Antitrust Writing Awards 2017

Washington, DC  March 28, 2017

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The Antitrust Writing Awards Jury is comprised of the Board, the Academic and Business Steering Committees, the Editorial Committee and the Readers. Each of these contributed to the selection process of academic and business articles as well as soft laws.

The Editorial Committee of Concurrences Review selected a pool of 160 articles out of more than 600 submissions from the two Steering Committees and the Readers. Then, the Steering Committees and the Readers voted their favorite articles, resulting in a short list of 40 finalists (20 Academic and 20 Business). Finally, the Board nominated 20 award-winning articles.

As for soft law, the Editorial Committee invited competition agencies to submit their best soft law documents. The Steering Committees members and the Readers then voted for the 5 most innovative documents.

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Authors:

- **Joshua WRIGHT**
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- **Marc van der WOUME**
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- **Joshua WRIGHT**
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The Antitrust Writing Awards have become, over the years, an exclusive platform for antitrust writers and thinkers to share their ideas on the global stage. Again this year, these Awards provided the best articles published in 2016 with a unique readership while rewarding antitrust excellence.

The 2017 Antitrust Writing Awards consisted of:

> “Best Articles”: Awards for the best academic publications (peer-reviewed journals) and for the best business publications (non-peer-reviewed journals, briefs, memoranda, blogs, etc.) published by individual authors.

> “Most Innovative Soft Law”: Selection of the most innovative non-enforcement tools published by National Competition Agencies such as guidelines, market studies, white papers, etc.

> “Best Newsletters”: Ranking and Awards of the best law firms’ antitrust newsletters.

The articles and soft law were selected by the Jury. The 2017 Jury consisted of a Board - Douglas Ginsburg, Frédéric Jenny, William Kovacic, Johannes Laitenberger, Maureen Ohlhausen, Rose Webb, Marc van der Woude, and Joshua Wright - and an Academic and a Business Steering Committees composed of leading academics and in-house counsels. Readers contributed to the selection process by voting for competing articles and soft laws. We are most thankful to the jury members who spent valuable time to read and review the selected articles and soft laws as well as to our sponsors who made these Awards possible.

The “Best Newsletters” Ranking & Awards rewards antitrust professional publications considered overall, as opposed to the Articles Awards which reward individual articles. Out of more than 80 law firms’ publications reviewed, the Editorial Board selected 30 professional antitrust publications to provide practitioners with a useful description and ranking. Such publications include newsletters, blogs, but also client briefs, memoranda. The Ranking is based on the publications freely made available as of early January 2016 on the websites of law firms reviewed.

To quote Johannes Laitenberger, “The Concurrences Antitrust Writing Awards Initiative fosters dialogue, debate and learning in the competition community worldwide... The 2017 vintage was a moment of stimulating conversation of celebrating ideas.”

We will continue putting our best efforts to ensure the greatest circulation of academic and professional expertise through quality articles as well as innovative soft laws in the antitrust field.
WILLIAM KOVACIC
PROFESSOR, GEORGE WASHINGTON UNIVERSITY LAW SCHOOL, COMPETITION AND MARKETS AUTHORITY, NON-EXECUTIVE DIRECTOR

Bill Kovacic - Professor, The George Washington University Competition Law Center - welcomed the enforcers, academics and private practitioners by first underlining the importance of the Antitrust Writing Awards. Professor Kovacic remarked that by recognizing superior writing in academia and practice, the Awards celebrates and enhances the indispensable intellectual infrastructure of the antitrust field.

Professor Kovacic looked back at the five previous editions of the Antitrust Writing Awards and expressed how pleased he was to see the continuing and growing enthusiasm that antitrust practitioners show in this annual celebration of new antitrust ideas and practices. The Awards provides an opportunity for all the bright minds in the antitrust field to meet and exchange ideas.

The international aspect of the Awards should also be emphasized, Professor Kovacic remarked. Antitrust law is relatively new and less developed than many other areas of law. Even for US and Europe, where antitrust law has a comparatively longer history, the law is still constantly undergoing significant developments and changes. In some other parts of the world where antitrust law is a fairly new concept, there is even more work that needs to be done. This background, Professor Kovacic said, highlights the importance of international conversation in the antitrust community. Platforms such as the Antitrust Writing Awards, where practitioners from around the world gather to exchange ideas and talk, are becoming more and more indispensable to the advancement of antitrust law.

Professor Kovacic concluded his remark by extending an invitation to all antitrust practitioners worldwide to keep sharing their ideas and insights through their writings.
MAUREEN OHLHAUSEN
ACTING CHAIRMAN, US FEDERAL TRADE COMMISSION

Maureen Ohlhausen, Acting US FTC Chairman, opened her remarks by noting the importance of events such as the Antitrust Writing Awards, which foster dialogues between the academics and enforcers in the antitrust world. Drawing on the example of antitrust scholarship revolution in the late 20th century and how that eventually spawned a revolution in enforcement, Chairman Ohlhausen emphasized the importance of scholarship to antitrust enforcement: “So anyone who tells you that scholarship doesn’t have a major role to play the development of antitrust doctrine really needs to spend a little time studying our recent history… Great scholarship can pierce through the swirling complexity of the modern economy and provide insights that drive us all towards better and more refined enforcement decisions.”

Chairman Ohlhausen then cautioned that although there is “considerable pressure to integrate new scholarship quickly,” enforcers’ approach to new scholarship “must necessarily be a cautious one.” To illustrate her point, Chairman Ohlhausen introduced the concept of “regulatory humility,” which refers to “understanding the limits of our own knowledge when considering whether to apply the considerable authority granted to us.”

“As enforcers,” Chairman Ohlhausen told the audience, “we are nothing more than citizens entrusted to execute the will of the people to the best of our ability. We have no special powers of predictions, and any one of us can be spectacularly wrong about how we expect the future to turn out. Regulatory humility is really about understanding the internalizing the limits of our own knowledge when we wield the considerable powers entrusted to us.” Chairman Ohlhausen then noted that the same applies to academics and practitioners as well: “Just as enforcers don’t always get it right, well-intentioned academics and thoughtful, seasoned practitioners are also not infallible.” Thus, Chairman Ohlhausen urged the scientific community as well as enforcers to adopt pragmatic skepticism toward new discoveries and ideas.

Chairman Ohlhausen continued by explaining her own careful approach towards thoughtful suggestions of latest theories, “I also want to know what the well-supported empirical analysis shows, what the parties’ documents and testimony may suggest and the like. In short, I want as much probative, reliable information as can be mustered on all sides of the question.”

Lastly, Chairman Ohlhausen said that she is going to be “pretty hesitant to embrace novel theories that conflict with the answers that the well-established antitrust toolkit already provides,” because she believes that the free market for new ideas in the antitrust field works extremely similar with that for material goods, “The best ideas tend to win out over time, while the trendy, flashy and ultimately unsupported theories are debunked or fade away.” Chairman Ohlhausen praised the many “bright, creative and serious” ideas she read in the articles that she judged for the 2017 Antitrust Writing Awards, stressing that because the antitrust community is so bright and vibrant, she has no doubt that antitrust law “will continue to grow and improve.” She stressed that although her pragmatic skepticism may be countered by some as “overcautious or insufficiently creative,” we “need not fear the constant re-examination and rigorous testing of both our existing core principles and the creative output of today’s strongest scholars. We are fortunate to stand here today on a strong foundation, a foundation largely shaped by these very processes.”

Looking forward, Chairman Ohlhausen remarked that she has no doubt that “the intellectual underpinnings of our critical mission to protect competition and consumers will only improve in the years ahead.”
Johannes Laitenberger - Director General, Directorate-General Competition, European Commission - presented the Soft Law Awards. This recently introduced category is neither an award nor a ranking but a selection of the most interesting administration practices (i.e., guidelines, market studies, white papers issued by competition agencies) that are believed to be an inspiring model for competition agencies around the world. “Most Innovative Soft Law” aims at contributing to the development of antitrust culture and awareness; it also seeks to support international antitrust advocacy by drawing attention towards the most meaningful competition agency practices. It is a recognition of the trend towards softer forms of governance and quasi-legal measures that play an important role as an information source for individuals and companies in the market. Soft law aids the understanding of the complex antitrust rules developed through case law, it makes the system more transparent enhancing legal certainty.

Soft law, as Mr. Laitenberger pointed out, is an excellent instrument to clarify public authorities’ actions for both companies and consumers. And the Most Innovative Soft Law category is an excellent way of sharing different public authorities’ best practices and foster learning from each other. Sharing the most forward thinking soft law through the Antitrust Writing Awards platform where forward thinking in the competition community is put in the limelight, Mr. Laitenberger noted, sends a message that cooperation and convergence is the best approach in a world where so much work is shared among multiple jurisdictions. Mr. Laitenberger urged conversations and dialogues to be fostered bilaterally and multilaterally whenever possible. Rather than having a soliloquy, he said, the world must have a conversation.

Conversation, Mr. Laitenberger emphasized, is the best strategy we can adopt together to pursue our shared overall goal of taking good care of consumer welfare, keeping markets open and contestable. This - Mr. Laitenberger stressed - is especially important at the present time, when protectionism, division, and antagonism threaten to take the central stage and where so many citizens have lost trust and confidence in the economic and political systems to be transparent and to improve.

* Check against delivery
The Administrative Council for Economic Defense - CADE, published, on March 16, 2016, the preliminary version of the Guidelines on Cease and Desist Agreement for Cartel Cases in English - the document reflects the practice and the parameters already used by CADE in the negotiation of Cease and Desist Agreements (TCC) in Cartel Cases on the last years. The preliminary Portuguese version of the Guideline was published on January 2016.

The goal of CADE is that the version in English increases the contributions of the international community. The purpose of the Guidelines is to register the institutional memory of the authority about the theme and serve as a reference to public servants, lawyers and the society in general about the procedures related to the instrument, generating more transparency, predictability, effectiveness and celerity to the negotiations of this kind of agreement.
Commitments have proved their worth in practice as a major instrument for the effective implementation and enforcement of merger control rules. The Bundeskartellamt examines and assesses between 1,000 and 1,200 mergers annually, of which the vast majority do not raise any competition issues. However, in particular in the context of markets that are already to some degree concentrated, mergers can also have negative effects on market structure and the competitive behaviour of companies and in this way can adversely influence market results by increasing the market power of a single or several companies active on the relevant market.

