

October 2026

Skadden

The Evolving Antitrust Enforcement Landscape

Key Insights and Practical Takeaways From the 2026 Georgetown and Fordham Antitrust Conferences

Each year, the Georgetown Global Antitrust Enforcement Symposium and Fordham Competition Law Institute's Annual Conference bring together leading competition enforcers, in-house counsel, practitioners, economists and academics to examine the issues shaping competition law and policy around the world. We were pleased to serve on the organizing committees for Georgetown and Fordham, and to help bring together conversations that are particularly important now, at a time when companies are navigating a changing and increasingly complex and interconnected global enforcement landscape.

For us, the value of these conferences comes from hearing directly from regulators, clients and other market participants about how enforcement priorities are evolving and, just as importantly, how those developments are affecting businesses in practice. This year's discussions addressed issues businesses are confronting every day, including cross-border merger reviews and remedies, the growing role of state enforcers in the United States, competition issues impacting digital markets, artificial intelligence and algorithmic pricing, and the increasing intersection of competition policy with broader regulatory and economic considerations.

We have prepared this compendium to share some of the most relevant insights and practical takeaways from the two conferences. We hope it serves as a useful resource as you consider how these developments may affect your business, transactions and broader antitrust strategy. More importantly, we welcome the opportunity to continue these conversations and discuss what the evolving enforcement environment means for your organization.



David P. Wales

Partner and Global Head, Antitrust/Competition
Planning Committee Member, Georgetown Global
Antitrust Enforcement Symposium



Karen M. Lent

Partner and New York Head, Antitrust/Competition
Associate Director of the Fordham Competition Law Institute

Table of Contents

- 01 Executive Summary
- 03 Georgetown Law 20th Annual Global Antitrust Enforcement Symposium
 - 04 A Conversation With Andrew N. Ferguson
 - 06 Global Enforcers Roundtable
 - 08 Beyond Merger Control: The Future of Global Antitrust Enforcement
 - 09 A Conversation With Emanuele Tarantino
 - 10 Merger Control and Geopolitics: Navigating a More Complex Approval Process
 - 12 The Expanding Role of State Attorneys General in Antitrust Enforcement
- 14 Fordham Competition Law Institute 53rd Annual Antitrust Economics Conference
 - 15 Keynote Addresses and Q&A Discussion
 - 17 The Monopolization/Dominance Frontier: Cases, Guidance and Legislation
 - 18 The Past, Present and Future of US Antitrust
 - 20 Competitor Collaborations or Cartels: Revisiting the Antitrust Framework for an Algorithmic Age
 - 22 Labor and Antitrust: A Global Focus With Disparate Results
 - 23 *Ex Ante* Regulation: The Early Report Card
 - 24 Keynote Addresses and Q&A Discussion
 - 27 Antitrust & Democracy: Are Politics and Industrial Policy Affecting Antitrust Enforcement Around the World?
 - 28 Conflict & Cooperation: States, Member States and the New Antitrust Federalism
 - 30 Trends in Merger Enforcement: Is International Convergence Still a Goal?

Executive Summary

Editor

Ryan J. Travers / Washington, D.C.

This compendium summarizes the principal insights from Georgetown University Law Center's 20th Annual Global Antitrust Enforcement Symposium and Fordham Law School's 53rd Annual Conference on International Antitrust Law and Policy. These conferences included remarks from leadership at the Department of Justice (DOJ), the Federal Trade Commission (FTC), the European Commission (EC), state attorney general offices and many other international regulatory bodies. Their comments over the course of the events show that antitrust enforcement is not receding globally, but it is evolving. Below are the main trends that emerged from the two conferences, as outlined in greater detail in the summaries that follow.

FTC strategy. At Georgetown, FTC Chairman Andrew Ferguson discussed the commission's pivot away from administrative adjudication toward federal court litigation. He pushed back against calls for AI-specific regulation or antitrust exemptions as potential "moat digging." He also indicated that major conduct cases are forthcoming in the near future. In a separate address at Fordham, Chairman Ferguson discussed continued international cooperation between regulators but noted that it would be conditioned on reciprocity from foreign regulators. He also raised concerns that digital regulations in Europe were disproportionately targeting U.S. firms.

DOJ enforcement and federal-state tensions. Associate Attorney General Stanley Woodward addressed the current state of global antitrust enforcement in a period of significant flux, focusing on tensions between federal and state antitrust enforcement. He argued that Congress made the DOJ and FTC the primary merger enforcers and pushed back on state attorneys general pursuing independent merger challenges. On merger review, he highlighted the DOJ's new model timing agreement and phased Second Request process as efforts to reduce burdens on merging parties, while giving the DOJ the information it needs in its investigations.

State attorneys general. State enforcement has increased in response to what some panelists considered declining federal enforcement. State enforcers cautioned, however, that they face significant resource constraints that limit their ability to bring standalone challenges.

Cross-border merger complexity. Multiple panels examined how geopolitics, industrial policy, national security and a diverse set of merger-control regimes are making multijurisdictional mergers more complex, with assertive U.S. state attorneys general adding a further complication. Panelists also examined whether international convergence in merger enforcement remains realistic, acknowledging that diverging domestic priorities are straining substantive international alignment, while cooperation among regulators retains value.

AI and algorithmic pricing. EC Executive Vice President (EVP) Teresa Ribera emphasized that competition policy must prevent AI market power from concentrating among a handful of dominant firms, framing AI as fundamentally different from prior innovations because AI systems "learn and make decisions, even beyond our control," and noting that the EU's Digital Markets Act (DMA) provides a complementary *ex ante* tool alongside traditional enforcement. A separate panel highlighted growing "hub and spoke" enforcement theories, a circuit court split on algorithmic pricing claims, and the risk of "ghost cartels" where AI agents facilitate tacit coordination without traditional collusion hallmarks.

Monopolization, digital regulation and labor. U.S. district court decisions, including the Google ad tech and search cases, show the evolution of monopolization case law in the United States. In Europe, the EC's updated Article 102 guidelines show that the EC will maintain a flexible effects-based approach to analyzing dominance cases. An early assessment of the DMA found tangible changes in interoperability and data choice, but disagreement over the effectiveness or fairness of the law as enforced. On labor, the DOJ's first criminal wage-fixing conviction likely means that wage-fixing cases will remain on the DOJ's docket.

We hope the following summaries and their takeaways offer a practical guide for businesses navigating an increasingly complex global competition enforcement landscape.

Georgetown Law
20th Annual Global
Antitrust Enforcement
Symposium

A Conversation With Andrew Ferguson

Panelists

Andrew Ferguson

Chairman, Federal Trade Commission

Paul Cuomo

Partner, Baker Botts (Moderator)

Contributing Associate

Yang Guo / Washington, D.C.

Overview

In this conversation, Chairman Ferguson discussed a wide range of topics related to the commission's enforcement strategy, including merger litigation, Hart-Scott-Rodino (HSR) Act reform, AI policy, consumer protection and global cooperation. On merger litigation, Chairman Ferguson discussed the FTC's pivot away from in-house administrative adjudication in favor of seeking injunctions in federal court. On HSR rulemaking, he signaled that any future reform would aim to strike a balance between burden and benefit. On AI, Chairman Ferguson pushed back firmly against calls for industry-specific antitrust exemptions, characterizing such efforts as "moat digging" designed to entrench incumbents. Consumer protection was also a focus, with Chairman Ferguson highlighting FTC partnerships with state attorneys general to expand its enforcement reach and obtain monetary relief. Finally, Chairman Ferguson indicated that the commission expects to bring several major conduct cases in the near future.

