GCR
GLOBAL COMPETITION REVIEW
LIVE

Antitrust Law Leaders' Forum 2014

Eden Roc Renaissance Hotel, Miami, Florida, 6 – 8 February 2014

In association with

CRA Charles River Associates

Cocktail reception host

Blakes
CANADIAN LAWYERS

Summary programme

Time	Description		
Thursday, 6 February 2014			
8:00pm	Registration and Drinks Reception Sponsored by *Blake, Cassels & Graydon LLP*		
Friday, 7 February 2014			
7:30am – 8:30am	Registration / Light Breakfast		
8:30am – 9:15am	Chairpersons' Opening Remarks and Keynote Address		
9:15am – 10:45am	Economic Issues for Agency Consideration in 2014		
11:00am – 12:45pm	Merger: "4-3" Mergers and their Competitive Effects – Do We Have a Better Understanding?	Antitrust: Antitrust Implications of Participating in Price Reporting, Benchmarking and other Collaborative Industry Organizations	
12:45pm – 2:00pm	Lunch and Keynote Speaker		
2:15pm – 4:00pm	Merger: Competition Concerns in Mergers in Innovation and Technology Markets	Antitrust: Lessons from the *e-Books* Case Going Forward	
4:15pm – 5:45pm	Merger: The Effectiveness of Merger Remedies	Antitrust: New Considerations in Intellectual Property – Antitrust and Negotiating Standard Essential Patents	
Evening	Conference Dinner – Sponsored by *Charles River Associates*, The Forge, Miami Beach		
Saturday, 8 February 2014			
8:30am – 10:30am	Debate Topic – Multijurisdictional Criminal Prosecution: Double Jeopardy or Sovereign Right?		
10:45am – 12:45pm	Merger Roundtable: In-House Counsel Perspectives on Notifying Complex Mergers in Multiple Jurisdictions	Antitrust Roundtable: Distribution Issues in Latin America, China, Russia and India	Antitrust Roundtable: Investigating, Defending and Settling Multijurisdictional Antitrust and Cartel Cases
12:45pm – 2:00pm	Chairpersons' Concluding Remarks and Lunch		

Register online at www.GlobalCompetitionReview.com/Miami2014

Day 1: Thursday 6 February

Drinks Reception Sponsored by Blake, Cassels & Graydon LLP

Day 2: Friday 7 February

7:30am – 8:30am Registration / Light Breakfast

8:30am (Plenary)
Chairpersons' Opening Remarks
Jason Gudofsky – Blake, Cassels & Graydon LLP (Toronto)
Margaret Sanderson – Charles River Associates (Toronto)

8:45am – 9:15am (Plenary)
Introduction: Ilene Knable Gotts – Wachtell, Rosen, Lipton & Katz (New York)
Keynote Speaker: Commissioner Maureen Ohlhausen – Federal Trade Commission (Washington)

9:15am – 10:45am Economic Issues for Agency Consideration in 2014

- The GCR Leaders' Conference promises a lively discussion among leading academics on the key economic issues facing the agencies in 2014 and beyond.

Moderator:
Margaret Sanderson – Charles River Associates (Toronto)

Speakers:
Kai-Uwe Kühn – University of Michigan (Ann Arbor)
Fiona Scott Morton – Yale School of Management, Yale University (New Haven)
Steven Salop, Georgetown University Law Center (Washington)

10:45am – 11:00am Coffee Break

11:00am – 12:45pm (Concurrent sessions)
Merger Session: "4-3" Mergers and their Competitive Effects – Do We Have a Better Understanding?

