

The Journal of Corporate & Financial Law presents



The Battle with Big Tech: Analyzing Antitrust Enforcement and Proposed Reforms

Friday, November 4, 2022

1 - 5:30 p.m. | program

**Fordham Law School
Costantino Room, Second Floor
150 West 62nd Street
New York, NY 10023**

Live Broadcast: Via Zoom



FORDHAM UNIVERSITY
THE SCHOOL OF LAW

The Journal of Corporate & Financial Law 2022 Symposium - Agenda

12:30 - 1 p.m. | Registration

1 - 1:30 p.m. | Welcome and Introductory Remarks

Morgan Hagenbuch, Symposium Editor, Journal of Corporate & Financial Law

Youngjae Lee, Professor and Associate Dean of Research, Fordham Law School

1:30 - 2:45 p.m. | Panel 1: How Did We Get Here? A Review of Major Antitrust Cases, Questions, and Controversies

(1.5 professional practice CLE)

Harry First, Charles L. Denison Professor of Law, New York University School of Law

Jonathan Jacobson, Senior Of Counsel, Wilson Sonsini Goodrich & Rosati

Spencer Weber Waller, John Paul Stevens Chair in Competition Law, Loyola University Chicago School of Law

2:45 - 2:55 p.m. | Break

3 - 4:15 p.m. | Panel 2: What's Next? A Discussion on the Desirability of Reforms

(1.5 professional practice CLE)

Makan Delrahim, Partner, Latham & Watkins

Kelly Fayne, Partner, Latham & Watkins

Marc Lanoue, Chief Antitrust and Competition Counsel, Senator Amy Klobuchar

Dina Srinivasan, Researcher

4:15 - 4:25 p.m. | Break

4:30 - 5 p.m. | Keynote Address

Maureen K. Ohlhausen, Section Chair - Antitrust & Competition Law (Firmwide), Partner, Baker Botts

5 - 5:15 p.m. | Closing Remarks

Morgan Hagenbuch, Symposium Editor, Journal of Corporate & Financial Law

5:15 - 6:15 p.m. | Reception

CLE Information

CLE credits are approved in accordance with the requirements of the New York State and New Jersey State CLE Boards for a maximum of 3.0 transitional and non-transitional professional practice credit.

The Journal of Corporate & Financial Law 2022 Symposium - *Speaker Bios*



Makan Delrahim
Partner, Latham & Watkins

Mr. Delrahim draws on more than a decade of government experience to skillfully help clients across the full spectrum of industries and institutions navigate:

- Merger control procedures
- Complex commercial transactions
- Regulatory and government compliance issues
- Government investigations, including congressional inquiries

As Assistant Attorney General at DOJ, Mr. Delrahim oversaw the review and resolution of hundreds of mergers and acquisitions, as well as more than 100 criminal investigations and indictments. Mr. Delrahim played a vital role in building the Antitrust Division's engagement with its international counterparts, and is recognized as one of the most transformative and effective leaders of the division. He is a respected thought leader on the interplay of antitrust and emerging technologies, including digital media, communications, and blockchain. He previously served as Deputy Assistant Attorney General of the Antitrust Division overseeing International and Appellate (2003-2005), a Commissioner on the Antitrust Modernization Commission (2004-2007), and as antitrust counsel and later as Staff Director and Chief Counsel of the US Senate Judiciary Committee (2000-2003).

Mr. Delrahim currently teaches a course on M&A transactions and multiple government bodies' roles in reviewing transactions as an Adjunct Lecturer in Law at the University of Pennsylvania. He previously served on the Attorney General's Task Force on Intellectual Property and as Chairman of the International Competition Network's Merger Working Group.

Makan Delrahim is an antitrust and competition

partner in the Century City and Washington, D.C. offices of Latham & Watkins.



Kelly Fayne
Partner, Latham & Watkins

Kelly Fayne is a partner in the San Francisco office of Latham & Watkins and a member of the Antitrust & Competition Practice.

Ms. Fayne is a globally recognized advisor of clients in government reviews of mergers and acquisitions, antitrust compliance and counseling, and government conduct investigations. She also works closely with experts in preparing and presenting antitrust economic analysis and econometrics. Ms. Fayne represents clients from a wide range of industries, including:

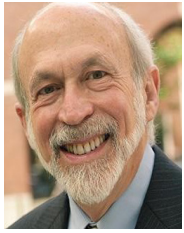
- High technology
- Entertainment and media
- Semiconductors
- Private equity
- Telecommunications
- Pharmaceuticals
- Logistics

Ms. Fayne has experience advocating for clients before several global antitrust regulators including in the US, European Union, United Kingdom, Australia, and across Asia and Latin America. She is also actively involved in the ABA Antitrust Section, writes and is invited to speak frequently on a range of antitrust issues, currently serves as vice chair of the ABA Antitrust Section Economics Committee, and has served as senior editor of the Antitrust Law Journal.

Ms. Fayne is a local leader of Latham's Bay Area Women Enriching Business (WEB) Committee, a firm-wide initiative developed to promote the long-term success of women lawyers and executives.

