

The Antitrust Dispatch

THE GW LAB'S BIMONTHLY NEWSLETTER

February 2025

ISSUE #02



Welcome to the latest issue of the Antitrust Dispatch, covering our activities from December 2024 to January 2025.

This period has witnessed significant political shifts, most notably the inauguration of President Trump as the 47th President of the United States. Trump's return to the White House marks a substantial shift in antitrust policy and enforcement, though some continuity with the previous administration remains.

While we anticipate a reduction in regulatory activism from the Federal Trade Commission and strong resistance to European regulations targeting U.S. companies, the new antitrust leadership has indicated its intention to uphold the 2023 U.S. Merger Guidelines issued under the Biden Administration.

We will closely monitor these developments in the U.S. and globally, continuing to engage with policymakers through rigorous scholarship and impactful events.

The Lab has been particularly active over the past two months, hosting two webinars and publishing seven research papers.

A major milestone was the launch of the Türkiye Initiative, bringing together scholars, practitioners, and regulators to foster engagement in this key European jurisdiction as local authorities consider ex-ante digital regulations.

Led by Dr. Hanna Stakheyeva of ACTECON, this initiative will strengthen the Lab's presence and influence in the region.

Looking ahead, the Lab will host two major international conferences in March.

On March 7th, we will convene leading scholars and stakeholders at the World Trade Organization in Geneva to examine the intersection of trade and competition in an era of rising nationalism.

On March 15th, we will bring together top enforcers and academics in New Delhi, including Senior Fellow Prof. Richard Whish, for a critical discussion on global antitrust enforcement.

Stay tuned, and as always, we welcome your ideas for collaboration!

In this newsletter you can expect:

Past Events

Some of Our Next Events

Our Publications

Our Fellows' Engagement

Call for Action



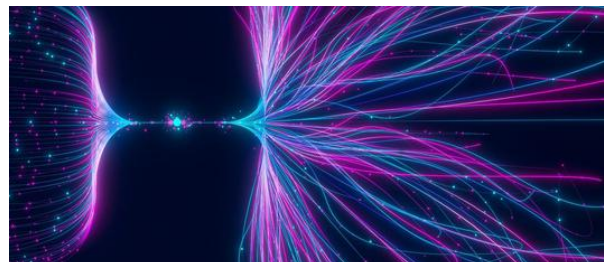
GW-MILBANK ROUNDTABLE AT THE ELLIOTT SCHOOL : TRUMP ANTITRUST 2.0 & CFIUS, FEBRUARY 4TH, 2025



Event Spotlight

On December 3rd, our webinar "[Legal Standards in Excessive Pricing: Reflecting on the Old and Making Sense of the New](#)" explored the evolving landscape of South African competition law and examine the Competition Amendment Act (2019) as well its introduction of new legal standards for assessing prohibited practices and mergers, with a focus on excessive pricing enforcement.

Speakers included Mpumi Tshabalala, Senior Fellow and Lead of the South African Initiative; Katlego Monareng, Lawyer at the Pan African Bar Association of South Africa; Maya Swart, Principal Legal Counsel at the Competition Commission of South Africa; Lara Granville, Director at MGI Competition Law; and Tehmbalethu Buthelezi, Principal at Genesis Analytics.



Publication Spotlight

Senior Fellow Professor Philippe Aghion co-authored a High-Level Panel Expert's Report to the G7 on "[Artificial Intelligence and Financial and Economic Policy Making](#)".

This Report is the outcome of the work of the High-Level Panel of Experts on Artificial Intelligence (AI). The report is intended to serve as a reference for policymakers. The Panel was established by the mandate of the Finance Ministers and Central Bank Governors of the Group of 7 (G7), with the objective of exploring the implications of AI for the economy and the financial sector.

The full implications of AI are unclear, and we know that there will be winners and losers. Opinions on the best approach to the technology will thus inevitably diverge.

A New Regional Initiative: Türkiye

The George Washington University Competition and Innovation Lab has launched the Türkiye Initiative to explore the evolving landscape and critical issues of competition law and innovation in Türkiye. Türkiye's competition law closely follows the framework established by the European Union with some national peculiarities.

To promote a deeper understanding of these issues, the initiative led by Dr. Hanna Stakheyeva will organize events designed to spark discussions, raise awareness, and generate ideas for improving Türkiye's competition law.

By bringing together policymakers, academics, and industry leaders, the initiative aims to encourage debate on how to further refine and strengthen Türkiye's competition law framework, an increasingly important jurisdiction in the global regulatory landscape.



