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GLOBAL COMPETITION REVIEW



Theodore Voorhees

Chair of the American Bar Association Section of Antitrust Law

Toward the end of his recent article on antitrust and innovation, which appeared in the September 2011 edition of the ABA Antitrust Section's *Antitrust Law Journal*, Professor Herbert Hovenkamp, one of the world's most highly respected antitrust scholars, wrote: 'This is an exciting time for those involved in the field of antitrust and intellectual property, and a great deal of work needs to be done.'¹

Amen to that! It can truly be said that it's exciting to be in any and all corners of the antitrust field today.

We live at a time when competition law – still fondly called 'antitrust' in the United States – is in its full global ascendancy. Not long ago, one could count the world's important competition law regimes on one hand. Today, the number of countries actively enforcing competition law within and across their borders is over 100 and growing. From its creation in 2001, the International Competition Network of competition-law-enforcing countries has grown in membership from 14 to 317.²

The American Bar Association's Section of Antitrust Law assiduously tracks competition law developments throughout the world, and we offer the benefit of our experience every chance we get by submitting our comments to national authorities considering competition law initiatives. The following table, listing the number and breadth of our international comments submitted over the past six years, illustrates the exponential growth of the competition paradigm as a fundamental pillar of economic policy across five continents:

2007	EC (3), South Africa, India, China
2008	Brazil, EC (3), Australia (3), Canada (4), Israel, UK (2), Hong Kong, Ireland, India (2), Korea, China, Japan
2009	EC (3), Brazil, Japan, Canada (4), UK, China (2), Australia, Paraguay
2010	Canada, UK, Ireland, China, EC (2), New Zealand (2)
2011	Brazil, EC (2), Germany, Canada, UK, China (2), India, France
2012	Canada, Brazil, EC (2), UK (3), Malaysia, Colombia

During this same period, the Section's annual Spring Meeting in Washington, DC has become the indisputable hub of the wider world's antitrust community. This year's meeting saw a record attendance of over 2,600 antitrust practitioners, academics, enforcers and economists, including nearly 500 attendees from outside the United States. It has long been a truism that competition law is a multinational, cross-border enterprise in which participants must be able to work seamlessly with one another on transactions, investigations and litigation that transcend the barriers of nationality, language and custom. Our Spring Meeting's robust global attendance is one of the most dramatic illustrations of how multinational antitrust collaboration works in practice.

All of the Section's international outreach undertakings are managed within a tightly organised oversight structure that begins with the Section's International Officer, Ken Glazer, and includes our International Task Force, co-chaired by Randy Tritell and Abbott (Tad) Lipsky, and our International Cartel Task Force, co-chaired

by Gary Spratling and James Mutchnik.

During this coming year, the Section of Antitrust Law will continue its ambitious campaign of outreach to the global competition law community in a series of programmes that are matched with the Section's long-standing domestic antitrust programme offerings. Here is a review of our upcoming domestic and international conferences, as well as the ABA publications, task forces and committee activities you will want to follow over the course of the year.

Programmes

On 8 November 2012, the Section will present its annual Fall Forum conference at the National Press Club in Washington, DC. At this event, there will be presentations on the US government's cutting-edge antitrust enforcement initiatives by top officials of the US Department of Justice Antitrust Division and the Federal Trade Commission. The Fall Forum will also include panel discussions featuring leaders of important competition enforcement agencies from other countries. Anyone who follows developments in government enforcement should be sure to attend.

Next, from 30 November to 1 December the venue shifts to New Delhi, where the Section will present the first of a biennial series of 'Antitrust in Asia' conferences. This year's inaugural event will focus on India's rapid emergence as one of the world's leading competition enforcement regimes under the stewardship of the invigorated Competition Commission of India.

It will be back to the United States in February for the Section's biennial Consumer Protection Conference, to be held on 7 February 2013 at the George Washington University Law School in Washington, DC. Those whose practice focuses on privacy law, marketing to children, data protection, internet marketing and consumer fraud of all kinds will want to attend in order to remain current on the latest government enforcement actions and policy initiatives.

