The 2015 Jury comprised the Board, the Academic and Business Steering Committees, the Editorial Committee and the Readers. Each of these contributed to the selection process of academic and business articles as well as soft laws.

The Editorial Committee of Concurrences Review selected a pool of around 100 articles based on Steering Committees members’ suggestions. Then, Steering Committees members and Readers made respectfully a short list of the most interesting articles. The Board members finally selected the award-winning articles among the short lists provided by the Steering Committees and readers.

As for soft laws, the Editorial Committee invited competition agencies to submit their best soft law documents. The Steering Committees and Readers then voted for the 10 most innovative documents.
FOREWORD

The Antitrust Writing Awards have become, over the years, an exclusive platform for antitrust writers and thinkers to share their ideas on the global stage. Again this year, these Awards provided the best articles published in 2014 with a unique readership while rewarding antitrust excellence.

The 2015 Antitrust Writing Awards consisted of:

> “Best Articles”: Awards for the best academic publications (peer-reviewed journals) and for the best business publications (non-peer-reviewed journals, briefs, memoranda, blogs, etc.) published by individual authors

> “Best Soft Law”: Selection of the most innovative non-enforcement tools published by competition agencies such as guidelines, market studies, white papers, etc.

> “Best Newsletters”: Ranking and Awards of the best law firms antitrust newsletters.

The aim of the Best Articles Awards is to promote competition scholarship. The Best Articles Awards comprise awards for the best academic publications (peer-reviewed journals) and for the best business publications (non-peer-reviewed journals, briefs, memoranda, blogs, etc.).

The “Best Soft Law” is a selection of the most recent and remarkable non-enforcement tools issued by competition agencies such as guidelines, market studies, white papers, etc. This new feature of the Antitrust Writing Awards aims to contribute to develop awareness of innovative guidance papers published by competition agencies in the world. This new feature has been specially discussed with counsels from the following companies: Apple, Cisco, Coca-Cola, General Electric, Google, Qualcomm, Microsoft, and Verizon.

The articles and soft laws were selected by a jury and by readers. The 2015 jury consisted of a Board—Douglas Ginsburg, Fred Jenny, Bill Kovacic, Alexander Italianer, Howard Shelanski, and Joshua Wright—an Academic and a Business Steering Committees composed of leading academics and counsels. Readers contributed to the selection process by voting for articles and soft laws. We are most thankful to the jury members who spent valuable time to read and review the selected articles and soft laws as well as to our sponsors who made these Awards possible.

The “Best Newsletters” Ranking & Awards rewards antitrust professional publications considered overall (as opposed to the Articles Awards which reward individual articles). 30 best professional antitrust publications—out of 80—were reviewed by the Editorial Board in order to provide practitioners with a useful description and ranking. Such publications include newsletters, blogs but also client briefs, memoranda. The Ranking is based on the publications freely made available at the end of 2014 on the websites of law firms reviewed.

To quote David Gerber’s words “[t]hese awards have come to play a very important role in encouraging and rewarding quality writing about competition law! They have helped to spread competition law insights and knowledge throughout the world.” We will continue walking along this path to ensure the greatest circulation of academic and professional.

Bill Kovacic
George Washington University
Competition Law Center

Nicolas Charbit
Concurrences Review
WELCOME REMARKS

WILLIAM E. KOVACIC

Bill Kovacic introduced the Awards and the new feature of “Best Soft Law” selection. This recently introduced category is neither an award nor a ranking but a selection of the most interesting administration practices (i.e., guidelines, market studies, white papers issued by competition agencies) that are believed to be an inspiring model for competition agencies around the world. “Best Soft Law” aims at contributing to the development of antitrust culture and awareness; it also seeks to support international antitrust advocacy by drawing attention towards the most meaningful competition agency practices. It is a recognition of the trend towards softer forms of governance and quasi-legal measures that play an important role as an information source for individuals and companies in the market. Soft law aids the understanding of the complex antitrust rules developed through case law, it makes the system more transparent enhancing legal certainty.

One of the selected “Best Soft Law” is the report on digital economy jointly issued by the UK and French competition authorities (“UK Competition and Markets Authority & French Competition Authority’s Joint Report on Digital Economy” Joint Report, December 2014). The introductory remark of the report explains “the digital economy developed large and complex systems [. . .] These systems are called ‘ecosystems’ in view of the significant number of products and services involved and of the symbiotic link.” Competition authorities have different tools to intervene on ecosystems, ranging from merger control to antitrust enforcement and market investigations to other ‘softer’ tools like advocacy; the challenge is to identify “the right time of intervention and the right set of tools of intervention, which may be before a system is dominant and has locked in a large number of consumers [. . .] or antitrust action at a later stage [. . .].”

Another selected soft law is the Guiding Opinion issued by MOFCOM (“Guiding Opinion on the Notification of Simple Cases of Concentrations of Business Operators” Interim provisions, 2014).

The Guiding Opinion contains rules on several aspects of the merger control procedure such as consultation, filing of documents, case initiation, and possible investigations. The Guiding Opinion represents and incremental positive step in the development of China’s merger review system and anticipates the prospect of a less burdensome and potentially quicker review process for those cases that fall under the definition of “simple cases.” It is encouraging to see MOFCOM bringing a new level of sophistication to a relatively young merger control regime.

Judges and readers have also acknowledged the significance of the OECD note drafted by the DOJ and FTC on intellectual property and standard settings (“US Department of Justice and Federal Trade Commission Intellectual Property and Standard Setting” Note by the United States, Competition Committee, December 2014). The note focuses on US antitrust enforcement actions, advisory policy, US court decisions in the area of standard setting and intellectual property rights. The FTC and the DOJ “recognize that the core principles of antitrust and intellectual property law can help ensure that any competition enforcement involving standard setting protects competition and consumers, and encourages investment, innovation, and participation in standard-setting activity.” On the other hand “competition enforcement involving intellectual property rights should protect competition and should not be used to advance unrelated domestic or industrial policy goal.”

On the other side of the Atlantic, the European Commission’s communication on antitrust enforcement under Regulation 1/2003 (“10 years of Antitrust Enforcement under Regulation 1/2003: Achievements and Future Perspectives,” Communication from the Commission to the European Parliament and the Council 453, 2015) has been selected as “Best Soft Law” in the procedure category. The Communication is a review of the operation of Regulation 1/2003 and lays out areas where progress will be needed in the future, in particular “areas for action to enhance the enforcement of EU antitrust rules by national competition authorities.” Overall, the Commission observes that enforcement of EU competition rules has considerably increased. This success is attributed to the stronger role played by NCAs and the cooperation with the European Competition Network. However, the Commission further notes that “it is important to build on these achievements to create a truly common competition enforcement area in the EU” by guaranteeing further independence to NCAs, ensure that NCAs have a complete set of effective investigative/decision making powers and well designed leniency programs.

Finally, for the economic category of “Best Soft Law,” the jury and the readers have chosen the Russian competition authority (FAS) paper on the economic analysis of pricing practices (“Russia FAS Principles of Economic Analysis to Verify whether Pricing Practices Comply with the Law “On Protection of Competition”, FAS October 2014). The principles are aimed to “determine unified approaches to analyzing whether pricing practices of economic entities that have the dominant market position [. . .] and to enhance the quality of economic analysis of pricing practices of economic entities with the dominant market position and expanding the practice of applying the “comparable markets method” in such analysis.” FAS’ paper constitutes a remarkable effort to enhance transparency in the authority’s economic analysis, and will certainly be a valuable tool for practitioners and companies.
Doug Ginsburg introduced the Antitrust Writing Awards, Academic Category. Commissioner McSweeney called the attention to the importance of competition law in our daily lives, saying that “it touches so much of the economy—the products we buy, the services we use, and the industries in which we work.”

She then mentioned that 2014 was the 100th anniversary of both the FTC and the Clayton Acts and emphasized the importance of two specific cases:

“I think many the FTC’s Supreme Court wins of the last couple of years—North Carolina Dental (building on Phoebe Putney) and Actavis (confirming the FTC’s position that reverse payments can harm competition)—underscore that antitrust remains a vibrant and important part of our legal and economic system.”

McSweeney reverted to the Writing Awards and pointed out that the academic articles nominated this year “touch on issues we are facing and working on at the FTC. They involve what I think of as the frontiers and foundational issues of antitrust law.”

The Commissioner also explained why these issues are important:

“The frontiers involve novel forms of economic activity and debates about how best to approach them from a competition perspective. For example, analyzing the competitive effects of reverse payment settlements or understanding how strategic patent acquisitions change economic incentives. And there are papers nominated tonight that address both of these issues. Additionally, I consider the increasing interconnectedness of the world to be an important frontier for antitrust law.

By interconnectedness, I am referring to both technology and geography—which in many ways are two sides of the same coin. We are increasingly interconnected to one another and to businesses from our computers and mobile phones, a fact that has ushered in new opportunities and new market realities.”

She concluded with a general analysis of topics mentioned in the nominated articles:

“Numerous papers nominated tonight make important contributions to our understanding of these antitrust frontiers and carefully consider developments in international competition regimes. The foundational issues of antitrust law, in my view, focus on more enduring issues and have more to do with a debate as to the effective application of antitrust law. In this category, I include topics such as the scope of the FTC’s Section 5 authority—an authority that, being a century old, would certainly not qualify as novel. I would also include in this category the discussion as to the appropriate role of disgorgement and other remedies in antitrust cases. The debate about how best to achieve the policy goals of deterrence, compensation, and remediation is nonetheless an enduring one. Once again, a number of academic papers have been nominated tonight that address these important topics.

Some articles may be supportive of the recent work of antitrust enforcers like the FTC. Others may criticize it—constructively, of course—or suggest alternative methods. But all of this scholarship enhances and supplements our thinking on the many novel and complex issues we currently face.”
HOWARD SHELANSKI

Howard Shelanski introduced the Business Antitrust Writing Awards. Shelanski celebrated the nominees of this category and the articles, which offer complex legal analysis, sophisticated economic analysis, deep syntheses of development in the case law, and powerful insights into the political economy of our global antitrust community. The winning articles are outstanding products of the prolific and growing global antitrust community. The Business Antitrust Writing Awards intent is to provide recognition to the writers and encourage the debate on global antitrust issues from a business and practical perspective.