A (notifiable) concentration has to be prohibited by the Bundeskartellamt if it would significantly impede effective competition. The guidance document explains the requirements that need to be met for the Bundeskartellamt to clear an otherwise problematic concentration subject to conditions and obligations (remedies). By including remedies in a clearance decision the Bundeskartellamt ensures that the parties to the merger fully meet the commitments they have offered during the merger proceeding in order to avoid a prohibition. This implies that the parties’ proposals are suitable to remedy the competition concerns.

The guidance document explains the requirements that merging parties’ commitment proposals have to fulﬁll. On this basis, and with the help of commitments, the parties to a merger can modify their project post-notiﬁcation in such a way that the merger no longer has to be prohibited. The document also sets out the procedure in which remedies are accepted and implemented.

Andreas Mundt, President of the Bundeskartellamt: “The new document provides the business community with detailed and practicable guidance on how the Bundeskartellamt assesses commitments proposed by merging parties in the context of merger control proceedings. I am conﬁdent that the increased transparency will be welcomed. The guidance document should assist companies in their efforts to prepare commitments that are acceptable. This can often save time and costs and enable them to realize the expected beneﬁts of a merger to the greatest possible extent.”

These Intellectual Property Enforcement Guidelines (Guidelines) articulate how the Bureau approaches the interface between competition policy and IP rights. They describe how the Bureau will determine whether conduct involving IP raises an issue under the Act. They also explain how the Bureau distinguishes between those circumstances that warrant a referral to the Attorney General under section 32 of the Act, and those that will be examined under the general provisions. Because of their subject matter, the Guidelines are necessarily technical in nature and are primarily targeted to IP and competition law practitioners.

These Guidelines are not intended to restate the law or to constitute a binding statement of how the Commissioner will exercise discretion in a particular situation. The enforcement decisions of the Commissioner and the ultimate resolution of issues will depend on the particular circumstances of each case. Final determination of the law is the responsibility of the Competition Tribunal (Tribunal) and the courts.

The Bureau will review these Guidelines annually and will revise them as needed in light of experience, changing circumstances and decisions of the Tribunal and the courts.

Recently, at the time, there were cases where a public authority action creates favorable conditions for companies to infringe competition law or encourage restrictive business cooperation. The Competition Council notes that the mere fact that restrictive agreements are concluded with the state bodies of knowledge or incentive, does not release the company from liability. It is expected that this memo will bring more clarity to both sides: companies and associations will help to answer the questions raised in cooperation with the public sector and public authorities - to evaluate whether their actions restrict competition and does not create conditions for enterprises violate fair competition principles.
Bill Kovacic - Professor, George Washington University Competition Law Center - presented the Antitrust Writing Awards for the Academic Category.

Professor Kovacic celebrated the nominees of this category and the articles, which offer complex legal and economic analyses, in-depth analyses of case law development, and powerful insights into the political economy of the global antitrust community. Each nominated article is the result of significant dedication of time and efforts.

Among the short-listed articles of this year’s Awards, Professor Kovacic noted, are insightful and interesting pieces on vertical agreements, global merger control, new Chinese antitrust law developments, and antitrust under the Trump administration. Authors for the articles, predominantly, come from universities and research institutions from all around the world. The geographical diversity allows the Awards to present a wide array of articles focusing on the cutting edge issues from different countries, giving antitrust practitioners and general readers an opportunity to overview antitrust development from a holistic and international perspective. The 10-category breakdown, Professor Kovacic remarked, ensures that different aspects of antitrust law are covered to present an organic and wholesome overview of antitrust law.

Lastly, Professor Kovacic praised the active participation of writers in the 2017 Awards and encouraged them to continue sharing their insights through research and writing.
The emergence of competition law as a global enterprise is a remarkable development in economic regulation. For nearly a century after the adoption of the first national statutes in the late nineteenth century, competition law, or antitrust, was largely an American idiosyncrasy. This is no longer the case. Since the late 1980s, the number of jurisdictions with competition laws has soared from roughly thirty to more than 130, and more are on the way. Many modern adopters are countries that once seemed immutably committed to central planning and government ownership as the foundations for economic progress until the recent past. The astonishing global expansion of competition law has considerable economic significance beyond the well-established regimes in the European Union and the United States, which together had, until recently, functioned as a form of regulatory duopoly in international competition law since the early 1990s. For large multinational companies, the establishment of new systems in Brazil and China and the makeover of India’s older, ineffective competition regime has transformed the planning of mergers and required reconsideration of practices such as the licensing of intellectual property.

Though its Antimonopoly Law only took effect in August 2008, China already is a peer of the European Union and the United States in its capacity to shape global norms of business behavior. In the years to come, regional alliances such as the Association of Southeast Asian Nations may achieve the same stature.

Competition law’s vertical agreement requirement is widely regarded to be perplexing and to offer a fairly limited unilateral action defense. These views prove to be understated. The underlying distinction is incoherent on a number of levels and difficult to reconcile with pertinent statutes, precedent, and practice. The requirement has little nexus with competition policy, and its satisfaction may even be associated with less, not more, anticompetitive danger. Furthermore, reflection on the thinness or nonexistence of the vertical agreement requirement renders problematic a central feature of competition law: the aim to subject myriad everyday actions of countless firms to more lenient scrutiny than that applicable to agreements, which on reflection are ever-present.
While data were always valuable in a range of economic activities, the advent of new and improved technologies for the collection, storage, mining, synthesizing, and analysis of data has led to the ability to utilize vast volumes of data in real-time in order to learn new information. Part I explores the four primary characteristics of big data: volume, velocity, variety, and veracity and their effects of the value of data. Part II analyzes the different types of access barriers that limit entry into the different links of the data value chain. In Part III, we tie together the characteristics of big data markets including potential entry barriers, to analyze their competitive effects. The analysis centers on those instances in which the unique characteristics of big data markets lead to variants in the more traditional competitive analysis. Our analysis suggests that the unique characteristics of big data have an important role to play in analyzing competition and in evaluating social welfare.

Merger analysis in the United States has witnessed significant improvement over the last 50 years. The antitrust agencies steadily have moved away from a rigid step-by-step approach that focuses on counting the number of firms in a market to assess whether a proposed transaction is likely to substantially lessen competition. In place of this simplistic analytical framework, the agencies have shifted toward a more sophisticated evidence-based method that is grounded in modern economics and that employs a variety of new tools to determine a merger’s likely competitive effects. Among the most significant changes is the discussion of the value of diverted sales as part of unilateral price effects analysis and the endorsement of the Gross Upward Pricing Pressure Index (GUPPI), which seeks to account for closeness of competition in evaluating a merger’s prospective unilateral effects. In this paper we assess how the GUPPI has been applied in modern merger analysis and whether it truly has lived up to its promise. We argue that the GUPPI regularly fails to live up to its promise for two principal reasons: (1) the GUPPI all too often is based on inaccurate or incomplete data and (2) there is insufficient guidance to allow the business community and the antitrust bar to draw reliable conclusions about how the GUPPI will be incorporated into the antitrust agencies’ enforcement decisions. As a result, GUPPI often fails to deliver the more rigorous and effects-based analysis we expect under modern merger review and instead reverts to an outdated focus on market concentration. Even more, without meaningful calibration or enforcement guidance, GUPPI fails to serve its potential purpose as an efficient screen to expedite the merger review process.
6. BEST ACADEMIC ARTICLE FOR PRIVATE ENFORCEMENT
PRIVATE ENFORCEMENT OF EU ANTITRUST LAW AND ITS RELATIONSHIP WITH PUBLIC ENFORCEMENT: PAST, PRESENT AND FUTURE
WOUTER P. J. WILS, World Competition: Law and Economics Review (Vol. 40), Forthcoming 2017

This article provides a short history of private enforcement of EU antitrust law and its relationship with public enforcement, from the 1957 EEC Treaty over Regulation 17 and Regulation 1/2003 until Directive 2014/104 and the current outlook. Among other things, the article explains how the EU has rejected the US American conception of private actions for damages as an instrument for deterrence and punishment, and thus a substitute for public enforcement. Instead, the central role of public enforcement, by the European Commission and the national competition authorities, working together in the European Competition Network, has been reaffirmed, with private actions for damages performing a supplementary, purely compensatory role. The article also analyses in some detail the provisions of Directive 2014/104 on actions for damages and finally discusses three specific contentious issues concerning the interaction between public and private enforcement, namely voluntary compensation as a ground for reducing fines, the cumulative impact of fines and damages, and the continued attractiveness of leniency programmes.
7. BEST ACADEMIC ARTICLE FOR CROSS-BORDER ISSUES

SPONGE

ARIEL EZRACHI, Journal of Antitrust Enforcement, 2016

When government officials argue for purity, one would expect raised eyebrows. But few question competition officials who, in speeches in foreign lands, praise the “purity” of competition law. They warn the hosts of polluting competition policy with social, ethical, and moral concerns. They warn of industrial policy, regulation, and rent-seeking. After the hosts provide dinner, the competition officials leave for the airport, where they prepare the same speech for another audience. The hosts will politely agree on the key objectives that competition policy should promote, but beneath this veneer, ill-defined terminology, open-ended goals and differences in enforcement philosophy remain.

Differences, in one’s understanding of the ends of competition law often transform into a ‘purity battle’ - the claim that competition analysis has been polluted by some, and that a pure approach, as propagated by others, would deliver better, optimal results. Often, these claims accompany large transactions, state aid, and foreign jurisdictions, possibly threatening the domination of national champions through enforcement of their competition laws. Sometimes these claims will be made by the competition agency. Sometimes by politicians or leading corporations. At times, the true source of the claim - politics, business, law or economics - may be hard to ascertain.

This is not to say that purity arguments are without merit. A consensus exists that competition law cannot be all things to all people: a panacea for every policy concern, ranging from labour to the protection of national champions. And yet, the pretence of purity may be misleading as it propagates a mirage of objectivity, clarity and analytical superiority - traits that are not always present.

The notion of analytical purity is at the centre of the article. It explores the presence of an objective and systematic core at the heart of the competition discipline. In doing so, it questions the presence of a superior form of competition enforcement and considers the role of competition law as a domestic or regional social policy. The article highlights the inherently dynamic nature of competition law and its wide-ranging goals, scope, and possible outcomes. It further notes how this susceptibility makes competition law a prime target to lobbying and can result in visible, or undetected, intellectual capture.

Importantly, the article does not discount the rule of law. Competition policy should be applied consistently, objectively, accurately, and fairly. In line with this, it does not question the value of ongoing international harmonisation and assimilation which help align our understanding and application of competition law. The thesis put forward in the article is more nuanced. It concerns the inherent characteristics of the law and the effect that these have on its susceptibility to a multitude of considerations. It argues that the sponge-like characteristics of competition law make it inherently predisposed to a wide range of values and considerations. Its true scope and nature are not ‘pure’ nor a ‘given’ of a consistent objective reality, but rather a complex and, at times, inconsistent expression of many values.

