Welcome to the AntitrustConnect Blog

AntitrustConnect Blog
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Welcome to AntitrustConnect. At this time of new direction and change in antitrust enforcement and practice, Wolters Kluwer Law & Business is excited to sponsor this blog as a forum for analysis, commentary, and discussion of antitrust issues for lawyers and economists in the field.
There has been much discussion about the reinvigoration of antitrust enforcement with the change in administration in Washington. Whether or not one agrees that enforcement efforts at the federal antitrust agencies have been revitalized in the last 12 to 18 months, new antitrust leadership has brought change.

Shortly after being sworn in as Assistant Attorney General in charge of the Department of Justice Antitrust Division, Christine A. Varney took steps to reverse some of the policies set by the prior administration.

In a May 2009 announcement, Assistant Attorney General Varney withdrew a September 2008, Antitrust Division report, entitled "Competition and Monopoly: Single-Firm Conduct Under Section 2 of the Sherman Act," which examined whether and when specific types of single-firm conduct violate Section 2 of the Sherman Act. The antitrust chief said that withdrawing the report "is a shift in philosophy and the clearest way to let everyone know that the Antitrust Division will be aggressively pursuing cases where monopolists try to use their dominance in the marketplace to stifle competition and harm consumers."

The antitrust bar is now watching for the Antitrust Division's filing of a Section 2 case.

The federal antitrust agencies have also aligned their positions on topics that divided them in the past. The Antitrust Division has taken a tougher stand on patent litigation settlements involving "reverse payments," a top priority for Federal Trade Commission Chairman Jon Leibowitz.

A closely watched FTC action against Intel for allegedly monopolizing the markets for central processing units and creating a monopoly in the markets for graphics processing units could be resolved any day.

And the agencies have been working together and with antitrust practitioners and economists to revise the Horizontal Merger Guidelines.

Despite the sluggish economy, significant acquisitions and mergers continue to be reviewed by the Antitrust Division and the FTC. Major deals, such as the proposed merger of Comcast and NBC Universal, are currently awaiting federal antitrust approval. Some lawmakers on Capitol Hill have questioned the impact on competition resulting from Comcast—the largest video and broadband provider—controlling huge quantities of entertainment content.

All of this change comes along with the continued crackdown on global cartels and the corresponding antitrust class actions.

Meanwhile, antitrust practitioners are anticipating the impact of two decisions handed down this term by the U.S. Supreme Court.

In April, the Court ruled in *Stolt-Nielsen S.A. v. AnimalFeeds Intl.Corp*., 130 S.Ct. 1758, 2010-1 Trade Cases ¶76,982, that international shipping companies should not be forced to defend in class arbitration customers' price fixing claims where their arbitration clause was "silent" on the class arbitration issue.

A month later, in *American Needle, Inc. v. National Football League*, 130 S. Ct. 2201, 2010-1 Trade Cases ¶77,019, the U.S. Supreme Court ruled that an arrangement among the 32 separately-owned member teams of the National Football League (NFL) to license their intellectual property collectively through their jointly-owned licensing affiliate—National Football League Properties (NFLP)—constituted concerted activity under Section 1 of the Sherman Act. On remand, the challenged agreement was to be reviewed under a flexible rule of reason analysis.

For expert analysis of the *American Needle* decision, please see the blog post from

University of Iowa College of Law Professor Herb Hovenkamp.

Herb Hovenkamp is joined by other contibutors offering their expertise on a wide variety of antitrust topics. We hope that you will visit the blog often, and we invite you to participate in the discussion. We look forward to hearing your thoughts on the “changes” taking place in antitrust and their impact on the practice of antitrust law.