Sean Durkin’s sophisticated article on the economics of loyalty discounts (The Discount Attribution Test and the Competitive Effects of Loyalty Discounts, Sean Durkin Monopoly Matters, Vol. 12, No. 1, Fall 2014) shows that “the discount attribution test framework provides a simple, intuitive way to illustrate the procompetitive consequences of loyalty discounts.” More in details, according to Durkin, “the discount attribution test framework can be used to illustrate the effect, on both rivals and on buyers, of allowing sellers to offer loyalty discounts.” Roy Hoffinger’s business piece (Legal doctrine, economic screens and other distortions in antitrust agency decisions, Concurrences Review, Art. N° 70582, N°4 2014) advocates a “shift to courts [of] the adjudication function from agencies that function simultaneously as investigator, prosecutor, judge and jury, thereby eliminating the bias created by the fine system” and a “common law process of refinement and improvement” of antitrust laws.

The winning article in the concerted practices category discusses the best practices in industry-wide cybersecurity collaboration in the aftermath of the DOJ’s and FTC’s recent joint guidance on information sharing networks (Industry Collaborations on Cybersecurity: Protecting Against Antitrust Violations Evan Wolff, David Laing, Kate M. Growley, and Elizabeth Blumenfeld, ABA Section of Criminal Justice, Vol. 29, No. 3, Fall 2014). The authors observe that “the line between lawful information-sharing among competitors and an ‘agreement in restraint of trade’ that violates the Sherman Act can at times be difficult to discern” and praise the joint policy statement because it provides “American industries with the clarity they need to share their cybersecurity information without violating the antitrust laws [. . .].”

The articles selected offer a legal analysis on recent important court rulings or amendments to existing legislation. In his piece on the Intel case, (The EU General Court upholds the European Commission’s Decision Regarding Exclusivity Rebates on the Microprocessor Market (Intel) James S. Venit, e-Competitions Bulletin June 2014, Art. N° 67164), James Venit points out that the case “was intended to help modernize the approach to Article 102 by developing an effects-based approach.” Instead, in his opinion, it turned out to be a step back and it “produced the exact opposite result, given, inter alia, the General Court’s firm rejection of any need to show actual effects, consumer harm or apply a cost-based test and its reliance on the traditional Article 102 jurisprudence concerning the special obligation of dominant firms to compete very cautiously if at all.”

Feng Deng and Su Sun article (Rainbow v. Johnson & Johnson: RPM Litigation in China Fei Deng and Su Sun, ABA’s Distribution Newsletter, March 2014) is a comment on the long awaited Shanghai High People’s Court decision on the resale price maintenance case involving Johnson & Johnson Medical China Ltd. In the authors’ view, the Court’s decision is significant for several reasons “including its embrace of economic analysis, its
decision on the burden of proof in an RPM case, its approach to admissibility and weighting of certain types of evidence, and its holdings on the standing of a distributor to challenge RPM agreements and how the contract between the distributor and the supplier influences how damages are determined.” The winning article in the private enforcement selection is a comment to a recent decision of the Canadian Supreme Court (Class Action Plaintiffs Can Obtain Wiretap Evidence Michael Osborne, The Litigator Blog, October, 2014). Pursuant to this decision, class action plaintiffs can obtain courtordered disclosure of wiretap evidence obtained by the Competition Bureau. The author remarks that this ruling “will make it easier for plaintiffs to obtain evidence in price fixing cases by effectively allowing secondhand wiretapping.”

In July 2014, the European Commission issued a White Paper and a Staff Working Document confirming its intention to propose expanding the jurisdictional scope of the EU Merger Regulation to capture the acquisition of noncontrolling minority shareholdings. Nicholas Levy’s article (Expanding EU Merger Control to Non-Controlling Minority Shareholdings: A Sledgehammer to Crack a Nut? Nicholas Levy, CPI Antitrust Chronicle, December 2014) critically looks into two issues on the proposal: whether the case for the change has been persuasively made, and if the modalities of the proposal are appropriate.

Globalization of antitrust is old news; with globalization well under way the more pressing concern is harmonization. Notwithstanding the harmonization attempts, practitioners and companies are increasingly faced with uncertainty over the application of antitrust laws across different jurisdictions. Christopher Hockett provides an overview of the antitrust due process issue and the harmonization efforts that have been made so far by international networks and organizations (Antitrust and Due Process Christopher Hockett, American Bar Association, Antitrust, Vol. 28, No. 2, April 2014). Roxane Busey focused her attention on the antitrust compliance challenge for global companies (Global Antitrust Compliance Roxane C. Busey, PLI Compliance Institute, May 2014) and she remarks “as more and more jurisdictions increase the penalties for illegal cartels and as international cooperation among enforcers increases, the risks associated with antitrust violations also increase.” Another global antitrust issue is the privateering of patents. Such issue has been analyzed by Maurits Dolmans (Privateers and Trolls Join the Global Patent Wars; Can Competition Authorities Disarm Them? Maurits Dolmans, Computerrecht, 2014). The author points out that “patents are supposed to foster innovation, but are now also used to block it [. . .] those who foster privateering may become the victims of their own stratagems, and the problem may infect other industries.” According to Dolmans, it may take some time before consumers see increased prices and reduction of competition, but the effects of privateering should be prevented and addressed under Article 101 TFEU.
NOMINATED AUTHORS

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Charles Balmain White & Case
Michel Beausseier White & Case
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To what extent do antitrust laws of the various nations proscribe anticompetitive acts of the state as market player? To what extent do the antitrust laws proscribe or override anticompetitive laws, rules and regulations? These are the research questions that we set about to explore, with the facilitation of UNCTAD’s Research Partnership Platform. Being students of developing and transitional countries, we found these questions of special importance to jurisdictions with deep histories of significant government control and often corruption and cronyism; jurisdictions that had often recently adopted or modernized competition law with an objective to open pathways to market competition.

We were much rewarded by our research. We found a surprisingly large number of countries that treat state bodies just like any other market player that can cartelize and abuse dominance, and a critical mass of countries that craft their competition laws to deal with seriously anticompetitive state measures such as procurement rules tailored to favored firms and even protectionist blockages of internal trade.

This article is the product of our research. It first assesses the problem of state restraints that harm the market, putting the problem into historical, evolutionary and intellectual context. Second, constructing a template of categories of state restraints, it summarizes the answers to our interrogatories by 34 jurisdictions over six continents. Third, it offers a normative analysis on the balance between state sovereignty and consumer and market rights and freedoms. Finally, it offers recommendations for a good competition law, and a modality for convergence on consensus principles.

Much has been written about competition authorities’ advocacy role in attacking excessive state restraints, and much has been written about private anticompetitive acts that may in certain cases be insulated from antitrust by state policy. This article enhances the literature by filling the large and heretofore undocumented space between—anticompetitive state acts and measures as direct violations of competition law. It may suggest possibilities to jurisdictions that count state restraints as among their biggest market problems.

To be sure, the law on the books is not the end of the game. Can the law successfully distinguish between legitimate and illegitimate sovereign interests? How robustly can competition authorities enforce the law when it touches the raw nerve of a state vested interest? How much of the universe touches the raw nerve?

Our next research project under the auspices of the UNCTAD Research Partnership Platform is to explore the enforcement of those competition laws, documented in our study, that reprehend state anticompetitive restraints.
We show that loyalty discounts create an externality among buyers because each buyer who signs a loyalty discount contract softens competition and raises prices for all buyers. This externality can enable an incumbent to use loyalty discounts to effectively divide the market with its rival and raise prices. If loyalty discounts also include a buyer commitment to buy from the incumbent, then loyalty discounts can also deter entry under conditions in which ordinary exclusive dealing cannot. With or without buyer commitment, loyalty discounts will increase profits while reducing consumer welfare and total welfare as long as enough buyers exist and the entrant does not have too large a cost advantage. These propositions are true even if the entrant is more efficient and the loyalty discounts are above cost and cover less than half the market. We also prove that these propositions hold without assuming economies of scale, downstream competition, buyer switching costs, financial constraints, limits on rival expandability, or any intra-product bundle of contestable and incontestable demand.
Google has been accused of manipulating its organic search results to favor its own services. We explore possible choices of relevant antitrust markets that might make these various antitrust allegations meaningful. We argue that viewing Internet search in isolation ignores the two-sided nature of the search-advertising platform and the feedback effects that link the provision of organic search results to consumers on the one hand, and the sale to businesses of advertising on the other. We conclude that the relevant market in which Google competes with respect to Internet search is at least as broad as a two-sided search-advertising market. We also ask whether Google has a duty to provide organic search results that are neutral with respect to whether the displayed listing is for a Google rather than a non-Google business. We articulate and apply a standard that asks whether various practices related to Google’s organic search results would harm competition that would have otherwise occurred.

JAMES D. RATLIFF, DANIEL L. RUBINFELD
> Journal of Competition Law and Economics, pp. 1-25, May 2014
In many jurisdictions across the world concern about foreign control of key national businesses appears to be mounting. This article examines the policies displayed towards foreign direct investment and cross-border mergers in the EU, focusing on the question of when public policy factors may impact on merger control within the EU and override competition law assessments. The article notes that not only do EU cases in this area raise the potential for differences in opinion as to how the benefits and costs of merger transactions should be assessed and weighed, and a clash between proponents of the principle of an open market economy and proponents of greater protectionism, but they raise delicate issues relating to the balance of competence between the EU and the Member States. Consequently, it analyses (i) how EU law, especially the free movement rules and the EUMR, limit the ability of the Member States either to impose obstacles in the path of foreign mergers (whether from inside or outside of the EU/EEA) or to authorise the creation of national champions, on public interest grounds and (ii) how EU law seeks to balance EU goals against the acutely felt and sensitive national interests at stake. Given concerns expressed about a rising tide of protectionism within the EU, it also examines EU enforcement mechanisms.

The article concludes that although EU law clearly prohibits national laws that impose unjustified obstacles in the path of investment from other EU Member States, it may not always be able to prevent the authorisation of national champions which may damage competition within the EU and that changes to the EU merger rules would be required to deal with this latter problem. Further, the extent to which Member States are able to control investments from third countries (outside of the EU/EEA) is extremely sensitive, controversial and requires clarification. It also notes that although some problems do lie in preventing Member States from taking protectionist steps and violating fundamental provisions of EU law, enforcement mechanisms are in place which can help to ensure the effectiveness of EU law.
Antitrust leniency programs in jurisdictions around the world have played an important role in allowing competition authorities to successfully prosecute major price fixing conspiracies. We provide an economic analysis of the incentives created by an antitrust leniency program, with particular attention to the incentives for cartels to exert effort towards concealment. The results point to a need for competition authorities to consider the effects of concealment when evaluating economic evidence of collusion. The results also suggest possible benefits from increasing penalties for cartels that use third-party facilitators.