Key Takeaways

- **The FTC is moving all enforcement — mergers and conduct cases — into federal court.** Following the Supreme Court's recent decision in *SEC v. Jarkesy*, which exposed proceeding in administrative courts to constitutional challenge, the FTC under Chairman Ferguson has shifted to bringing merger challenges as preliminary injunction actions in federal district courts rather than relying on its own administrative tribunal. Chairman Ferguson said that the FTC will no longer pursue any antitrust or consumer protection conduct cases through its internal administrative process. He noted that this shift eliminates the traditional two-step administrative proceeding, aligns the FTC's procedures with those of the DOJ and ensures that enforcement actions are decided by impartial Article III courts. Accordingly, companies facing FTC scrutiny — whether in merger or conduct investigations — should expect the FTC to bring its suits in federal court.
- **HSR reform is being recalibrated, not abandoned.** While Chairman Ferguson continues to support the goals of the revised HSR Form, which was overturned by a federal court in February, the FTC is continuing to seek ways to improve the effectiveness of the HSR Form and process. The FTC and DOJ have launched a joint public inquiry on the effectiveness of the HSR Form and are exploring refinements that would balance obtaining useful upfront information for more targeted investigations against reducing unnecessary burdens on filers. Companies should anticipate potential HSR rulemaking that demands more information than the current "old" HSR Form but less than the recently vacated new form.
- **The FTC is skeptical of AI-specific regulation and antitrust exemptions.** Chairman Ferguson characterized industry calls for regulation of AI companies and antitrust exemptions as potential "moat digging" by incumbents to entrench their positions. He emphasized that AI policy will be set by the White House, and the FTC's role will focus on enforcing existing antitrust and consumer protection laws, which he believes are still sufficient to protect consumers.
- **Consumer protection is a growing enforcement focus, particularly through state attorneys general partnerships.** Chairman Ferguson underscored that consumer protection is an important complement to the FTC's competition mandate, as it allows the agency to address real-time consumer harms without the structural complexity of antitrust cases. The commission's alliance with state attorneys general has expanded its ability to obtain monetary relief, and Chairman Ferguson signaled that this collaboration will continue to grow.

- **Global coordination remains a policy goal, with a focus on procedural convergence.** Chairman Ferguson expressed a desire for greater convergence on procedures with foreign antitrust authorities. However, he made clear that the FTC will not coordinate with foreign agencies that the administration believes consistently mistreat U.S. companies.
- **The FTC is signaling an aggressive forward-looking enforcement agenda on conduct cases.** Chairman Ferguson highlighted the agency's recent enforcement actions, including four consumer protection cases that were filed in court recently. But he also noted the agency's renewed willingness to pursue remedies to resolve competition concerns. He concluded the discussion by indicating that major conduct cases are forthcoming.

What Companies Should Consider

It is clear from Chairman Ferguson's statements that the FTC is not shying away from continued enforcement actions, and it will pursue them in federal court rather than through its administrative tribunal. At the same time, changes to the HSR Form remain possible, with the FTC and DOJ seeking input on ways to revise it, so companies should consider monitoring developments related to HSR rules.

Global Enforcers Roundtable

Panelists

Christian Ahlborn

Partner, Covington & Burling (Moderator)

Andreas Mundt

President, Germany Federal Cartel Office (Bundeskartellamt)

Andrea Marván Saltiel

Chair, Mexico National Antitrust Commission (CNA)

Arisa Wakabayashi

Commissioner, Japan Fair Trade Commission (JFTC)

Camila Cabral Pires Alves

Commissioner, Brazil Administrative Council for Economic Defense

Contributing Associate

Yang Guo / Washington, D.C.

Overview

At this global enforcers roundtable, senior competition officials from Germany, Mexico, Japan and Brazil offered a comprehensive assessment of their agencies' current priorities and the forces shaping global antitrust enforcement. The panel addressed four principal themes: agency enforcement priorities, the interplay between competition policy and other governmental objectives, competition policy's role in fostering innovation and economic growth, and international agency cooperation. The discussion highlighted ongoing global regulatory scrutiny of digital markets, a rebound in cartel enforcement, growing cost-of-living concerns, and a notable tension between maintaining competition law's independence and accommodating broader policy goals such as economic security and industrial policy. The panelists also highlighted that cross-border cooperation — both bilateral and multilateral — remains essential in an era of increasingly global transactions.

Key Takeaways

- **Digital markets enforcement remains a priority, with global agencies deploying new statutory tools and targeting major technology platforms.** President Mundt noted that digital markets enforcement remains a priority for the Bundeskartellamt as well as the EC. He reported that the Bundeskartellamt has been actively pursuing abuse of dominance cases under Section 19a of the German Competition Act since 2021, including a recently concluded Amazon marketplace investigation that required the company to disgorge €59 million. President Mundt also highlighted the Apple app tracking transparency case concerning Apple's treatment of third-party app data. Commissioner Wakabayashi reported on Japan's enactment of the Mobile Software Competition Promotion Act, which became fully operational in December 2025, covering major mobile ecosystem services including operating systems, app stores, web browsers and search engines.
- **Cartel enforcement is rebounding from its post-COVID decline, bolstered by digital investigative techniques and reinvigorated leniency programs.** President Mundt reported that cartel enforcement, which had experienced a dip during the COVID-19 pandemic, is now recovering. Notably, President Mundt credited the Bundeskartellamt's adoption of digital tools — enabling it to scan large datasets for patterns indicative of bid rigging — as a critical factor in strengthening its cartel detection capabilities.
- **Cost-of-living pressures and strategic sectors are driving enforcement agendas as agencies respond to the economic concerns most salient in their jurisdictions.** President Mundt identified fuel prices — now approaching the €3 mark in Germany — as a top enforcement priority. Chair Marván Saltiel described the Institutional Program in Mexico that strategically focuses on six markets with the goal of benefiting Mexican families and the economy.
- **Agencies are grappling with how to balance competition law's independence against growing pressure to incorporate other policy goals.** President Mundt warned that politicization of competition law presents an "imminent danger," noting his opposition to efforts to weaken merger control or dilute competition analysis with noncompetition objectives. Commissioner Wakabayashi offered a more calibrated perspective, describing how the JFTC's November 2025 Casebook on Economic Security and the Antimonopoly Act analyzed the ways that national or economic security measures are assessed within a competition framework. Across jurisdictions, the enforcers emphasized that transparent and predictable enforcement is essential to business confidence and to avoiding a chilling effect on legitimate business activity.

- **Agencies encourage merging parties to bolster their transaction rationale with concrete growth and innovation narrative.** Commissioner Pires Alves of Brazil explained that merging parties should be ready to demonstrate, with concrete evidence, how a transaction will promote innovation and competitive dynamics. She stressed that the pro-competitive analysis is sector-specific and should explain how the deal would affect market conduct and innovation in a particular segment and jurisdiction.

What Companies Should Consider

Global enforcers continue to scrutinize digital markets, as evidenced by Japan's Smartphone Act and the EU Digital Markets Act, and businesses should expect continued scrutiny and further refinement as these laws continue to be implemented.

Beyond Merger Control: The Future of Global Antitrust Enforcement

Panelists

Rafique Bachour

Partner, Skadden (Moderator)

Stephanie Greco

Deputy Assistant Attorney General (DAAG) for Litigation, DOJ Antitrust Division

Hugh Hollman

General Counsel, Antitrust, Honeywell Aerospace Inc.

Derek Ludwin

Partner, Covington & Burling

Kirsten Edwards-Warren

Founding Partner, Eonic Partners LLC

Contributing Associate

Elizabeth L. Karbassi / Washington, D.C.

Overview

The panel examined how competition enforcement is being reshaped by geopolitics, industrial policy and national security. Panelists agreed that navigating multijurisdictional mergers has become more complex — driven by more than 150 merger control regimes worldwide, the growing role of national security and FDI reviews, and increasingly assertive U.S. state attorneys general. For transacting parties, building a global regulatory strategy from day one and engaging antitrust counsel and economists early is key to managing the challenges of multijurisdictional merger clearance.

Key Takeaways

- **Enforcement priorities continue to evolve.** DAAG Greco stressed that the DOJ Antitrust Division's role is to protect competition, not to pick "winners and losers," even while operating within a Trump administration that has expressed economic priorities in industries such as food, energy, health care and housing. Edwards-Warren observed that Europe and the U.K. competition authorities are integrating industrial policy more openly, reinforced by the call in the 2024 Draghi Report on EU Competitiveness for a modernized approach to competition policy. Panelists also noted the increasing role of U.S. state attorneys general, who have adopted an increasingly active posture in recent years.
- **Lines are blurring between competition and national security reviews for transacting parties.** Panelists agreed merger control and national security reviews apply distinct legal frameworks and evaluate different evidence, but the boundary between them has blurred in recent years. As an example, one panelist contrasted the 2022 FTC challenge to Lockheed Martin's proposed acquisition of Aerojet Rocketdyne, with the subsequent clearance of the Aerojet acquisition by L3Harris Technologies on broadly similar facts and competitive conditions — a shift he attributed to changed national security priorities. DAAG Greco cautioned that while national security concerns can be legitimate considerations in a competition review, they must be credible and verifiable. Parties asserting a national security interest should be prepared to substantiate it with documents and data, and regulators will test the assertion by corroborating it with other government agencies and market participants.
- **Narrative consistency across jurisdictions is critical for global deal management.** Inconsistencies in transacting parties' narratives regarding the deal or market dynamics in multijurisdictional merger reviews can invite unnecessary scrutiny and cause delays in closing. Panelists agreed that aligning transaction-related communications to regulators and investors is imperative given the number of stakeholders now examining global transactions. DAAG Greco also noted that parties should consider early engagement with the Antitrust Division to expedite merger reviews.

