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Panel 2:
Merger Issues — A Global Perspective

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MR. SOVEN: We are going to move to what really makes up the bulk of the competition work out there, which is mergers. Of course, over the last few days there has been a lot hubbub and highlight and noise and discussion about the dominance and abuse of dominance by four or five large technology companies,

but the fact of the matter is the bulk of the work on the ground overwhelmingly is in mergers. Those take up the bulk of the resources in the antitrust agencies throughout the world, they take up the bulk of the work in law firms and competition outfits and consulting firms throughout the world, and they take up the bulk of the competition resources in companies.

We are very privileged today to have a fantastic panel to dive into what really is leading-edge stuff that is not old but quite new.

Very briefly, I'm Josh Soven. I am a Partner at Wilson Sonsini. Before that, I spent a bunch of time at the Federal Trade Commission and the Justice Department.

But, far more important than me, let me introduce our panelists are. Isabelle de Silva, who is the President of the French Competition Authority. Isabelle, my children speak accent-free French, but I do not, so I will not make an attempt at the French. Daniel Francis is the Deputy Director of the Bureau of

Competition at the FTC and has also held a number of positions there. Bruce Hoffman, a partner at Cleary Gottlieb, before that was Daniel's boss in some sense as the Director of the Bureau of Competition. Axel Schulz is a Partner at White & Case.

One of the fantastic things about Fordham — and I think I am certainly privileged to speak here because of it — is, unlike so many conferences, it does not center around six square blocks in Washington, D.C.; it covers a lot of ground beyond that.

In that spirit, we are going to kick it off with Isabelle, and I am going to try to manage the topics and keep us on the road but otherwise be a good moderator and get out of the way.

Isabelle, the French Competition Authority has recently issued some new merger guidelines. Why don't you go ahead and tell us what is new, what's not so new, and generally how you are thinking about merger policy as we keep moving into the 21st century?

MS. DE SILVA: Thank you, and hello to everyone. I am glad to be at Fordham for this event.

The new merger guidelines that we published very recently are part of the major overhaul that we did of the merger procedure in France. Three years ago, we started a consultation with stakeholders to ask them about whether the merger thresholds were appropriate, whether the substance should be reviewed, and whether the process could be improved. In this process we proposed an important number of changes.

The first change was to ask companies for less information for their merger filings. The first part was the simplification of the information request, which was introduced by a decree in our law.

The second thing was to expand the scope of the simplified procedure, and also, in addition to that, the creation of a fully online notifying procedure for the simplest mergers.

Another part was about substance, whether the national framework was appropriate, considering

the changes we have in the merger landscape, so we decided that it was not appropriate to introduce new value transaction thresholds, like Germany and Austria have done recently. We felt that it was more appropriate to have a new form of targeted merger control to catch those transactions that have a very strong competitive impact. I will come back to this when we talk about the Article 22 of the 2004 Regulation, news that had been announced by Margrethe Vestager a few days ago.

What about those new merger guidelines? It was a lot of work because we decided to take into account ten years of application of the law to mergers in France. What we tried to do was, first, to make those guidelines very informative, even more so than they used to be, by introducing all the big decisions that companies must take into account, trying to help them to prepare their cases for the Authority.

What is new in substance in those guidelines?

First, we decided to devote quite some time to the issue of procedural infringements. As you may know, we had a big case concerning gun-jumping in France three years ago where we issued a €80 million fine to Altice, a company that had implemented the merger too soon. So we really devoted quite some effort in the guidelines to explain to companies how they can avoid receiving such a fine and going into conduct that might be considered as gun-jumping: for example, how they use "clean teams" when they are preparing for the merger; or how can they use covenants without infringing our law; or another example, how they can concretely continue to act as competitors until the day when we finally approve the merger.

Another issue that is quite important is commitment. We take commitment very seriously. We recently issued a €20 million fine to Fnac Darty, a company that had failed to sell some of its subsidiaries it was compelled to sell in the merger

decision. In the guidelines we make an overview of all the jurisprudence about commitments and how they must be applied.

