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## Georgetown and Fordham Global Antitrust Law Symposia Focus on Trends in Cartel Enforcement, Merger Control, IP and Financial Services

Last week, Georgetown University Law Center hosted its Eighth Annual Global Antitrust Enforcement Symposium, and Fordham University School of Law hosted its 41st Annual International Antitrust Law and Policy Conference. These symposia provide key antitrust regulators a forum to discuss recent developments and signal future enforcement priorities. This year's events focused on trends in cartel enforcement, merger control, intellectual property and financial services.

### Cartel Enforcement

In his Georgetown speech, Assistant Attorney General Bill Baer of the U.S. Department of Justice's Antitrust Division (DOJ) discussed cartel enforcement and emphasized the importance of full cooperation in connection with bids for antitrust immunity by price fixers, noting that investigation targets must cooperate fully with and provide meaningful information to the DOJ that will assist in the DOJ investigation. Baer cautioned that "first reporting" illegal activity is not, by itself, sufficient to receive immunity.

DOJ Deputy Assistant Attorney General for Criminal Enforcement Brent C. Snyder and Kevin Coates of the European Commission's (EC's) Directorate-General for Competition echoed Baer's comments, and reiterated that offenders should take active measures to avoid recidivism by instituting top-down compliance programs and removing culpable senior executives. However, both DOJ and EC officials noted the agencies' challenges in formulating concrete guidance for compliance programs.

### Merger Control

The DOJ's Deputy Assistant Attorney General for Litigation David I. Gelfand and the Federal Trade Commission's (FTC's) Director of the Bureau of Competition Deborah L. Feinstein emphasized at Georgetown the importance of fact-based, early, complete and transparent advocacy by the parties. At Fordham, FTC Chairwoman Edith Ramirez similarly encouraged parties to communicate with the agencies, but asked those who approach the FTC with a remedy in mind to be flexible during the FTC's independent review, instead of honing in on the proposed "fix." Chairwoman Ramirez also explained that the FTC prefers structural remedies, even when reviewing consummated transactions, and called for a new study analyzing remedy effectiveness.

Also at Fordham, Carles Esteva Mosso, acting deputy director of the EC's Directorate-General for Competition, praised the EC's move to a holistic "effects based" analysis that is guided by economic theory. Mosso also highlighted the need to police transactions that can create anticompetitive effects without a change in control, referring to the much-debated proposal for revisions of European Union (EU) merger control law that could make minority interest acquisitions subject to notification in the EU.

### Intellectual Property

At Georgetown, Chairwoman Ramirez stated that the FTC is open to antitrust enforcement when the holders of standards-essential patents (SEPs) seek injunctions against licensees entitled to fair, reasonable and nondiscriminatory (FRAND) terms. Ramirez

argued that the antitrust agencies have a role in the so-called “patent wars,” citing the FTC’s requirement that Google seek a third-party arbiter before pursuing SEP infringement injunctions against licensees. She also acknowledged the importance of restraint in enforcement, given the potential risk of dampening innovation.

### **Antitrust and the Financial Sector**

The Fordham conference focused on recent antitrust investigations into rate manipulation by major financial institutions, most notably of LIBOR. Miguel de la Mano, director general for the Internal Market of the EC, argued that a lack of oversight by antitrust regulators contributed to the 2008 financial crisis, and that government responses, although necessary, have created market imbalances between large and small firms — including the fact that only institutions “too big to fail” can rely on taxpayer subsidies. De la Mano believes that antitrust authorities must now take a more active role in regulating the financial sector, in order to avoid further crises and problematic fixes. Baer, for his part, praised European and U.S. efforts to police the manipulation of financial benchmarks and to prosecute real estate investors and other actors who formed cartels to take advantage of foreclosure auctions following the 2008 financial crisis.

### **International Harmonization**

At Fordham, both Chairwoman Ramirez and Assistant Attorney General Baer highlighted the importance of coordinating antitrust review worldwide. Ramirez focused on merging parties, encouraging them to ensure speedy review and effective outcomes by coordinating filings and enabling enforcers from multiple jurisdictions to share information. Baer’s remarks were more directed to fellow regulators, noting that antitrust law must be driven by a focus on harm to competition and consumers, rather than by noncompetition factors such as industrial policy, gaining leverage in international trade negotiations or protectionism.

### **Almunia’s Reflections**

Vice President and Commissioner for Competition Joaquin Almunia, whose mandate at the EC ends October 31, spoke at both Georgetown and Fordham and reflected on his nearly five-year tenure as the lead European competition official. Almunia emphasized the role that antitrust has and should continue to play in facilitating a single European market. Almunia also praised the increased transparency of the EC’s Directorate-General for Competition in merger and criminal enforcement, and noted its shift toward encouraging competition and fostering innovation in nontraditional sectors such as finance, energy and the digital economy. He lauded European investigations into Google’s and Intel’s abuses of dominance, as well as into the activities of Greek state-owned lignite companies. With the EC’s rejection of the latest Google commitments as insufficient, Almunia indicated that any resolution with Google was unlikely during his tenure. He also expressed hope that the EU’s new private damages directive will deter cartels without the abuses often associated with such systems.

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We will continue to follow global developments in cartel and merger enforcement, the issues emerging at the intersection between intellectual property and competition law, and the continued antitrust scrutiny of financial services. If you have any questions about the Georgetown symposium or the Fordham conference, or about any of the specific topics covered in this alert, please do not hesitate to contact us.

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