We study a model of leniency and analyze the incentives created by the existence of a leniency program for managers at colluding firms to conceal evidence in order to reduce the likelihood that they will be successfully prosecuted. We consider concealment activity that reduces the probability that the competition authority acquires evidence of collusion and so starts an investigation, as well as concealment activity that reduces the probability that an internal investigation at an individual firm produces sufficient evidence to support a leniency application.

For example, in order to reduce the probability that a competition authority starts an investigation, firms might expend additional effort coordinating their claimed justifications for price increases or arranging their conduct to more closely resemble noncollusive conduct. In order to reduce the probability that an individual firm can produce sufficient evidence through internal investigations to support a leniency application, colluding firms might make changes to the firm’s organizational chart to limit the number of individuals who must know about the collusion or engage a third party facilitator to manage incriminating evidence. The potential role of outside consultants in facilitating collusion has been recognized and called out by the Department of Justice, and we discuss examples of the use of outside facilitators by several cartels, including cartels in Italian Cast Glass, Organic Peroxides, and Marine Hoses.

We show that cartels optimally respond to the introduction of a leniency program by increasing both types of concealment effort, thereby mitigating the effects of the leniency program. Concealment effort directed at reducing the probability of an investigation by the competition authority potentially reduces the profitability of collusion and so may provide benefits to consumers even if the cartel is not detected. However, concealment effort directed at reducing the probability that an individual cartel member has access to evidence sufficient to support a leniency application potentially provides incentives for firms to outsource the running of the cartel, with negative consequences such as professionalizing collusion, promoting additional collusive activity, and hampering enforcement.

A number of policy implications follow from the results of the paper. Competition authorities should (1) use leniency programs to enhance the detection of cartels; (2) evaluate economic evidence of collusion in light of a cartel’s incentives to disguise its presence; (3) take steps to improve the likelihood that internal investigations into possible antitrust offenses will be successful, including steps that enhance cooperation by employees, facilitate the discovery of incriminating evidence, and impose increased penalties for cartels that use third-party facilitators.
Expert economic analysis has long played an important role in class-action antitrust litigation. But never more so than now, as the Supreme Court has in recent years further clarified the standards for class certification and identified some of the hallmarks of reliable economic expert opinion in Comcast Corp. v. Behrend, 133 S. Ct. 1426 (2013); Amgen Inc. v. Connecticut Ret. Plans & Trust Funds, 133 S. Ct. 1184 (2013); and Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541 (2011). This paper traces the evolution of class actions and the role of expert economic analysis, probing how economic evidence of liability and damages ought to be developed in light of the teachings of these recent decisions. We examine the early history of Federal Rule of Civil Procedure 23; initial confusion about the appropriateness of merits inquiries at the class-certification stage; the wane of bifurcated discovery; and the advent of Wal-Mart and Comcast, which provide a roadmap for courts, litigants, and economists in evaluating expert economic testimony. In this setting, we advance sound methodologies for expert economic analysis in antitrust class proceedings in the post-Comcast world, drawn from economic literature, case law, and our own training and litigation experience. The emphasis is on scientific reliability in the context of the real world, where no model, no matter how sophisticated, can quite encompass all of the essentially random aspects of economic life. In constructing a “but-for” or counterfactual world, economists cannot run a controlled laboratory experiment and, instead, must rely on economic data generated and recorded as part of real world interactions. Such data consist of two components: a systematic signal component that represents causal relationships between measureable economic variables and a random noise component, due to idiosyncratic variations not readily explained by any economic model. Accordingly, in order to avoid erroneous inferences based only on random noise, adherence to the scientific method of hypothesis formulation (based on theory and evidence outside of the data itself), followed by sound empirical testing, is essential to establish whether a common, class-wide economic analysis is appropriate and comports with recent Supreme Court guidance. We highlight the relationship among liability, common-impact, and damage analyses; describe sound hypothesis formulation and the specification of a maintained hypothesis; discuss the proper use of summary statistics, such as averages; examine the inevitable presence of price-dispersion in economic data and its implications for common impact analysis; and present the reliable use of multiple regressions. In the latter regard, we also identify methodologically unsound techniques, including unreliable decomposition of regression model data samples and unscientific data mining. Finally, we conclude with thoughts on the practical implications of these developments, which have transformed antitrust class proceedings into resource-intensive efforts that have begun to resemble summary judgment or even trial testimony. The call for “rigorous analysis” is ultimately a welcome one, however—even for plaintiffs—as a court’s findings of fact at class certification under these demanding standards, however non-binding, help shape and inform the litigation as it unfolds.

Doris Hildebrand, EE-MC
Gareth Macartney, Hausfeld
Terrell McSweeny, FTC
Bill Kovacic, GWULS
In this article we explain the economics of patent hold-up and the mechanism and incentive by which a patent holder can engage in holdup. In particular, the patent owner can use what we term an “outsized threat” in order to obtain a royalty payment that is above the level of reasonable royalties. We also situate patent litigation in markets; for example, a firm may want to charge a holdup royalty rate to raise rivals’ costs because it is a competitor in one or more downstream product markets. Alternatively, the patent owner may be a non-practicing entity (NPE). We discuss the business strategy of the NPE and use our hold-up framework to illuminate the strategies behind recent patent portfolio acquisitions by NPEs. Finally, the acquiring firm could be a hybrid entity including interests or ownership from both non-practicing and practicing entities. The paper also includes an economic model of the effects of enhanced monetization by PAEs on innovation and consumers. We identify the parameters that determine whether enhanced monetization promotes or hinders innovation and provide empirical evidence as to which is more likely.
This article is a first attempt to investigate Chinese bureaucratic politics in-depth in order to analyze how these dynamics affect the outcome of antitrust enforcement in China. It has two major findings. First, bureaucratic politics have a powerful impact on the allocation of economic resources in China, which in turn determines how monopolies arise in the Chinese market. Second, the bureaucratic structure and political processes of decision-making shape the incentive structures of administrative agencies, thus affecting how they regulate the economic activities of various actors in the economy. The article finds that antitrust enforcement in China is a highly pluralistic process involving officials from various central ministries and local governments with overlapping functions and divergent missions and objectives. Their incentive structure and the formal and tacit rules of the Chinese bureaucracy shape the enforcement outcome of China's Anti-Monopoly Law.
Edwin Schrödinger was an Austrian physicist. In 1935, he devised a thought experiment, a paradox illustrating the problem of the Copenhagen interpretation of quantum mechanics applied to everyday objects. The scenario presents a cat that may be both dead and alive, this state being tied to an earlier random event. Just as Schrödinger’s cat was both alive and dead, US judicial extraterritoriality seems to be at once both expanding and shrinking. Especially in the 1970s, application of American Law to foreign conduct engaged in by foreign companies in compliance with foreign law led many foreign countries (mostly America’s closest European and North American allies) to enact blocking and clawback statutes with a distinctly anti-American animus. The FTAIA was enacted in 1983 partly in response to this foreign reaction to perceived American jurisdictional adventurism and legal hegemony. That statute was declared by Congress to limit the “subject matter jurisdiction” of the Sherman Act and was for many decades interpreted as limiting the subject matter jurisdiction of the courts.

The essence of the FTAIA is that the Sherman Act does not apply to conduct involving trade or commerce (other than import trade or commerce) with foreign nations unless the conduct has a direct, substantial and reasonably foreseeable effect on domestic or import commerce, and that effect gives rise to a claim under the Sherman Act. A handful of recent cases, two of which now have petitions for certiorari pending before the Supreme Court, have both expanded and limited the reach of federal antitrust law. The Seventh Circuit en banc, and at the behest of the DOJ, held that the word “direct” actually means “reasonably proximate.” The Ninth Circuit recently agreed and also held that the phrase “involving import trade or commerce” is a very broad phrase indeed. A later panel of the Seventh Circuit has expanded the meaning of the words “indirect” and “remote,” thus expanding the reach of the exemption, while the same time strictly construed the phrase “involving import trade or commerce the setting up a direct conflict with the Ninth Circuit, as to the exact same company and product and conduct.” And the DOJ has argued to the Seventh Circuit that even in a case where a private plaintiff might be denied the cause of action because the domestic effect does not “give rise to” the plaintiff’s claim, the government is not bound by that restriction. This is an odd consequence of recent Supreme Court jurisprudence holding that district courts are denied subject matter jurisdiction only where the statute involved, on its face, makes clear that it is limiting the reach of the federal courts (as opposed to the applicable statute).

Litigants and amici, including multiple Asian foreign governments are protesting the extraterritorial application of US law, and invoking principles of comity, to which at least the Seventh Circuit has responded favorably. This cauldron of conflict and confusion cries out for Supreme Court attention and clarification with respect to all facets of the statute.
Data Protection in the Context of Competition Law Investigations: An Overview of the Challenges, by Monika Kuschewsky, Special Counsel at Covington, and Damien Geradin, Professor at George Mason University School of Law and at Tilburg University, deals with the interface between data protection law and competition rules. This topic had been neglected so far, but is an area of growing interest from companies and lawyers on it. Competition law investigations have become increasingly data intensive with the advent of automatic processing, cheaper storage capacities and forensic data analytics. Emails, files and other records that are collected and processed in the course of dawn raids, in response to information requests and statements of objections or for the purpose of preparing a leniency application will frequently contain personal data relating to employees or third parties.

Guidance or case law on the application of data protection rules in the context of competition law investigations is, however, slim and there are no clear or legally binding procedures on all data protection aspects. This article explains and compares the two different legal frameworks for data collection and processing in the EU, which apply to competition authorities on the one hand and private companies on the other hand.

The most striking finding is that there is a double standard, and thus an issue of inequality of arms, when it comes to data protection compliance: competition authorities have broad powers and benefit from a number of exceptions and privileges. By contrast, private organizations are subject to stricter rules which may severely affect their ability to proactively detect competition law infringements and collect the relevant evidence. Double standards also apply when it comes to the consequences of non-compliance with data protection rules. Given the importance of the fundamental right to data protection it is doubtful whether this is justified and there should at least be clear and legally binding procedures for the competition authorities which are subject to judicial review. The tension between data protection requirements and competition law is unlikely to disappear in the future. To the contrary, the EU data protection legal framework is currently undergoing a reform which, if adopted, will increase the compliance burden for private companies, whilst at the same time strengthening the enforcement powers of data protection authorities and providing for competition-law size fines expressed in percentage of global turnover in case of non-compliance.