8. BEST ACADEMIC ARTICLE FOR PROCEDURE

PRIVATE ENFORCEMENT OF EU COMPETITION LAW:
A COMPARISON WITH, AND LESSONS FROM, THE US

ALISON JONES, Harmonising EU Competition Litigation: The New Directive and Beyond, 2016

This paper examines the core features of the EU reform package designed to encourage greater volumes of private enforcement of the EU competition rules, particularly the Directive on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union. Its principal objective is not, however, to scrutinize these provisions in detail. Rather, its purpose is to reflect on the questions of why, especially when compared with the position in the US, it has proved so difficult for a culture of antitrust litigation to develop in the EU, why the Commission believed that EU measures were necessary to kindle it and to consider, against that backdrop, whether the EU package is likely to achieve its stated goals.

Section 2 commences by exploring how private enforcement has developed in the US, examining not only the factors that have facilitated and encouraged it, but the extremes widely-believed to have bedevilled and undermined it, and the steps which have consequently been taken to limit and curtail private actions there. Section 3 then examines the EU system and seeks to unpick the different factors that have operated over time as barriers to private litigation in the EU Member States and to identify those that still exist. Having set out the factors that have encouraged and hindered litigation in the US and the EU respectively and examined some of the pros and cons of each system, it is possible to reflect more fully on the questions of whether private litigation should be further encouraged in the EU, what measures might be desirable or required to overcome the obstacles which exist to it, what measures should be avoided, whether the current package is likely to succeed, what pitfalls might be anticipated and/or what further developments and clarifications are likely to be required in the future. Section 4 concludes that the package of reforms is not likely to lead to over-enforcement or to the encouragement of unmeritorious antitrust actions in the EU. What may be more of an issue, however, is whether it has done enough to boost and facilitate private damages actions and to create the level playing field across the EU sought by the Commission. Not only does the Directive not institute a completely harmonised framework, leaving a number of potential obstacles to national actions and areas of legal ambiguity outstanding, but a number of the Directive’s provisions are liable to introduce considerable complexities into national proceedings. Further, scope for some significant divergences between national rules remain; such differences are likely to continue to affect where litigants choose to commence their actions and to result in forum-shopping,
9. BEST ACADEMIC ARTICLE FOR ASIAN ANTITRUST
CHINESE STATE CAPITALISM AND WESTERN ANTITRUST POLICY
NICOLAS PETIT, Concurrences (Nº 4), 2016

Enthusied by China’s conversion to the free market system in 1978 and its adoption of Western-style market institutions, the world has spent the last few decades turning a blind eye to China’s real “governance” problem: that a shadow Party-State system permeates all branches of the economy. Whatever Washington-consensus style institutions are put in place, whatever State Owned Enterprise (SOE) reform is introduced, corporate and market governance occur under the rule of the Chinese Communist Party (CCP). And the CCP’s guidebook is the Leninist command that the whole of society shall be run as “single country-wide State syndicate”. This paper contends that China’s syndicated economic organization is akin to a “supertrust”, and that this creates conditions that are conducive to antitrust problems to which the Western world must awaken. In this context, this paper advances that the antitrust regulators of North America, Europe and elsewhere should take two simple, pragmatic steps under merger control and antitrust rules. In merger review, antitrust agencies should treat all SOEs and Privately Owned Enterprises (POEs) with a CCP cell as one unitary group and undertake a thorough competitive assessment of transactions on this basis. In addition, antitrust cases involving Chinese firms should be investigated on the default assumption that there is an underlying coordination scheme among them.

10. BEST ACADEMIC ARTICLE FOR ECONOMICS
DIAGNOSING FORECLOSURE DUE TO EXCLUSIVE DEALING
JOHN ASKER, Journal of Industrial Economics (64), 2016

Exclusive dealing arrangements, in which a distributor contracts to work exclusively with a single manufacturer, can be efficiency enhancing or they can be an anticompetitive means to foreclose markets. This paper evaluates the effect of exclusive distribution arrangements on competition in the Chicago beer market in 1994. A diagnostic test is provided to judge whether exclusive arrangements between brewers and their distributors lead to foreclosure. To implement this test I estimate a model of consumer demand and firm behavior that incorporates industry details and allows for distribution through exclusive and shared channels. The test indicates that foreclosure effects are not present in this market, suggesting that the most likely effect of intervention would be to reduce social welfare.
Marc van der Woude - Judge, General Court, Court of Justice of the European Union - presented the Business Awards. Drawing on his personal experience of working at the General Court, Judge Woude mentioned that he values the privilege to exchange ideas and arguments with colleagues from different countries and professional backgrounds. The Antitrust Writing Awards, Judge Woude commented, has the similar function of bringing people from around the world in business, academic and governmental agencies to exchange ideas and arguments on antitrust topics.

The Best Business Articles is an important part of the Awards, as it celebrates the observations made by practitioners through their works. Among this year’s shortlisted articles, some interpreted newly released guidelines to help businesses understand and conform to the requirements, some discussed recent court rulings in-depth and gave interesting insights, and some offered practical advice to businesses for steering clear from liabilities.

The short-listed business articles, Judge Woude remarked, examine some of the most relevant case law and government regulations for companies and practitioners in this last year. Judge Woude concluded his speech by thanking all those who participated in the 2017 Awards and by encouraging antitrust practitioners to keep sharing their ideas.
1. BEST BUSINESS ARTICLE FOR GENERAL ANTITRUST
DOJ AND FTC SET POSSIBLE CRIMINAL LIABILITY TRAP FOR HR PROFESSIONALS
JAMES J. TIERNEY ET AL., Orrick, October 2016

Late last year, in the waning days of the Obama Administration, the US DOJ and FTC published Antitrust Guidance for Human Resource Professionals that signaled a dramatic change of course by, for the first time, suggesting they would seek criminal penalties for certain hiring conduct involving human resource professionals. This action followed highly-publicized civil lawsuits brought by the DOJ in 2010 and 2011 alleging that agreements between high-level executives at seven high-tech companies and one digital animation studio not to solicit or hire each other’s employees were per se violations of the Sherman Act. Although the court never ruled on whether the agreements were subject to the per se rule, the DOJ’s assertion that such agreements could be condemned as per se unlawful left the door open for possible criminal enforcement. The DOJ and FTC walked through this open door with their October 2016 announcement that “naked” agreements not to solicit each other’s employees could result in criminal prosecution against individual human resource professionals, other company. The DOJ’s dramatic change of course by, for the first time, suggesting they would seek criminal penalties for certain hiring conduct involving human resource professionals is notable because no court has ever held that a non-solicit agreement is per se unlawful. Historically, the DOJ has been reluctant to criminally pursue anticompetitive agreements where there is uncertainty whether the courts will view the agreement as a per se violation. In any event, human resource professionals and counsel who support them are now on notice.

They must look backward to ferret out any existing anticompetitive hiring agreements and look ahead to implement effective compliance procedures and prevent employees from entering into anticompetitive hiring agreements.

2. BEST BUSINESS ARTICLE FOR CONCERTED PRACTICES
PRACTICAL ADVICE FOR AVOIDING HUB-AND-SPOKE LIABILITY
RACHEL BRASS AND CAELI HIGNEY, The Antitrust Source, October 2016

It is axiomatic that the federal and state antitrust laws prohibit unreasonable agreements in restraint of trade. Most often, such agreements take one of two forms: (1) horizontal agreements made between competitors and (2) vertical agreements made up and down a supply chain, like those between a supplier and its distributors. Certain horizontal agreements, like agreements among competitors to fix prices or divide markets, and certain forms of group boycott agreements, are deemed per se illegal. In those circumstances, once the agreement’s existence is established, no further inquiry into the parties’ intentions or the practice’s actual impact on the market is necessary to establish a violation. Vertical agreements, by contrast, are analyzed under the rule of reason, which involves an examination of the particular context in which the restraint was adopted, including its effect on the relevant product market and any procompetitive justifications for the restraint. Sometimes, however, “the line between horizontal and vertical constraints can blur.”
3. BEST BUSINESS ARTICLE FOR UNILATERAL CONDUCT
RESALE PRICE MAINTENANCE AND DUAL DISTRIBUTION
REUBEN ARNOLD ET AL., Cornerstone Research, 2016

In several recent antitrust cases brought by both direct and indirect purchasers, plaintiffs have challenged the minimum resale price maintenance (RPM) policies imposed by manufacturers on resellers. The main economic issue in these cases is whether the procompetitive benefits of an RPM policy outweigh any potential harm to competition. In this article, we discuss some of the reasons for dual distribution and multi-channel distribution, review the economic analysis of RPM, and demonstrate that RPM plays a key role in facilitating the competitive benefits that can arise from dual distribution and multi-channel distribution.

4. BEST BUSINESS ARTICLE FOR MERGERS
INNOVATION IN EU MERGER CONTROL:
IN NEED OF A CONSISTENT FRAMEWORK
RAPHAËL DE CONINCK, Competition law & Policy Debate (Vol. 2), September 2016

The European Commission has recently shown great interest in assessing the impact of mergers on innovation. As highlighted below, the Commission has in particular been more interventionist in recent pharmaceutical mergers, requesting divestments of pipeline products including in some cases at an early stage of development, such as in Novartis/GSK Oncology. The Commission has also stressed the need to protect innovation as a rationale for divestment in other technology-driven industries, most recently and prominently in the context of the GE/Alstom transaction. This article discusses the approach followed by the Commission and argues in favour of developing a consistent framework for assessing the impact of mergers on innovations. Such a framework could help the Commission’s case teams assess the impact of mergers on innovations—taking into account both pro- and anti-competitive innovation effects—and make the analysis more predictable for companies. This article argues that such a framework cannot rely on general presumptions of the effect of mergers on innovation, but rather highlights the key considerations for a sound case-by-case assessment, and favours a relatively cautious approach.