Another chapter that we developed quite a lot in those new guidelines concerns the issue of digital and online retail, how it affects our analysis when we have to look at mergers that involve distributors and how do we compare the market power of companies with their shops and online. So we have in the guidelines a very precise methodology that explains how we take into account online sales in the retail sector.

That is what is new.

Maybe one last point is the issue of the timeframe that we take into account. As you know, classically the Commission and the French Authority take into account what is going to happen in the two years after the merger. It has been debated whether this two-year reference was appropriate considering the profound digital changes, for example in the

digital economy. We developed this part of the new merger guidelines to say which are the cases in which we could take into account some more years when we try to forecast what the effect of the merger will be.

Maybe a final word. This document is now ready and is applicable, but we also have a very important exercise that is going on within the European Competition Network, which is the revision of the EU Market Definition Notice. This is a document that dates back to 1997 and now really needs a complete update to take into account the digital economy. When this work is finished in the next few months, I think that we will have a good setup at the national and European level especially to take into account all the changes that we have known in the digital economy.

Thank you.

MR. SOVEN: Great. Time permitting, I am going to come back with a whole bunch of questions, which I haven't told the panelists I am going to ask

but we will give it a shot anyway.

In the meantime, Axel — you are on the ground — what is your reaction based on Isabelle's excellent overview? I hear a lot of change, and a lot of change that could hit the ground really quickly.

MR. SCHULZ: Yes, it seems like it. To be honest, I have not read the guidelines in detail, but from what I have heard from Isabelle right now, it does indeed seem to reflect the very excellent practice of the French Competition Authority over the years.

She mentioned *Altice*, which was obviously a big bang in Europe, and companies are quite nervous about what they can do and what they cannot do. And I know that there was already — I think two years ago maybe — a paper which was published by the Authority on this particular point, so I assume that has been now lifted over into the guidelines.

Also, I think the French Authority, probably together with the German Authority, has been one of

the two authorities in Europe looking really at the digital retail market, the other one being the German Authority that has been occasionally divergent, with different views — "Can I block my retailer from sales on Amazon or not?," this kind of question — so I am curious to see what the guidelines say there. But again, I assume that they will reflect what the case law in France has provided in the last few years. So it is probably quite an interesting read.

I have also seen that you had your first merger decision which blocked a case. Is that right?

MS. DE SILVA: Yes. This was a first for the French Authority. The case we blocked was a three-to-two merger in a local retail distribution case that went to Phase II. The case was interesting because we really used all our toolkit to have a very refined evaluation of how this merger would impact the local customers.

In a way, it is surprising that it took us ten years to say no to a merger, but in reality, as

you practitioners know, many deals are abandoned in the last run when the companies feel that the Authority does not see an easy way out for the merger.

Maybe another case that is interesting to mention was just a few weeks before that decision we were on the verge of saying no to a big merger that was leading to taking the control of an oil pipeline which is restructuring in France. This could have been another first merger decision that could end with a prohibition.

It is interesting to see that, at least in France, not many companies take the risk of going to the final prohibition decision and try to challenge them in court. I don't know if they feel that they would lose anyway, but we do not have that many decisions that have gone to court after a prohibition. So maybe this could be the first one.

MR. SOVEN: I think there are a couple of ways to think about that. You can think about it as "Well, look, the enforcement process is efficient in

that it is reaching resolution where people really understand what is going on." On the other hand, you could say, "Well, maybe at times the risks, the transaction costs, are so great that procompetitive mergers, or ones where there are reasonable bases for argument, might be getting stopped when they shouldn't be." We can come back to that.

Axel, as Isabelle noted and as you alluded to, Brussels — post-Brexit or pre-Brexit, it doesn't seem to matter — is quite active.

Commissioner Vestager is making news quite often, which is appropriate for the time. She delivered what I think many view as a seminal or foundational speech in September of this year. A lot to digest there. Why don't you give us your take on that?

MR. SCHULZ: Indeed, it was a very interesting speech, and it did mark the existence of thirty years of the European Merger Regulation, and so it was obviously quite well timed.