Companies will therefore find themselves increasingly between a rock and a hard place, unless they anticipate the data protection implications of competition law investigations or compliance programs and whistleblowing schemes which have been set up to prevent or discover competition law violations. Data protection considerations should be embedded from the outset. Properly drafted privacy policies and notices, complemented by investigations procedures, IT and e-mail use and other internal policies can greatly facilitate the gathering of evidence by a company in the framework of investigations. Companies with a comprehensive data protection compliance program will be a step ahead. They can gain valuable time and dedicate resources to the competition law issues rather than getting bogged down by data protection law when receiving a request for information or in the race to leniency.
My article is written from the perspective one who has spent the past 9 years counseling a business that, while highly successful as measured by its standing among competitors, nevertheless is subject to intense competition. With success comes antitrust scrutiny. These businesses have a great need for clear and objective rules that they, with the assistance of their counsel, can use to determine whether conduct or proposed conduct is allowed under competition law. Those rules can take the form of legal rules or economic screens such as comparisons of price to cost. Rules and screens are often if not always imperfect. They can sometimes allow conduct that may be or is anticompetitive. And they can sometimes condemn conduct that is harmless or even pro-competitive. These are sometimes referred to as “false negatives” or “false positives.” The use of legal rules and economic screens that may lead to false positives or negatives can be said to “distort” sound decision-making.

It is not implausible to think that such distortions may very well be reduced if each matter were decided based on its own facts and circumstances, and not disposed of by the application of a legal rule or economic screen developed based on more generalized considerations. My article argues, however, that the likelihood and number of “better” (i.e., more sound) outcomes in cases and matters addressed by courts and agencies do not justly dispense with legal rules and economic screens. The utility and desirability of such rules and screens must also be evaluated in connection with conduct that never comes to the attention of an agency or court, in many cases because the business in question has refrained from the conduct.

Business decisions and conduct that is the subject of an antitrust case or investigation reflect only a microscopic fraction of the business conduct could and should be, and are, informed by antitrust law. Antitrust law thus makes its greatest contribution to a healthy competitive process not through its enforcement by courts and agencies, but by informing the far larger number of decisions that businesses must make. Especially in this context, legal rules and economic screens need not be perfect. Unless a rule or screen yields incorrect outcomes more often than not, society as a whole is better off with it than without it.

Rather than urging that we abandon he concept of rules and screens, economists, antitrust lawyers, enforcers and should focus their resources on improving existing ones and devising new ones. Of course, that is not to say that sources of distortions in sound decisions by antitrust enforcers do not exist and cannot be addressed without creating greater problems. A classic example of such distortion is that created by the enormous biases introduced by having the same institution serve as investigator, prosecutor, judge and jury. There is no perhaps no greater threat to the prospect that decisions in antitrust enforcement matters will reflect the application of sound competition law principles to a complete and accurate record.
May 2014 found the Department of Justice (DOJ) with a first criminal charges brought against a state actor for computer hacking, economic espionage and other related offenses. Although the indictment itself may have come as a surprise, the story behind it is all too familiar to American industry in the twenty-first century. Computer hacking—including that committed in the name of economic espionage—is prolific and increasing. Faced with the new reality that computer crime is a cost of doing business, companies are scrambling to find new ways to avoid becoming victims.

One method picking up steam is information-sharing between similar companies. A company’s ability to understand its vulnerabilities and threats is its first line of defense against today’s pervasive cyber threats. In a way that is similar to the more familiar phenomenon of crowdsourcing, industries that share cyber-threat information can aggregate data from a larger pool of resources. The result is a communal capacity to spot and counter trends, often before any single company would be able to on its own. Although it may seem counterintuitive to share valuable information with a competitor, the breadth and timeliness of the insights that these communities can achieve are critical for staying ahead of, or at least not too far behind, malicious actors.

Yet the growing trend of industry-wide collaboration comes at a time when the United States has been actively investigating and prosecuting other forms of information-sharing, arguing that such collaboration is a criminal antitrust violation of the Sherman Act.

In response to concerns stemming from competitors’ collaborations on cybersecurity, the DOJ and Federal Trade Commission (FTC) issued on April 10, 2014, an “Antitrust Policy Statement on Sharing of Cybersecurity Information.” This joint policy statement provides American industries with the clarity they need to share their cybersecurity information without running afoul of antitrust laws. The statement both recognized the benefits of cyber information-sharing and provided examples of what kinds of information could be shared without issue. In sum, “properly designed sharing of cybersecurity threat information is not likely to raise antitrust concerns” and can “help secure our nation’s networks of information and resources.”

The joint statement is one of many steps that the federal government has taken, without legislation, to encourage greater cybersecurity in the private sector. That effort largely began in early 2013 when President Obama signed Executive Order 13636, which highlighted the acute need for private entities to share cybersecurity information in order to secure national IT infrastructure. Industry appears to be responding, with cyber information-sharing catching on. Within one month of the agencies’ antitrust statement, the retail industry announced the development of its own Information Sharing and Analysis Center (ISAC).

Ultimately, the decision to participate in an information-sharing network is a strategic one, based on both the many benefits and potential risks. Thanks in part to the DOJ and FTC’s recent joint guidance, antitrust concerns are less likely to be one of those risks.
The 12 June 2014 judgment of the General Court upheld the European Commission’s May 2009 decision fining Intel €1.06 billion for granting exclusive rebates to Dell, HP, NEC, Lenovo and the retailer MSH and for making cash payments to HP, Acer and Lenovo conditioned on their cancelling or postponing the launch, or restricting the distribution, of PCs incorporating x86 CPUs supplied by Intel’s only competitor, AMD.

The Court’s judgment confirmed that there need be no analysis of actual effects or consumer harm to determine the anti-competitive effects of exclusive discounts and rejected as too lenient the use of an “as efficient competitor” test to assess the legality of such discounts. As such it represents a severe setback for those who had advocated adoption of an “effects-based” approach to Article 102, and calls into question the approach in the Commission’s Article 102 Guidance Paper. It also stands in sharp contrast to the Court of Justice’s March 2012 judgment in Post Danmark, which took a more robust approach to above-cost discounts.
This article discusses the implications of a July 2014 European Commission White Paper proposing an expansion of the jurisdictional scope of the EU Merger Regulation (EUMR) to capture the acquisition of non-controlling minority shareholdings.

It describes how any such extension of the EUMR’s scope of application would represent a significant change that could materially increase the number of reportable transactions. It explains how, given the existing possibilities available to the Commission to apply Articles 101 and/or 102 to non-controlling minority shareholdings, together with the existence of national merger control laws in the EU that apply to such transactions, the burden rests on the Commission to demonstrate the existence of a material gap in the EUMR’s jurisdictional ambit. The article accepts that there is theoretical support for the notion that non-controlling minority shareholdings may in certain circumstances raise antitrust concerns, but concludes that the available evidence is insufficient to justify the EUMR’s expansion, including because several of the principal theories of harm potentially raised by the acquisition of non-controlling minority shareholdings are based on predictions about future conduct that are ill-suited to ex ante merger control. Accordingly, the article considers that the Commission has not discharged its burden and persuasively shown the need for expanding the EUMR’s jurisdictional scope.

As to the detail of any change to the EUMR, it is recognized that any proposal to extend the ambit of the EUMR necessarily involves balancing potential benefits against likely costs. This calculus is in part a function of the modalities of the system adopted by the EU: the clearer the jurisdictional thresholds, the easier they are to apply, and the more targeted their scope of application, the stronger the case for reform. The article explains that the Commission’s proposal is unsatisfactory because, notwithstanding the slender “gap” in the EUMR’s current scope of application, the White Paper envisages a complex, cumbersome, and uncertain process that is inconsistent with the “bright line” jurisdictional thresholds that have served the EUMR well from the outset. Finally, the article considers the real risk that any expansion of the EUMR would be copied in more than 100 jurisdictions, including the 25 or so EEA countries that do not currently subject structural links to review under their applicable merger control rules, thereby significantly increasing the incidence of global merger control with the attendant costs and risk that pro-competitive investments and legitimate corporate transactions would be delayed or not pursued. Accordingly, the answers to the two most pertinent questions raised by the White Paper—has the case for change been persuasively made and are the modalities of the Commission’s proposal appropriate?—are “no” and “no.”
This article shows that the discount attribution test framework provides a simple, intuitive way to illustrate the procompetitive consequences of loyalty discounts. In particular, the discount attribution test framework can be used to illustrate how loyalty discounts benefit buyers by inducing sellers to compete more aggressively for contested purchases.

The discount attribution test assumes that two sellers compete for sales to a buyer that has both contested and non-contested purchases. A buyer's contested purchases are those for which the two sellers compete, and its non-contested purchases are those for which the sellers face no competition. Competition for contested sales is limited by the fact that sellers are forced to reduce profits on sales of non-contested units, over which they face no competition, in order to compete for contested sales. Loyalty discounts induce sellers to compete more aggressively for contested units because sellers lose profits on non-contested sales only if they are able to make sales of contested units.