What Companies Should Consider

Transacting parties should create a global antitrust review strategy from day one. To avoid undue delay to closing, companies should consider proactively engaging antitrust counsel and economists to identify reportable merger control regimes. Parties should also consider coordinating closely with deal counsel and negotiating terms in deal documents to reflect the additional time and complexity of multijurisdictional regulatory review. Additionally, national security concerns can be legitimate considerations, and parties asserting national security arguments should be prepared to substantiate those arguments.

A Conversation With Emanuele Tarantino

Panelists

Emanuele Tarantino

Chief Competition Economist,
European Commission

Jon Orszag

Founding Partner, Econic Partners LLC
(Moderator)

Contributing Associate

Elizabeth L. Karbassi / Washington, D.C.

Overview

Tarantino sat down with Orszag to discuss the EC's forthcoming merger guidelines and the role that economic analysis will play in shaping European merger review. Tarantino confirmed that the commission aims to adopt the guidelines in the fourth quarter of this year. The conversation covered the European "champions" policy, the EU General Court's September 9, 2026, judgment in *Booking Holdings v. Commission* (T-1139/23), and how Tarantino assesses innovation rivalry. For companies contemplating European transactions, the discussion offers an early read on how the EC's economists may frame theories of harm under the forthcoming merger guidelines.

Key Takeaways

- **The new merger guidelines are on track for Q4 2026 adoption.** Tarantino confirmed that the EC's draft merger guidelines are expected to be adopted in the fourth quarter of this year, after a market feedback process that involved extensive consultation with numerous stakeholders. He reported that feedback on the draft has been broadly positive, including on its dynamic view of competition and consumer welfare.
- **"European champions" arguments will not carry a deal.** When asked directly whether increased European competitiveness can justify merger clearance, Tarantino's short answer was no. Proponents of a European champions policy argue that merger analysis should focus on international rather than European competition, calling for a more flexible approach toward acquisitions that create large European players that can better compete globally. Tarantino emphasized that global competitive gains do not excuse harm to the competitive process in Europe, absent identifiable benefits to European consumers.
- **Entrenchment theories of harm remain unsettled after the EU General Court's *Booking/Etraveli* decision.** On September 9, 2026, the General Court dismissed Booking Holdings' challenge to the Commission's 2023 prohibition of its proposed acquisition of Etraveli Group, which was the Commission's first prohibition resulting from concerns arising from a service ecosystem. Tarantino described the 2026 decision as providing limited guidance on which economic framework applies to mergers giving rise to entrenchment. He emphasized that cases involving firms operating across several markets should be assessed holistically, and that even small increases in market share can impede competition. Tarantino noted that the EC is actively reviewing the *Booking/Etraveli* judgment.
- **In innovation cases, internal documents may inform outcomes.** When asked about innovation rivalry, Tarantino suggested a decisive question is how the merger changes the parties' incentives. Premerger internal documents showing whether the parties were reacting to, or investing against, each other provide key evidence to inform a regulator's investigation. Where the parties are investing in different products or consumer groups, he noted that the relationship is more likely to reflect complementarity than innovation rivalry.

What Companies Should Consider

Transacting parties should be prepared for the final EU merger guidelines expected in the fourth quarter of this year. Antitrust counsel can assist companies as they consider how their deals may be impacted by the new guidelines as adopted.

Merger Control and Geopolitics: Navigating a More Complex Approval Process

Panelists

David Cordell

Partner, Baker Botts (Moderator)

Charlie Beller

Deputy Assistant Attorney General (DAAG), DOJ

Nate Asker

Partner, Davis Polk

Loren Smith

Founding Partner, Econic Partners LLC

Mika Ikeda

Senior Counsel, Competition Law, Johnson & Johnson

Contributing Associate

Rianna N. Jha / Washington, D.C.

Overview

The panel examined the increasing complexity of cross-border merger review processes. The panelists agreed that states are taking a more aggressive approach to antitrust enforcement, while some international regulators are contemplating novel theories of harm, particularly around innovation. In the U.S., however, the second Trump administration is embracing deal-making, and transacting parties are encouraged to proactively engage with regulators conducting merger reviews.

Key Takeaways

- **While enforcement attitudes have shifted considerably under the second Trump administration, there are currently no plans to rescind and replace the 2023 Merger Guidelines.** When asked how federal merger enforcement has evolved over the past 18 months, DAAG Beller highlighted two major developments: First, regulators are less skeptical of M&A activity and its potential to realize pro-competitive benefits, such as innovation; and second, regulators are much more receptive to resolving competition concerns with merger remedies. DAAG Beller said that, despite this shift, the DOJ and FTC opted to retain the 2023 Merger Guidelines because the regulators want to avoid turning the guidelines into a “partisan football.” He explained that there were other ways to change policy, such as culture in the department, but the guidelines have to be “predictable.” DAAG Beller also stated that while the guidelines are “instructive” for case teams at the investigatory phase, “they’re no longer an indication of how the division will approach an enforcement decision.” He suggested that the agencies intend to provide greater clarity on how the guidelines should be interpreted under the current administration.
- **The EC is exploring novel approaches to assessing innovation competition.** Ikeda observed that, while both the U.S. and EC are recognizing more dynamic theories of harm around innovation and potential competition, the new EC merger guidelines demonstrate some notable differences in the EC’s approach. Namely, the EC guidelines acknowledge innovation competition at two levels: “specific innovation competition,” concerning overlapping research and development efforts in product markets that are identifiable, even if not yet commercialized; and broader innovation competition, which can encompass innovation in markets that lack clear product delineations. Ikeda warned that this approach could result in “speculation” and “overenforcement.”
- **States are playing a more expansive role, introducing another level of complexity to merger review.** The panelists discussed the rising influence of states in antitrust enforcement. Panelists noted that several states are contemplating new antitrust statutes, including proposals to codify by statute the Supreme Court’s *Philadelphia National Bank* 30% market share presumption. Smith observed that while state involvement can be effective in partnership with federal authorities, states bringing independent actions often lack the resources necessary for sophisticated economic analyses of challenged mergers. Asker concurred, noting that transacting parties are increasingly accounting for “new regimes” and “more government actors” when allocating risk in merger agreements.
- **The DOJ is encouraging a cooperative approach to merger review.** DAAG Beller stated that parties should expect “engagement” and “transparency” from DOJ. In particular, he encouraged merging parties to work proactively with DOJ staff to address concerns and avoid unnecessarily escalating matters to the front office. Citing a recent high-profile HSR settlement, DAAG Beller also stressed the importance of proper compliance with procedural requirements, which he called “the flipside” of the administration’s openness toward deals.

What Companies Should Consider

The merger approval process is becoming increasingly complex, especially as states assume a larger enforcement role and international regulators adopt more novel theories of harm. Clients should remain vigilant regarding such developments, including the potential effects on risk allocation in merger agreements. At the same time, at the federal level in the U.S., regulators are signaling a deal-friendly approach to enforcement and a willingness to resolve competition concerns with remedies. Clients are encouraged to consider engaging proactively with agency staff and working cooperatively toward closing deals.

The Expanding Role of State Attorneys General in Antitrust Enforcement

Panelists

Phil Weiser

Attorney General (AG), Colorado
(Keynote Speaker)

Jessica Delbaum

Partner, Davis Polk (Moderator)

Joe Rancour

Partner, Skadden

Paula Blizzard

Senior Assistant Attorney General (AAG)
for Antitrust, Office of the California State
Attorney General

Elizabeth Odette

AAG, Minnesota Attorney General's Office

J. David McDowell

Deputy Attorney General (DAG),
Tennessee Attorney General's Office

Contributing Associate

Rianna N. Jha / Washington, D.C.