First of all, apart from her speech, I think the good news is that, following the first few weeks of the Covid-19 lockdown in Brussels, things are totally back to normal. Things are proceeding perfectly, I think, between the European Commission and the practitioners. That is something I just wanted to mention.

Back to Commissioner Vestager's speech. After thirty years of the Merger Regulation, she did make the point that merger enforcement is as important as ever, if not even more important. She referred back to the 1930s, the Great Depression in the United States — and I didn't know that before reading her speech — when the rules for merger control were relaxed in the United States, and apparently this didn't quite help the economy come back into shape after the Great Depression.

She said that we definitely need to have merger control enforcement even today, even if we are going through probably the biggest recession certainly

of our careers.

I want to pick out two points, and I think we will come back to the topic of nascent competition on substance.

One thing that she discussed was: Are we managing currently to pick up cases that fly under the radar; how are we doing this? Isabelle also said that when they looked at their guidelines, they decided not to impose or adopt value-based thresholds, as in Germany and Austria. The same is true for the European Commission and the Merger Regulation, which do not have value-based thresholds.

But the problem of nascent competition, or killer acquisitions, or whatever you call it, is there. In cases where established companies merge and the Commission sees that some products are in the pipeline and maybe one of the two companies would stop the innovation in their pipeline and only proceed with one of the innovations, that is okay; these cases can be picked up when we are talking about established

companies, like big pharma companies, because somewhere chances are that the turnover thresholds are met.

The problem is for the regulators: How do we pick up cases where the target companies have no turnover?

One solution was, as adopted in Germany and Austria a few years ago, to have a value-based threshold, like in the USSR. The Commission had looked at this a few years ago in Commissioner Vestager's first time, and she wasn't convinced, I believe. And even this time around that is not what the Commission wants to do.

So what is the solution for the Commission? Isabelle mentioned this as well already. Article 22, which has always been in the Merger Regulation, a referral system, whereby Member State authorities can refer a case to the European Commission. That is all fine if the threshold or the test at the national level is met. Then there is jurisdiction in a given

Member State and that Member State can refer the case up to the European Commission.

Now the suggestion is that cases could also be referred up to the Commission by Member States where the international test is not met. And yes, there have been cases very early on in the life of the Merger Regulation where some Member States did not have a merger control system yet and they thought, *This case really should be looked at by someone. We can't do it, so let's refer it to the European Commission*. But this was really thirty or twenty-five years ago.

So the big question is really now in my view: Is this a practical solution or does this create a huge legal uncertainty? That is to be debated.

The Commission has said they will issue guidelines. I wonder whether guidelines can establish a legal requirement to make a notification. That is to be discussed, but this is certainly an interesting point and I think we will come back to that many

times.

The other thing that she said is very welcome actually. She talked about simplification. In a way — never waste a good crisis — in Europe it is actually very hard to get on the clock. You see this often, all of you, when you advise companies when you have to do a filing in the United States and a filing in Europe: it is always the case that within weeks the HSR filing goes in and half a year later we are still in prenotification in Brussels. It is a thing that creates tension.

I always thought somewhere things can be held back. I think now the Commission is now also warming to this again, trying to somehow simplify again the simplified procedure, which is very good, but over the years it became not so simple anymore to follow the simplified rules. There were still rounds of prenotifications, RFIs; have you captured all market shares under any plausible market definition? This is a very plausible [inaudible] — an alien word

in Brussels — and hopefully we can simplify this again.

Also, do we need prenotifications in every case? Commissioner Vestager now suggests maybe not and they should look into that. Again, there are a number of jurisdictions out there, including Germany for example — I'm not actually sure about France, but certainly in Germany 80 percent of the cases go in without a prenotification, and I think nobody would suggest there is underenforcement in Germany.

So these are welcome things. There isn't anything concrete.

Maybe one idea from me would be to increase the market share threshold for what amounts to an "affected market" — so maybe you go up a little bit from 20 percent to 25-30 percent — maybe coupled with a small incremental market share, so a combined market share of 30 percent. If the increase is only 2 percent, that could still be an unaffected market and it would make life easier for many people.