Analyzing the effects of loyalty discounts through the discount attribution framework helps to clear up three common misconceptions about loyalty discounts. First, when a more preferred seller offers loyalty discounts, doing so offsets an advantage that a less preferred seller has without loyalty discounts that is unrelated to either buyer preferences or lower costs. Thus, the argument that that competition without loyalty discounts is better for buyers because it represents “competition on the merits” is incorrect. Second, allowing sellers to offer loyalty discounts has the same effect on competition and consumers as a reduction in a more preferred seller’s costs, so the claim that loyalty discounts have no procompetitive efficiency justification is incorrect. Third, a seller’s loyalty discounts can act like a tax, or penalty, on purchases of its rival’s sales. However, the claim that this tax harms competition is incorrect because loyalty discounts offset the market inefficiency that reduces the incentive of sellers to compete for contested sales.
Class action plaintiffs can obtain court-ordered disclosure of wiretap evidence obtained by the Competition Bureau, Canada’s Supreme Court held in a 2014 decision. The plaintiffs were seeking production from the Competition Bureau of wiretap intercepts it obtained in the course of a gasoline (petrol) price fixing investigation and subsequently disclosed to the defendants as part of Crown disclosure. The majority started from the “cardinal principle” that “the ultimate aim of any trial, criminal or civil, is to seek and ascertain the truth”. The confidentiality provisions in the do not apply to wiretaps at all, and provisions in the barring disclosure of intercepts of private communications do not prevent their disclosure for use in a civil case, the majority held. Abella J., writing in dissent, focussed on privacy rights. The state is only allowed to intercept private communications if express safeguards are followed. Intercepts are not admissible in a criminal proceeding until a determination has been made as to the legality of a challenged interception. Yet the majority effectively permitted their disclosure and use in civil proceedings before the legality of the interception had been determined, she noted. The Supreme Court’s decision will have an important impact on price fixing class actions. The court has effectively allowed second-hand wiretapping by plaintiffs, since they will now have access to all relevant wiretap intercepts obtained by the Bureau. This will make it easier for plaintiffs to obtain evidence of price fixing, and thus easier for them to prove their case. While this undoubtedly serves the goal of obtaining all relevant evidence as part of the search for truth, it also magnifies the breach of privacy inherent in a wiretap authorization. This point may well be argued by targets challenging wiretap evidence in criminal cases.
On Halloween of 2013, patent assertion company Rockstar, owner of one of the largest patent portfolios in the world, filed patent law suits against seven mobile phone makers and Google in the Texas ‘rocket docket’. This heralded an escalation in the mobile patent world war raging since 2010. This ‘Halloween Attack’ is symptomatic of an increasing problem: opportunistic exploitation of patents by Patent Assertion Entities (‘PAEs’, or less politely, ‘trolls’), and the strategic use of such PAEs by firms who arm them, and send them off as “privateers” to hamper their rivals. The Rockstar litigation was resolved in early 2015 by an innovative arrangement pursuant to which a defensive patent pool entity (RPX) bought the portfolio. But the war stories from the mobile phone sector remain interesting as examples of a competitive game, and even more as a harbinger of troubles likely to arise also in other sectors if competition authorities, courts, or legislatures do not stop them. This article briefly describes the battlefield, the combatants and their strategy, concluding with a discussion of relevant competition law and possible solutions. There are increasing signals that PAEs and privateers will be active litigators in the EU as well, and that can only be expected to increase, with the creation of the Unified Patent Court. Antitrust authorities have thus far concentrated on hold-ups in the context of SEPs (rightly in Rambus, wrongly in Samsung and Motorola, because the facts in those cases do not fit the theory). But consumer harm is not limited to situations involving SEPs. FRAND-encumbered non-SEPs, commercially essential patents, and even patent portfolios that are so large as to be de facto unavoidable are also used as hold-up weapons. Manufacturers have begun to disaggregate patent portfolios and transfer portions to multiple PAEs with profit sharing agreements, knowing that these PAEs will hold up their rivals, leading to royalty stacking. The system is turning against itself. If antitrust authorities and courts allow this to continue, these practices will spread. Those who foster privateering may become the victims of their own strategems, and the problem may infect other industries than ITC. The article describes when and how privateering can be addressed under competition law.
Dr. Fei Deng and Su Sun commented on the parties’ economic analyses and the appellate judges’ decision in China’s first resale price maintenance (RPM) case, Rainbow v. Johnson & Johnson, in their article that appeared in the March 2014 issue of the Distribution newsletter, published by the Distribution and Franchising Committee of the ABA Section of Antitrust Law.

Prior to this important appellate decision in 2013, the appropriate antitrust approach to RPM practices had been controversial in China. In Rainbow v. Johnson & Johnson, the Shanghai High People’s Court set an important precedent of applying the rule of reason approach to RPM cases in China, and established that the plaintiff bears the burden of proof, and that the application of the rule of reason requires consideration of four factors: (1) the competitiveness of the relevant market; (2) the defendant’s market power; (3) the defendant’s purpose for implementing the RPM; and (4) the competitive effect of the RPM. The High Court’s decision demonstrates the importance of economic analysis in applying the rule of reason analysis to RPM cases, which also has implications to antitrust litigation in China in general. The High Court’s opinion in Rainbow v. Johnson & Johnson is further notable for its holding that a distributor has standing to challenge an RPM agreement even when the distributor signed the agreement, and for its holdings on admissibility and weighting of certain types of evidence and on the role played by contract law in assessing antitrust damages.

In their article, Drs. Deng and Sun evaluated and commented on the analyses conducted by the parties’ economic experts and the High Court’s assessment of the economic evidence in this case. They concluded that although some of the High Court’s reasoning may be subject to debate, the lengthy and carefully drafted decision reflects the Chinese judiciary’s increasing sophistication in adjudicating complex antitrust cases. As such, both plaintiffs and defendants engaged in antitrust litigation in China need to formulate legal theories and strategies carefully, and have them supported by strong factual evidence and solid economic analysis.
The detection and prosecution of international cartels continues to be the highest priority of antitrust enforcers worldwide. As more and more jurisdictions increase the penalties for illegal cartels and as international cooperation among enforcers increases, the risks associated with antitrust cartels also increase. One of the challenges, however, with respect to global antitrust compliance programs is that they need to cover more than just cartel activity. Nevertheless, because of the large civil and, in some cases, criminal fines and because of the uniform prohibition against cartel activity, most of the emphasis in antitrust compliance programs is on cartel behavior.

Recognizing that the starting point for most antitrust compliance programs is cartel activity, the article focuses on ways in which a company may prevent and detect cartel behavior. It notes that other offenses should also be included and suggests that these might be identified on a country by country basis taking into account the seriousness of the offense and the likelihood of occurrence. It identifies those characteristics of high risk industries that are vulnerable to illegal cartel activity. For those companies in high risk industries, or who want to follow up on any suspicious behavior, or who want to assess the effectiveness of their compliance program, it suggests various ways in which a company may conduct an audit. It includes a useful checklist of issues to be considered before conducting an audit. It also provides tips on compliance training, and it recommends the adoption of policies and procedures with respect to document destruction and creation, attorney-client privilege, dawn raids/searches and seizure, and crisis management.
As companies increasingly engage in multi-national business conduct, countries around the world have responded by increasingly—and independently—flexing their antitrust muscles. Today there are over 125 agencies in over 100 countries that enforce competition laws. Many of these regimes began by focusing on cross-border merger reviews. Now the scope of their enforcement efforts has expanded to encompass international cartels, dominant firms, and non-cartel joint conduct. At the same time, penalties imposed for competition infractions have skyrocketed. The global explosion of competition enforcement could be viewed as a good development, at least to the extent that it signifies a strong shared interest in protecting competition and consumers. But it also raises critical complications—the most important of which is the significant divergence in procedures and standards followed by enforcers around the world, some of which raise serious concerns about procedural fairness and due process. The due process differences among jurisdictions arise at least in part from distinct cultural, legal, political, and judicial norms that influence the characteristics of each country’s competition laws and enforcement mechanisms. In addition, some countries are new to competition enforcement and lack the technical expertise and institutional knowledge possessed by mature jurisdictions. And there may be some jurisdictions in which competition law is (at least sometimes) invoked as a means to pursue other goals—such as protecting domestic industries, pursuing national industrial policies, or advancing perceived national security interests. Against this backdrop, what is the best way to encourage the many competition enforcement institutions around the world to operate with appropriate safeguards of fairness and objectivity? Although sovereign nations will never agree on a single institutional design or procedural rulebook, the international antitrust community can promote the interests of fairness and due process by sharing ideas and best practices with the goal of converging on basic principles to guide enforcement processes everywhere. Examples of potential norms for antitrust due process would include: (1) an opportunity for a meaningful hearing by the decision maker before enforcement action is taken; (2) actual and perceived neutrality of the merits decision maker; (3) transparency of the legal standards that apply to the conduct in question, and the theory of how those legal standards apply in particular cases; (4) party access to evidence collected in connection with an enforcement action; (5) party ability to challenge and test evidence, including questioning of adverse witnesses; (6) protection of parties’ and third parties’ confidential information from unauthorized disclosure; and (7) ability to challenge enforcement outcomes before an independent judicial or administrative body. Convergence on due process principles would obviously benefit companies and business people dealing with international enforcers. But convergence would also promote the fairness of competition enforcement systems in the eyes of third parties—including consumers and competitors—whose faith in the integrity of the systems is essential to their effective operation. And most importantly, employing fair procedures will help make the outcomes of enforcement less arbitrary and more reliable—to the benefit of consumers and the competitive process.
III. SOFT LAW

1. BEST GENERAL ANTITRUST SOFT LAW ARTICLE

UK COMPETITION AND MARKETS AUTHORITY & FRENCH COMPETITION AUTHORITY’S JOINT REPORT ON DIGITAL ECONOMY

> Concurrences Review, Art. N° 70582, N°4 2014 T

The French Autorité de la Concurrence and the UK Competition and Markets Authority have produced a joint report on digital economy ecosystems and their effects on competition. The report draws on the main conclusions from the economic literature on these ecosystems, inspired notably by the work on two-sided markets by Nobel economics laureate Jean Tirole. It shows that the effects of their closure or openness the degree of openness or closure should be assessed on a case-by-case basis. This depends, for example, on the degree of competition between systems, on the ease with which consumers may switch between systems, on the degree of coordination required to ensure a system's viability and on the ability of consumers to assess the overall cost associated with a system before making a choice.

2. BEST MERGERS SOFT LAW ARTICLE

CHINA’S MOFCOM INTERIM PROVISIONS ON THE STANDARDS APPLICABLE TO SIMPLE CASES INVOLVING CONCENTRATION OF BUSINESS OPERATORS

> Interim Provisions, 2014

To assist business operators in making their notification, the Anti-Monopoly Bureau of MOFCOM has formulated this Guiding Opinion (Trial) in accordance with the Anti-Monopoly Law of the People’s Republic of China, the Interim Provisions on the Standards Applicable to Simple Cases of Concentrations of Business Operators issued by MOFCOM (Interim Provisions) and other regulations, which can be used as a reference by business operators in their notifications in respect of simple cases of concentrations of business operators.