- Does the recent increase in challenges and conditions on "4-3" mergers suggest that antitrust agencies have increased their scrutiny of such transactions?
- Are an agency's concerns about increased coordination post-merger in "4-3" mergers an admission that the agency "got it wrong" during its review of the last merger in the industry (in the sense that the previous merger tipped the industry from uncoordinated to coordinated competition)? What are the evidentiary and economic techniques for determining when a merger may tip a concentrated industry to coordinated competition?
- Are concerns about unilateral and coordinated effects in concentrated industries more plausible in high fixed cost industries, like airlines or telecommunications, or do such theories overlook the incentive to compete in order to drive next generation investment?
- What is the evidence and economics associated with concerns about tacit collusion in differentiated product markets, as in recent agency investigations of merges in the food and beverage and airline industries?

Moderator:
Thomas McGrath – Linklaters LLP (New York)

Speakers:
Oliver Bretz – Clifford Chance LLP (Paris)
Christine Varney – Cravath, Swaine & Moore LLP (New York)
William Rooney – Willkie Farr & Gallagher LLP (New York)
David Reitman, Charles River Associates (Washington)

or
Antitrust Session: Antitrust Implications of Participating in Price Reporting, Benchmarking and other Collaborative Industry Organizations

- What are the practical implications for companies that participate in price reporting, benchmarking and other collaborative industry organizations considering, on the one hand, the increasing scrutiny placed on such organizations by antitrust authorities (e.g., *LIBOR* investigation, *Platts* investigation, etc.), and, on the other hand, the decision in *In Re LIBOR*?
- Are allegations of conspiracies and/or unilateral market manipulation concerning information reporting to price reporting or cooperative organizations properly the subject of antitrust?
- What are the possible economic approaches for calculating damages in cases where (1) "price fixing" does not involve products, and (2) the question of whether claimants have suffered damages is ambiguous (i.e., some potential claimants will have benefited from rate fixing)?
- What are the compliance "best practices" for companies that participate in price reporting, benchmarking and other industry collaborations?

Moderator:
Rafique Bachour – Freshfields Bruckhaus Deringer LLP (Brussels)

Speakers:
Molly Boast – Wilmer Cutler Pickering Hale and Dorr LLP (New York)
Alex Kogan – NASDAQ (Rockville, Maryland)
Cristina Caffarra – Charles River Associates (London)
Michael Rowe – Slaughter and May (London)

12:45pm – 2:00pm Lunch (Plenary)
Keynote Speaker: Bernd Langeheine, Deputy Director-General for Mergers, European Commission (Brussels)

2:15pm – 4:00pm (Concurrent sessions)
Merger Session: Competition Concerns in Mergers in Innovation and Technology Markets

- Acquisitions of innovative and successful start-ups by established technology firms often prompt in-depth merger investigations by antitrust agencies (e.g., *Facebook/Instagram* (2012), *Google/Waze* (2013)), but challenges to such mergers are infrequent.
- Is the uncertainty associated with future innovation so significant as to frustrate any attempts to block such mergers on legal grounds? In these markets, what are the theories of harm that are most plausible?
- How should agencies assess possible effects on innovation when considering joint ventures between established technology firms in "over the horizon" technology markets (e.g., *Telefónica/CaixaBank/Bankco Santander Mobile Wallet JV* (2013) and *Telefónica UK/Vodafone UK/Everything Everywhere Mobile Wallet JV* (2013)).

Moderator:
Scott Sher – Wilson Sonsini Goodrich & Rosati (Washington)

Speakers:
Greg Vistnes – Charles River Associates (Washington)
Stephen Weissman – Federal Trade Commission (Washington)
Susanne Zuehlke – Latham & Watkins LLP (Brussels)
Kevin Yingling – Google (Washington)

or

Antitrust Session: Lessons from the *e-Books* Case Going Forward

- Going forward, what is the legal status of most-favoured-nation clauses and other "contracts that reference rivals" in the wake of the US *e-Books* decision, the EU settlement of its *e-Books* investigation and other recent cases?
- Was the understanding of the economic effects of most-favored-nation and other "contracts that reference rivals" clauses improved by the *e-Books* case, or did the specific facts of the case cloud the guidance that other companies can take-away from the case going forward?
- The original remedies sought by the US Department of Justice, which were broad and would have extended to Apple's other businesses, indicated a view that the competitive harm flowed from the most-favored-nation clauses themselves. These proposed remedies were rejected by the court. In future cases, would requests for such broad remedies be appropriate as a matter of law and economics?