That is a very welcome development, I think, but we will see exactly how the Commission will address these points.

So, hopefully, this is good in Brussels and we can simplify it again.

I will stop here.

MR. SOVEN: That was great, Axel. Thanks.

One quick note. I have been notified that I have committed the cardinal sin of any moderator, which is I have not announced the CLE code, and I am required by law to do that twice. Very briefly, before I turn it back to Isabelle, it is MIGP20.

Isabelle, a lot there. I will pick out my favorites, but since you are the president of a competition authority, you should certainly pick up on what you want.

The issue of referrals and who is doing what and what we're looking at and what we're not looking at, at least on the U.S. side, it seems like there is a lot to unpack there and it is a challenge to advise

clients.

MRS. DE SILVA: Thank you, Josh, and thank you, Axel.

I received with great enthusiasm the announcement by Margrethe Vestager that the European Commission is willing to reconsider its traditional interpretation of Article 22. We have now advocated for some time, a few years now, the fact that there was a loophole in the merger regime in Europe at the national level, because such transactions as *Facebook/WhatsApp* or *Facebook/Instagram*, even transactions that are not in the digital sphere but come in the biotech industry, can have a profound impact on the market and the target may have no turnover at all or a turnover that is below the threshold.

So we really felt that there was something that was lacking. It might be only one or two mergers that we miss every year, but those mergers might be crucial and might completely redefine the dynamics of

the market.

I think that the solution of coming back to the roots of Article 22 to its letter and to its objective is the best one because this means that we do not have to open Regulation 2004; we have already the text to apply.

Of course, this is something that is met with skepticism or anxiety by businesses and counsel. When we had the consultations with those people at the national level, our competition lawyers' association and business organizations were quite skeptical or reluctant about this change, even though a few major companies advocated such a change.

I think that now the next step will be to have a guidance about which are the types of mergers we might look into through this new interpretation of Article 22.

In my view, this is not something that should be limited to digital. It might also have an interest to make sure that some dominant companies are

not allowed to buy their last competitors and to completely stifle competition in their market.

I think that now we have a few months ahead of us to discuss which could be the priorities and how would it work quite practically. We know how to do referrals; this is something that is quite common in the European Competition Network. I think it is a good time to have a discussion at the level of the European Competition Network, but also of course with businesses and lawyers, to make sure that there is not the sort of incertitude that hampers deals that should never be subject to that procedure.

I think that with a lot of explanation and discussion we will be able to alleviate those fears and be able to catch those mergers that are of critical importance. It is not only about what we might call killer acquisitions; it is also about acquisitions where the target is not killed at all but it comes and reinforces the dominant company's strength or the value of the companies that decided to

merge.

I will stop there, not to be too long on this topic, on which I could speak a lot.

MR. SOVEN: Daniel, a lot to choose from there. I know U.S. competition authorities are appropriately discreet and measured and everyone has to think about which parts of the foreign competition landscape or international competition landscape they want to comment on and which parts they don't. Why don't you pick out a few "greatest hits" of what you are hearing from Europe?

MR. FRANCIS: That sounds great, Josh. Thank you.

Let me start by keeping myself out of FTC jail: everything I am going to say today is on my own account; I am not speaking for the Commission or for any individual Commissioner. I don't know how we do the FTC dungeon when we are working from home, but I am sure it won't be pleasant.

Let me just pick a couple things to respond

to, and maybe I will say something about the themes of what I thought was a terrific speech and then just touch briefly on a couple points of substance.

I took some of the themes in the Commissioner's speech to really touch on things that I think all of us antitrust enforcers around the world are focused on a lot at the moment, including but not limited to digital enforcement.

First, what I really took to be a kind of framing observation or a framing impetus for a lot of the Commissioner's remarks, was response to fast-changing markets and how antitrust enforcers should respond to change and to the uncertainty that it creates.