5. BEST BUSINESS ARTICLE FOR INTELLECTUAL PROPERTY
LUNDBECK V. COMMISSION: REVERSE PAYMENT PATENT SETTLEMENTS AS RESTRICTIONS OF COMPETITION BY OBJECT

The General Court upheld the Commission’s finding that Lundbeck and generic producers of citalopram were at least potential competitors, that the reverse payment patent settlements at issue restricted competition by object, and that the Commission was not required to examine the situation that would have arisen had the agreements not been concluded.
6. BEST BUSINESS ARTICLE FOR PRIVATE ENFORCEMENT

NO SAFE HARBOR: THE EFFECT OF THE SCHREMS DECISION ON CROSS-BORDER DISCOVERY

KENINA LEE AND BROOKE OPPENHEIMER, ABA’s Section of Antitrust Law Competition Torts Committee, March 2016

In an age of globalization, cross-border disputes and litigation have become the norm. As a result, the need for US companies to receive documents and data from their foreign affiliates in the course of US discovery has increased exponentially. These efforts are often hampered by the unique data privacy laws that prevent the transfer of personal data to the US, which vary from jurisdiction to jurisdiction. The tension between broad US discovery practices and the strict protection of personal privacy in the EU in particular was heightened in a 2015 case before the European Court of Justice (ECJ) Maximilian Schrems v. Data Protection Commissioner. The Schrems decision exposed the weaknesses in the US data protection regime and effectively invalidated the “Safe Harbor Decision.” The Safe Harbor Decision had provided a framework by which US-based organizations could freely receive transfers of personal data from the EU without contravening the EU Data Privacy Directive. This article analyzes the impact of the Schrems decision on the costs of cross-border discovery in US litigation and the viability of alternative mechanism to complete EU-US data transfers going forward.

7. BEST BUSINESS ARTICLE FOR CROSS-BORDER ISSUES

EXTRADITION & ANTITRUST: CAUTIONARY TALES FOR GLOBAL CARTEL COMPLIANCE

CHRISTOPHER THOMAS AND GIANNI DE STEFANO, MLex, September 2016

The global enforcement of cartel laws relies on the extent to which extradition is a realistic prospect. As more jurisdictions criminalize cartel conduct and increase cooperation with enforcement regimes around the globe, the threat of extradition in cartel cases becomes more and more real.

The United States Department of Justice (DOJ) has secured its first litigated extradition in cartel charges: Romano Pisciotti, an Italian national, was extradited from Germany (where he was catching a connecting flight) on cartel charges related to the marine-hose cartel. This white-collar executive spent several months in a US federal prison in a room with around 40 inmates and a single corner toilet.

To successfully extradite a fugitive for an antitrust violation is no easy task. First of all, the alleged antitrust violation must be considered punishable under the criminal laws of both the requesting and the surrendering jurisdictions: this is the double-criminality requirement. Historically very few jurisdictions had criminal cartels on their books, leaving the DOJ unable to pursue extradition in most if not all fugitives’ cases. But antitrust violations today can be considered a criminal offence in several jurisdictions around the globe. For example, Romano Pisciotti was accused of, among other things, bid rigging, which is a criminal offence in Germany.

Moreover, the nationality of the defendant may prevent or reduce the chance of extradition, because several jurisdictions have laws that prevent the extradition of their own citizens. Mr. Pisciotti would have not been extradited by Germany had he been a German citizen. Another notable example: so far, Japan has not extradited its own citizens to the US.

In an ironic twist, Germany, the country that extradited Mr. Pisciotti, refuses to extradite one of his alleged co-conspirators who has been charged with identical crimes, and who today remains at large as a US-indicted fugitive in Germany. This gave rise to a damages claim from Mr. Pisciotti before the regional court of Berlin that he was being discriminated against based on his citizenship. The Berlin court referred the case to the Court of Justice of the EU to obtain guidance on the applicability of EU law to extradition matters involving non-EU Member States (such as the US) and the compatibility with the non-discrimination principle (as set forth in the EU Treaty) of domestic laws privileging a Member State’s own nationals over nationals of other EU Member States. It is possible that the Court of Justice will follow the principles set forth in recent ruling in a similar case (the Petruhin case) confirming that the non-extradition of a Member State’s own nationals generally falls within their discretion.

Even with all these hurdles, extradition remains a strong deterrent. More cases are in the pipeline, and unseen circumstances can occur, for which antitrust agencies will be ready to seize the moment. Even if executives live in a country that will not extradite, if they travel to another country, they are going to be increasingly at high risk of being extradited. The solution remains global cartel compliance and strategy.
Can law enforcement issue legal process in its home country to compel the production of data on a server in another country? Given the global sharing of data, this novel issue is particularly important in antitrust cases as international companies often store data in different jurisdictions.

On July 14, 2016, Microsoft and other US-based internet service providers prevailed at the US Court of Appeals for the Second Circuit, which held that the company is not required to comply with a federal search warrant for customer emails stored on a server in Dublin, Ireland. The ruling was the first by a federal court of appeals to address the extraterritoriality of the Stored Communications Act (SCA) often used in government investigations to obtain data. The Second Circuit overturned the lower court’s ruling which had ordered that the data outside the US be produced.

*Microsoft Corp. v. United States* implicates numerous emerging legal issues intersecting with international data privacy, including antitrust, which frequently involves the government requesting data stored overseas.

Our article provides some initial observations and highlights a number of open questions following the landmark opinion. One open question is the precedential value of the ruling. Presently, the ruling only applies to federal courts in the Second Circuit (Connecticut, New York, and Vermont). Other federal courts are not bound by the new ruling and may reach other conclusions.

In fact, since the ruling, the US Justice Department has asked judges outside the Second Circuit to reject the new ruling. Recently, on February 3, 2017, Magistrate Judge Thomas J. Reuter of the Eastern District of Pennsylvania ordered Google to comply with search warrants for emails stored overseas. A judicial split on this issue is emerging.

Another open question is whether the US Supreme Court or Congress will intervene to clarify the SCA. Some judges have invited congressional action.

Our article discusses how the ruling avoids a major conflict between EU and Irish laws that protect personal data located in Ireland from being delivered to US law enforcement through a warrant from the United States.

The article further highlights the broader fight between Silicon Valley (and other technology companies) and Washington over how much authority the government has to force technology companies to provide data in investigations.

Finally, our article notes that the scope of the government’s authority to compel the production of data will continue to turn on the particular facts of the case. The manner in which the data is obtained and stored abroad can vary. In the *Microsoft Corp.* case, the data was automatically stored in Ireland based on the user’s country code. Upon the transfer of the data to Ireland, “all content and non-content information associated with the account in the United States” was deleted from US-based servers. The question of where data is actually located at any given time becomes particularly challenging when one considers the various and complex methods of data storage.

The full impact of this landmark ruling remains to be seen.
9. BEST BUSINESS ARTICLE FOR ASIAN ANTITRUST
THE DECISION OF THE SUPREME PEOPLE’S COURT IN QIHOO V. TENCENT AND THE RULE OF LAW IN CHINA: SEEKING TRUTH FROM FACTS
EMILIO VARANINI AND FENG JIANG, Competition: Antitrust, UCL and Privacy Section of the California State Bar (Vol. 25), Spring 2016

The rule of law creates social order, enhances legitimacy, and promotes economic growth. To accomplish these goals, the rule of law requires the development of administrable principles, the use of a system of case precedent, and the implementation of due process. In the area of antitrust, there is an additional gloss on the rule of law in that the need for administrable rules must be balanced against the application of economic theories. However, at bottom, these notions all depend on a competent judiciary that can, in fact, carry out these tasks. The 2014 antitrust decision by the Supreme People’s Court - Beijing Qihoo Technology Co., Ltd. v. Tencent Technology (Shenzhen) Co., Ltd.4 is a thorough opinion demonstrating the judiciary in China is up to the job. However, this decision’s ultimate significance will be determined by how China follows-up on it; in its receiving the quasiprecedential status under Chinese law known as a “Guiding Case;” in private litigants in China using all of the procedural and evidentiary tools entrusted to them to litigate antitrust cases going forward based on the lessons learned from this decision; and in the Chinese courts being now entrusted to exercise the administrative review power delegated to them vis-à-vis government agency actions. Given that China is the second largest economy in the world, China’s fostering further the rule of law becomes particularly important not just for its own growth and reform but also for the rest of the world.

10. BEST BUSINESS ARTICLE FOR ECONOMICS
CHALLENGES FOR ECONOMIC ANALYSIS OF MERGERS BETWEEN POTENTIAL COMPETITORS: STERIS AND SYNERGY
JENNIFER CASCONE FAUVER AND SUBRAMANIAM (SUBBU) RAMANARAYANAN, Antitrust (Vol. 30), Summer 2016

The FTC’s failed challenge of the merger between Steris Corporation and Synergy Health in 2015 was based on the potential competition doctrine. In potential competition cases, the theory of harm depends on the predicted increase in future competition that consumers in a relevant market may be denied as a result of a merger.

This article uses the setting of the Steris-Synergy merger, and the arguments employed by the FTC and the merging parties as part of the Preliminary Injunction proceedings, to illustrate the challenges that economists face in analyzing mergers between potential competitors. Specifically, to the extent that the lack of current competition between the merging Parties precludes the use of analyses that are typically part of the merger review toolkit, economists have to resort to innovative workarounds involving the use of documents, such as strategic plans, customer statements and industry reports to gather the data needed for analysis of competitive effects. The article discusses the various sources that could be of use, and also outlines the caveats one ought to employ while using these sources as the basis of the analysis, using specific examples from the Steris-Synergy case to highlight some of the pitfalls involved. This article is particularly helpful to practitioners in thinking through the analyses that need to be undertaken to present a successful case the next time the FTC pursues litigation based on the potential competition doctrine.
newsletters and other professional antitrust publications have been closely reviewed by the Concurrences’ Editorial Board in order to provide practitioners with a useful description and ranking.

Professional antitrust publications include newsletters, blogs, client briefs, memoranda, and freely made available on the Internet. Whereas the Articles Awards reward individual articles, the Newsletters Ranking rewards antitrust newsletters considered overall.

**WHY A RANKING?**

The quality and usefulness of antitrust newsletters and other professional publications vary greatly. Even though all this is going in the right direction due to increased competition among firms as well as among university competition law centers, users’ ability to read or browse such publications is indeed limited. There are just too many of these publications and too many similarities among them for users to be able to effectively assess what is worth reading or watching.

Ranking such publications is intended to guide users on which publications they should read or view first, depending what they are looking for.

**WHAT ARE THE CRITERIA USED TO RANK?**

Antitrust professional publications are ranked according to 10 criteria:

- Readership
- Counsel Choice
- Country Coverage
- Case Coverage
- Cartels
- Mergers
- Intellectual Property
- Private Enforcement
- Asian Antitrust
- Website’s Accessibility

The assessment of the above categories is based on a combination of objective and subjective criteria, together with individual interviews conducted over the phone.
This ranking is based on counsels’ choice of their favorite professional publication (based on a questionnaire sent to 4,685 counsels).