The 61st Annual Spring Meeting will take place from 10 to 12 April 2013 at the JW Marriott Hotel in Washington, DC. Look for another year of record-breaking attendance and expansion of the Section's international footprint as the enforcement leaders of the world join us for the single largest gathering of the world's competition law community. Nowhere will you be able to find a concentration of educational offerings on competition law subjects comparable to the extensive programming provided at the Section's Spring Meeting, nor is there any remotely comparable opportunity to converse in a single place with enforcers and practitioner colleagues from all the leading competition law jurisdictions across the globe. You simply need to be there.

From 6 to 7 June 2013 the Section will partner with the Brazilian institute for the Study of Competition (IBRAC) in Brazil for our second biennial Antitrust in the Americas conference, to be held in São Paulo. The ABA/IBRAC conference will once again attract regulators and practitioners from throughout Latin America to the largest dedicated competition law convocation in the region. Enforcement activities continue to accelerate along with the continent's rapidly growing economies, so this conference should be a seminal event.

Finally, the Section's year will close in Washington, DC, once again on the campus of George Washington University Law School, with a truly outstanding symposium on the timely subject of merger retrospective analysis. Co-chaired by former Federal Trade Commission (FTC) chairman William Kovacic and OECD competition division director John Davies, this symposium will explore the latest research assessing the effectiveness of competition enforcement agencies in making ex ante predictions about the likely impact of merger transactions on conditions of competitiveness in markets, aiming to improve execution of sound antitrust policy as markets recover from the recent economic downturn. There will be no charge for attending this singular event, but turnout is expected to be strong, and admission will be on a first-come, first-served basis.

Publications

The Section has published an extraordinary array of major books on competition law topics over the past 12 months. By far the most significant new publication is the seventh edition of the Section's comprehensive two-volume treatise, *Antitrust Law Developments*, which was released in April 2012 at the Spring Meeting. *ALD* is truly an indispensable bible on the desk of most lawyers who practice antitrust law in the United States, and it is increasingly becoming a reference work of incomparable usefulness to non-US competition lawyers and regulators as well.

Other new books published by the Section in the past year include the *Handbook of US Antitrust Sources* (e-book), the *DOJ Civil Antitrust Practice and Procedure Manual*, the *International Licensing Handbook*, *Merger Review Process* (fourth edition) and the *Monopolization and Dominance Handbook*.

In the coming year the Section has a number of important new books in its publication pipeline, including the *Telecommunications Antitrust Handbook* (second edition), the *Price Discrimination Handbook*, *Resolving Criminal Antitrust Exposure* and the *Antitrust Discovery Handbook* (third edition).

Task forces

When important new antitrust developments or competition policy matters arise needing analysis and potentially requiring action by the Section, it is common for the Section Chair to appoint a task force of highly experienced practitioners to study the underlying issues and provide recommendations for the appropriate Section response. This year saw the emergence of two new task forces and the continuation of a third task force to address important issues.

First, every four years (when the United States holds a presidential election), it is the Section's practice to prepare a 'transition report' on the state of antitrust following the election, whether there is a new president or an incumbent winning a second term. This year's transition report task force is composed of 20 preeminent antitrust lawyers and scholars in the United States under the joint leadership of co-chairs Don Klawiter, a former Section chair, and Doug Melamed, general counsel of Intel Corporation.

The Section has also created a new task force aimed at extending the Section's membership to include greater participation by attorneys whose predominant practice involves representation of plaintiffs and filing of class action litigation. Finally, the Section has extended for a second year's term its Civil Redress Task Force (CRTF). The mission of the CRTF is to help explain to foreign jurisdictions that are considering introducing new 'private' remedies for individuals and firms injured by anti-competitive practices the many procedural challenges that are presented when such remedies are employed, and best practices for dealing with such issues.