On that, I will just say that I think our answer to that question, our institutional response — and to preview something we might talk about later, the response of courts — to the fact of rapid competitive change and the uncertainty that it generates in some of the things that are very

important to our everyday work will probably have, perhaps more than anything else, to say about how our antitrust system responds to what we sometimes call the digital economy.

That is as true for competitively significant acquisitions. I notice that Isabelle is a fellow warrior in the fight to keep the term "killer acquisition" applied to the specific context of a target that is where the product or service is shelved — but it is true in potential and nascent competition cases as well. So we are thinking about those things also.

The second theme that I took from her speech was that the Commission is pursuing its effort to focus antitrust enforcement on what really matters to competition, and not treating all things alike but responding to what in particular in some individual case or some individual market affects competition.

I thought those themes resonated a lot with a lot of what we are thinking about and what I know is

on the mind of other enforcers as well.

Let me just say a couple things about some of the substantive developments.

The first is obviously thresholds and notification thresholds. This is a sort of hot-button issue around the world. We, of course, are thinking very hard, including but not limited to in our hearings last year and year before and in some of our internal reflections since then, about the consequences and the limits of our merger notification system.

If you think of antitrust in general, and perhaps digital antitrust in particular, as a knowledge problem, then Hart-Scott-Rodino notification is a critical tool for generating that knowledge and bringing it to us.

One way in which we are trying to think about that is through our current 6(b) study. In February of this year, we issued an order to some large technology platforms in an effort to understand

the nature and competitive implications of some of their nonreportable acquisitions. That is one way in which we at least are grappling with some of the same questions.

The one response that I would offer is I don't think any notification system is ever going to be the whole answer. We will never have a merger notification system of any kind — we will never find a magic answer to these thresholds, whether it's size of person, size of deal, or something else — that captures all competitively troubling acquisitions and is workable for agencies and for the parties.

That to my mind begs the questions not just of what the thresholds should do in isolation, but what else matters. I think there are critical roles to be played — to touch on the second thing that I will come to in a second — by other enforcers, including particularly State AGs in the United States and national authorities in Europe, to bring matters, to act as sort of knowledge generators for the center,

to bring matters to their attention.

And then for the agencies to develop robust channels to the market, to hear from competitors, ultimately even from consumers themselves, in ways that can put things on our radar. I think that kind of thing is always going to be a critical complement to merger notification.

Obviously, the other big-ticket item is the referrals from the national agencies. We of course do not have that, but we do have State Attorneys General. We find consistently that they are a critical part of what we do. We actually just last week finished trying a case in Philadelphia alongside the Pennsylvania Attorney General. We are currently suing Vyera Pharmaceuticals with New York and six other states. We find them to be both a source of cases and referral in exactly this way and really significant support on the cases that we do bring.

All things considered, I thought it was wonderful speech and it really sounded themes that are

front and center of mind for us, and that I think signal a series of very promising developments both in Europe and over here.

MR. SOVEN: Fantastic. That was very helpful.

We are going to go about 3000 miles west, having stayed away from D.C. for a while, we will pivot back to D.C. and the East Coast of the United States and the United States as a whole.

Bruce, if you haven't noticed — and for those who haven't noticed — we are in a political season here in the United States.

MR. HOFFMAN: What?!?

MR. SOVEN: Exactly. At least in conventional times — and who knows if these times are conventional or not — this is the time in any administration where both the people who work or worked in the administration and those outside are looking at the box score; taking stock; seeing what was done, what was not done. Those who are perhaps

angling for some new things would say, "Well, nothing was done," and those who are there correctly point out, "Look, an awful lot was done."

For what it's worth, as a personal note, I worked for lots of different people of lots of different persuasions at both agencies, and I always saw them do it straight-up and never turn down a case that people thought was the right case to bring.

But you were on the front lines for thirty-six months, running half the COO operation of the U.S. antitrust agencies. What is your take on what happened in this Administration?

MR. HOFFMAN: Thanks, Josh, and thanks to everybody, and thanks very much for the opportunity from Fordham and the various sponsors for me to join this panel. It has been a lot of fun to listen to so far. The prior panel was really good also. I think we have a lot to talk about.