1. BAKER MCKENZIE
2. LINKLETERS
3. ALLEN & OVERY
4. FRESHFIELDS
5. HOGAN LOVELLS
6. CLIFFORD CHANCE
7. CLEARY GOTTlieB
8. GIBSON DUNN
9. NORTON ROSE FULBRIGHT
10. HERBERT SMITH FREEHILLS
11. JONES DAY
12. COVINGTON
13. WHITE & CASE
14. MAYER BROWN
15. SHEARMAN & STERLING
16. WEIL GOTSHAL
17. ARNOLD & PORTER
18. DAVIS POLK
19. KIRKLAND & ELLIS
20. MCDERMOTT
21. SKadden APPs
22. SLAUGHTER & MAY
23. ASHURST
24. DECHERT
25. HAUSFELD
26. PAUL WEISS
27. PROSKAUER
28. SIDLEY AUSTin
29. SIMMONS & SIMMONS
30. WINSTON & STRAWN
### COUNTRY COVERAGE
This ranking is based on the number of jurisdictions addressed in the 2016 publications made available on each firm’s website.

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### CASES COVERAGE
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Antitrust Writing Awards 2017 - 21
This ranking is based on the number of articles concerning IP & Antitrust in 2016 publications made available on each firm’s website.

1. McDermott
2. Norton Rose Fulbright
3. Cleary Gottlieb
4. Weil Gotshal
5. Jones Day
6. Hogan Lovells
7. Shearman & Sterling
8. Allen & Overy
9. Hausfeld
10. Proskauer
11. Sidley Austin
12. Simmons & Simmons
13. Slaughter & May
14. White & Case
15. Winston & Strawn
16. Ashurst
17. Baker McKenzie
18. Covington
19. Davis Polk
20. Dechert
21. Herbert Smith Freehills
22. Linklaters
23. Arnold & Porter
24. Clifford Chance
25. Freshfields
26. Gibson Dunn
27. Kirkland & Ellis
28. Paul Weiss
29. Skadden Arps
30. Weil Gotshal

This ranking is based on objective criteria (pdf/html/print publications, access to archives…) and subjective criteria (design, search engine features…) of each law firm’s website.

This ranking is based on the number of articles concerning private enforcement in 2016 publications made available on each firm’s website.

1. Hausfeld
2. Cleary Gottlieb
3. Norton Rose Fulbright
4. Simmons & Simmons
5. Winston & Strawn
6. Herbert Smith Freehills
7. Slaughter & May
8. Proskauer
9. Allen & Overy
10. Shearman & Sterling
11. Hogan Lovells
12. Mayer Brown
13. Kirkland & Ellis
14. White & Case
15. Ashurst
16. Gibson Dunn
17. Linklaters
18. Minter Ellison
19. McDermott
20. Sidley Austin
21. Skadden Arps
22. Arnold & Porter
23. Baker McKenzie
24. Covington
25. Davis Polk
26. Dechert
27. Jones Day
28. Kirkland & Ellis
29. Paul Weiss
30. Weil Gotshal

This ranking is based on the number of articles concerning Asian antitrust in 2016 publications made available on each firm’s website.

1. Norton Rose Fulbright
2. Cleary Gottlieb
3. Linklaters
4. Mayer Brown
5. Hogan Lovells
6. Allen & Overy
7. Baker McKenzie
8. Jones Day
9. Winston & Strawn
10. Freshfields
11. Sidley Austin
12. Davis Polk
13. Gibson Dunn
14. Herbert Smith Freehills
15. Kirkland & Ellis
16. Ashurst
17. Paul Weiss
18. Shearman & Sterling
19. Slaughter & May
20. White & Case
21. Arnold & Porter
22. Ashurst
23. Covington
24. Dechert
25. Hausfeld
26. McDermott
27. Proskauer
28. Simmons & Simmons
29. Skadden Arps
30. Weil Gotshal

This ranking is based on the number of articles concerning IP & Antitrust in 2016 publications made available on each firm’s website.

1. McDermott
2. Norton Rose Fulbright
3. Cleary Gottlieb
4. Weil Gotshal
5. Jones Day
6. Hogan Lovells
7. Shearman & Sterling
8. Allen & Overy
9. Hausfeld
10. Proskauer
11. Sidley Austin
12. Simmons & Simmons
13. Slaughter & May
14. White & Case
15. Winston & Strawn
16. Ashurst
17. Baker McKenzie
18. Covington
19. Davis Polk
20. Dechert
21. Herbert Smith Freehills
22. Linklaters
23. Arnold & Porter
24. Clifford Chance
25. Freshfields
26. Gibson Dunn
27. Kirkland & Ellis
28. Paul Weiss
29. Skadden Arps
30. Weil Gotshal

This ranking is based on objective criteria (pdf/html/print publications, access to archives…) and subjective criteria (design, search engine features…) of each law firm’s website.
A. AIM

The aim of the Antitrust Writing Awards is to promote competition scholarship and to contribute to competition advocacy. Each year, the Antitrust Writing Awards Jury contributes to this achievement by selecting the best writings published. A Board and two Steering Committees, composed of leading enforcers, academics and counsels, participate impartially in this selection and seek to reward the most meaningful antitrust publications of the past year. The Antitrust Writing Awards consist of:

> Best Articles: Awards for the best academic publications (peer-reviewed or student journals) and best business publications (non-peer-reviewed journals, briefs, memoranda, posts etc.) published by individual authors.

> Most Innovative Soft Law: Selection of the most innovative non-enforcement tools published by competition agencies such as guidelines, market studies, white papers, etc.

> Best Newsletters: Ranking of the best law firms’ antitrust newsletters.

B. BEST ARTICLES

1. ELIGIBILITY

Articles eligible must have been accepted for publication, published or released in print or electronic format in English between January 1st and December 31st, 2016. Articles can be co-authored. Authors eligible are individuals. Articles must be made freely available on the Internet (SSRN, academic websites...) or on the Awards website for the purpose of the Awards in order to allow the Jury to vote. Articles are classified in Academic and Business categories. The Academic category comprises long articles published or accepted for publication in academic peer-reviewed journals, chapters of academic books or student journals, etc. whereas the Business category comprises short articles published in professional publications, such as non-peer reviewed journals, briefs, memoranda, blogs, etc. Each of these categories is sub-divided as follow:

> General Issues
> Concerted Practices: including criminal cartel enforcement, civil federal, state, and private enforcement, treatment of joint ventures, vertical restrictions
> Monopolization/Unilateral Conduct: including attempted monopolization and invitations to collude
> Mergers: substantive merger analysis, merger enforcement and guidelines
> Intellectual Property: issues relating to antitrust and intellectual property
> Private Enforcement: issues relating to antitrust private enforcement
> Cross-border Issues
> Procedural Issues
> Asian Antitrust: issues relating to antitrust enforcement in Asia (China, Japan, India...)
> Economics: including economic theories, models, and statistical tools used in the antitrust field

2. SELECTION & VOTING PROCEDURE

The Editorial Committee selects two pools of eligible academic and business articles based on Concurrences readers’ submissions and the Steering Committees’ suggestions. The readers and the Steering Committees will vote on their favorite articles, resulting in a short list of 40 finalists (20 Academic and 20 Business). Finally, the Board votes for the 20 award-winning articles. Articles are judged on writing, scholarship, originality, practical relevance and the contribution they make to competition advocacy. There is a winning-award article for each of the sub-categories mentioned in 1. above, for each of the Academic and Business categories. However, the Board reserves the right to award fewer Awards than planned if the articles under consideration do not meet the high standards of the Awards.

C. MOST INNOVATIVE SOFT LAW

The “Most Innovative Soft Law” selection aims to contribute to developing antitrust culture and awareness. Alongside the ICN work, it seeks to support international antitrust advocacy by drawing attention towards the most meaningful competition agency practices. It aims at singling out some of the most interesting administration practices that could be usefully applied more generally. The “Most Innovative Soft Law” is neither an award nor a ranking but a mere selection of some of the most innovative soft laws.

1. ELIGIBILITY

Eligible publications are non-enforcement tools such as guidelines, market studies, white papers, etc. issued by competition agencies between January 1st and December 31st, 2016. Publications are judged according to practical relevance, innovation and the contribution they make to competition advocacy. English versions or detailed English summaries are required.

2. SELECTION & VOTING PROCEDURE

The Editorial Committee invites competition agencies to submit their best soft law documents. The Steering Committees and Readers then vote for the 10 most innovative documents.

D. BEST NEWSLETTERS

Whereas the Best Articles Awards reward individual articles, the Best Newsletters Awards and Ranking rewards antitrust newsletters and related free access professional publications considered overall. The Best Newsletters Awards and Ranking’s goal is to promote competition advocacy by selecting the best of these publications in order for counsels to know what they should read first, depending what they are looking for.

1. ELIGIBILITY

Antitrust professional publications include newsletters, client briefs, memoranda, blogs etc. made freely available on websites of law firms. Publications eligible must have been released in English between January 1st and December 31st, 2016. Authors eligible are corporate entities. Publications are ranked according to 10 categories.

> Readership: Award and Ranking based on the number of counsels who acknowledge receiving the surveyed publications (based on a questionnaire send to 4,685 in-house counsels)
> Counsel Choice: Award and Ranking based on the surveyed publications preferred by counsels (based on a questionnaire send to 4,685 in-house counsels)
> Country Coverage: Award and Ranking based on the number of jurisdictions addressed in the publications of each firm

> Case Coverage: Award and Ranking based on the number of cases reported in the publications of each firm
> Cartels: Award and Ranking based on the number of articles concerning cartels in the publications of each firm
> Mergers: Award and Ranking based on the number of articles concerning mergers in the publications of each firm
> IP & Antitrust: Award and Ranking based on the number of articles concerning antitrust and IT published in the publications of each firm
> Private Enforcement: Award and Ranking based on the number of articles concerning private enforcement issues published in the publications of each firm
> Asian Antitrust: Award and Ranking based on the number of articles concerning antitrust in Asia published in the publications of each firm
> Accessibility: Award and Ranking based on objective criteria (pdf/html/print publications, access to archives...). subjective criteria (search engine features...) of the website of each firm

2. SELECTION & VOTING PROCEDURE

The Editorial Committee selects a pool of eligible newsletters and related antitrust professional publications. The assessment of the above Awards and Rankings is based on a combination of objective - and subjective criteria where relevant - together with individual interviews. For the Readership and Counsel’s Choice rankings, the Editorial Committee sends a questionnaire to the 4,685 in-house counsels subscribing to Concurrences Review and e-Competitions Bulletin. Any in-house counsel or general counsel dealing with antitrust law is eligible to vote. Firms considered in the ranking can direct their clients to the online questionnaire in order to include in the survey their own contacts’ votes. A business e-mail is requested in order to make sure only counsels vote.

