

大成 DENTONS

CLE SEMINAR FOR IN-HOUSE COUNSEL
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How Thick Is That Ice? Competition Law

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Introduction and Overview



- Enforcement Initiatives of DOJ and FTC
- State of merger control at the agencies;
- Practical antitrust concerns

Department of Justice - Antitrust Division



William Barr,
Attorney General



- Criminal prosecutions
- Sharing the load of merger review



Makan Delrahim,
AAG Antitrust Division

DOJ Merger Review

- Enforcement, not regulation
- Reduce compliance time and expense
- Aiming to resolve most merger investigations within six months of filing

$\frac{dv}{dt} = \frac{g \cdot \sin \alpha}{1 + \frac{1}{2} m R^2} = \frac{g \cdot \sin \alpha}{1 + \frac{1}{2} m R^2} f(x) = \int_0^{\infty} B(\omega) \sin \omega x d\omega \frac{dv}{dt} \approx 3,2 \text{ (m/s)}$
 $\frac{dv}{\sin 2\varphi} = \frac{dx}{x^2+1} = \frac{x^2+3x+2 \ln(x^2+1)}{x^2+1} = 3 \arctg x + C; -\frac{5}{6}$
 $1 = \frac{1}{2} m R^2 \text{ Res}[f(z); 0] = \lim_{z \rightarrow 0} d(z^2 \cdot f(z)) \ln = -0,18 \ln 0,8 \frac{-5}{-5-1}$
 $\frac{9,80685 \cdot 0,5}{1,5} = \frac{490332}{1,5} \approx 2,27 \text{ (m/s}^2\text{)}$
 $\alpha = 30^\circ dt = \sin \varphi + \frac{\cos 2\varphi}{\sin 2\varphi} d\varphi \quad \frac{d\varphi}{r} \quad B(\omega) = \frac{2}{\pi} \int_0^{\alpha} \sin \omega d\omega \sqrt{\frac{2}{\pi}}$
 $\vartheta = x^3 + 3x + 5x \lim_{z \rightarrow 0} \frac{z^{-3z}}{z^2} = \frac{e^{-3i}}{-i^2} = -e^{3i}$
 $du = \frac{dx}{1+x^2} \oint \frac{e^{-5z}}{z^2(z+i)} dz = 2\pi i (3i+1-e^{3i})$
 $\lim_{\frac{x}{y} \rightarrow \frac{a}{b}} \frac{x^2 - a^2}{x - a} = \lim_{x \rightarrow a} \frac{(x-a)(x+a)}{x-a} = x+a = \frac{-4}{-5}$
 $\lim_{z \rightarrow 0} \frac{d(e^{-3z})}{dz} = \lim_{z \rightarrow 0} \frac{-e^{-3z} \cdot (3z+3i+1)}{(z+i)^2} = \frac{-1(0+3i+1)}{-i^2}$
 $1 = (x^3 + 3x^2 + 5x) \arctg x - \int \frac{x^3 + 3x^2 + 5x}{1+x^2} dx = \int \frac{x^3 + 3x^2 + 5x}{1+x^2} dx = \sum_{i=1}^n (a_i x + b_i)^2 = \sum_{i=1}^n a_i^2 x^2 + 2 \sum_{i=1}^n a_i b_i x + \sum_{i=1}^n b_i^2$

Structural Remedies



- Under AAG Delrahim, we expect more use of “structural remedies” like divestment
- See, e.g., Bayer's \$66 billion acquisition of Monsanto