3. BEST INTELLECTUAL PROPERTY SOFT LAW ARTICLE

US DEPARTMENT OF JUSTICE AND FEDERAL TRADE COMMISSION INTELLECTUAL PROPERTY AND STANDARD SETTING

> Note by the United States, Competition Committee, December 2014

In June 2010, the United States submitted a paper to the Competition Committee setting forth its views on US competition policy concerning standard-setting activities. This paper updates parts of that submission, focusing on US antitrust enforcement actions and advisory policy guidance and leading US court decisions in the area of standard setting and intellectual property rights. Through enforcement actions and policy statements, the US Department of Justice, Antitrust Division (DOJ) and the US Federal Trade Commission (FTC) (collectively “the Agencies”) have provided significant guidance concerning competition issues related to standard setting and intellectual property rights. The Agencies’ policy guidance and enforcement decisions in this area take into account the complementary roles that competition and intellectual property laws play in promoting innovation and enhancing consumer welfare.
4. BEST PROCEDURE SOFT LAW ARTICLE
DG COMP’S COMMUNICATION “10 YEARS OF ANTITRUST ENFORCEMENT UNDER REGULATION 1/2003: ACHIEVEMENTS AND FUTURE PERSPECTIVES”

To mark ten years of enforcement of Regulation 1/2003, this Communication: (1) provides a facts based review of public enforcement during this period by the Commission and the NCAs; and (2) examines some key aspects of enforcement by the NCAs, in particular institutional and procedural issues, with a view to its further enhancement. It is to be read in conjunction with the accompanying Commission Staff Working Documents which contain a more detailed review.

5. BEST ECONOMICS SOFT LAW ARTICLE
RUSSIA FAS PRINCIPLES OF ECONOMIC ANALYSIS TO VERIFY WHETHER PRICING PRACTICES COMPLY WITH THE LAW “ON PROTECTION OF COMPETITION”
> Interim Provisions, 2014

The Principles are aimed to determine unified approaches to analyzing whether pricing practices of economic entities that have the dominant market position comply with Clauses 1 and 6 Part 1 Article 10 of No. 135-FZ Federal Law “On Protection of Competition” of 26.07.2006 (further on referred to as the Federal Law “On Protection of Competition”), and to enhance the quality of economic analysis of pricing practices of economic entities with the dominant market position and expanding the practice of applying the “comparable markets method” in such analysis.
BEST NEWSLETTERS

30 newsletters and other professional antitrust publications have been reviewed by the Institute’s Editorial Board in order to provide practitioners with a useful description and ranking.

Professional antitrust publications include newsletters, blogs, client briefs, memoranda, and even webinars accompanied by written presentations freely made available on the Internet. Whereas the Articles Awards reward individual articles, the Newsletters Ranking rewards antitrust newsletters considered overall.

WHY A RANKING?

The quality and usefulness of antitrust newsletters and other professional publications vary greatly. Even though all this is going in the right direction due to increased competition among firms as well as among university competition law centers, users’ ability to read or browse such publications is indeed limited. There are just too many of these publications and too many similarities among them for users to be able to effectively assess what is worth reading or watching.

Ranking such publications is intended to guide users on which publications they should read or view first, depending what they are looking for.

WHAT ARE THE CRITERIA USED TO RANK?

Antitrust professional publications are ranked according to 9 criteria:

1. COUNSEL CHOICE
2. READERSHIP
3. COUNTRY COVERAGE
4. CASES COVERAGE
5. CARTELS
6. IP & ANTITRUST
7. PRIVATE ENFORCEMENT
8. ASIAN ANTITRUST
9. ACCESSIBILITY

The assessment of the above categories is based on a combination of objective and subjective indicators. Objective indicators originate from information freely accessible on each law firm’s website.

Subjective indicators come from a detailed survey sent to Concurrences in-house counsels subscribers.

The final results and more details on the survey are illustrated in the following pages.
<table>
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<th>COUNSEL'S CHOICE</th>
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</table>

**GLOBAL RANKING**

The Global Ranking of the Antitrust professional publications is based on the 9 rankings below.

1. **CLEARY GOTTLIEB**
2. **JONES DAY**
3. **BAKER & MCKENZIE**
4. **CLIFFORD CHANCE**
5. **HOGAN LOVELLS**
6. **SKADDEN APPS**
7. **GIBSON DUNN**
8. **WINSTON & STRAWN**
9. **LINKLATERS**
10. **BAKER & MCKENZIE**
11. **MAYER BROWN**
12. **ALLEN & OVERY**
13. **HERBERT SMITH**
14. **MCDERMOTT**
15. **FRESHFIELDS**
16. **WHITE & CASE**
17. **COVINGTON**
18. **SILDEY AUSTIN**
19. **WEIL GOTSHAL**
20. **DECHERT**
21. **SHEARMAN STERLING**
22. **WILMERHALE**
23. **DAVIS POLK**
24. **APRIL BROWN**
25. **GIBSON DUNN**
26. **WINSTON & STRAWN**
27. **SULLIVAN CROMWELL**
28. **ASSOCIATED LAWYERS**
29. **O’MELVENY**
30. **PROSKAUER**

**1. COUNSEL CHOICE**

This ranking is based on counsels’ choice of their favorite professional publication (based on a questionnaire sent to at least 3,500 counsels).

1. **LINKLATERS**
2. **NORTON ROSE**
3. **SKADDEN APPS**
4. **WHITE & CASE**
5. **ALLEN & OVERY**
6. **BAKER & MCKENZIE**
7. **FRESHFIELDS**
8. **JONES DAY**
9. **CLEARY GOTTLIEB**
10. **CLIFFORD CHANCE**
11. **HOGAN LOVELLS**
12. **COVINGTON**
13. **GIBSON DUNN**
14. **SILDEY AUSTIN**
15. **ARNOLD & PORTER**
16. **DAVIS POLK**
17. **DECHERT**
18. **HERBERT SMITH**
19. **KIRKLAND & ELLIS**
20. **MAYER BROWN**
21. **MCDERMOTT**
22. **O’MELVENY**
23. **PAUL WEISS**
24. **PROSKAUER**
25. **SHEARMAN STERLING**
26. **SIMPSON THacher**
27. **SULLIVAN CROMWELL**
28. **WEIL GOTSHAL**
29. **WILMERHALE**
30. **WINSTON & STRAWN**

**2. READERSHIP**

This ranking is based on the number of counsels having acknowledged that they receive the surveyed publications (based on a questionnaire sent to at least 3,500 counsels).

1. **CLEARY GOTTLIEB**
2. **JONES DAY**
3. **LINKLATERS**
4. **BAKER & MCKENZIE**
5. **WHITE & CASE**
6. **CLIFFORD CHANCE**
7. **HOGAN LOVELLS**
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24. **PROSKAUER**
25. **SHEARMAN STERLING**
26. **SIMPSON THacher**
27. **SULLIVAN CROMWELL**
28. **WEIL GOTSHAL**
29. **WILMERHALE**
30. **WINSTON & STRAWN**

**3. COUNTRY COVERAGE**

This ranking is based on the number of jurisdictions addressed in the 2014 publications of each firm.

1. **GIBSON DUNN**
2. **CLEARY GOTTLIEB**
3. **CLIFFORD CHANCE**
4. **JONES DAY**
5. **MAYER BROWN**
6. **ALLEN & OVERY**
7. **HOGAN LOVELLS**
8. **WINSTON & STRAWN**
9. **NORTON ROSE**
10. **BAKER & MCKENZIE**
11. **HERBERT SMITH**
12. **WHITE & CASE**
13. **MCDERMOTT**
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16. **LINKLATERS**
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22. **DAVIS POLK**
23. **SILDEY AUSTIN**
24. **SIMPSON THacher**
25. **SULLIVAN CROMWELL**
26. **ARNOLD & PORTER**
27. **KIRKLAND & ELLIS**
28. **O’MELVENY**
29. **PAUL WEISS**
30. **PROSKAUER**
## 4. CASE COVERAGE

This ranking is based on the number of cases covered in the 2014 publications of each firm.

<table>
<thead>
<tr>
<th>Rank</th>
<th>Firm</th>
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<tbody>
<tr>
<td>1</td>
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## 5. CARTEL COVERAGE

This ranking is based on the number of articles concerning cartels in 2014 publications made available on the website of each firm.

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## 6. IP & ANTITRUST

Ranking based on the number of cases concerning antitrust and IP published in the 2014 publications of each firm.

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## 7. PRIVATE ENFORCEMENT

Ranking based on the number of cases concerning private enforcement published in the 2014 publications of each firm.

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## 8. ASIAN ANTITRUST

Ranking based on the number of cases concerning antitrust in Asia published in the 2014 publications of each firm.

<table>
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## 9. ACCESSIBILITY

This ranking is based on objective criteria (pdf/html/print publications, access to archives…) and subjective criteria (design, search engine features…).

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<td>28</td>
<td>DECHERT</td>
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</table>
In order to set the Counsel Choice and the Readership Rankings above, Concurrences has designed a data-driven approach survey. The survey has been sent from March 18 to April 10, 2015 to 3500 counsels. The counsels interviewed cover more than 15 industries. Among these counsels, 25% are General Counsels and 75% Antitrust Counsels.

Individual answers remain confidential; only aggregated data are provided.

The first fifty responding counsels were invited to the Awards Gala Dinner on April 14, 2015.

Survey Coverage Represented Corporations (excerpt)

<table>
<thead>
<tr>
<th>Industry</th>
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<td>Airbus, Boeing, Dassault, EADS, Safran, Snecma, Thales...</td>
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<tr>
<td>Agriculture Food Products</td>
<td>CocaCola, Bacardi, Interbrew, Kraft, Nestle, Panzani, PepsiCo, Saint Louis Sucr...</td>
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<tr>
<td>Automobile</td>
<td>Ford, General Motors, Nissan, PSA, Renault, Toyota, Volkswagen, Volvo...</td>
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<tr>
<td>Energy</td>
<td>American Electric Power, BP, EON, EDF, Exxon, Framatome, GDF Suez, IFP, Powernext, RTE, Shell, Suez Tractebel, Total...</td>
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<tr>
<td>Entertainment</td>
<td>Clear Channel, Time Warner, Viacom, Walt Disney, Warner Music...</td>
</tr>
<tr>
<td>Information Technology</td>
<td>Apple, Google, Hewlett-Packard, IBM, lixid, LD Com, Microsoft, Nexans, Oracle, Qualcomm, Rim, Sony, Spot, Sun Microsystems, Symantec...</td>
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<td>Luxury</td>
<td>Hermes, Lacoste, L’Oréal, LVMH, PPR...</td>
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<tr>
<td>Other Industry</td>
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<tr>
<td>Pharmaceuticals Chemical Industry</td>
<td>Abbott, Aventis, Arkema, AstraZeneca, Bayer, BASF, Biocin, Colgate, Clariant, DuPont de Nemours, Ecolab, GlaxoSmithKline, IMS, Ipsen, Johnson and Johnson, Monsanto, Novartis, Pfizer, Rhodia, Sanofi, Servier, Solvay, Unilever</td>
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<td>Alcatel, Belgacom, British Telecom, Bouygues Telecom, Cegetel, Chronopost, Emettel, Geopost, La Poste, Neopost, Orange, SFR, Rom Telecom, Sita Aéro, TDF, Telecom Italia</td>
</tr>
<tr>
<td>Transports</td>
<td>ADP, Air France, British Airways, Chargeurs Interlinting, Eurotunnel, SNCF, Thalys</td>
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How to Write a Good Antitrust Newsletter?