E. TERMS

1. PUBLICATION

The 2017 Antitrust Writing Awards results are made public at the Gala Dinner which took place on March 28th, 2017, the day before the ABA Antitrust Spring Meeting in Washington, DC. The Antitrust Writing Awards results were announced via social media and emails to subscribers to Concurrences Review and e-Competitions Bulletins after the Awards Gala Dinner. The results are made available on the website. A detailed report is published in a special print issue of Concurrences Review.

2. TERMS OF USE AND PRIVACY POLICY

Individual votes remain confidential. Click here to read the Terms of use and our Privacy Policy.

3. MISCELLANEOUS

The Antitrust Writing Awards are managed by Concurrences Review. Concurrences Review, acting as the event manager, works to ensure that a sufficient number of quality articles and publications are submitted and surveyed, checks eligibility and organizes the Awards ceremony. Any unexpected issues will be dealt with by the Editorial Committee of the Antitrust Writing Awards.
RECEPTION & DINNER

1. B. Buffier (NYSAG), G. McCurdy (Uber), A. Appella (21st Century Fox)
2. A. Bomhoff (DG COMP), M. Woude (Court of Justice, EU), J. Laitenberger (DG COMP)
3. J. Briggs (Perri), G. Sivinski (Microsoft), M. Weiner (Dechert)
4. M. Heim (Qualcomm), R. Tuffett (Morgan Lewis), G. Levine (Uber)
5. M. Ohlhausen (US FTC), R. Zhang (UIBE), Y. Huang (UIBE)
6. Maureen Ohlhausen (US FTC), Bill Kovacic (GWU Law)
7. G. McCurdy (Uber), V. Domen (Tennessee - Office of the AG), S. Stack (Dechert)
8. P. Kirch (Paul Hastings), R. Coninck (CRA)
1, 6, 7, 8, 9 Guests

2  Matthew Bye (Google)

3  Neill Norman (Cornerstone Research)

4  Steve Reed (Morgan Lewis)

5  Bill Kovacic (GWU Law)
The Concurrences Antitrust Writing Awards Initiative fosters dialogue, debate and learning in the competition community worldwide. Introducing the Most Innovative Soft Laws Category contributes to the exchange of best practices and the increasing convergence between jurisdictions. The 2017 vintage was a moment of stimulating conversation of celebrating ideas.”

Johannes Laitenberger, DG COMP (2017)

With their outstanding contributions the authors play a key role in helping the antitrust community to keep ahead of global developments. The Antitrust Writing Awards are a great forum that pays tribute to their excellent work.”

Andreas Mundt, Bundeskartellamt (2016)

By recognizing superior writing in academia and practice, the Antitrust Writing Awards enhance the indispensable intellectual infrastructure of our field.”


The Antitrust Writing Awards are the right event, on the right issue, at the right time. I thank George Washington University Law School and the Institute of Competition Law for launching this initiative.

Frédéric Jenny, OECD Competition Committee (2015)

Having served as a member of the panel bestowing the 2014 Concurrences Awards for excellence in antitrust writing, I was very pleased to find the submissions ranged from the merely good to the truly outstanding. These awards have surely made antitrust academics and practitioners more alert to the value of writing well, with attention not only to substantive analysis but also to clarity and economy of presentation. Our field is blessed with an erudite academy and an intellectually sophisticated bar; the Concurrences Awards bring out the best in both.”

Douglas H. Ginsburg, George Mason University (2014)

The Antitrust Writing Awards are a unique opportunity to read some of the best academic and business articles of the year. I thoroughly enjoyed the different perspectives on antitrust that each article provided, as well as the well-crafted arguments put forward by their talented writers.”

Alexander Italianer, European Commission (2013)

I truly enjoyed taking part in the 2013 Antitrust Writing Awards, which serves an important function in helping promote quality articles in the antitrust field. It is also an illustration of the cooperation at play between antitrust publications to ensure the greatest circulation of academic and professional expertise.”

Bruno Lasserre, French Competition Authority (2013)
The awards ceremony was a rewarding event in more ways than one. It was a pleasure to see these outstanding authors from all over the world and to hear a synthesis of their work which has contributed so much to the law and its practice.”

Eleanor Fox, New York University School of Law (2013)

There is a great deal of writing in the area of antitrust, ranging from lengthy scholarly articles to short, timely notes on key cases. The Antitrust Writing Awards uniquely embrace and celebrate that scope for the benefit of all workers in the field.”

Janusz A. Ordover, New York University (2012)

The Antitrust Writing Awards promote valuable interaction among antitrust experts bringing the best possible selection of antitrust writings to the reader. As in-house counsel and member of the Business Steering Committee I truly value the useful insights and guidance offered by the articles I had the honor and pleasure to evaluate.”

Anna Rosa Cosi, SanDisk (2016)

The Antitrust Writing Awards bring together practical and theoretical scholarship that benefits everyone in the field. The focus on both scholars and practitioners from all over the world realizes economies of both scope and scale when addressing antitrust concerns. It was a pleasure to be involved in this year's activities.”

Timothy Boyle, Eaton (2016)
I commend the organisers for recognizing professional writing as a specific category. This initiative will, I hope, increase the quality and depth of such writing to provide the practical complement to academic articles.”

Mathew Heim, Qualcomm (2015)

The quality and conciseness of the Business Articles, as well as the experience and knowledge which their authors are sharing, are of great use to corporate lawyers.”

Jean-Yves Art, Microsoft (2013)

The Antitrust Writing Awards bring together the Academic and the Business world from many countries, contribute to a better understanding of other legal cultures and thereby promote the global development of Competition law.”

Olaf Christiansen, Bertelsmann (2013)

It was a pleasure to participate at a prestigious Antitrust Writing Award Gala Dinner.”


I was honored to receive an award for my article with Carl Minniti on citizen petitions. Our empirical study showed that there is a concern that the activity, which is designed to raise safety concerns, has been used by brand drug companies to delay generic entry. It is a true honor to receive such an award, which will hopefully raise awareness of this conduct. And I am grateful to Concurrences and GW for their creation of these awards and all of the work they do every year to run the competition and host a delightful dinner. In highlighting scholarship that is particularly deserving of attention, Concurrences and GW provide a real service to the antitrust community.”

Michael Carrier, Rutgers School of Law (2017)

The Antitrust Writing Awards are pivotal in promoting and showcasing excellence in antitrust scholarship. The nominations provide a reliable list of the year’s must-read pieces on all aspects of competition law. It is an honour to have been nominated in 2017 and to have won the Readers’ Vote in the category of Cross-Border Issues for my piece on leniency programmes.”

Sandra Marco Colino, The Chinese University of Hong Kong (2017)

The Antitrust Writing Awards not only brings well deserved recognition to those who have a true passion for competition law but more importantly, provides the priceless benefit of challenging our intellect with their theories, knowledge, expertise and talent.”


The Competition Bureau was honoured to receive the “Best Innovative Soft Law” distinction for its Intellectual Property Enforcement Guidelines. Thank you to the Antitrust Writing Awards for increasing knowledge and promoting a shared understanding of the best, most forward-thinking and innovative practices within the antitrust community.”

Vicky Eatrides, Deputy Commissioner of Competition, Competition Bureau of Canada (2017)

As a 2017 academic writing winner for my work with Michal Gal and a former member of the Academic Steering Committee I am appreciative of the highly successful effort that Concurrences and GW Law have made to encourage and to reward writing efforts by incredible area of academics and practitioners.”

Daniel Rubinfeld, NYU Law (2017)

The jury reviewed and selected a great number of publications with real diligence. This not only rewards the authors, but also is very helpful for practitioners, because it highlights the most interesting and influential papers from an increasing flood of publications that is more and more difficult to follow. We were honoured to receive an award for our firm’s alert memoranda and for several articles authored by lawyers from our firm, and we are grateful to Concurrences for this excellent initiative.”

Maurits Dolmans, Cleary Gottlieb Steen & Hamilton (2016)
Many thanks to Concurrence and its distinguished board for recognizing practical pieces as well academic articles on competition law and policy. I was very pleased and surprised that my article on global antitrust compliance was selected in the Cross Border business category. In this particularly challenging and ever changing area, we all have much to learn as we seek to understand and comply with the competition laws of other countries entering the global arena.”


The Awards celebrate excellence in an area that clients find important and where most competition lawyers practice every day: explaining in plain language what the law is and where it is—or should be—heading.”

**Steve Cernak,** Schiff Hardin (2014)

We are pleased with the significant contribution that the Antitrust Writing Awards program makes to the development and promotion of antitrust scholarship and practical business literature.”

**J. Mark Gidley,** White & Case (2013)

It was an honor to have our paper reviewed and considered by such a distinguished panel of luminaries, with such leading thinkers in both Europe and the United States. The concept of encouraging excellence in both academic and more practical writings on competition is an excellent one, and Concurrences has done a remarkable job in creating a process for doing so.”


The Antitrust Writing Awards represent a unique initiative to reward pure and applied research in antitrust. Academics and practitioners making valuable contributions to the literature see their names recognised and their work publicized. On a personal front, I have enjoyed reading some of the papers that were selected this year, most of which I would have overlooked absent this initiative.”

**Jorge Padilla,** Compass Lexecon (2013)
Established in 1865, The George Washington University Law School is the oldest law school in Washington, DC. The school is accredited by the American Bar Association and is a charter member of the Association of American Law Schools. The George Washington University Law School founded the Competition Law Center (CLC) in March 2008 with a generous cy pres award from the United States District Court for the District of Columbia. The CLC promotes the effective design and implementation of competition law systems in the United States and abroad.

Concurrences is a print and online quarterly peer-reviewed journal dedicated to EU and national competitions laws. Launched in 2004 as the flagship of the Institute of Competition Law, the journal provides a forum for both practitioners and academics to shape national and EU competitions policy. Its articles and research programs have influenced legal theory and practice, occasionally effecting change in public policy or specific cases.

In addition to the journal, Concurrences publishes e-Competitions, an online resource that provides consistent coverage of antitrust cases from 55 jurisdictions, organized into a searchable database structure. Concurrences is also the publisher of several antitrust books inter alia, “William E. Kovacic - An Antitrust Tribute - Liber Amicorum” and “Antitrust Case Digest.”