Ms. Fayne was previously an analyst at a major economic consulting firm supporting expert economists in antitrust and intellectual property

matters.



Harry First

*Charles L. Denison Professor of Law,
New York University School of Law
Co-Director, Competition, Innovation,
and Information Law Program, New
York University School of Law*

Harry First is the Charles L. Denison Professor of Law at New York University School of Law and Co-Director of the law school's Competition, Innovation, and Information Law Program. From 1999-2001 he served as Chief of the Antitrust Bureau of the Office of the Attorney General of the State of New York. Professor First's teaching interests include antitrust, regulated industries, international and comparative antitrust, business crime, and innovation policy. Professor First is the co-author of the casebook *Free Enterprise and Economic Organization: Antitrust* (7th Ed. 2014) (with John Flynn and Darren Bush), as well as a casebook on regulated industries (with John Flynn). He was twice a Fulbright Research Fellow in Japan and taught antitrust as an adjunct professor at the University of Tokyo.

Professor First's most recent scholarly work has focused on various aspects of antitrust enforcement and theory. These include: *The Microsoft Antitrust Cases: Competition Policy for the Twenty-first Century* (with Andrew I. Gavil) (MIT Press, 2014), winner of the Jerry S. Cohen Memorial Fund Writing Award for Antitrust Scholarship; "Exploitative Abuses of Intellectual Property Rights" in *The Cambridge Handbook of Antitrust, Intellectual Property, and High Tech* (2017); "Philadelphia National Bank, Globalization, and the Public Interest" (*Antitrust Law Journal*, 2015) (with Eleanor M. Fox); "Your Money and Your Life: The Export of U.S. Antitrust Remedies" in *Global Competition Law and Economics* (Stanford Univ. Press, 2013); "Antitrust's Democracy Deficit" (with Spencer Weber Waller) (*Fordham Law Review*, 2013), winner of the Institute of Competition Law's 2014 Antitrust Writing Award for Best General Antitrust Academic Article; and two chapters

in *The Design of Competition Law Institutions: Global Norms, Local Choices* (Oxford Univ. Press, 2013), one dealing with the United States (with Eleanor Fox and Daniel Hemli), the other with Japan (with Tadashi Shiraishi). First is also the author of a casebook on business crime and of "Business Crime and the Public Interest: Lawyers, Legislators, and the Administrative State" (*University of California Irvine Law Review*, 2012).

Professor First is a contributing editor of the *Antitrust Law Journal*, foreign antitrust editor of the *Antitrust Bulletin*, a member of the executive committee of the Antitrust Section of the New York State Bar Association, and a member of the advisory board and a Senior Fellow of the American Antitrust Institute.



Jonathan Jacobson

*Senior Of Counsel, Wilson Sonsini
Goodrich & Rosati*

Jonathan Jacobson is Senior Of Counsel in Wilson Sonsini Goodrich & Rosati's New York office. Considered one of the country's preeminent antitrust litigators and thought leaders, Jonathan has taken a lead role in many high-profile antitrust litigations, investigations, trials, and appeals. He served as the Chair of the ABA's Section of Antitrust Law from 2017-2018. Among other noteworthy representations, Jonathan has served as lead counsel for Coca-Cola in several cases, including *PepsiCo v. Coca-Cola*, a leading monopolization case under Section 2 of the Sherman Act. He also argued the Vitamin C case in the Supreme Court and on remand; led the representation of American Express in *United States v. Visa USA*; defended Google in the *Dreamstime, Digital Advertising, KinderStart, Person, TradeComet, and myTriggers* cases; defended Netflix in *In re Online DVD Rental Antitrust Litigation*, and *Live Nation and Clear Channel in Heerwagen, In re Live Concert Antitrust Litigation*, and *It's My*

Party v. Live Nation.

Jonathan was appointed by Congress to serve on the Antitrust Modernization Commission, responsible for reviewing and recommending potential changes to the nation's antitrust laws. In addition to serving as a past Chair of the ABA's Section of Antitrust Law, he previously served as an officer, council member, and in several other Antitrust Section positions, including editorial chair of *Antitrust Law Developments* (6th ed.).

Jonathan was a presenter in the DOJ/FTC 2020 Vertical Merger Guidelines Hearing, the FTC's 2018 Competition Hearings, the DOJ's 2018 Roundtable series, the DOJ/FTC Intellectual Property Hearings, the DOJ/FTC Single-Firm Conduct Hearings, the DOJ/FTC Merger Guideline Workshops, the DOJ/FTC Most Favored Nations Clause Workshop, and the DOJ/FTC Conditional Pricing Practices Workshop. He has written or edited numerous articles and books spanning the gamut of antitrust topics, including exclusionary practices, merger enforcement, government and other civil litigation matters, and cartel enforcement. His recent papers include "Acquisitions of 'Nascent' Competitors," *The Antitrust Source*, August 2020, and "Missing the Forest for the Trees: The Application of Amex in United States v. Sabre," *The Antitrust Source*, June 2021.