Moderator:
Jeremy Calsyn – Cleary Gottlieb Steen & Hamilton LLP (Washington)

Speakers:
Gary Kubek – Debevoise & Plimpton LLP (New York)
Kevin Murphy – The University of Chicago Booth School of Business (Chicago)
Christoph Stadler – Hengeler Mueller (Düsseldorf)
Andrea Appella – 21st Century Fox (London)

4:00pm – 4:15pm Coffee Break

4:15pm – 5:45pm (Concurrent sessions)
Merger Session: The Effectiveness of Merger Remedies

- This panel will review the current approaches to remedies (structural, quasi-structural and behavioural) in established antitrust jurisdictions and in jurisdictions where remedies are being required with increasing frequency (e.g., China).
- What are the key take-aways from cases where behavioural remedies have been effective? Does "tailoring" behavioural remedies represent an attempt to do the least possible to fix a recognised competition problem (which may increase the likelihood the remedy will be ineffective)? Have the changes in policy by certain antirust agencies, which no longer express a "preference" for structural remedies, been reflected in other jurisdictions?
- Does experience suggest that threats of "crown jewel" divestitures are necessary to force companies to complete divestitures quickly? Should agencies retain authority to address situations where initial remedies have not been effective, including in the case of concluded mergers?
- What are the considerations for designing effective remedies where agencies are investigating the effects of minority investments and other "structural links"? What remedies are appropriate in cases involving innovation and technology markets, and can ordering "interoperability" ever be truly effective?
- What are the implications for the design of remedies in cases being notified to agencies in multiple jurisdictions? What strategies have proved effective in reconciling their inconsistent timetables and deadlines?

Moderator:
Paul Cuomo – Baker Botts LLP (Washington)

Speakers:
Joseph Krauss – Hogan Lovells US LLP (Washington)
Damien Neven – The Graduate Institute of Geneva (Geneva)
Sharis Pozen – Skadden, Arps, Slate, Meagher & Flom LLP (Washington)
Alec Burnside – Cadwalader, Wickersham & Taft LLP (Brussels)

or

Antitrust Session: New Considerations in Intellectual Property – Antitrust and Negotiating Standard Essential Patents

- Should the ability to assert a standard essential patent depend on whether a patent holder is a practicing or non-practicing entity in the market? When is asserting an SEP in a litigation context justified?
- Should merger review consider the competitive effects of patent transfer where the acquiring party may not practice the patents? Are anti-competitive effects more likely, and are pro-competitive effects less likely, when a patent is asserted (particularly in litigation) by a non-practicing party?
- How should antitrust assess the actions of "patent privateers"? Should agencies examine (and/or attempt to prevent) the creation of "patent privateers"?

Moderator:
Anne Layne-Farrar – Charles River Associates (Chicago)

Speakers:
John Harkrider – Axinn, Veltrop & Harkrider LLP (New York)
David Blonder – Blackberry (Washington)
Dina Kallay – Ericsson (Washington)
Peter Camesasca – Peter Camesasca Advocaat BVBA (Brussels)

Evening – Conference Dinner Sponsored by Charles River Associates, The Forge, Miami Beach

Day 3: Saturday 8 February

8:30am – 10:30am
Plenary Session: Debate Topic – Multijurisdictional Criminal Prosecution: Double Jeopardy or Sovereign Right?

