



**Baker
McKenzie.**

Annual Compliance
Conference 2022

Antitrust Compliance

Key Takeaways from the Annual Compliance
Conference 2022

In Brief

In this week's sessions, we delve into notable developments in Antitrust Compliance, including:

- Global Antitrust Hot Topics
- Information Exchange in Supply Chain
- Evolving Risks in Antitrust Enforcement and Litigation

Session 3: Evolving Risks in Antitrust Enforcement and Litigation

29 September 2022

We examine new and developing areas of risk in antitrust enforcement and litigation and provide compliance tips for in-house counsel.

Purchasing collusion – training your HR and procurement personnel: Cartel conduct continues to involve coordination in the 'downstream' sale of goods/services. But there is also a clear trend of enforcement in relation to 'upstream' buying markets, particularly in Europe. An interesting subset involves procurement of talent and the intersection between human resources (HR) and antitrust. The US remains the hottest location with regard to this enforcement risk, but we are seeing more authorities around the globe bringing cases. Across all jurisdictions, the key takeaway regarding procurement collusion is that antitrust compliance lessons apply not just in relation to what you sell, but also in relation to what you buy. Training and guidelines for anyone who could get involved in joint purchasing with competitors is critical. Companies should ensure in particular that HR departments are aware of the antitrust risks and that hiring managers know the boundaries in their conversations with competitors.

It's not just about prices – the expanding parameters of competition: A wide set of factors may influence a customer's decision to buy a product: price, technical characteristics, lifespan, ESG credentials. Particularly in Europe, we are starting to see competition authorities take an enforcement interest in collusion relating to non-price factors. It is important to ensure that competition compliance training is provided to employees in any department that might find themselves having discussions with competitors about the company's products/services, e.g., trade associations, ESG working groups, etc.

Risk in the post-pandemics world: Companies have faced an existential economic challenge to stay in business during the pandemic. But it is now very clear that competition authorities are back in business, resuming dawn raids both in the office and in some cases at the homes of employees. Companies should be prepared for these investigations by offering training at all levels of the company, particularly on how to cooperate with authorities to the degree required by the law.

The growth of antitrust litigation

- **Antitrust litigation - expansion of risk to Europe:** Antitrust litigation had long been a feature of US and Canadian systems, yet only recently gained traction in Europe, for example in the UK and several other Member States where we expect to see more and more litigation. A key rule that will make it easier for claimants to succeed in damages claims is that courts will be able to estimate loss where it is too difficult to quantify. In such cases, it will be for the defendant to prove if damages have been passed on by a direct purchaser, or vice versa, and not passed on to an indirect purchaser, risking a double payout if they fail.
- **Class actions as a route for competition recovery:** Class actions are a global litigation risk factor which companies should be on guard for. The ability to claim damages has been boosted in the EU by collective redress reforms and an expansion in class actions across jurisdictions. As a baseline standard, the EU collective redress directive means that a representative body must be able to bring an opt-in action on behalf of consumers across many areas of law. Member States are then free to go beyond this standard to introduce opt-out class actions which are available, not just for consumers, but also for businesses, and not necessarily limited to being brought by representative bodies. Additionally, there has been an expansion of consumer rights, an expansion of funding, and an increase in the number of associations that are willing to fund these claims. Overall, these factors provide momentum for litigation across jurisdictions. A global litigation strategy is key to navigating the complex regulatory investigations successfully.

Annual Compliance Conference 2022

Our popular Annual Compliance Conference, which attracts over 6,000 in-house senior legal and compliance professionals from across the world, took place across five weeks from 6 September - 6 October 2022. These sessions virtually delivered our cutting-edge insights and guidance on key global compliance, investigations and ethics issues.

The sessions provided practical insights and analysis on significant developments across:

- Anti-bribery, corruption and economic crime
- Customs and FTAs
- Export controls, sanctions and foreign investment
- Antitrust and competition
- ESG, supply chain and product compliance



Watch these sessions on demand at our **Annual Compliance Conference hub**.

Speakers



James Robinson
Partner, Chair
London
james.robinson
@bakermckenzie.com



Paulo Casagrande
Partner
Trench Rossi Watanabe*
paulo.casagrande
@trenchrossi.com



Stephen Crosswell
Partner
Hong Kong
stephen.crosswell
@bakermckenzie.com



Jeffrey Martino
Partner
New York
jeffrey.martino
@bakermckenzie.com



Francesca Richmond
Partner
London
francesca.richmond
@bakermckenzie.com



Miriam Allena
Of Counsel
Milan
miriam.allena
@bakermckenzie.com



Jan Kresken
Counsel
Dusseldorf
jan.kresken
@bakermckenzie.com

*Trench Rossi Watanabe and Baker McKenzie have executed a strategic cooperation agreement for consulting on foreign law.

www.bakermckenzie.com

© 2022 Baker McKenzie. All rights reserved. Baker & McKenzie International is a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner or equivalent in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.