Finally, Concurrences organizes events and lunch-talks in Paris, Brussels, London, New York City, Washington DC, Singapore, and Hong Kong.
The Survey was sent from November 29, 2016 to January 18, 2017 to 4,685 in-house counsels. The counsels interviewed cover more than 15 industries. Among these counsels, 25% are General Counsels and 75% Antitrust Counsels. 52% of the respondents completed the survey online. 48% were interviewed and offered their opinion over the phone. Individual answers are kept confidential; only aggregated data are provided herein.

Survey Coverage per Industry

- Aerospace/Defense
- Agriculture/Food Products
- Automobile
- Energy
- Financial Services/Insurance
- Information Technology
- Luxury
- Media
- Media/Telecommunications
- Other Industry
- Pharmaceuticals/Chemical Industry
- Transports
- Other Services

Survey Coverage per Geographical Area

- Europe
- America
- Asia
- Africa
- Oceania

Survey Coverage: Represented Corporations (excerpt)

<table>
<thead>
<tr>
<th>Category</th>
<th>Corporations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aerospace/Defense</td>
<td>Airbus, Boeing, Dassault, EADS, Safran, Sncema, Thales...</td>
</tr>
<tr>
<td>Agriculture/Food Products</td>
<td>AB-InBev, Coca-Cola, Baccardi, Kraft, Nestle, Panzani, PepsiCo, Saint Louis Sucre...</td>
</tr>
<tr>
<td>Automobile</td>
<td>Ford, General Motors, Nissan, PSA, Renault, Toyota, Volkswagen, Volvo...</td>
</tr>
<tr>
<td>Energy</td>
<td>American Electric Power, BP, E-On, EDF, Exxon, Framatome, GDF Suez, IJP, Powernext, RTE, Shell, Suez Tractebel, Total...</td>
</tr>
<tr>
<td>Entertainment</td>
<td>21st Century Fox, Clear Channel, Time Warner, Viacom, Walt Disney, Warner Music...</td>
</tr>
<tr>
<td>Information Technology</td>
<td>Amazon, Apple, Ericsson, Google, Hewlett-Packard, IBM, Iliad, LD Com, Microsos, Nexans, Oracle, Qualcomm, Rim, Samsung, Sony, Spot, Sun Microsystems, Symandic...</td>
</tr>
<tr>
<td>Luxury</td>
<td>Burberry, Chanel, Coach, Hermès, LACOSTE, L’Oréal, LVHM, PPR...</td>
</tr>
<tr>
<td>Pharmaceuticals/Chemical Industry</td>
<td>Abbott, Aventis, AstraZeneca, Bayer, BASF, Boiron, Colgate, Clarian, DuP ont de Nemours, Ecolab, GlaxoSmithKline, IMS, Ipsen, Johnson and Johnson, Moneaz, Novartis, Pfizer, Procter &amp; Gamble, Rhodia, Sanofi, Servier, Solvay, Unilever...</td>
</tr>
<tr>
<td>Telecommunications/Postal Services</td>
<td>Alcatel, AT&amp;T, Belgacom, British Telecom, Bouygues Telecom, Cegettel, Chronopost, Emettel, Geopost, La Poste, Neopost, Orange, SFR, Rom Telecom, Sta Aeri, TDF, Telefónica Italia, T-Mobile, Verizon...</td>
</tr>
<tr>
<td>Transports</td>
<td>ADF, Air France, American Airline, British Airways, Chargeurs Interlining, Eurotunnel, SNCF, Thalys, Virgin, United Airlines...</td>
</tr>
<tr>
<td>Other Services</td>
<td>Alltran, ASIF, Auchan, Aviva, Bouygues, Brinks, Brwin, Capgemini, Carrefour, Carlson Wagonlit, Club Med, FFF, Frire, IECON, Ivicec, JDC decaux, Manpower, Mangas Garrin, MEDEF, LFP, Partouche, Prestatials, Price Minister, PMU, Publicis, Saur, Sanef, Sodesco, Sothebys, Vedelitps, Veolia, Vivendi, SAP, Sodesco, Suez, Walmart...</td>
</tr>
</tbody>
</table>

**SUMMARY**

The aim of the Survey is to assess in-house counsel’s readership and choices when it comes to antitrust client alerts released by law firms and related professional publications such as newsletters, briefs, memoranda, etc. The execution of the Survey leads to 26 findings (see pp. 5-9). Here are the 6 key findings:

1. **SHARE OF READING**
   - 65% of in-house counsels find client alerts of relevance (for their practice).
2. **CONTENT OF READING**
   - 87% of in-house counsels read newsflash, analysis, or reporting (for their practice).
3. **FORWARDING**
   - 98% of in-house counsels forward client alerts when needed (for their practice).
4. **SPECIALIZATION**
   - 98% of in-house counsels receive antitrust client alerts (see p. 5).
5. **QUALITY OF READING**
   - 87% of in-house counsels link the quality of a client alert to its opinion (for their practice).
6. **ADDITIONAL BENEFITS**
   - 45% of in-house counsels have contacted a counsel based on reading his/her client alerts (see p. 9).

An Appendix lists 15 recommendations on format and content expressed by in-house counsels. The counsels interviewed are a pool of in-house counsels with an interest in antitrust matters and the Survey resulted from a partnership between Lavoie Conseils and the Antitrust Writing Awards 2017.
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EXECUTIVE SUMMARY

> This Report summarizes the results of the Survey designed by Concurrences Review for the 2017 Antitrust Writing Awards.

> The Aim of the Survey is to assess in-house counsel’s readership and choices when it comes to antitrust client alerts released by law firms and related professional publications such as newsletters, briefs, memoranda, etc.

> The Survey leads to 26 findings (see pp. 5-9). Here are the 6 key findings:

98% of in-house counsels receive antitrust client alerts (see p. 5).

The shortcoming most commonly cited is the insufficiency of practical orientation and relevance (see p. 9).

87% of in-house counsels link the quality of the client alerts to their opinion of law firms (see p. 9).

65% of in-house counsels find client alerts relevant—to some extent—to their practice (see p. 8).

31% of client alerts are just browsed (and not read): carefully crafting titles is key (see p. 6).

> An Appendix lists 15 recommendations on format and content expressed by in-house counsels (see pp. 10-11).
WHY A SURVEY?

This is the first survey and ranking of Antitrust Professional Publications of its kind, i.e., publications such as client alerts, newsletters, briefs, memoranda, etc., released by law firms. While the number of these publications is constantly increasing, their quality and worth vary greatly. At the same time, clients have limited time to search, browse, and read such publications.

This Survey report is meant to achieve a two-pronged result.

> First, it may serve as a guide for recipients of Antitrust Professional Publications (i.e., in-house counsels) in order to make it easier for them to select and read only those publications that are more interesting and relevant to their practice.

> Second, this report also provides feedback for authors of Antitrust Professional Publications (i.e., law firms) as it include qualities, shortcomings, and other comments made by in-house counsels on how newsletters and alerts should be written.

The complete results of this Survey are summarized in the following pages.

There are around 80 Antitrust Professional Publications published on a weekly, monthly, or quarterly basis. The Survey limits itself to the most 30 important ones viewed on a global scale.

List of Law Firm Publications Reviewed

Allen & Overy
Arnold & Porter
Ashurst
Baker McKenzie
Cleary Gottlieb
Clifford Chance
Covington & Burling
Davis Polk
Dechert
Freshfields

Gibson Dunn
Hausfeld
Herbert Smith Freehills
Hogan Lovells
Jones Day
Kirkland & Ellis
Linklaters
Mayer Brown
McDermott
Norton Rose Fulbright

Paul Weiss
Proskauer
Shearman & Sterling
Sidley Austin
Simmons & Simmons
Skadden Arps
Slaughter and May
Weil Gotshal & Manges
White & Case
Winston & Strawn

CONTACT

If you want to learn more about this Survey Report and the Newsletters Ranking, contact awards@concurrences.com
INTERPRETATION OF RESULTS

The Survey included 26 questions aimed at assessing the in-house counsels’ opinion of Antitrust Professional Publications in relation to their features, qualities & defects, and practical usage. The Survey is divided in 2 parts: Part 1 deals with Facts, Part 2 deals with Assessment.

1. FACTS

> QUANTITY

The Survey first asked how many Antitrust Professional Publications are received by each responding in-house counsel. The most striking result is that all interviewed in-house counsels receive at least one Antitrust Professional Publication.

> FREQUENCY

The Survey then focused on how often Antitrust Professional Publications are released, sent out and thus received by in-house counsels. As the chart at the right shows, 65.3% are ad hoc publications that are released to coincide with a recent piece of legislation or decision. 18.4% of Antitrust Professional Publications are released on a weekly basis, 14.3% are released on a monthly basis.

> CATEGORIES: GENERAL VS. SPECIALIZED

As to the type of Antitrust Professional Publications, as shown by the chart at the right, 18% are general antitrust (i.e., covering various antitrust issues), while only 24.5% are specialized (i.e., dealing only with specific issues such as Antitrust & IP or Antitrust in Asia, etc.)

> In-house counsels are subject to intense marketing from numerous law firms. 42.5% of respondents get between 5 and 8+ Antitrust Professional Publications. 57.4% receive between 1 and 4 antitrust alerts.

> The option of not publishing - or not sending - any type of Antitrust Professional Publications should be carefully assessed by law firms as their clients or prospects will be reached by other firms in any case.

How many different Antitrust Professional Publications do you receive?

<table>
<thead>
<tr>
<th>Number of Publications</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>2%</td>
</tr>
<tr>
<td>1</td>
<td>4.3%</td>
</tr>
<tr>
<td>2</td>
<td>8.5%</td>
</tr>
<tr>
<td>3</td>
<td>27.8%</td>
</tr>
<tr>
<td>4</td>
<td>19.1%</td>
</tr>
<tr>
<td>5</td>
<td>10.6%</td>
</tr>
<tr>
<td>6</td>
<td>2.1%</td>
</tr>
<tr>
<td>More than 6</td>
<td>25.5%</td>
</tr>
</tbody>
</table>

How often do you receive Antitrust Professional Publications?

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daily</td>
<td>2%</td>
</tr>
<tr>
<td>Weekly</td>
<td>14.3%</td>
</tr>
<tr>
<td>Monthly</td>
<td>18.4%</td>
</tr>
<tr>
<td>Depends on the publication</td>
<td>65.3%</td>
</tr>
</tbody>
</table>

Are these publications general - i.e., covering various business law issues - or specialized in antitrust issues?