Overview

This session explored the expanding role of state attorneys general in antitrust enforcement. AG Weiser opened with a keynote speech, which was followed by a panel discussion. All participants agreed that state enforcement has evolved in response to perceived declining federal oversight, while speakers representing state attorney general offices flagged the need for greater resources. Panelists also emphasized that state enforcers are particularly interested in mergers uniquely or closely impacting their state or consumer-facing industries. Clients should stay abreast of developments at the state level, contemplate potential state-specific impacts when brokering deals and consider engaging proactively with state regulators.

Key Takeaways

- **States are embracing “checks and balances federalism.”** AG Weiser began his speech by declaring, “Federalism in antitrust is having an important moment.” He noted that while the HSR Act makes clear that states are “integral” partners in antitrust enforcement, they are now playing “a critical role, even acting alone.” AG Weiser argued that the federal government has become an “unreliable” and “inconsistent” enforcer of antitrust law, citing the DOJ’s settlement in *LiveNation/Ticketmaster* as a “turning point” and emphasizing that the current administration has shattered the post-Watergate consensus around insulating antitrust enforcement from political forces. He described this as an abdication of federal leadership that has prompted states to embrace “checks and balances federalism” and fill federal enforcement gaps.
- **States need the resources to increase enforcement efforts.** AG Weiser acknowledged that states face unique challenges as enforcers of antitrust law. Namely, states lack the resources available to federal regulators, and they typically have no control over timing; indeed, absent federal review, states often depend on protracted reviews by regulators outside of the United States for sufficient time to bring merger challenges. AG Weiser called for greater funding for state enforcement efforts, as well as consideration of states playing a more formal role in the HSR compliance timeline. He also recommended expanding the scope of statutory tools available to states, including extending applicability of the Tunney Act to the FTC.
- **State enforcers consider local issues when making investigation decisions.** Delbaum asked the panel how state enforcers determine which merger investigations to pursue and prioritize. Tennessee DAG McDowell noted that Tennessee is particularly interested in “emerging technologies” as well as industries that have outsized impact in the state, such as agriculture, healthcare, and entertainment. California AAG Blizzard agreed, explaining that California also considers predominant state industries, citing *Paramount Skydance/Warner Bros. Discovery* and *Nexstar/Tegna* as examples. Additionally, California looks for opportunities to “move the law forward,” such as intervening in the Tunney Act proceedings in the *Hewlett Packard Enterprise/Juniper Networks* settlement, and to advance the attorney general’s priorities (e.g., labor is an important issue for California AG Rob Bonta).
- **With the rise of multistate investigations, merging parties cannot sideline state enforcement priorities.** Delbaum asked Rancour how these developments in state enforcement have impacted advice to clients. Rancour said he encourages merging parties to seriously consider state enforcement priorities when planning deals, especially those impacting consumer-facing industries such as platform technologies, media and health care, as these are sectors where state AGs have demonstrated significant interest and it is important to keep potential state-specific issues and concerns in mind, even where

markets involved are global or national. When asked whether the evolution of increased state AG enforcement efforts changes the calculus around whether to grant waivers to allow state AGs to share information with other enforcers, Rancour explained that at least in merger investigations where parties are trying to resolve regulator questions and get to closing, granting waiver requests from states to share information with other states or federal regulators often makes sense, as this cultivates good will and creates opportunities to engage with regulators on the merits of a transaction.

What Companies Should Consider

Clients contemplating mergers in consumer-facing industries or industries with particular relevance in certain states should consider the potential ramifications of enforcement at the state level on deal risk and timing. To navigate this changing enforcement landscape, clients can track state developments (*i.e.*, new state premerger notification regimes) and cultivate goodwill with state enforcers during the investigation, including by granting waivers.

Fordham Competition
Law Institute
53rd Annual Antitrust
Economics Conference

Keynote Addresses and Q&A Discussion

Speakers

Teresa Ribera

Executive Vice President (EVP) for a
Clean, Just and Competitive Transition,
European Commission

Stanley E. Woodward Jr.

Associate Attorney General, DOJ

Contributing Associate

Jordan S. Janis / New York

Overview

This discussion featured remarks on the current state of competition enforcement globally. Associate Attorney General Woodward addressed the current state of global antitrust enforcement in a period of significant flux. EVP Ribera focused on competition policy's role in shaping efficient and sustainable AI, emphasizing that it must prevent market power from concentrating among a handful of dominant firms and that the EU's Digital Markets Act provides a complementary *ex ante* tool alongside traditional enforcement. While Associate Attorney General Woodward also discussed DOJ's approach to AI regulation, he focused on current tensions between federal and state antitrust enforcement, signaling that the DOJ sees itself as the frontline enforcer and pushing back on state attorneys general pursuing independent merger challenges. Both speakers emphasized the importance of international collaboration. For companies, the session underscored that antitrust regulators are sharpening their focus on AI development, and that federal-state enforcement tensions are likely to persist in some areas.

Key Takeaways

- **AI is a central focus of competition enforcement, with Europe taking *ex ante* action and the U.S. continuing to monitor.** EVP Ribera framed AI as fundamentally different from prior innovations because AI systems “learn and make decisions, even beyond our control.” Competition policy, she argued, plays a critical role in promoting sustainable AI growth by keeping markets open and preventing power from concentrating among a few dominant firms. While the EU is already applying the DMA to AI-adjacent cases, the U.S. is reviewing its AI-related policies and closely monitoring for anticompetitive behavior by AI companies.
- **Competitor collaboration on AI safety remains a gray area.** When asked whether competitors could cooperate to develop safe AI, Associate Attorney General Woodward noted that existing DOJ/FTC guidance on competitor collaboration is under review and may be updated, but cautioned against assuming a relaxed enforcement posture. Both Associate Attorney General Woodward and EVP Ribera stated that no AI companies have approached their respective agencies seeking guidance on collaborative safety efforts. Associate Attorney General Woodward encouraged companies to approach the DOJ with any concerns and called for broader dialogue on the topic.
- **The DOJ is streamlining merger review but will still litigate aggressively.** Associate Attorney General Woodward stated that the DOJ has published a new model timing agreement and phased Second Request processes to reduce the burden on merging parties while preserving DOJ's ability to conduct thorough reviews. Although he views settlements as a pragmatic tool that delivers consumer benefits faster than protracted litigation, Associate Attorney General Woodward made clear that the DOJ “will litigate to stop anticompetitive deals.”
- **Tensions between federal and state antitrust enforcement remain, but cooperation is possible.** Associate Attorney General Woodward devoted significant attention to tensions between federal and state enforcers, arguing that Congress assigned the DOJ and FTC the primary responsibility for merger review and that state attorney general challenges — particularly those filed shortly before closing — amount to “gamesmanship” that federal courts should not permit. However, he also noted that the DOJ aims to continue to work with the states, taking the lead on national deals while collaborating to examine local impacts.

-
- **Transatlantic antitrust cooperation remains strong despite diverging enforcement paths.** Despite different frameworks — the DMA in the EU versus litigation-driven enforcement in the U.S. — both speakers affirmed that their jurisdictions’ underlying competition concerns are broadly similar. EVP Ribera noted that both paths have produced similar remedies and that cooperation is necessary to successfully navigate the AI race.

What Companies Should Consider

The session reinforced that antitrust scrutiny of AI markets is intensifying on both sides of the Atlantic, while the increasingly complex multienforcer landscape in the U.S. adds a separate layer of risk for companies navigating mergers. In both Europe and the U.S., technology firms operating in digital markets continue to be a focus for regulators. And companies contemplating competitor collaboration on AI safety should be cognizant of potential antitrust concerns arising out of such collaboration.

The Monopolization/Dominance Frontier: Cases, Guidance and Legislation

Panelists

Stacy Frazier

Partner, Clifford Chance (Moderator)

Nick Kreisle

Partner, Eonic Partners LLC

Rich Pepper

Partner, Paul Weiss

Anthony Whelan

Director-General, EC Directorate-General for Competition (DG COMP)

Koren W. Wong-Ervin

Partner, Jones Day

Contributing Associate

Kendall H. Hart / New York

Overview

This panel explored recent developments in monopolization/dominance jurisprudence in the U.S. and Europe. Panelists expressed their views that, in the U.S., a series of recent district court decisions, including the Google ad tech and search cases, represent a marked departure from the analytical framework that has governed Section 2 monopolization cases for more than two decades. In Europe, the EC's updated Article 102 guidelines signal a move toward a refined effects-based approach, while also raising questions about the evidentiary threshold for showing competitive harm. These developments carry meaningful implications for companies operating in the technology space and other markets characterized by network effects and economies of scale.