Finally, as noted above, the Section continues to operate its international task force and its international cartel task force.

Committees

Much of the work of the Section is performed by our 26 substantive committees, which focus on specific areas of the law such as merger control, joint conduct, distribution, or privacy, or on specific industries such as agriculture, energy or financial services. Membership in these committees is open to all of our members, including non-lawyers and lawyers practising anywhere in the world.

The committees publish newsletters, updates and bulletins. They present programmes on all the latest developments in their areas of speciality. They also host online discussions with members who have a particular interest in their areas of concentration. There is no better or more timely source of targeted information in each area than these dedicated committees, which tap into the most knowledgeable people working in each field. Practising in any of these areas without the benefit of these rich resources would be giving up a valuable opportunity.

A full list of our committees is available on the Section's website.³ You can join a committee online or simply subscribe to our committee discussion lists. You will be amazed at the quality and quantity of information that will immediately be at your fingertips.

Other activities

The Section regularly monitors proposals for new competition legislation or policies and prepares comments as appropriate. From time to time, the Section is asked to provide testimony at congressional hearings on particular legislative initiatives. The Section also occasionally prepares amicus curiae briefs in significant cases.

The Section has been sponsoring an oral history project that collects video histories from leading figures in the field of competition and consumer protection law. These histories are available on our website, and we are in the process of compiling material from the videos into an edited documentary that will capture some of the most interesting segments to share with our members.

The Section sponsors a fellowship programme to help fund internships for law students interested in working for consumer protection bureaus in various states. So far, 162 law students have participated in this worthwhile programme, helping to protect consumers while supplementing their education.

Once again this year, the Section will offer fellowships to allow scholars from outside the United States to work and study competition law within it. We hope that this programme will foster greater understanding among different jurisdictions.

The Section is committed to serving the profession and the public, and will continue to undertake projects that foster these goals.

Notes

- 1 Herbert Hovenkamp, 'Antitrust and Innovation: Where We Are and Where We Should be Going,' *Antitrust Law Journal*, Vol. 77, Issue 3 (2011) p. 755.
- 2 International Competition Network, 'History,' available at <http://www.internationalcompetitionnetwork.org/about/history.aspx>; International Competition Network, 'Member Directory,' available at <http://www.internationalcompetitionnetwork.org/members/member-directory.aspx> (last visited June 4, 2012).
- 3 See www.americanbar.org/groups/antitrust_law.html

About the author

Theodore Voorhees is a litigation partner in the Washington, DC office of Covington & Burling LLP and a member of the firm's antitrust and consumer law practice group. Mr Voorhees is chair of the Section of Antitrust Law of the American Bar Association.

Mr Voorhees' antitrust practice encompasses counselling and litigation, with particular emphasis on pricing and distribution arrangements in the United States, and counselling trade associations on antitrust compliance matters. Before becoming chair of the Section of Antitrust Law, he previously served as chair-elect, vice chair, international officer, section delegate to the ABA House of Delegates and publications officer. He has also served as one of the co-teachers of Covington & Burling's antitrust seminar at the University of Virginia School of Law since the early 1980s.

On consumer protection matters, Mr Voorhees has represented clients in connection with advertising and marketing matters before the Federal Trade Commission and product safety matters before the Consumer Product Safety Commission. He has also advised clients regarding the new field of neuromarketing and class action proceedings filed under state consumer protection and unfair business practices statutes.

Mr Voorhees' practice also encompasses industry-wide risk management in the product liability and toxic tort field, including both counselling and litigation with particular emphasis on mass tort litigation and trade association liability. He has counselled clients on product liability and risk assessment in the software, mining, medical devices, construction equipment, pharmaceutical, chemical, food and alcoholic beverage industries. Mr Voorhees has lectured at numerous conferences on a broad range of risk assessment matters including nanotechnology, growing controversy over the causes of the obesity epidemic, harm caused by computer viruses and similar cyber-attacks, and product liability risks facing trade associations that lobby the government on health and safety matters.



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