Before I answer your question, Josh, I want to make one quick point about something that Daniel

touched on and that Axel and Isabelle both mentioned.

I think it's right when you say, "Well, thing are changing quickly; therefore, something needs to happen quickly." As the pace of competition picks up, as the pace of innovation picks up, antitrust has to respond in some way.

Exactly the same thing was said in the late 1990s, by the way, in almost literally exactly the same words, about dot-com and so forth. So this is not a new thing. This is a recurrent, every ten- or fifteen- or twenty-year kind of cycle, where we hear this.

But I do think there is real room for caution about the idea that because the industrial landscape writ large, the economic landscape writ large, is changing really fast, we therefore need to regulate more or restrict more. I do not think that is likely a good policy decision, and I also think it is very unlikely in the United States — to touch on a point that, as Daniel said, we'll come to a little bit

later — I think that kind of notion is not likely to receive a sympathetic audience in the courts.

Turning from that to the question you asked, just in terms of box scores, there is a narrative out there — this is sort of a constant media narrative — that whenever there are Republican administrations there is less enforcement and whenever there are Democratic administrations there is more. The same has been said about the last now closing in on four years. There is the narrative out there that there was less enforcement, and in fact there have been some pretty poor analyses statistical analyses that have tried to show that, although they do that in statistically unsound ways. We've actually looked at this pretty closely.

I'll talk about the announcement that Ian Conner made a couple days ago about it. You see enforcement, but what you find is that there is no evidence of any kind of decline in enforcement. It is actually pretty steady in merger enforcement as

between the Obama terms — particularly the second term, which is closer in time and probably more relevant — and the last four years.

For example, in the second term of the Obama Administration, the two agencies together had an average of forty enforcement actions each year; in three years of the Trump Administration, the two agencies together averaged forty enforcement actions per year in mergers. That average is actually going to climb, I think, because of the FTC's phenomenally busy last fiscal year, where there were twenty-eight merger enforcement actions brought, which is, I believe, the highest since 2001. But I do not have the comparable stats for DOJ over the last fiscal year so I do not know what the net average will be.

Another metric you could look at is litigation. During the four years of the second Obama term, the two agencies initiated a total of twenty-two merger litigations. By that I mean filing litigation to block a merger where there was not a settlement.

The case is filed — and sometimes parties abandon when that happens; sometimes they actually litigate; who knows? — but there were twenty-two such cases during the four years of the second-term Obama Administration.

There were twenty-two such cases during three-plus years of the Trump Administration. Again, this does not include the last fiscal year. That is exactly the same number although over a shorter period.

You do see a difference. Under the second-term Obama Administration, there were twelve FTC merger litigations and ten at DOJ. In the first three years of the current Administration, there were sixteen FTC merger litigations and six from the DOJ. I do not know, though, if that actually reflects any kind of statistically valid difference.

You are getting into such a small set of numbers when you're talking twenty-some-odd litigation cases that small changes in case mix — the things that

are presented to you — could actually produce changes on the margin. You know, one or two fewer cases or one or two more cases move the needle when you are this level.

But certainly, when you look at the number of litigations, the level of enforcement activity, there is absolutely no support for the notion that enforcement is down. In fact, I think likely we will conclude when we look at the current statistics that enforcement is up relatively speaking, at least in a small way.

I think that is consistent with the experience of people who have been in front of the agencies. I think that you have seen a lot of aggressive cases. The FTC has brought a number of challenges to five-to-four and six-to-five mergers — not always successfully, but quite aggressively.

DOJ has brought fewer litigations, but it has brought some big ones and some pretty risky and daring ones, including the *ATT/Time Warner* case and

the *Sabre/Farelogix* case, where there were pretty unusual theories that were brought to bear and pursued in actual litigation.

So, just in terms of the overall track record — and I think this is important from a client perspective to understand — you are not looking at an environment where enforcement is down — quite the contrary — and there is no reason to think that is going to change in any material way.