Key Takeaways

- **U.S. monopolization law is at an inflection point.** Panelists noted that recent decisions, particularly in the Google cases, underscore the challenges of fashioning effective remedies in Sherman Act Section 2 cases and highlight how technology markets, characterized by economies of scale, network effects, and first-mover advantages pose distinct enforcement challenges.
- **The EU is lowering the evidentiary bar for abuse of dominance cases.** European panelists explained that it is increasingly clear under EU law that the European Commission needs only to show that the challenged conduct is *capable* of producing anticompetitive effects, rather than demonstrating actual harm. While this does not mean an abandonment of an effects-based approach entirely, it raises questions about where the line falls between a capability standard and a purely theoretical one — a debate likely to intensify in the years ahead.
- **The EC is pursuing faster enforcement through interim measures.** The EC is recognizing the need for quicker action to protect competition, including through involuntary commitments and interim measures, a departure from the traditionally deliberate enforcement approach in Brussels. Panelists noted that interim measures necessarily operate under a different evidentiary standard than full proceedings.
- **Counterfactual analysis remains a key battleground, particularly in technology cases.** Panelists debated the difficulty of constructing credible counterfactuals in cases involving long-running conduct, especially in technology markets. Economists on the panel emphasized that while precise but-for worlds are not required, several analytical tools, including natural experiments (potentially informed by the EU's DMA), field experiments and simulations, can support rigorous counterfactual analysis.

What Companies Should Consider

Companies with significant market positions, particularly those operating digital platforms or in technology sectors, should closely monitor the evolving enforcement landscape in both the U.S. and EU. The shifting judicial approaches in the EU and U.S. may increase the risk of enforcement actions targeting unilateral conduct. Businesses should evaluate whether their competitive strategies, including product design decisions, pricing and platform practices, could be characterized as exclusionary under these emerging frameworks. The EC's new Article 102 guidelines on balancing competitive harm against efficiencies — including their treatment of sustainability benefits — also warrant attention from companies seeking to raise procompetitive justifications for their conduct.

The Past, Present and Future of US Antitrust

Panelists

Daniel Francis

Professor, NYU School of Law
(Moderator)

Herbert Hovenkamp

Professor, University of Pennsylvania
Carey School of Law

Doha Mekki

Former Acting Assistant Attorney General
(AAG), DOJ Antitrust Division

Noah Phillips

Partner, Cravath, Swaine & Moore LLP

Timothy Wu

Professor, Columbia Law School

Jamie Grischkan

Associate Professor, Fordham Law School

Contributing Associate

Madeleine W. Gramigna / New York

Overview

This panel examined the trajectory of U.S. antitrust enforcement and offered assessments of where the law stands today. The panel expressed the view that antitrust law is at a turning point after nearly half a century under the consumer welfare paradigm, and panelists debated whether broader values, such as economic liberty and the de-concentration of political power, should play a larger role in enforcement today. The discussion centered on the outcomes of major big tech cases, the limits of available remedies, the expanding role of state enforcers and the persistent influence of bipartisan antimonopoly sentiment. For companies, the principal message was clear: Antitrust scrutiny is not receding, but it is evolving in important ways and businesses should consider whether they need to calibrate their compliance efforts accordingly.

Key Takeaways

- **The definition of “big tech” is expanding, and so is enforcement’s reach.** Panelists noted that recent antitrust focus on major technology platforms, including Apple, Amazon, Google and Meta, is now broadening to include newer market participants in emerging spaces like AI, such as NVIDIA, OpenAI and Anthropic. Panelists acknowledged that this is a repeated pattern in antitrust history, where “the big new thing” often becomes a focal point of enforcement. Companies in the AI space should expect heightened scrutiny as enforcers apply established antitrust frameworks to emerging markets.
- **State enforcement is becoming a durable force in competition policy.** Panelists highlighted that the antitrust enforcement in the U.S. increasingly extends beyond the federal regulators. State legislatures are enacting new premerger notification requirements, and state attorneys general are pursuing enforcement actions focused on algorithmic pricing and surveillance practices.
- **Bipartisan populist sentiment is persistent, even if legislation has stalled.** The panelists observed that recent aggressive regulatory initiatives failed (*e.g.*, the FTC’s attempt to ban noncompetes) but they agreed that popular concern about concentrated market power continues to shape the political environment on both sides of the aisle. The panelists noted that left and right share the view that low prices alone do not negate harms from economic concentration, though they differ on enforcement mechanisms and institutional preferences.
- **The government can win big tech monopolization cases, but don’t expect breakups.** Panelists noted that the DOJ secured significant Section 2 liability findings in the Google search and ad tech cases, but courts did not order the requested structural remedies.
- **Economics remains central to antitrust litigation, but its role is being reexamined.** Panelists agreed that economic analysis is indispensable to antitrust enforcement. One panelist emphasized this importance and shared his observation that despite a common perception that economists tend to side with defendants, economic analysis has in practice often worked to the benefit of plaintiffs. Another panelist suggested that economists inform but do not dictate the outcome of antitrust cases, as law and statutory intent can override economic logic. For companies preparing for litigation, robust economic evidence remains essential, but the panelists suggested that courts are also looking for concrete, direct evidence of competitive harm rather than relying solely on market share or economic analyses.

What Companies Should Consider

Companies should consider factoring the evolving antitrust landscape into key business decisions. Businesses operating in or adjacent to digital markets and AI can prepare for sustained and expanding antitrust scrutiny. And compliance programs should account for the growing role of state enforcement and state legislation.

Competitor Collaborations or Cartels: Revisiting the Antitrust Framework for an Algorithmic Age

Panelists

Jack Pace

Partner, White & Case (Moderator)

Kail Jethmalani

Partner, Axinn

Heather Lamberg

Partner, Freshfields US LLP

Minjae Song

Principal, The Brattle Group

Arisa Wakabayashi

Commissioner, JFTC

Contributing Associate

Madeleine W. Gramigna / New York

Overview

This panel examined whether the existing antitrust framework is adequate to address competitor collaborations facilitated by algorithmic pricing tools and AI. The discussion highlighted a growing enforcement focus on “hub and spoke” theories involving third-party algorithmic pricing vendors, a circuit court split in pleading standards and the emerging risk of so-called “ghost cartels,” where AI agents may facilitate tacit coordination without traditional hallmarks of collusion. For companies using (or developing) algorithmic pricing tools, the panel made clear that both litigation risk and regulatory scrutiny are intensifying.

Key Takeaways

- **Antitrust framework remains the same, but AI introduces gray areas.** Panelists agreed that if conduct would be illegal when performed by a human, it is illegal when performed by an algorithm. However, adaptive, self-learning AI raises novel issues — particularly the risk of “ghost cartels,” where independently deployed algorithms reach collusive outcomes without any explicit communication, shared platform or human intent to coordinate. Emerging news discussing AI agents attempting to conceal coordinated behavior compounds the concern. Companies should not assume that the absence of a traditional “agreement” insulates them from antitrust scrutiny.
- **Potentially diverging outcomes in algorithmic pricing cases across circuits.** Panelists highlighted different outcomes for algorithmic claims in appellate courts. For example, the Ninth Circuit dismissed “hub-and-spoke” conspiracy claims where plaintiffs failed to allege that a pricing tool actually pooled nonpublic competitor data or that users were effectively required to follow its recommendations. The Third Circuit, by contrast, allowed claims to proceed where plaintiffs alleged that the software used forward-looking, nonpublic data and that firms generally followed its pricing outputs, even if they were not required to follow them. This divergence underscores that how a pricing tool handles data, and how closely users adhere to its recommendations, will be critical to how companies structure their use of these products and their litigation and regulatory exposure.
- **The legal standard remains unsettled.** Courts have reached conflicting conclusions at the motion-to-dismiss stage, with some suggesting *per se* treatment is appropriate for algorithmic pricing cases and others applying the rule of reason. The panel observed that the ongoing debate itself likely signals that rule of reason will prevail, at least initially, which would allow defendants to present procompetitive justifications.
- **State and local legislation is expanding to fill perceived federal gaps.** Multiple states and cities have enacted or proposed laws targeting algorithmic pricing, some narrowly focused on specific industries (e.g., real estate) and others sweeping more broadly. Several of these statutes may lower the standard for liability relative to federal antitrust law, potentially eliminating the need to prove a traditional “rim” in a hub-and-spoke conspiracy or broadening the definition of anticompetitive data sharing. The scope and meaning of many of these provisions remain untested.
- **Vendor marketing language and product design matter.** Panelists cautioned that loose marketing claims by algorithmic pricing vendors, such as suggesting that tools intermingle competitor data or guarantee market-aligned pricing, can create significant litigation exposure. Panelists noted that from the vendor side, there is a growing expectation that platform providers should take greater responsibility for how their tools handle competitive information.