- ***Pro.*** Cartels cause harm to customers, including consumers, across the world. It is the sovereign right of any country whose companies and consumers have been harmed by illegal activity to sanction companies and individuals who engage in such activity, whether that activity occurred domestically or internationally. There is no fundamental principle of justice that protects perpetrators of economic crimes from punishment (including fines and restitution) in every country where their practices have caused harm. Agencies that do not take action against international cartels (including those cartels that have been subject to criminal sanctions) make it more difficult for customers in their jurisdictions to seek redress. It is particularly important for agencies to take such actions where agencies in established jurisdictions, such as the United States and the European Union, base their fines on the volume of commerce conducted within their own borders (leaving cartelized sales outside of those jurisdictions unpunished).
- ***Con.*** Criminal prosecutions in multiple countries for the same act constitute double jeopardy, which is contrary to principles of fundamental justice. In addition, given prevailing fining practices in many of the most experienced competition law jurisdictions, multiple criminal prosecutions in different jurisdictions offer only marginal deterrents and marginal denunciation to cartelists (both of which are important purposes of criminal conviction and sentencing). The risk of prosecution and class actions in an ever expanding list of countries may actually reduce the incentives of companies to self-report under the available immunity and leniency programs. The sovereignty of nations with competition laws where agencies do not

prosecute foreign cartels is not diminished; the choice of these agencies to focus on domestic matters represents an appropriate allocation of resources to areas where it can be most effective for consumers and industry in those jurisdictions.

Judges:
Stephen Kinsella – Sidley Austin LLP (Brussels)

Debaters:
Michael Weiner – Dechert LLP (New York)
Deirdre McEvoy – Patterson Belknap Webb & Tyler LLP (New York)
Carlos Ragazzo, CADE/Brazilian Administrative Council for Economic Defense (São Paulo)
John Terzaken – Allen & Overy LLP (Washington)
Boris Kasten – Schindler Management AG (Zurich)

10:30 am – 10:45 am Coffee Break

10:45 am – 12:45 pm (Concurrent roundtable sessions)
Attendees at this morning's sessions will be asked to sign-up in advance for the various sessions, where discussion will be facilitated between panelists and the audience participants by the moderators.

Merger Roundtable: In-House Counsel Perspectives on Notifying Complex Mergers in Multiple Jurisdictions
- How to balance the risks of giving multiple agencies an extended pre-notification period to review a transaction against the burdens and risks of numerous in-depth/2nd Request/Phase II investigation?
- What to consider when advancing arguments in one jurisdiction that may not assist in another jurisdiction?
- How to balance the burden of information requests from the EU and the US against the need to provide information to agencies in other jurisdictions?
- How does the role of the economist change as an investigation advances towards a 2nd Request or Phase II stage?
- What advantages or disadvantages in a global deal are there of retaining a global law firm versus retaining the "best" counsel in individual countries? How should communications be managed (internally with the board, externally to customers, and externally to shareholders)?

Moderator:
Olivier Antoine – Crowell & Moring LLP (New York)

Speakers:
Fiona Schaeffer, Jones Day (New York)
Julian Miezitis – Associated British Foods plc (London)
Kaarli Eichhorn – General Electric (Brussels)
Andrew McBride, BHP Billiton (London)

Antitrust Roundtable: Distribution Issues in Latin America, China, Russia and India
- As the world continues to shrink, the challenge of understanding the various restrictions on distribution practices in different countries becomes increasingly complex.
- This panel will explore recent enforcement and legal developments in Brazil, Argentina, China, Russia and India, including discussions about exclusivity, RPM, tying and bundling, and share practical solutions for these multifaceted issues.
- Is there renewed energy for enforcement against restrictive distribution practices in these countries in light of the *e-Books* case?

Moderator:
Miguel Del Pino – Marval, O'Farrell & Mairal (Buenos Aires)

Speakers:
José Carlos Berardo – Barbosa, Müssnich & Aragão (São Paulo)
Hannah Ha – Mayer Brown (Hong Kong)
Daniel Sokol – Levin College of Law, University of Florida (Gainesville)
Paul Jones, Jones & Co. Law Office (Toronto)
Pallavi Shroff, Amarchand & Mangaldas & Suresh A Shroff & Co (New Delhi)

Antitrust Roundtable: Investigating, Defending and Settling Multijurisdictional Antitrust and Cartel Cases
- What are the considerations and challenges associated with initiating and managing internal investigations across multiple jurisdictions?
- What are the strategic and tactical considerations vis-à-vis the competition law agencies of defending and settling multijurisdictional cases in certain jurisdictions before other jurisdictions?
- What are the implications for discovery in future civil suits of defending and settling multijurisdictional cases in certain jurisdictions before other jurisdictions?