DOJ Enforcement Initiatives

Healthy Healthcare Competition

Cartel Investigation in Key Markets

Promoting Innovation

Protecting Taxpayer Dollars

Federal Trade Commission



Joseph Simons, Chairman



- Bureau of Consumer Protection
- Bureau of Competition
- Bureau of Economics

FTC Competition Priorities & Merger Review

Drug pricing

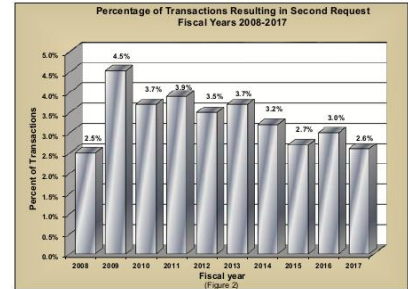
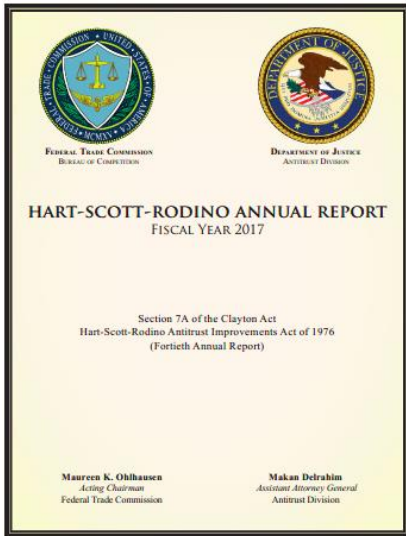
Nascent competitors



High-tech platforms

Innovation markets

One Last Word on Mergers



¹ Fiscal year 2017 covered the period of October 1, 2016 through September 30, 2017.

**TABLE I
FISCAL YEAR 2017¹
ACQUISITIONS BY SIZE OF TRANSACTION (BY SIZE RANGE)²**

TRANSACTION RANGE (\$ MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER ⁴	PERCENT	NUMBER		PERCENT OF TRANSACTION RANGE GROUP			NUMBER		PERCENT OF TRANSACTION RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M⁵	1	0.1%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
50M - 100M	145	7.3%	7	4	4.8%	2.8%	7.6%	0	0	0.0%	0.0%	0.0%
100M - 150M	346	17.4%	26	6	7.5%	1.7%	9.2%	3	1	0.9%	0.3%	1.2%
150M - 200M	271	13.6%	17	3	6.3%	1.1%	7.4%	2	0	0.7%	0.0%	0.7%
200M - 300M	250	12.6%	33	14	13.2%	5.6%	18.8%	4	1	1.6%	0.4%	2.0%
300M - 500M	255	12.8%	23	5	9.0%	2.0%	11.0%	1	2	0.4%	0.8%	1.2%
500M - 1000M	469	23.5%	47	17	10.0%	3.6%	13.6%	6	5	1.3%	1.1%	2.3%
Over 1000M	255	12.8%	52	23	20.4%	9.0%	29.4%	17	9	6.7%	3.5%	10.2%
ALL TRANSACTIONS	1,992	100.0%	205	72	10.3%	3.6%	13.9%	33	18	1.7%	0.9%	2.6%

Congress is Getting Into the Act



Evolution of Focus on Information Exchanges

Safe harbor - lag data 3 months; use 3d party to collect and manage data; and aggregate data from at least 5 sources



2016 guidance discusses info exchanges in the employment setting - while not criminal, could have anticompetitive effect; offers example on wage data lessening competition

2018 DOJ settled with broadcast companies for exchanging indirect data related to advertising spot inventory

Algorithms - Welcome to the Future



“We will not tolerate anticompetitive conduct, whether it occurs in a smoke-filled room or over the Internet using complex pricing algorithms. American consumers have the right to a free and fair marketplace online, as well as in brick and mortar businesses.”

DOJ prosecuted David Topkins, who used pricing algorithms to fix prices for posters, prints and framed art sold on Amazon Marketplace

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13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 UNITED STATES OF AMERICA **CR 15 201**
16 v. **INFORMATION**
17 DAVID TOPKINS, **VIOLATION:**
18 Defendant. **Title 15, United States Code,**
Section 1 (Price Fixing)

19 The United States of America, acting through its attorneys, charges:
20 DAVID TOPKINS,
21 the defendant herein, as follows:
22 I.

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NORTHERN DISTRICT OF CALIFORNIA
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Questions?



Thank you

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