What Companies Should Consider

Companies using third-party algorithmic pricing tools should consider evaluating whether those tools pool nonpublic competitor data, how closely they follow algorithmic recommendations, and what representations the vendor makes about the product's functionality. Vendors and developers of pricing algorithms should consider scrutinizing marketing materials and product documentation to ensure accuracy and avoid language that could support a hub-and-spoke theory. All companies should monitor the expanding patchwork of state and local algorithmic pricing laws, which may impose obligations beyond federal antitrust requirements.

Labor and Antitrust: A Global Focus With Disparate Results

Panelists

Aleksandr Livshits

Partner, Fried, Frank, Harris, Shriver & Jacobson (Moderator)

Benoît Cœuré

President, French Competition Authority

Justin McCrary

Senior Advisor, Cornerstone Research; Professor, Columbia Law School

Bill Rinner

Partner, Latham & Watkins

Contributing Associate

Trevor S. Floyd / New York

Overview

This panel examined the divergent treatment of labor-market restraints across the United States and Europe. The discussion highlighted that Europe is not a single labor market: Twenty-seven national labor-law regimes, languages, cultures and mobility patterns shape local supply and demand. In the United States, the DOJ's first criminal labor-antitrust conviction, in *United States v. Lopez*, reinforced that wage fixing can be prosecuted like price fixing. Yet no-poach prosecutions remain difficult, and noncompete rules differ sharply by jurisdiction. For companies, the central challenge is to distinguish conduct that may create criminal antitrust exposure from restraints governed principally by labor law or state-specific rules.

Key Takeaways

- **European labor-antitrust risk remains fragmented, not harmonized.** Companies should not treat Europe as a single labor market or assume a uniform enforcement position. Portuguese authorities have led labor-antitrust enforcement, and that work is influencing European-level thinking, but national labor laws, mobility patterns, cultures and languages continue to drive materially different assessments across jurisdictions.
- **U.S. criminal exposure for wage fixing is now concrete and likely durable.** Panelists highlighted that, after several government losses, DOJ secured its first criminal labor-antitrust conviction in *United States v. Lopez* in 2025. The case involved an agreement to keep workers within the same hourly rate and sent a straightforward message: An agreement fixing wages can receive the same treatment as an agreement fixing prices.
- **No-poach cases remain hard to prove, but the criminal theory has survived.** Juries have not always accepted the government's evidence in no-poach cases, contributing to multiple losses. Even so panelists noted that there is now broad bipartisan acceptance that naked wage-fixing and some no-poach arrangements may warrant prosecution.
- **Noncompetes require a jurisdiction-specific analysis.** In Europe — and particularly France — noncompetes generally are governed by developed labor-law standards, not treated as an antitrust issue. In the United States, the landscape has largely returned to case-by-case rule-of-reason analysis, subject to states that have enacted complete bans or other restrictions.

What Companies Should Consider

Companies should consider inventorying agreements and practices that affect employee compensation, recruiting, hiring or mobility, including informal understandings with competitors and communications through trade associations or shared service providers. Compliance training should make clear that wage coordination can carry the same criminal consequences as product-price coordination and that no-poach risk persists despite mixed trial results. Additionally, multinational policies should not assume that a U.S. analysis transfers to Europe — or that one European country's approach applies across the EU. Legal teams should consider mapping applicable labor and competition rules by jurisdiction.

Ex Ante Regulation: The Early Report Card

Panelists

Eleanor M. Fox

Walter J. Derenberg Professor of Trade Regulation Emerita, New York University School of Law (Moderator)

Izaak Earnhardt

Associate, Boies Schiller Flexner LLP

Linsey McCallum

Deputy Director-General, EC DG COMP

Emilie Feyler

Director, NERA

Marissa Troiano

Senior Legal Counsel, Competition, Spotify

Contributing Associate

Trevor S. Floyd / New York

Overview

This panel assessed the first two years of the EU DMA and whether *ex ante* rules can address digital-market conduct faster and more predictably than case-by-case litigation. Panelists identified tangible changes — including greater device interoperability and more user control over cross-service data — but disagreed over whether gatekeeper obligations are being enforced effectively. The early record matters because the DMA is shaping product design and commercial terms for largely U.S.-based technology companies, while U.S. litigation remedies may exert similar forward-looking pressure even without a DMA-style statute.

Key Takeaways

- **The DMA is producing visible product and data-choice changes.** Examples discussed included AirDrop interoperability in the EU, the ability to use Android without a Gmail account and greater control over cross-service data use. For some services, 45% to 90% of EU consumers reportedly decline cross-service data use, suggesting that mandated choice can materially affect gatekeeper data advantages and contestability.
- **Decisions are becoming the practical compliance playbook.** The Commission has adopted four decisions — two directed to Apple and two to Google — to clarify what full compliance requires rather than merely declare noncompliance. The Apple decisions address iOS interoperability for devices and services such as Garmin and Google offerings; the Google decisions seek to ensure competing chatbots receive access comparable to Gemini.
- **Stakeholders dispute whether formal rights are delivering effective access.** One panelist argued that enforcement has not adequately secured the rights contemplated by DMA Article 5(4). In her view, Apple and other gatekeepers can still impose supracompetitive steering fees, illustrating how pricing and implementation choices may blunt the practical value of nominal access rights.
- **U.S. remedies can function like targeted *ex ante* regulation.** The United States has not adopted a DMA analogue, but remedies in cases such as the Epic Games litigation can impose forward-looking constraints that change platform behavior. Panelists said companies should therefore evaluate not only the likelihood of liability, but also whether contested conduct could invite operational remedies resembling sector-specific rules.

What Companies Should Consider

Technology companies should treat DMA compliance as an iterative product, engineering and commercial exercise rather than a one-time legal certification. Companies subject to the DMA should consider monitoring specification proceedings, testing whether implementation delivers the required practical outcomes, and preserving evidence supporting design and fee choices. Companies outside the DMA's current scope should still assess whether their products depend on designated platforms and whether evolving interfaces create opportunities or risks. Because the European record is only two years old, clients should expect continued adjustment rather than settled compliance standards.

Keynote Addresses and Q&A Discussion

Speaker

Andrew Ferguson
Chairman, FTC

Contributing Associate

Carly Weisen / New York

Overview

Chairman Ferguson addressed a wide range of topics bearing on U.S. antitrust enforcement, including the agency's approach to international cooperation, the EU's DMA and Digital Services Act (DSA), the fallout from the U.S. Supreme Court's decision in *Trump v. Slaughter*, and the FTC's evolving posture toward merger remedies and AI. Chairman Ferguson signaled that the FTC will condition international cooperation on reciprocal treatment of U.S. companies abroad and expressed continued concern that European digital regulations disproportionately target U.S. firms. For companies navigating cross-border enforcement and emerging technology regulation, Chairman Ferguson's remarks offer a practical window into the agency's current priorities and enforcement philosophy.