<table>
<thead>
<tr>
<th>Type of Publication</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Both</td>
<td>24.5%</td>
</tr>
<tr>
<td>General</td>
<td>18.4%</td>
</tr>
<tr>
<td>Specialized</td>
<td>57.1%</td>
</tr>
</tbody>
</table>
The Survey explored more practical habits of the interviewed pool when it comes to Antitrust Professional Publications. Readers were asked what they usually do when receive the alert: 72% of respondents either read it or browse titles, while 17% and 11% save or print it respectively.

Antitrust Professional Publications are the most common way – with lawyer profiles – of bringing in-house counsels to visit firms’ websites.

Antitrust Professional Publications are read within a maximum of a week and then forgotten or disposed of.

Having this in mind, it is important to assess carefully the best timing for release and transmission of these professional publications.

Only 40% of Antitrust Professional Publications are actually read, whereas 30% are just browsed. Crafting perfect titles is of key importance.

When asked when they usually read the publication, a large majority of the in-house counsels try to read it either the same day (24.5%) or during the week they receive it (61.2%).

When do you read them?

- The day of reception: 24.5%
- Later: 14.3%
- During the week: 61.2%

Do you visit law firm websites to browse their publications without having actually received them?

- Never: 38.6%
- Sometimes: 53.1%
- Often: 8.2%

What do you generally do with these publications?

- Read articles: 45.9%
- Browse titles: 17.2%
- Save articles: 31.2%
- Print articles: 10.8%

Do you forward Antitrust Professional Publications?

- No: 28.6%
- Yes: 71.4%

When asked whether readers forward the alerts received, the majority of the respondents (71%) state that they may forward it to other colleagues, should the alerts be relevant in terms of content and quality.

Swifter dissemination could be achieved via social media share buttons such as ‘Tweet this’ or ‘Like This’.
> BENEFITS

Interviewed in-house counsels highlight the fact that the benefits most appreciated in Antitrust Professional Publications are that they attract readers’ attention to new points of law (+65%) as well as providing a general update on relevant legal issues (+65%).

> In-house counsels mainly use Antitrust Professional Publications to keep abreast of new legal developments in their field of expertise.

> In-house counsels also find substantial benefits in learning about other areas of antitrust law. These publications are also used to bring basic knowledge to non-specialists in a particular field of antitrust law.

> What are the benefits of Antitrust Professional Publications?

<table>
<thead>
<tr>
<th>Benefit</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>They provide general updates</td>
<td>68%</td>
</tr>
<tr>
<td>They attract my attention to new issues</td>
<td>66%</td>
</tr>
<tr>
<td>They provide new insights on risks relevant to my business</td>
<td>62%</td>
</tr>
<tr>
<td>They inform me about specialized areas of legal practice</td>
<td>52%</td>
</tr>
<tr>
<td>Other</td>
<td>8%</td>
</tr>
</tbody>
</table>

> SENDERS: TOP 30 LAW FIRMS

The Survey also looked at the most common Antitrust Professional Publications received. The chart below lists the 30 most popular ones.

> The Baker McKenzie Client Alert is the most commonly received antitrust professional publications by respondents’ in-house counsels (48%).

> Allen & Overy (36%), Clifford Chance (32%), Freshfields (32%) and Linklaters (30%) are close behind.

From which firms do you receive Antitrust Professional Publications?

- Baker McKenzie: 48
- Allen & Overy: 36
- Clifford Chance: 32
- Freshfields: 32
- Linklaters: 30
- Hogan Lovells: 28
- Norton Rose Fulbright: 22
- Cleary Gottlieb: 18
- Jones Day: 16
- White & Case: 16
- Covington & Burling: 12
- Gibson Dunn: 12
- McDermott: 12
- Simmons & Simmons: 12
- Ashurst: 12
- Herbert Smith Freehills: 10
- Sladden Arps: 10
- Dechert: 8
- Wall Gotshal & Mangas: 8
- Davis Polk: 6
- Mayer Brown: 6
- Shearman & Sterling: 6
- Sidley Austin: 6
- Slaughter and May: 6
- Arnold & Porter: 4
- Kirkland & Ellis: 4
- Paul Weiss: 4
- Hausfeld: 2
- Proskauer: 2
- Winston & Strawn: 2

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2. ASSESSMENT

> QUALITY

A large majority of in-house respondents (77.6%) consider the Antitrust Professional Publications they received “good”, and 2% “excellent”.

> RELEVANCE

The Survey inquired whether Antitrust Professional Publications were relevant to in-house counsels’ practice. Although a majority of in-house counsels acknowledged that Antitrust Professional Publications were relevant to their practice (65.3%), nearly 33% claimed that their relevance varies.

> Nearly 80% of in-house counsels claim to be satisfied with the quality of the law firms’ publications, a surprisingly high percentage in view of the sometimes low consideration shown by lawyers themselves for their own production.

> Although the relevance rate is fairly high, there is substantial room for improvement. An Appendix to this Report provides 15 in-house counsels’ recommendations on how to improve relevance.

Data shows that for some law firms there is a strong connection between the readership rate and the relevance rate.

The charts below lists 30 law firms’ Antitrust Professional Publications sorted by order of relevance according to the respondents.

<table>
<thead>
<tr>
<th>Law Firm</th>
<th>Relevance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baker McKenzie</td>
<td>10</td>
</tr>
<tr>
<td>Linklaters</td>
<td>10</td>
</tr>
<tr>
<td>Allen &amp; Overy</td>
<td>14</td>
</tr>
<tr>
<td>Freshfields</td>
<td>16</td>
</tr>
<tr>
<td>Hogan Lovells</td>
<td>16</td>
</tr>
<tr>
<td>Clifford Chance</td>
<td>14</td>
</tr>
<tr>
<td>Cleary Gottlieb</td>
<td>12</td>
</tr>
<tr>
<td>Gibson Dunn</td>
<td>10</td>
</tr>
<tr>
<td>Norton Rose Fulbright</td>
<td>10</td>
</tr>
<tr>
<td>Herbert Smith Freehills</td>
<td>8</td>
</tr>
</tbody>
</table>

What is the quality of Antitrust Professional Publications?

![Quality Chart]

Are Antitrust Publications you receive relevant to your practice?

![Relevance Chart]

The charts below lists 30 law firms’ Antitrust Professional Publications sorted by order of relevance according to the respondents.

<table>
<thead>
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<th>Law Firm</th>
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<td>8</td>
</tr>
</tbody>
</table>

Jones Day 8
Covington & Burling 5
White & Case 6
Mayor Brown 4
Shearman & Sterling 4
Weil, Gotshal & Manges 4
Arnold & Porter 2
Davis Polk 2
Kirkland & Ellis 2
McDermott 2
Skadden Arps 2
Slaughter and May 2
Ashurst 0
Dechert 0
Hausfeld 0
Paul Weiss 0
Proskauer 0
Sidley Austin 0
Simmons & Simmons 0
Winston & Brown 0

What is the quality of Antitrust Professional Publications?

Excellent 77.8%
Good 10.2%
Average 10.2%
It varies 2%

Are Antitrust Publications you receive relevant to your practice?

Relevant 65.3%
Not Relevant 32.7%
Depends 2%
> **SHORTCOMINGS**

The Survey then offered a list of possible shortcomings of antitrust professional publications as perceived by in-house counsels: Practical orientation, Length (too short or too long), Jurisdictions, Quality, and Promptness. Results are as follows:

- Practical orientation is the issue.
- Quality is not the most significant issue where alerts are concerned. It is listed only 5%.
- More prompt publication would be welcome.
- A greater variety of jurisdictions covered is expected.
- Opinions diverge on length, some considering the alerts on average too long, others stating that they are too short.

> **LAW FIRMS’ REPUTATION**

In connection to quality, it was also asked whether Antitrust Professional Publications contribute to the reputation of law firms.

> According to the vast majority of in-house counsels, the quality and relevance of Antitrust Professional Publications directly affect the opinion they have of the law firms.

> Do publications from a given firm contribute to your opinion of that firm?

![Graph showing the contribution of publications to opinion of a firm.](image)

> **BUSINESS CONTACT / HIRING**

Furthermore, the Survey asked about what happens after the alert is sent and read. Has the reader ever contacted the author of the publication? 36.7% and 44.9% of interviewed respondents have respectively contacted and retained the author of a publication.

**Have you ever contacted the author of a publication after reading it?**

- Never: 36.7%
- Sometimes: 63.3%

**Have you ever retained such author after reading his publication?**

- Never: 44.9%
- Sometimes: 55.1%
**15 RECOMMENDATIONS BY IN-HOUSE COUNSELS**

1. “More webcasts and video-conferences could be useful.”

2. “In-house counsels have limited time and ability to focus. Successful articles for me are more like Kiplinger’s and less like War and Peace. Short and to the point transmitting just the practical, essential information. If I want a deeper dive, I can always get it.”

3. “A lot depends on the writer. Some are far too academic, some are too broad sweeping. The «baby bear» bowl of porridge is a matter of one’s own preferences.”

4. “Make more references to previous case law.”

5. “Add links to the items being discussed.”

6. “Include a Q&A section.”

7. “Find new ways of communicating, more focus on emerging markets.”

8. “Simplify legal jargon.”

9. “The very worst tendencies of firms to discuss their own victories in court seem to be especially evident in these newsletters. I would tone that down.”

10. “A transversal regular update (Law/Case Law/Regulatory/Conf) would be very useful, on a weekly or bi-monthly basis to keep current on changes to antitrust laws in key jurisdictions, and written in a practical language, not academic. The most useful are articles I can share with my business partners.”

11. “Not really interpretation of new laws: be bolder in suggesting in your articles how new laws should be applied by regulators, sometimes they don’t know how to apply it themselves and pay attention to how others reputable legal practitioners are viewing the implementation.”

12. “Be more practical and show a more balanced risk approach providing real solutions rather than only suggesting to contact outside legal counsel.”

13. “Timely publication is really important, as well as being as broad as possible. Most publications cover the large cases from the EU/US but as an in-house counsel with a global coverage it is really valuable for me to also get coverage on national developments worldwide.”

14. “Have more articles about issues with e-commerce.”

15. “Make digest regular on-spot news on turning points of antitrust authorities practice or changes of law.”
2018 AWARDS: NOW OPEN FOR SUBMISSIONS

The Antitrust Writing Awards Editorial Committee is currently selecting papers for the 2018 Awards. Eligible papers need to be published or accepted for publication in 2017. To submit a paper, email a pdf version or a link to the article to awards@concurrences.com. Deadline for submission is December 31, 2017. Results will be announced at the occasion of the Gala Dinner to take place on April 10, 2018 in Washington, DC.