10 TIPS FOR 10 TOP NEWSLETTERS

These 10 tips are guidelines that any lawyer should follow when writing an antitrust newsletter. Antitrust newsletters can be a great way to demonstrate antitrust expertise, which, in turn, can be an effective way to attract clients. However, if done poorly, a newsletter can drive away more business than it generates. Most law firms invest substantial time in producing such newsletters, but most of them fail to conduct feedback surveys.

The 10 tips set out below have been gathered by the Institute of Competition Law on the occasion of the 2014 Antitrust Writing Awards, following an online survey sent to 3,500 in-house counsels between November 2013 and January 2014.

1 Readability: Any newsletter should aim at explaining complex issues simply and theories underlying case reasoning clearly. The goal is to facilitate reading and understanding by readers who are not lawyers/economists, or who simply have inadequate knowledge of the issues. The articles need to be simple, straightforward, and written with clarity. Readability should also extend to the title.

2 Accuracy: Each newsletter should primarily display the basic facts at issue (the date and full reference of a given case or piece of legislation) instead of laying out general considerations. This may sound obvious, but many in-house counsels complained about articles that were too general.

3 Insight: Each newsletter should include genuine insights from the author and his firm. In-house counsels understand that newsletters may often be drafted by young associates, if not trainees, but a final review by a partner or senior counsel is necessary to provide added value to each piece. Only a lawyer with substantial experience can provide an enlightened approach and look at issues from different angles. Here is what one general counsel wrote: “Banal conclusions, such as “Every case is different”, “Time will tell” or “Companies need to take this seriously”, do their authors a disservice. Surely more insightful comments can be thought of.”

4 Usefulness: Newsletters should provide readers with useful solutions applicable to corporate needs, rather than succumbing to the temptation of only identifying hurdles. Practical guidance is what makes the difference between added-value newsletters and the rest. Ask a question that is relevant to your clients, and then answer it for them in the newsletter.

5 Timing: In-house counsels stressed that receiving antitrust updates in a timely fashion is an important factor since it shows the law firm’s ability to follow up and to deal with all current legal issues. Schedule newsletter production based on court docket and consider newsletter deadlines as seriously as court dates and filing deadlines. If a law firm chooses to send out a monthly or quarterly newsletter, then it should make sure to send it out on a consistent basis, just like any other regular publication. Firms who try to work on their newsletter “when they get a chance” don’t have a newsletter for very long.

6 Length: Most in-house counsels stated that they prefer short newsletters that include active links to the full decisions or documents discussed in the article. This makes it easy for them to get more information if they are interested.

7 Neutrality: In-house counsels are aware that often the choice of a given topic of a newsletter may have been driven by a case on which a law firm worked or has been working. Where possible, mention in a footnote your firm’s direct involvement in the case. This increases the credibility of the newsletter in general by showing concern for the neutrality and expertise of the firm.

8 Authorship: In-house counsels indicated that they tend to give greater credibility to pieces signed by authors, rather than anonymous ones. In addition, each newsletter should mention the email address of its author(s) in an active digital format (when html) making it possible to contact him/her with just a click.

9 Organization: In-house counsels stated that the organization of newsletters is a key factor for their own swift appraisal, and that this is often underestimated by authors. They clearly expressed preference for individual alerts rather than multi-topic newsletters. Items in multi-topic newsletters must be functionally organized. Organization by designated section (mergers, cartels and concerted practices, unilateral conduct/monopolization, etc.), industry (pharmaceutical, IT, health, etc.), or even geographical coverage, are usually preferred to chronological order.

10 Format: Some in-house counsels complained about “heavy” newsletters in terms of file size. Email inboxes get clogged quickly. Avoid adding the firm’s logo or heavy signatures. In-house counsels also suggested that both HTML and PDF are desirable formats for newsletters: print versions are not welcomed any more. Consistent design is appreciated, with uniform design elements such as typestyles, layout, and graphics. To ensure searchability on the firm’s website, in-house counsels have recommended tagging each newsletter with at least 3 to 5 keywords. There are just too many newsletters that remain basically unknown to their audience because they are not easily searchable on the firm’s website.
RECEPTION & DINNER

THE Fairmont
WASHINGTON, D.C.

America's Health Insurance Plans
American Express
America's Health Insurance Plans
Apple
Bertelsmann
BlackBerry
Bundeskartellamt
CADE
Canadian Competition Bureau
Deutsche Bahn
DG COMP
eBay
Ericsson
European Commission
Exxon Mobil Corporation
Fordham University
Hewlett-Packard Corporation
General Electric
Google
George Mason University
George Washington University
Georgetown University
Harvard Law School
Herbalife
Hewlett-Packard
IATA
Intel
JAMS

Japan Fair Trade Commission
Michelin
Microsoft
New York Attorney General Antitrust
New York University School of Law
Nokia
Novartis
Organizações Globo
Penn State University
Pfizer
Polish Competition Authority
Qualcomm
Samsung Electronics
SanDisk
The Coca Cola Company
The Estée Lauder Companies
United First Partners
University of Baltimore School of Law
University of Florida
US Federal Trade Commission
US Government Accountability Office
US Northern District Court
US Office of Information and Regulatory Affairs
United First Partners
Visa
Walmart
Walt Disney Company
Western Digital
By recognizing superior writing in academia and practice, the Antitrust Writing Awards enhance the indispensable intellectual infrastructure of our field.”

William E. Kovacic, George Washington University Competition Law Center

The Antitrust Writing Awards are the right event, on the right issue, at the right time. I thank George Washington University Law School and the Institute of Competition Law for launching this initiative.”

Frédéric Jenny, OECD Competition Committee

Having served as a member of the panel bestowing the 2014 Concurrences Awards for excellence in antitrust writing, I was very pleased to find the submissions ranged from the merely good to the truly outstanding. These awards have surely made antitrust academics and practitioners more alert to the value of writing well, with attention not only to substantive analysis but also to clarity and economy of presentation. Our field is blessed with an erudite academy and an intellectually sophisticated bar; the Concurrences Awards bring out the best in both”

Douglas H. Ginsburg, George Mason University

It was a great pleasure to be part of the 2014 Antitrust Writing Awards Board. The Awards really matter because competition law is experiencing a dynamic development worldwide and the Awards highlight the valuable insights and findings of the international antitrust community.”

Andreas Mundt, Bundeskartellamt

The Antitrust Writing Awards are a unique opportunity to read some of the best academic and business articles of the year. I thoroughly enjoyed the different perspectives on antitrust that each article provided, as well as the well-crafted arguments put forward by their talented writers.”

Alexander Italianer, European Commission

The Antitrust Writing Awards are a unique opportunity to read some of the best academic and business articles of the year. I thoroughly enjoyed the different perspectives on antitrust that each article provided, as well as the well-crafted arguments put forward by their talented writers.”

Bruno Lasserre, French Competition Authority

These Awards recognize excellence in antitrust writing, and we expect over time they will have a real impact on the way agencies and practitioners think about competition matter around the world.”

Jon Leibowitz, US Federal Trade Commission
The awards ceremony was a rewarding event in more ways than one. It was a pleasure to see these outstanding authors from all over the world and to hear a synthesis of their work which has contributed so much to the law and its practice.”

Eleanor Fox, New York University School of Law

There is a great deal of writing in the area of antitrust, ranging from lengthy scholarly articles to short, timely notes on key cases. The Antitrust Writing Awards uniquely embrace and celebrate that scope for the benefit of all workers in the field.”

Janusz A. Ordover, New York University

The Antitrust Writing Awards are an exciting celebration of the excellent research undertaken in the area of competition policy.”

Andreas Stephan, University of East Anglia

These awards have come to play a very important role in encouraging and rewarding quality writing about competition law! They have helped to spread competition law insights and knowledge throughout the world. I and many others are very grateful that they exist and that they are so effective.”

David Gerber, Kent College of Law

The writing awards showcase works that push the boundaries of academic and practitioner knowledge. These works will be cited by courts and agencies and will help top shape antitrust/competition policy going forward.”

Daniel Sokol, University of Minnesota Law School

The 2014 Antitrust Writing Awards were a wonderful celebration of the extremely high caliber of antitrust scholarship around the world. Competition policy, law and enforcement worldwide is greatly enriched by the quality of the research that was evidenced in the papers reviewed for the Awards. It was a great pleasure to be involved.”

Caron Beaton-Wells, University of Melbourne Law School

The Antitrust Writing Awards are a great service to the antitrust community. By collecting the best writing in the field of both practitioners and academics, the Writing Awards create a one-stop shop that saves tremendous amounts of time, keeps readers fully cognizant of the best new work, and provides recognition to those who make the effort to share their expertise with antitrust lawyers across the globe.”

Clifford A. Jones, University of Florida Levin College of Law

The writing awards showcase works that push the boundaries of academic and practitioner knowledge. These works will be cited by courts and agencies and will help top shape antitrust/competition policy going forward.”

Daniel Sokol, University of Minnesota Law School
It was my pleasure to serve on the Business Steering Committee this year. The Antitrust Writing Awards showcase the very best in antitrust writing over the past year, and participating in this process helps keep me updated on developing enforcement trends in the fast-pace and ever expanding world of antitrust and competition law.”

Charles Webb, Walmar

“I commend the organisers for recognizing professional writing as a specific category. This initiative will, I hope, increase the quality and depth of such writing to provide the practical complement to academic articles.”

Mathew Heim, Qualcomm

The Antitrust Writing Awards provide a vital forum for the validation and recognition of thought-leading scholarship. They accompany and consecrate the rising prominence and impact of competition law on the global economy.”

Paul Andres, Nestlé

“The quality and conciseness of the Business Articles, as well as the experience and knowledge which their authors are sharing, are of great use to corporate lawyers.”

Jean-Yves Art, Microsoft

The Antitrust Writing Awards bring together the Academic and the Business world from many countries, contribute to a better understanding of other legal cultures and thereby promote the global development of Competition law.”

Olaf Christiansen, Bertelsmann

The Antitrust Writing Awards are a welcome addition to the antitrust community because they reward excellence among the many practical articles of use to antitrust counselors.”