Key Takeaways

- **International cooperation will be tied to reciprocity.** Chairman Ferguson stated that the FTC will cooperate with foreign counterparts only where those entities treat U.S. companies the same as their domestic players. He emphasized that cooperation is "a means to an end" to further American interests, and that the agency will not engage where foreign governments use competition law as a form of trade punishment or apply their principles to U.S. firms differently than to domestic ones.
- **Concerns about the EU's digital regulations persist.** Chairman Ferguson drew a distinction between the DMA and the DSA, noting he remains "unapologetically opposed" to the DSA. While acknowledging the DMA addresses conduct the FTC also considers problematic, such as self-preferencing, he described it as "pretty poorly executed" and expressed concern that its facially neutral criteria were effectively designed around U.S. firms.
- **The *Slaughter* decision reinforces presidential accountability at the FTC.** Chairman Ferguson welcomed the Supreme Court's overruling of *Humphrey's Executor*, arguing that the prior consensus model did not produce consistent results. He characterized pre-*Slaughter* bipartisan decision-making as often resulting in gridlock rather than efficient enforcement, and endorsed the view that a president elected by American voters should set FTC enforcement priorities.
- **Support for continued two-agency structure.** Chairman Ferguson dismissed proposals to consolidate the FTC and DOJ antitrust functions, citing the practical costs of dissolving a century-old agency and the benefits of housing antitrust and consumer protection under one roof. He noted that the FTC's dual mandate allows antitrust and consumer protection work to inform each other, and urged a pragmatic "if it ain't broke, don't fix it" approach, favoring reforms to reduce interagency friction rather than structural overhaul.
- **The FTC is developing procedural tools to address "litigating the fix."** Following its recent workshop, the FTC is working with the DOJ on a case management order to present to courts at the outset of merger litigation that would account for late-arriving remedy proposals. Put simply: "Litigating the fix is bad for the FTC, parties and the judicial system."
- **AI-related antitrust exemptions face skepticism.** Chairman Ferguson expressed suspicion toward proposals granting antitrust exemptions for AI industry self-regulation, characterizing them as potential moat-building by dominant firms. He noted that collaboration on technology safety has proceeded for years without formal exemptions and questioned whether new exemptions combined with new substantive regulations would serve consumer interests.

What Companies Should Consider

Companies with cross-border operations and transactions should monitor the FTC's increasingly transactional approach to cross-border cooperation. Merging parties should also take note of the FTC's continued concern regarding "litigating the fix" and consider whether early engagement with the agency on potential fixes would lead to a better outcome than introducing those fixes after a complaint is filed. Companies in the AI space should be prepared for continued FTC scrutiny of collaborative arrangements and should not assume that self-regulatory initiatives will receive an antitrust safe harbor.

Speaker

Andrea Marván Saltiel

Chair, Mexico's CNA, and Chair,
International Competition Network (ICN)

Contributing Associate

Carly Weisen / New York

Overview

Chair Marván Saltiel discussed how competition agencies worldwide are adapting to new economic realities, including digital markets, industrial policy, and supply chain pressures. She described how the CNA has navigated its transition from a constitutionally autonomous body to one housed within the administrative arm of government, and offered perspective on agency independence, cooperation and the growing role of consumer-facing enforcement in Mexico.

Key Takeaways

- **Competition agencies must adapt without losing their credibility.** Chair Marván Saltiel acknowledged that agencies globally are navigating new priorities (including digital markets, supply chain issues and labor market issues) that were not central to competition enforcement a decade ago. She framed the challenge not as a choice between preserving traditional principles and embracing new mandates, but as building on existing foundations while evolving to address current realities, cautioning that agencies that lose their analytical rigor risk losing their institutional credibility.
- **The CNA's transition has changed priorities, not standards.** Since moving from constitutional autonomy to the administrative arm of government, the CNA has shifted its enforcement docket to align with national economic priorities. However, Chair Marván Saltiel emphasized that the agency's analytical standards, investigative approach, and staff have remained intact, and that the agency is now resolving mergers faster and exercising stronger enforcement powers, including gun-jumping enforcement and collective actions.
- **Mexico's collective action authority is a powerful and distinctive enforcement tool.** Unlike most competition agencies, the CNA has the authority to file collective actions directly against companies that have breached competition law. Chair Marván Saltiel noted the agency has filed two collective actions to date, creating new precedent in Mexico, and described the tool as sending a clear message about achieving justice against anticompetitive harm.
- **Advocacy and sector selection are key to public relevance.** Chair Marván Saltiel stressed the importance of selecting enforcement sectors that resonate with the public, citing a recent abuse-of-dominance investigation in soccer that generated significant public attention. She also identified advocacy as a cost-effective tool for driving broader policy change through engagement with academics, stakeholders, and legislators.

What Companies Should Consider

Companies operating in or contemplating transactions in Mexico should be aware that the CNA, while institutionally restructured, has maintained its enforcement standards and gained additional tools, including the authority to bring collective actions and pursue gun-jumping violations. The agency's docket is now more closely aligned with national economic priorities, which may increase scrutiny in sectors deemed strategically important.

Antitrust & Democracy: Are Politics and Industrial Policy Affecting Antitrust Enforcement Around the World?

Panelists

Zephyr Teachout

Professor of Law, Fordham Law School
(Moderator)

Renata Hesse

Partner, Sullivan & Cromwell LLP

David Lawrence

Former Policy Director, DOJ
Antitrust Division; Fellow, Yale
Thurman Arnold Project

Karina Lubell

Partner, Brunswick Group LLP

Saverio Valentino

President, Italian Competition Authority

Contributing Associate

Christian Marshall / New York

Overview

Panelists discussed the intersection of antitrust, politics, and industrial policy, and examined how political influence has shaped recent antitrust enforcement decisions. While offering differing perspectives on the role of political influence in antitrust enforcement, the panelists agreed that an enforcement regime driven by political considerations, rather than the rule of law, creates uncertainty for businesses and makes it harder to predict how the law will be applied in merger reviews or to other business practices.

Key Takeaways

- **Antitrust enforcement decisions driven by political or other extralegal considerations undermine predictability for businesses.** The panelists discussed accusations that political interference has improperly influenced recent antitrust enforcement decisions. Multiple panelists pointed out that politics have always played a role in antitrust enforcement and have a proper role in guiding enforcement priorities within the confines of the law. However, the panelists agreed that enforcement decisions that disregard the rule of law in pursuit of extralegal goals undermine businesses' ability to predict how the law will be applied.
- **Institutional checks and reforms could help prevent improper political influence.** The panelists offered varied perspectives on how current institutional checks and potential reforms could address concerns about political interference. Lubell pointed out that Congress is an important check, given that Congress controls the agencies' funding. Lawrence suggested importing from tax law into antitrust a duty to report improper influence. Hesse suggested strengthening the Tunney Act by providing judges with more guidance on how to properly review Tunney Act claims. Companies should consider monitoring any congressional oversight or reform activities in this area, particularly in the aftermath of the upcoming midterm elections.
- **The European model offers a degree of political independence.** President Valentino contrasted the level of political influence on antitrust enforcement in Europe. European competition authorities are institutionally insulated from political direction in individual cases, subject only to review by the European Court of Justice and its jurisprudence. President Valentino noted that this may provide greater predictability in terms of substantive outcomes.
- **Improper political interference is not a partisan issue.** The panelists agreed that concern about improper political influence is not a partisan issue. They emphasized that all stakeholders should be invested in a predictable, rule-of-law based enforcement regime because it provides for greater business predictability and is beneficial to the economy.

What Companies Should Consider

Businesses should understand that antitrust enforcement is operating in an environment of heightened political influence on both sides of the aisle, which has led to diminished predictability about enforcement outcomes and has real implications for how businesses plan transactions and manage regulatory risk. Regulatory risk assessments should still consider traditional antitrust principles but should take into account any relevant political stakeholders and whether the transaction touches on any administration priorities or sensitivities. Importantly, companies should consider building this broader awareness into their compliance programs, deal planning and advocacy, while ensuring their regulatory strategy remains firmly grounded in legal principles.

Conflict & Cooperation: States, Member States and the New Antitrust Federalism

Panelists

John Mark Newman

Herbert Herff Chair of Excellence and Professor of Law, University of Memphis School of Law (Moderator)

Nitin Dua

Partner, Bates White

Andreas Mundt

President, Germany Federal Cartel Office (Bundeskartellamt)

Elizabeth Odette

Chair, National Association of Attorneys General (NAAG)

Matt Schock

Counsel, Baker Hostetler

Contributing Associate

Jack F. Holtze / New York

Overview

A panel of enforcers, economists and practitioners explored the dynamics of antitrust federalism — examining how federal and state competition authorities in the United States relate to one another, with comparisons drawn to the allocation of enforcement authority among EU member states. The discussion centered on a clear trend: State attorneys general are moving beyond a role as secondary enforcers that step in only when the federal government declines to act, and are instead bringing independent actions, opting out of federal settlements and developing substantial in-house antitrust capabilities. Against a backdrop of leadership turnover at the federal agencies and high-profile disputes — including the recently settled state challenge to the Paramount/Warner Bros. transaction — the panel offered a candid look at where enforcement authority may be headed and what it could mean for the companies subject to it.