Marc Lanoue

Chief Antitrust and Competition Counsel, Senator Amy Klobuchar

Marc Lanoue is a Federal Trade Commission attorney who has been detailed to the Senate

Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights, where he serves as Chief Antitrust and Competition Counsel for Subcommittee Chair Senator Amy Klobuchar (D-MN). His work focuses on competition and related policy issues, including competition and consumer protection legislative reform, antitrust agency oversight, and antitrust

issues arising in a variety of sectors, including technology, pharmaceuticals, agriculture, energy, and telecommunications. At the Federal Trade Commission, Marc has led or worked on antitrust investigations into the pharmaceuticals, energy, and digital advertising industries, among others. He also spent several years in private practice, including an extended in-house stint assisting a pharmaceutical client with competition and product development issues.

Marc earned a J.D. from the New York University School of Law and a B.A. in Economics and Geology & Geophysics from Yale College.



Maureen K. Ohlhausen

Section Chair - Antitrust & Competition Law (Firmwide), Partner, Baker Botts

Maureen K. Ohlhausen chairs the firm's Global Antitrust and

Competition practice. Her practice focuses on antitrust, privacy and data security and consumer protection investigations and litigation both in the U.S. and abroad. She advises top-tier clients across a wide variety of industries including technology, retail, telecommunications, social media, and life sciences.

Maureen is sought after for her depth of experience both nationally and globally on antitrust and Federal Trade Commission (FTC)-related matters. She is known for her relationships with officials in the U.S. and abroad, with a particular emphasis on Europe and China. She most recently led the FTC as Acting Chairman and Commissioner where she directed all aspects of the FTC's antitrust work, including merger review and conduct enforcement, and steered all FTC consumer protection enforcement, with a particular emphasis on privacy and technology issues. She regularly led the U.S. delegation at international antitrust and data privacy meetings and is the only FTC Commissioner to have received the Robert Pitofsky Lifetime Achievement award in recognition of her knowledge of and

contributions to the Commission.

Prior to her role as Commissioner, she led the FTC's Internet Access Task Force, which produced an influential report analyzing competition and consumer protection legal issues in the areas of broadband and internet. A recognized thought leader, Maureen is a frequent author and speaker and is often quoted by leading print and broadcast media on antitrust, FTC, and privacy and data security matters. She has published dozens of articles on antitrust, privacy, intellectual property, regulation, FTC litigation, telecommunications and international law issues in prestigious publications. She has also testified over a dozen times before the U.S. Congress, including recent appearances before the Senate Commerce Committee and the House Energy and Commerce Antitrust Sub-Committee.

Maureen previously headed the FTC practice group at a leading telecommunications law firm, representing and counseling telecommunications and technology clients on antitrust compliance, privacy and consumer protection matters before the FTC and the FCC. She began her legal career as a clerk at the U.S. Court of Appeals for the D.C. Circuit.



Dina Srinivasan
Researcher

Dina Srinivasan is a researcher and lawyer. She's also a Fellow with the Thurman Arnold Project at Yale University.

Most recently, Ms. Srinivasan's research and economic analysis of new, tech markets provided the foundation for government enforcement of antitrust laws against two of the largest market cap companies in the world. Her 2020 research, "Why Google Dominates Advertising Markets: Competition Policy Should Lean on the Principles of Financial Market Regulation", explains how Google distorts electronically traded ad markets by engaging in conduct that lawmakers normally prohibit (e.g., conduct analogous to

insider trading and front running). Her research instigated a shift in the House and Senate and a coalition of U.S. States subsequently filed suit against the company relying on the architecture of Ms. Srinivasan's thinking. "The Antitrust Case Against Facebook", published in 2019, laid out the correlation between privacy and economics. Congress called on the U.S. Federal Trade Commission to open an investigation; and in 2020, the Federal Trade Commission and a coalition of 48 Attorneys General filed actions against Facebook. She's been profiled by The New York Times and The Wall Street Journal. Her research and commentary on tech and competition are regularly covered in the domestic and global media. Ms. Srinivasan holds a J.D. from Yale Law School, where she studied law & economics and was an Olin Fellow with the Kauffman Program in Law, Economics and Entrepreneurship.



Spencer Weber Waller

*John Paul Stevens Chair in
Competition Law, Loyola University
Chicago School of Law*

Spencer Weber Waller is the John Paul Stevens Chair in Competition Law, Director of the Institute for

Consumer Antitrust Studies, and Professor at Loyola University Chicago School of Law where he teaches antitrust, intellectual property, civil procedure, and international litigation courses. He is a member of the Advisory Board of the American Antitrust Institute and the editorial boards of the Antitrust Law Journal and the World Competition Law and Economics Review. Professor Waller is the author, co-author, or editor of 8 books and over one hundred articles on United States and international antitrust, including Antitrust and American Business Abroad, the leading treatise in the field, and the first full-length biography of Thurman Arnold, the founder of modern antitrust enforcement in the United States.

He is the co-editor and contributor to Brands, Competition Law and IP (Cambridge University

Press 2015). His recent scholarship focuses on antitrust, brands, class actions, high-tech industries, innovation, and intellectual property. He is the recipient of the 2014 Concurrence Antitrust Writing Award. Professor Waller previously taught and served as associate dean at Brooklyn Law School.