Steve Cernak, General Motor

What I found to be most encouraging about the Antitrust Writing Awards is that they value – and hopefully incent — short-form articles that offer important information and practical advice for antitrust practitioners.”

Deborah Majoras, Procter & Gamble

Many thanks to Concurrence and its distinguished board for recognizing practical places as well academic articles on competition law and policy. I was very pleased and surprised that my article on global antitrust compliance was selected in the Cross Border business category. In this particularly challenging and ever changing area, we all have much to learn as we seek to understand and comply with the competition laws of other countries entering the global arena.”

Roxane C. Busey, Baker & McKenzie

The jury reviewed and selected a great number of publications with real diligence. This not only rewards the authors, but also is very helpful for practitioners, because it highlights the most interesting and influential papers from an increasing flood of publications that is more and more difficult to follow. We were honoured to receive an award for our firm’s alert memo- randa and for several articles authored by lawyers from our firm, and we are grateful to Concurrences for this excellent initiative.”

Maurits Dolmans, Cleary Gottlieb Steen & Hamilton
"Gets you educated on cutting-edge issues and offers the best networking event of the antitrust spring meeting – I never miss it!"

In-house Antitrust Counsel, DC

"Law professors so often write without any meaningful feedback or hearing only from those who disagree with them (to be sure, in the spirit of healthy debate). To have our work not only recognized, but recognized by board members whose work we respect so much and by institutions with so much credibility, is a rare and delightful treat."

Robert Lande, University of Baltimore and Joshua Davis, University of San Francisco School of Law

"Inhouse Antitrust Counsel, DC"

"The Awards celebrate excellence in an area that clients find important and where most competition lawyers practice every day: explaining in plain language what the law is and where it is—or should be—heading."

Steve Cernak, Schiff Hardin

"The Concurrences writing awards highlight outstanding work by practitioners in the area of competition law and policy and shed valuable light on ‘cutting edge’ topics."

Alden Abbott, RIM

"The Antitrust Writing Awards represent a unique initiative to reward pure and applied research in antitrust. Academics and practitioners making valuable contributions to the literature see their names recognized and their work publicized. On a personal front, I have enjoyed reading some of the papers that were selected this year, most of which I would have overlooked absent this initiative."

Atilano Jorge Padilla, Compass Lexecon

"We are pleased with the significant contribution that the Antitrust Writing Awards program makes to the development and promotion of antitrust scholarship and practical business literature."

J. Mark Gidley, White & Case

"I greatly value seeing the list of articles nominated for a Concurrences award each year because it invariably brings to my attention some excellent pieces I would otherwise have missed."

Douglas H. Ginsburg, New York University

"It was an honor to have our paper reviewed and considered by such a distinguished panel of luminaries, with such leading thinkers in both Europe and the United States. The concept of encouraging excellence in both academic and more practical writings on competition is an excellent one, and Concurrences has done a remarkable job in creating a process for doing so."


"The Antitrust Writing Awards represent a perfect mix of academic and business writing and set the scene for a valuable exchange among all players in the antitrust arena."

Anna Rosa Cosi, SanDisk

"As sponsors as well as participants, we are delighted to play an active role in raising the bar of antitrust scholarship and the quality of client publications across the legal community."

Olivier Fréget, Allen & Overy

"This is a great event promoting antitrust scholarship around the world."

Hans Zenger, CRA

I greatly appreciate our receiving this award, and the dinner was a great opportunity to meet and talk with other practitioners and government enforcement officials."

Scott P. Perlman, Mayer Brown

Antitrust Writing Awards 2015 41
RULES

A. ARTICLES AWARDS

The Antitrust Writing Awards’ goal is to promote antitrust scholarship and competition advocacy by recognizing and awarding the best articles published in the antitrust law and law & economics fields.

1. ELIGIBILITY

Articles eligible must have been accepted for publication, published or released in print or electronic format in 2013 in English. Articles can be co-authored. Authors eligible are individuals. Articles must be made freely available on the Internet (SSRN, academic websites...) or on the Awards website for the purpose of these Awards in order to allow the Jury to vote. Articles are classified in Academic and Business categories. The Academic category comprises articles published or accepted for publication in academic peer-reviewed journals or chapters of academic books, whereas the Business category comprises articles published in professional publications, such as non-peer reviewed journals, newsletters, client briefs, memoranda, blogs. Each of these categories is sub-divided as follow:

- General: including cross-over topics, procedural issues
- Anticompetitive practices: including criminal cartel enforcement, civil federal, state, and private enforcement, treatment of joint ventures, vertical restrictions
- Monopolization/Unilateral conduct: including attempted monopolization and invitations to collude
- Mergers: substantive merger analysis, merger enforcement and guidelines
- Intellectual Property: issues relating to antitrust and intellectual property
- Private Enforcement: issues relating to antitrust private enforcement
- Asian Antitrust: issues relating to antitrust enforcement in Asia (China, Japan, India...)
- Economics: Including economic theories, models, and statistical tools used in the antitrust field

2. SELECTION & VOTING PROCEDURE

The Editorial Committee of the Antitrust Writing Awards selects two pools of eligible academic and business articles based on Academic and Business Steering Committees members’ suggestions. The Steering Committees members and the readers then each make a short list of nominated articles. The Board members finally select the award-winning articles among the nominated articles provided by the Steering Committees and the readers. The Editorial Committee, the Steering Committees and the Board members are collectively referred as the Jury.

Papers are judged according to writing, scholarship, originality, practical relevance and the contribution they make to competition advocacy. There is a winning-award article for each of the sub-categories mentioned at 1. above, for each of the Academic and Business categories. However, the Board reserves the right to award fewer Awards than planned if the articles under consideration do not meet the high standards of the Awards.

B. NEWSLETTERS AWARDS

Whereas the Articles Awards reward individual articles, the Newsletters Awards reward antitrust newsletters and related free access professional publications considered overall. The Newsletters Awards’ goal is to promote competition advocacy by selecting the best of these publications in order for readers to know what they should read first, depending what they are looking for.

1. ELIGIBILITY

Antitrust professional publications include newsletters, client briefs, memoranda, blogs, e-books, and even videos and webinars made freely available on websites of law firms, economic consulting firms... Publications eligible must have been released in print or electronic format in 2013 in English. Authors eligible are corporate entities. Publications are ranked according to 9 categories:

- Country coverage: Ranking based on the number of jurisdictions addressed in the 2013 publications of each firm
- Cases Coverage: Ranking based on the number of cases reported in the 2013 publications of each firm
- IP & Antitrust: Ranking based on the number of cases concerning antitrust and IP published in the 2013 publications of each firm
- Asian Antitrust: Ranking based on the number of cases concerning antitrust in Asia published in the 2013 publications of each firm
- Enforcement: Ranking based on the number of articles concerning private enforcement issues published in the 2013 publications of each firm
- Readership: Ranking based on the number of counselors acknowledging receiving the surveyed publications (based on a questionnaire send to 3,500 counselors)
- Counsel Choice: Ranking based on the surveyed publications preferred by counselors (based on a questionnaire send to 3,500 counselors)
- Accessibility: Ranking based on objective criteria (pdf/ html/print publications, access to archives...) and subjective criteria (search engine features...) of the website of each firm
- Innovation: Ranking based on innovative professional publications such as blogs, e-books, webinars, videos... made available on the website of each firm

2. SELECTION & VOTING PROCEDURE

The Editorial Committee selects a pool of eligible newsletters and related antitrust professional publications. The assessment of the above categories is based on a combination of objective - and subjective criteria where relevant - together with individual interviews.

For the Readership and Counsel’s Choice rankings, the Editorial Committee sends a questionnaire to the 3,500 counselors subscribing to Concurrences Review and e-Competitions Bulletin. Any in-house counsel or general counsel dealing with antitrust law is eligible to vote. Firms considered in the ranking can direct their clients to the online questionnaire in order to include in the survey their own contacts’ votes. A business e-mail is requested in order to make sure only counselors vote (except for the Economics ranking).

C. SURVEY

The Institute of Competition Law has designed a proven, data-driven approach survey that provide both publishers and readers of such publication with substantial and innovative information on antitrust newsletters and related professional publications published by law firms. A detailed questionnaire is send to the 3500 counselors subscribing to e-Competitions. This questionnaire contains two sets of questions: General questions on what do counselors think about the various antitrust publications they receive, and; Specific questions on given publications. Individual answers remain confidential; only aggregated data are provided. As an incentive to answering, the first fifty responding Counsels were invited to the Awards Gala Dinner on March 25, 2014. The results of this survey is communicated to the sponsors, the Board and the Business Steering Committee members, and the counsels having participated to the survey.

D. TERMS

1. DEADLINES

Voting from the Steering Committees and the readers takes place from 1 January to 1 March 2014. The Awards final votes were announced at the Awards Gala Dinner on 25 March 2014 - the day before the ABA Antitrust Spring Meeting - in Washington DC.

2. PUBLICATION

The Awards final votes are announced by an email to Concurrences and e-Competitions subscribers after the Awards Gala Dinner. The final votes are made available on this website. A detailed report is published in a special print issue of Concurrences Review.

3. TERMS OF USE AND PRIVACY POLICY

Individual votes remain confidential. Click here to read the Terms of use and our Privacy Policy.

4. MISCELLANEOUS

The Antitrust Writing Awards are managed by the Institute of Competition Law. The Institute, acting as the event manager, works to ensure that a sufficient number of quality articles and publications are submitted and surveyed, checks eligibility and organizes the Awards ceremony. Any unexpected issues will be dealt with by the Editorial Committee of the Antitrust Writing Awards.
NOW OPEN FOR SUBMISSIONS

The Antitrust Writing Awards Editorial Committee is currently selecting papers for the 2016 Awards. Eligible papers need to be published or accepted for publication in 2015. To submit a paper, email a pdf version or a link to the article to webmaster@concurrences.com. Deadline for submission is December 31, 2015. Results will be announced at the occasion of the Gala Dinner to take place on April 5, 2016 in Washington, DC.

GW LAW

Founded in May 2008, based on a generous cy pres award, the mission of the Competition Law Center is to sponsor research and promote education in the field of competition law – also known as antitrust law – particularly relating to issues of international enforcement and the harmonization of national laws and policies.

Concurrences Review

Concurrences Review is a print and online quarterly peer-reviewed journal dedicated to EU and national competition laws. Launched in 2004 as the flagship of the Institute of Competition Law, the journal provides a forum for both practitioners and academics to shape national and EU competition policy. Print and online versions.