

AntitrustConnect Blog

Highlights of the 2012 ABA Antitrust Spring Meeting

Christopher Sagers (Cleveland-Marshall College of Law) · Monday, April 9th, 2012

Ah, the Spring Meeting. God I love it.

Admittedly, the ABA Antitrust Section Spring Meeting, perhaps the profession's preeminent event, is in some respects getting to be just a bit of a circus. What were once a handful of calm, early evening cocktail receptions in the bowels of the Marriott have grown into a deafening barrage of extravagant drink-fests, which have spilled over into the many posh surrounding hotels and restaurants, including the Willard and that exclusive, trendy new home of \$20 hamburgers, Central Michel Richard. One venue on Thursday afternoon featured, in addition to the inability to hear, mini-sombrero party-favors and a mariachi band. And as proof how much the Spring Meeting now resembles fraternity pledge week, walking outside the Marriott one was surrounded by quite a number of exceptionally well-dressed young men and women, oblivious both to the Occupy Wall Streeters camping on Freedom Plaza and to whatever might be the District's open-container laws. You could hear them saying things like "Dude, are you going to [XYZ law firm's] party? You *totally* have to go to [XYZ's] party." And then there was the . . . well . . . there was the Teddy Roosevelt impersonator. Put that in your pipe and smoke it.

Anyhoo, for those many of us who must follow antitrust from outside the Beltway, the Spring Meeting is also pretty priceless. Here are a few points that especially stood out to one humble observer.

First there was the Annual Dinner address by Senator Al Franken. Most remarkable to me was the depth and erudition of his remarks, which focused almost entirely on antitrust substance. (In the audience there was a bit of grumbling—quite misplaced, I thought—that his remarks weren't funny; it would hardly have befitted any U.S. Senator to come and perform stand-up, and all the less so in times of crisis in which many believe that matters of competition policy are of pressing concern.) But here is the highlight, as far as I am concerned: Well over half of the Senator's lengthy [remarks](#) were devoted to the possibility of antitrust action against Google.

If this were just the random thoughts of some guy it would hardly amount to much. But first, the Senator serves on the Senate Subcommittee on Antitrust, Competition Policy, and Consumer Rights, and second, it lends weight to one of the suspicions I found most fervently discussed in the Meeting's hallways and anterooms: that the FTC will proceed with its apparent [intention](#) to challenge Google's alleged monopolistic conduct.

And so many other nice tidbits jumped out at me as matters to take notice of:

1. Rich Feinstein, Director of the FTC's Bureau of Competition, was asked whether the agencies' failure since 1984 to modify the *Vertical Merger Guidelines* can be taken as proof that nothing has changed in their approach to analyzing vertical acquisitions. Though saying he doubted the *Guidelines* would be revised any time soon, he said this: "Let me put it this way. It's been a pretty long time since I've read those *Guidelines*." (Commission chief economist Joe Farrell agreed that market share—the primary consideration under the 1984 *Guidelines*—is no longer very important.)
2. An entire panel was devoted to what many of us may not really have known much about—that there is a major wave of health care mergers. Entitled "Merger Mania: Health Care Reform's Impact on Markets," the panel was billed this way: "Health care reform has had a profound impact on the business activities of many health care providers. With a proliferation of mergers between hospitals and other health care providers, what role will State Attorneys General play in ensuring competitive markets while also protecting the public interest?" Seems to me a major component of what is going on has also been a more or less concerted effort to secure as much antitrust immunity as possible for these maneuvers; witness the *Phoebe-Putney* case and the fairly likely consideration of it by the Supreme court. (For more, see [here](#).)
3. And in a speech nicely sprinkled with other erudite and careful insights, former FTC Chairman Kovacic speculated during the "Hot Topics" session that if any merger case is "in the pipeline" to break the Supreme Court's near-40-year moratorium on merger cases, it might be the Commission's recent [decision](#) in *ProMedica*.
4. It was also just a bit arresting to hear Chairman Kovacic, less than a year after his return to academia and therefore free of the usual constraints of official decorum, waxing passionate in his denunciation of "the astonishing selfishness" of one member of Congress" who has [proposed](#) to turn the Commission's building into an art museum.

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