable J. Thomas Rosch, Commissioner, Federal Trade Commission,
Washington, DC

Joshua D. Wright, George Mason University, Fairfax, VA

Lawrence Wu, NERA Inc, San Francisco, CA

4:00-5:00pm

Panel VII: Criminal Enforcement

Cartel enforcement remains a priority for U.S. and International antitrust enforcement officials. Leading practitioners will explore current issues and new developments in the U.S. and abroad. For example, the European Union entered its first settlement of a cartel case last year. Mexico has recently enacted new antitrust legislation that includes criminal penalties for cartel offenses and new investigatory powers, including unannounced searches sometimes called “dawn raids.” The panelists also will address the state of cooperation across jurisdictions on both policies issues and specific enforcement matters.

Moderator:

Richard G. Parker, O’Melveny & Myers LLP, Washington, DC

Speakers:

Scott D. Hammond, Deputy Assistant Attorney General, U.S. Department of Justice, Antitrust Division, Washington, DC

Roxann E. Henry, Dewey & LeBoeuf LLP, Washington, DC

Eduardo Pérez Motta, President, CFC-Comisión Federal de Competencia, Del Cuajimalpa, Mexico

Eric Van Ginderachter, Director of Cartels Directorate, Competition Directorate General, European Commission, Brussels, Belgium

5:15 – 6:30pm

Reception at kstreet lounge

Please join faculty and fellow attendees for hors d’oeuvres and cocktails at kstreet Lounge immediately following the conclusion of Fall Forum.

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