

Hot Topics in Antitrust – What do you think? Let's Vote!

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Four current antitrust debates + Voting here today!

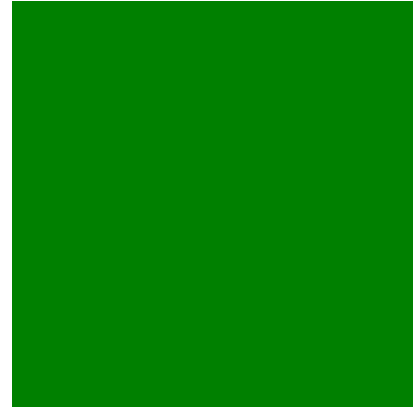
- Private vs public enforcement – will private actions kill leniency?
- Merger control and big data – do we need new rules for low value deals with high value data?
- Competition law compliance - can agencies do more to help - should they through compliance credit?
- E-Commerce – do we have the right toolkit?



Yes/Ano

Or/Nebo

No/Ne



The effect of private enforcement on public Enforcement

- The Damages Directive being implemented – will antitrust private actions across the EU increase?
- Important for access to justice for damaged parties, cartel deterrence, the economy...
- But leniency is a key tool in cracking cartels...
- So does the threat of private actions deter leniency applicants?
- And thus also hurt follow-on private actions (via fewer public actions) too?
- How do companies consider the risk calculus?
 - Leniency vs private actions
 - Directive safeguards – liability cap for 1st in; disclosure controls
 - What about collective/class actions?

Merger Control and Big Data

- Debate around amending thresholds for EC merger notification and other regimes (e.g., Germany)
 - Small turnover, but large market impact?
 - Thresholds based on deal value?
 - Remedial ability to “call in”/“claw back” deals not notifiable?
 - But we’ve spent so much time simplifying thresholds!
- Big Data (*Facebook/Whatsapp*)
- Pharma/R&D (*AbbVie/Pharmacylics*)
- Other ways – sector-based thresholds?

Competition law compliance

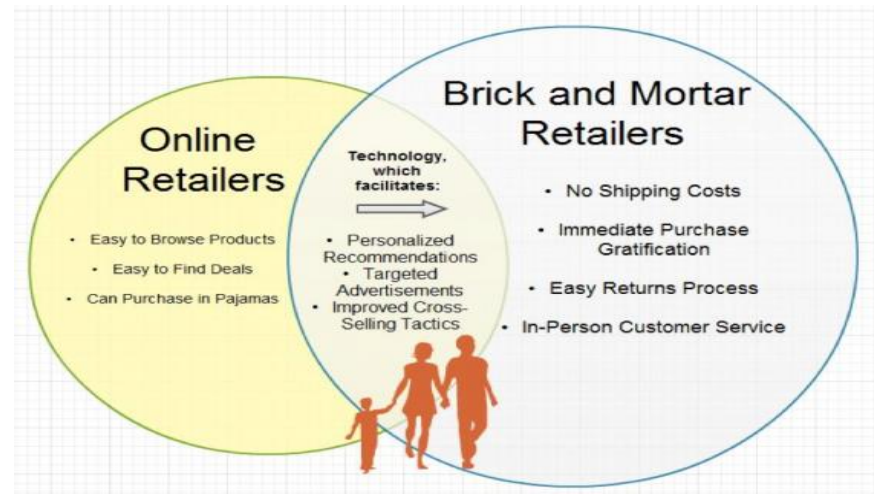
- We all want more/better compliance with the law
- But awareness of competition law is too low
 - UK 2015 survey – 77% of UK businesses had no/low awareness
 - ICN 2015 survey – “gap in competition law awareness” worldwide
 - SMEs in particular lack awareness and lack resources to develop compliance programs
- How to make it better – how to develop a competition culture?
- Are fines and enforcement enough?
- Trend – complementing enforcement with dynamic agency advocacy/engagement
 - Agency approved compliance programs/templates
- Trend – giving credit where it may be due - taking bona fides compliance programs into account when fining
 - Credit given in many jurisdictions now – France, Germany, Italy, UK, US, Canada
 - Credit given in similar areas of enforcement – e.g., corruption

Compliance help from agencies worldwide



E-Commerce

- Digital Single Market and the EC's E-Commerce Review
- The online battle between manufacturers/brand owners and platforms/retailers
- The “renaissance of the vertical restraint”?
- Territorial restrictions, RPM, geo-blocking, selective distribution
- Everybody's talking about it...and enforcing too!
What's next?!



But are existing competition law tools and approaches sufficient for the online world?

- “[*The online market*] warrants a sophisticated and subtle enforcement policy designed to prevent collusive agreements and the abuse of market power, while allowing the full force of innovation to proceed at its market-determined pace. Although the growth of this market may be unprecedented, traditional antitrust rules still apply.” **David Balto, US FTC 1999**
- “ *The principles of competition law enforcement do not change when we leave the realm of brick-and-mortar, but we have to adjust our methods to the specific features of these new sectors.*” **Commissioner Almunia, EU Commission 2012**
- “ *...where geo-blocking occurs due to agreements, we need to take a close look whether there is anti-competitive behaviour, which can be addressed by EU competition tools.*”
Commissioner Vestager, EU Commission 2016



Thanks!

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This document provides a general summary only and is not intended to be comprehensive. Specific legal advice should always be sought in relation to the particular facts of a given situation.