



US Antitrust – What's New, and So What?

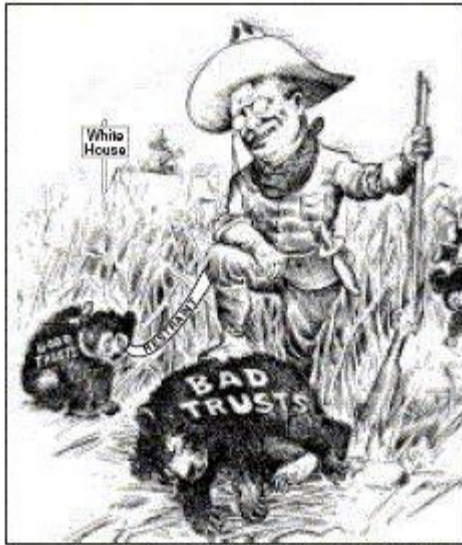
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US Antitrust...ups and downs since 1890



Source: Triumph of the American Nation, Harcourt Brace



U.S. v. Microsoft

GO BACK 3 SPACES

COMPETITORS ADVANCE TO GO. COLLECT \$200.

Life in America

U.S. v. Microsoft

What: The U.S. Justice Department and 20 state attorneys general sue Microsoft for monopolistic practices against Microsoft Corporation.

Where: Federal District Court, Washington, D.C.

When: From May 18, 1998



COMPETITION AND MONOPOLY:

SINGLE-FIRM CONDUCT UNDER SECTION 2 OF THE SHERMAN ACT

U.S. DEPARTMENT OF JUSTICE



The US antitrust legacy in the EU (and beyond)

- Market definition
- Leniency programmes and procedure
- Criminal enforcement
- Economic approach
- Private actions – “private enforcers”
- Leadership in international cooperation and convergence
- Importance of antitrust to capitalism



Global cartels

- Continued massive impact on international cartels
 - Imprisonment of non-US nationals
 - Extradition, incarceration and cooperation
 - Cases with massive breadth and international reach
 - 2010 – Today: Automotive sector
- The rise (and fall?) of class actions
 - Huge issue for cartel defendants
 - Criticism of US model
 - Is the “spectre of the US class actions” fading?
 - Influence on proposed EU legislation



US/international mergers

- Joint guidance with other competition authorities
 - US/China guidance published
 - US/Canada/Mexico discussions
- New-ish merger guidelines
- International cooperation in major cases
 - UTC/Goodrich
 - Globally coordinated antitrust remedy
 - Cleared on the same day by, US, EU, Canada
 - Deutsche Börse/NYSE
 - AT&T/T-Mobile



Antitrust issues

- Resale price maintenance in a post-*Leegin* world
 - Not a *per se* violation at Federal level
 - State antitrust authorities not bound by *Leegin*
 - Influence on EU approach to RPM
 - Back to the past by DoJ in Obama II?
- Google - FTC
 - Patent abuse?
 - Search manipulation?
- Apple E-books - DoJ
 - Agency model?
 - Wholesale model?



More antitrust issues

- What are “contracts referencing rivals” or “CRR”s?
 - Vertical contracts that include horizontal information
 - Different types including:
 - Exclusivity/Rebates
 - Most favored-nation clauses
 - Non-discrimination clauses
 - A sign of convergence on verticals enforcement with EU?

Looking to the future – DoJ/FTC

- More enforcement-minded than a Romney I administration
- Obama I track record:
 - Shelved Bush era dominance report
 - Initially slow in mergers, dominance cases, but more later in term
 - But continued tough on criminal cartel enforcement
- Obama II
 - DOJ - Bill Baer nominated to head Antitrust Division
 - FTC - Jon Leibowitz likely to step down in coming months
 - Continued strong cartel enforcement
 - But also possibly more dominance cases (Google, Apple) and verticals enforcement (CRRs)





Thanks – Any Questions?

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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.