Moderator:
George Paul – White & Case LLP (Washington)

Speakers:
Joel Sanders – Gibson, Dunn & Crutcher LLP (San Francisco)
Robert Kwinter – Blake, Cassels & Graydon LLP (Toronto)
Kozo Kawai – Nishimura & Asahi (Tokyo)
Claudio Lizana – Carey y Cía. Ltda. (Santiago)
Kim Dietzel – Herbert Smith Freehills LLP (London)

12:45pm – 2:00pm: Chairpersons' Concluding Remarks and Lunch
Jason Gudofsky – Blake, Cassels & Graydon LLP (Toronto)
Margaret Sanderson – Charles River Associates (Toronto)

Steering Committee
GCR and the chairpersons would like to thank the following Steering Committee for their work on this programme:
Olivier Antoine, Crowell & Moring LLP
Antonio Bavasso, Allen & Overy LLP
Oliver Bretz, Clifford Chance LLP
Jeremy Calsyn, Cleary Gottlieb Steen & Hamilton LLP
Cristina Caffarra, Charles River Associates
Hannah Ha, Mayer Brown LLP
Thomas Janssens, Freshfields Bruckhaus Deringer LLP
Jan McDavid, Hogan Lovells
George Paul, White & Case LLP
Miguel Del Pino, Marval O'Farrell & Mairal
Sharis Pozen, Skadden, Arps, Slate, Meagher & Flom LLP
Paula Riedel, Linklaters LLP
Barbara Rosenberg, Barbosa, Müssnich & Aragão Advogados
David Rosner, Blake, Cassels and Graydon LLP
Michael Rowe, Slaughter and May
Joel Sanders, Gibson, Dunn & Crutcher LLP
Fiona Schaeffer, Jones Day
Scott Sher, Wilson Sonsini Goodrich & Rosati
John Taladay, Baker Botts LLP
Michael Weiner, Dechert LLP
Susanne Zeulkhe, Latham & Watkins LLP

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Eden Roc Renaissance Hotel, Miami, Florida, 6 – 8 February 2014

Administrative details

Date
6 – 8 February 2014
Eden Roc Renaissance Miami Beach
4525 Collins Avenue
Miami, 33140, USA
Tel: +1-305-531-0000

How to register
Register online at
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to pay by debit or credit card.

For booking enquiries, please call
+44 (0)20 7467 0178
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How to register

Registration Type	Super Early Bookings: on and before 20 Dec 2013	Early Bookings: 21 December – 23 January 2014	Standard Bookings: on and after 24 January 2014
Private Practitioner	US$1315	US$1655	US$1750
In-House Counsel / Government Agency	US$1045	US$1315	US$1575

Register online at **www.GlobalCompetitionReview.com/Miami2014** to pay via credit or debit card.

For booking enquiries, please call **+44 20 7908 9222** or email **GCRLive@GlobalCompetitionReview.com**

Forthcoming events

GCR Live 3rd Annual Law Leaders Asia-Pacific
6–7 March 2014, Maxwell Chambers, Singapore

GCR Live IP & Antitrust USA
25 March 2014, The W Hotel, Washington, DC

GCR 4th Annual Awards Ceremony
25 March 2014, The W Hotel, Washington, DC

GCR Live 2nd Annual IP & Antitrust
6 June 2014, Arts 56, Brussels

GCR Live 3rd Annual Telecoms Media & Technology
26 June 2014, 1 Bishops Square, London

GCR Live 2nd Annual New York
18 September 2014, CityBar, New York