Key Takeaways

- **State enforcement activity is rising, and states are increasingly going it alone.** Data presented at the panel showed that approximately 70% of recent state antitrust actions were brought without federal involvement, up from roughly 60% during the first Trump administration. This reflects both a willingness and a growing capacity at the state level to initiate and litigate complex antitrust matters independently — a trend companies may wish to factor into their enforcement-risk assessments.
- **States play multiple roles — gap-filler, complement, and substitute.** Panelists identified at least three distinct functions that state enforcers serve: filling gaps below federal thresholds or in areas of local impact, such as hospital mergers; complementing federal investigations with local knowledge and damage claims; and stepping in as a substitute where the federal government declines to act. The result, according to the panel, is a more distributed enforcement landscape in which state and federal authorities each appear to play meaningful, and at times independent, roles.
- **Multipronged enforcement is inherent in the U.S. system.** Several panelists observed that there is no formal hierarchy between state and federal authorities, and no doctrine requiring state deference. Panelists remarked that this multipronged approach reflects the broader structure of American federalism, in which overlapping authority across jurisdictions naturally produces parallel — and sometimes divergent — enforcement priorities. For companies, it may mean that resolution with one enforcer does not guarantee resolution with all.
- **The Paramount/Warner Bros. challenge signals a new willingness to test procedural boundaries.** Two states petitioned the Supreme Court to stop the challenge, showing an emerging red/blue divide among state enforcers. The panel also noted both substantive and procedural complexities — including novel questions about the bond that states must post when bringing a suit and difficult market-definition issues in rapidly evolving media markets shaped by AI and shifting distribution models.
- **Health care, technology, and agriculture are the sectors to watch.** Panelists consistently flagged health care, technology and data, agriculture, housing, and AI as likely priority enforcement areas for both U.S. states and international authorities.

What Companies Should Consider

Companies facing regulatory review or enforcement exposure should consider the possibility that multiple enforcers — state, federal, private litigants and potentially international authorities — may pursue the same conduct independently, with different priorities and remedial objectives. Parties to a merger should consider the potential for state scrutiny even in circumstances where federal authorities have approved or declined to challenge a transaction, and may want to consider engaging with state attorneys general early in the process where such state scrutiny is anticipated. Given the breadth of active enforcement across health care, technology and agriculture, companies in those sectors, in particular, may benefit from proactive antitrust compliance assessments and from monitoring state-level enforcement developments alongside federal activity.

Trends in Merger Enforcement: Is International Convergence Still a Goal?

Overview

Panelists

Ori Schwartz

Head of Competition Division,
Organisation for Economic Co-operation
and Development (OECD)

Guillaume Lorient

Deputy Director-General for Mergers,
EC DG COMP

Elizabeth Avery

Partner, Gilbert + Tobin

Rafique Bachour

Partner, Skadden

Aditi Mehta

Managing Principal, Analysis Group

Contributing Associate

Grayson W. Kuehl / New York

This panel examined whether international convergence in merger enforcement remains a realistic objective. While panelists agreed that cooperation between agencies remains valuable, they acknowledged that divergent domestic priorities are straining substantive alignment. The panel also addressed regulatory gaps around acqui-hires and minority investments, the risk of politicization in merger review, and the persistent gap between agencies' stated preference for structural remedies and their actual practice.

Key Takeaways

- **Procedural convergence remains critical even as substantive alignment erodes.** Deputy Director-General Lorient emphasized that international cooperation benefits companies and agencies alike, particularly for transactions reviewed across multiple jurisdictions, and pointed to commonalities between the 2023 U.S. Merger Guidelines and EC merger policy as evidence that a degree of convergence persists. Avery, however, cautioned that substantive convergence is increasingly difficult as antitrust objectives expand to encompass broader political agendas — including the Trump administration's "America First" agenda and the defensive postures of smaller economies. She maintained that, at minimum, regulators should pursue procedural convergence (e.g., consistent timelines, cooperative information-sharing protocols), as the absence of such coordination imposes tangible costs on companies, the agencies and consumers.
- **Acqui-hires and minority investments remain in a regulatory gray zone.** Mehta observed that, from an economics perspective, an acqui-hire can produce the same competitive effects as a killer acquisition, raising the question of whether existing reporting regimes are sufficient to capture these types of transactions. On acqui-hires, Deputy Director-General Lorient suggested that some may qualify as transactions where they involve a structural market change (e.g., acquiring all personnel while the target withdraws from the market), and flagged Article 22 referrals as the EC's principal enforcement pathway. Avery noted that acqui-hires would not be captured under Australia's existing laws, and Bachour stressed the importance for jurisdictions to operate within existing legal frameworks rather than overstretching beyond their regulatory authority. On minority investments, Deputy Director-General Lorient explained that the EC elected in the 2010s not to capture minority investments without control, but that the EC can nonetheless analyze minority stakes as part of a theory of harm where they create structural links and potential coordinated and/or unilateral effects.
- **Agencies seek to preserve the independence of merger control from political influence, but the boundary is under pressure.** Deputy Director-General Lorient drew a distinction between merger policy that is politically grounded — which is a normal feature of democratic governance — and merger review that affords preferential treatment based on political proximity, which is not.
- **Structural remedies are the stated preference, but behavioral remedies persist in practice.** Panelists acknowledged a gap between agencies' expressed preference for structural remedies and actual enforcement outcomes. Mehta observed that behavioral remedies are more prevalent in the U.S., partly because agencies must balance the costs of litigation against permitting transactions to proceed with behavioral conditions, and U.S. courts tend to be more receptive to behavioral remedies. Deputy Director-General Lorient noted that EC policy generally follows the caselaw favoring structural remedies and that the EC has not accepted a nonstructural remedy in the last two years, but he emphasized that behavioral remedies are "never off the table."

What Companies Should Consider

Companies engaged in cross-border M&A should not assume that international regulators are aligned on substance, even where procedural cooperation exists. Transacting parties should develop a coherent, consistent narrative across all jurisdictions and concentrate strategic resources on the leading reviewing agencies that are most likely to influence outcomes globally. For transactions involving acqui-hires or minority investments, companies should carefully assess whether their deal may fall within the expanding reach of merger review — including through mechanisms such as EC Article 22 referrals — and engage counsel early to evaluate jurisdictional exposure. Finally, while regulators publicly favor structural remedies, companies should be prepared to engage on behavioral alternatives where appropriate.

Practice Leaders



Karen M. Lent

Partner / New York
212.735.3276
karen.lent@skadden.com



David P. Wales

Partner / Washington, D.C.
202.371.7190
david.wales@skadden.com

Editor



Ryan J. Travers

Partner / Washington, D.C.
202.371.7347
ryan.travers@skadden.com

Contributing Associates

Trevor S. Floyd

Associate / New York
212.735.2295
trevor.floyd@skadden.com

Madeleine W. Gramigna

Associate / New York
212.735.2335
madeleine.gramigna@skadden.com

Yang Guo

Associate / Washington, D.C.
202.371.7205
yang.guo@skadden.com

Kendall H. Hart

Associate / New York
212.735.2831
kendall.hart@skadden.com

Jack F. Holtze

Associate / New York
212.735.2875
jack.holtze@skadden.com

Jordan S. Janis

Associate / New York
212.735.3234
jordan.janis@skadden.com

Rianna N. Jha

Associate / Washington, D.C.
202.371.7229
rianna.jha@skadden.com

Elizabeth L. Karbassi

Associate / Washington, D.C.
202.371.7236
elizabeth.karbassi@skadden.com

Grayson W. Kuehl

Associate / New York
212.735.2782
grayson.kuehl@skadden.com

Christian Marshall

Associate / New York
212.735.2874
christian.marshall@skadden.com

Carly Weisen

Associate / New York
212.735.2803
carly.weisen@skadden.com

This communication is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This communication is considered advertising under applicable state laws.

One Manhattan West, New York, NY 10001 / 212.735.3000

1440 New York Ave., NW, Washington, DC 20005 / 202.371.7000



Skadden