Competition &
Innovation Lab



December 12th, 2024



What, Why and How? Exploring the European Union's Ambitious Competition Policy Reforms

The new European Commission aims to modernize EU competition law across the board, notably merger review, enforcement (covering antitrust, the Digital Markets and Foreign Subsidies Acts), as well as state aid. These changes occur in a broader context including the need to address falling European productivity and threats of geo-political instability.

The panelists discussed the competition policy mandate of Executive Vice-President-designate Teresa Ribera Rodríguez set out by European Commission President, Ursula von der Leyen. In particular, the panel explored how the Commission could address key competition policy challenges facing Europe at home and abroad, and how to best address them.

Speakers included Mathew Heim (Senior Fellow, GW Competition & Innovation Lab, George Washington University); Marceline Tournier (Global Head of Antitrust & Associate General Counsel EMENA at Nestlé); Dr. Thorsten Käseberg (Head of the unit "Competition and Consumer Policy" in the German Federal Ministry for Economic Affairs and Energy); Georg Boettcher (Chief Counsel Competition at Siemens)



Nov. 13



Legal standards in Excessive Pricing: Reflecting on the Old and Making Sense of the New

This webinar explored the Competition Amendment Act (2019)'s introduction of new legal standards applicable for the evaluation of prohibited practices and merges. This webinar focuses on the legal standards applicable to excessive pricing enforcement.

Where the Competition Commission of South Africa has had little success at prosecuting excessive pricing cases prior to amendment, since then - combined with the Covid-19 pandemic necessitating the utilization of price gouging under the rubric of excessive prices - South Africa has seen an increase in the number of these cases initiated and a higher rate of prosecutorial success.

Speakers included Mpumi Tshabalala (South Africa Initiative Leader, and senior legal counsel at the Competition Commission of South Africa); Katlego Monareng (advocate in private practice with the Pan African Bar Association of South Africa); Lara Granville (Director in Cliffe Dekker Hofmeyr's Competition Law practice); Maya Swart (Principal Legal Counsel in the Competition Commission of South Africa); Thembaletu Buthelezi (principal in the Competition and Regulatory Economics practice at Genesis Analytics).

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Some of Next Events

March 7th,
2025

WTO Conference : The Future of Competition & Trade

March
15th, 2025

India's Competition & Innovation Forum

April 1st,
2025

Concurrences Antitrust Writing Awards 2025

May 5th,
2025

The Second Annual Antitrust Conference

May 6th,
2025

The Lab's Annual Antitrust Workshop



Our Publications

The GW Competition & Innovation Working Paper Series in December 2024 and January 2025:

1. The European Commission's Draft Article 102 Guidelines Under Fire: Examining the Substance and the Roots of the Criticism, by Miroslava Marinova

Recently, the European Commission published Draft Guidelines on the application of Article 102 TFEU to abusive exclusionary conduct by dominant undertakings that provoked considerable criticism and raised concerns from commentators. The main concerns are raised about the shift away from the established effects-based approach and in that context particularly the downplaying of the As-Efficient Competitor (AEC) principle; and the introduction of presumptions, which may diminish legal certainty by shifting the burden of proof onto companies.

This paper provides a critical analysis of the Draft Guidelines, evaluating their consistency with the existing legal framework and case law. It is focused on addressing the concerns expressed publicly by different stakeholders, evaluating their validity and whether they are fully sustainable. While some concerns may have merit, this paper argues that the criticisms are not entirely justified. The goal of the paper is formulating recommendations that both reflect stakeholders' concerns and remain practical and balanced in application.

2. The 'Crisis' of Antitrust Economics, by Jorge Padilla

Jorge Padilla discusses how the antitrust frameworks in the EU, UK and US are being challenged conceptually, ideologically and empirically. In particular, they are criticized for downplaying the economic and political cost of underenforcement.

In this essay, Jorge Padilla accepts, for the sake of the argument, that enforcement has been excessively lenient, though he believes the jury is still out, and focuses on investigating whether the alleged under-enforcement of the competition laws is caused by the move towards a "more economics approach" to competition law enforcement. In his opinion, the evidence is mixed. Yet, the answer should not be less economics but better economics and greater scrutiny of both economic and non-economic evidence when they fail to point in the same direction.



