

Post-Conference Summary

NAVIGATING THE UNCERTAIN CLIMATE OF VERTICAL MERGER ENFORCEMENT

EVANSTON, IL – On Friday, January 25, 2019, economists, attorneys, regulators, and business executives gathered at the Kellogg Global Hub for a conference focused on vertical mergers, a topic thrust into the antitrust limelight last year following a federal Judge’s decision to approve AT&T’s purchase of Time Warner, and the subsequent DOJ appeal of that decision. The conference, *Navigating the Uncertain Climate of Vertical Merger Enforcement*, was organized by Kellogg’s Mark McCareins and Thomas N. Hubbard.

The opening panel was moderated by McCareins and included panelists Dennis Carlton of Booth School of Business at University of Chicago, Nicholas Koberstein of Abbott, and Koren Wong-Ervin of Qualcomm Inc. The panelists outlined the broad theory behind vertical merger enforcement and emphasized the fundamental differences between vertical and horizontal mergers.

The next panel, moderated by Benjamin Jones of Kellogg, was designed to provide a rationale for why firms pursue vertical deals. Jim Dugan of OCA Ventures, Edward Lehner of Ryerson, and Rajan Naik of Motorola Solutions discussed how vertical mergers are an important way for firms to create value for their customers. Panelists pressed regulators to provide clarity on when vertical mergers might be challenged and to align regulations across jurisdictions.

The next panel, moderated by McCareins, included panelists Jamillia Ferris, formerly of the Federal Communications Commission; J. Bruce McDonald, formerly of the DOJ; and Jonathan Sallet, formerly of the Federal Communications Commission. There is much debate among regulators as to whether behavioral remedies, which require ongoing monitoring, are less appropriate than structural remedies (i.e., divestiture), which do not require post-merger monitoring but can limit the efficiencies that firms were seeking to create through the merger.

McCareins next led a discussion of the AT&T/Time Warner appeal with James Herbison of Winston and Strawn LLP and John Lopatka of Penn State. Although businesses should feel free to pursue vertical mergers, they must have economic models to defend mergers and show they will not cause harm. An overturning of Judge Leon's decision in the lower court would be a dramatic reversal of the *status quo* and would fundamentally alter the vertical merger regulatory landscape.

As businesses become increasingly global, it is important to consider how antitrust is handled by different regulatory agencies across the world. The next panel, moderated by Peter Crowther of Winston and Strawn, included Stephen Calkins, former member of The Competition Authority of Ireland; The Honorable Jeanne Pratt of the Canada Competition Bureau; and Hans Zenger of the European Commission.

Hubbard moderated the final conversation between Luke Froeb of Vanderbilt University, Kevin Murphy of Booth School of Business of University of Chicago, and William Rogerson of Northwestern University. The panel highlighted how balance between academia and industry is critically important in vertical merger analyses.

These discussions highlighted the different players and perspectives in the merger space. Hearing thought leaders discuss the implications of the AT&T/Time Warner case was particularly salient for attendees, as a dramatic change will ensue if the DOJ appeal is successful.