Our Publications

3. New Powers, New HSR Rules: The Illumina Ripple Effect, by Aurelien Portuese and Lawrence Landman

The article explores the impact of new Hart-Scott-Rodino rules on merger reviews, emphasizing their focus on protecting competition in Future Markets. It highlights how the Fifth Circuit's decision in Illumina v. FTC empowered enforcers by affirming their authority under the Clayton Act to regulate competition in markets for products that do not yet exist. These new rules require merging parties to disclose extensive information on "known planned products."

The piece also addresses procedural challenges, including increased compliance burdens and the potential for ambiguity in interpreting the new requirements. It advocates for strategic planning by merging parties, suggesting that clear, well-prepared documentation and white papers can help demonstrate the procompetitive nature of transactions and avoid second requests. Ultimately, the article underscores the heightened attention regulators will pay to innovation-driven markets and urges parties to proactively align with the new rules to ensure regulatory clearance.

4. The Curious Case of the European Commission's Missing Jurisprudence, Mathew Heim

The European Commission is undertaking a review of its approach to unilateral conduct cases, including a revision of Regulation 1/2003 in order to modernise competition law enforcement. This paper shows that a high percentage of antitrust investigations that the Commission had formally prioritised (and at times even issued a Statement of Objections) have been closed without any finding - 20% of Article 102 investigations over a 20-year span of Regulation 1/2003.

This paper explores the reasons why these investigations closed and finds that while around half were closed due to insufficient evidence the remainder were closed following a cessation of impugned behaviour, informal 'remedies', settlements with complainants or other regulatory solutions. This paper therefore fills a gap in the literature and provides insight into the Commission's enforcement practices. Such closures provide an opportunity to the Commission to give additional guidance in appropriate cases to market participants and National Competition Authorities on its enforcement priorities. The paper explores these opportunities and offers recommendations.



Our Publications

3. Artificial Intelligence and Financial and Economic Policy Making, by Philippe Aghion (co-authored).

This Report is the outcome of the work of the High-Level Panel of Experts on Artificial Intelligence (AI). The report is intended to serve as a reference for policymakers. The Panel was established by the mandate of the Finance Ministers and Central Bank Governors of the Group of 7 (G7), with the objective of exploring the implications of AI for the economy and the financial sector. The full implications of AI are unclear, and we know that there will be winners and losers. Opinions on the best approach to the technology will thus inevitably diverge. There were indeed some differences in views and emphasis among the members of the Panel in the preparation of this Report.

4. Between Permission and Protection. AI as a Challenge to Established Approaches to Law and Innovation, by Pierre Larouché, Yingchao Yu

Legal literature does not offer any sound theoretical development on the relationship between law and innovation. In practice, two broad rival approaches – protective or permissive – emerged over time as social regulation was introduced in sectors of activity where innovation looms large. The protective approach requires evidence that an invention has a positive impact on society before it can be diffused (e.g. pharmaceuticals), whereas the permissive approach allows for diffusion without prior examination (e.g. digital sector).

Each of these approaches is by now embedded in the “innovation culture” of their respective sectors. In recent years, the limits of these approaches have become more apparent. This contribution surveys the two approaches and the innovation cultures associated with them. Furthermore, co-existence between them became fraught, once the dynamism of the digital economy induced convergence with heretofore distinct sectors under a protective approach. Seeing that none of these approaches is appropriate for AI, the contribution then investigates whether a third approach, based on responsible innovation would be feasible and how the EU seems to follow it in the AI Act.

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Engagement with the Lab

As the Lab continues its growth and prepare for exciting projects in 2025, we would like to emphasize two opportunities to be involved with the Lab: i) Visiting Research Fellowship, and ii) the GW Lab Engagement Award



Visiting Fellowship

The GW Competition & Innovation Lab is pleased to announce a six-month Visiting Researcher Fellowship for scholars focused on antitrust, innovation, and related disciplines.

This unpaid fellowship provides access to Lab resources, collaborative opportunities, and involvement in impactful policy discussions.

Fellows will actively contribute to research and events shaping the future of competition and innovation. The fellowship will run from June to December 2025, with applications open from January to February 2025.

For details, contact gwucil@gwu.edu.



Engagement Award

The GW Competition & Innovation Lab is proud to present *The Antitrust Engagement Award*.

This unique award honors thought leaders and coalition builders who have effectively collaborated with civil society, regulators, and scholars to champion a specific cause, resulting in tangible policy changes.

The award aims to spotlight impactful policy advocacy in antitrust and to draw valuable lessons from successful efforts in driving meaningful reform.

Applications will be accepted from March to April 2025, with the award ceremony scheduled for May 2025. For more information, please contact gwucil@gwu.edu.



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