MR. SOVEN: I think that's right. If you look at the second request issuance data, it is really, really consistent.

I should also point out it is certainly true that Republican administrations have been critiqued for supposedly taking their foot off the gas pedal a bit, but also, honestly, in the last week people on both the left and the right have been critiquing some of the no decisions of the Obama Administration. A lot of this just depends on where you sit at the time and whether you want to look back or look forward.

Axel, let me put a completely unfair question to you: From your perspective, has Bruce got it right in characterizing what has really been sort of the consensus landscape when you push out the rhetoric of what is going on in the United States, or are we in fact missing some cases that from the European vantage point should be brought?

MR. SCHULZ: I agree it is a little unfair question, but that's fine.

I really can just make some comments on some anecdotal evidence. I have been doing this now for a few years, and I do not see a big difference at the enforcement level during the Obama or the Trump administrations.

I have had the honor of being involved under the Obama Administration in the first ever vertical merger for twenty years. That was surprising. That was clearly important, and everybody said, "Okay, sure, under Obama what do you expect?"

At the same time, recently I was involved in

a case where the FTC had looked at and was assessing non-overlapping products.

But really I do not see a big difference in terms of the enforcement level of four or five years ago to today. But again, this is just anecdotal experience.

We have been discussing how to solve the riddle for the authorities to pick up cases which they think are important. At the moment that is difficult because either you meet the threshold or you do not; you meet the test or you don't. It is not really pick and choose for the authorities at the moment. They have to do whatever comes in. At the moment I find it is a little bit tricky for enforcement authorities.

MR. SOVEN: That is a great point. It's a really relevant point that sometimes gets lost. There is a clamor for a certain type of case — and maybe it is the right type of case and maybe it is not — but either no one has proposed that sort of merger or no one has engaged in that sort of conduct, which makes

it awfully difficult for competition authorities throughout the world to bring that case when it is not in front of them.

MR. SCHULZ: Of course this will all change now in Europe with Article 22.

MR. SOVEN: That could be. Sometimes you can create demand by generating supply, or something like that, even at the government level.

Let's stick with the United States a little bit more to kind of pivot from what Bruce was talking about. As Bruce said, the antitrust agencies, rightly or wrongly, have brought some pretty high-profile, daring stuff both at the federal level — the FTC's *Chemicals* case; the DOJ's *ATT/Time Warner* and the *Sabre/Farelogix* case — and the state level. I spent the last two years working closely with the states collaboratively on *T-Mobile/Sprint*, which had its own sort of novel aspect to it.

Daniel, people are understandably asking, "Well, were those relatively few government losses the

results of judges just not getting it and missing and sidestepping what are perfectly valid 21st-century theories; or is the reason the outcomes were averse to the government that the theories were in fact novel and wrong and/or the facts did not really support it?

A lot there, Daniel, but you think about these things, so what's up?

MR. FRANCIS: There is a lot there for sure. I am also aware that I should try to be as brief as possible given that we have our nascent competition theme that we keep alluding to and I do not want to hold up that discussion. But let me try to say a couple things.

The first is just a more general institutional observation — really, by footnote, agreeing with Bruce — and point out a couple of examples, including the ones that you mentioned.

As you know, and as Bruce alluded to, there are a lot of calls at the minute for increased agency action by the FTC as well as DOJ and states and

others. I will say a couple of things about that.

Number one, just subjectively, my lived experience of being there is that everyone is working all the way around the clock and, as Bruce mentioned, the numbers really support that. I really think this fiscal year has seen more merger enforcement actions than in any fiscal year in the last twenty. So, number one, I would say the agencies, to agree with Bruce, are very active.

Number two, the piece that gets left out of the discussion a lot but which you touched on in your question, our merger enforcement system requires us to bring and prove cases not just before neutral adjudicators but before neutral non-specialist adjudicators. Sometimes that piece of the enforcement architecture gets left out of the discussion of what the agencies are doing, can do, and should do.

I wouldn't want to suggest for a minute that the agencies abdicate to courts. I think we have a long track record of developing the law and pushing

for change in the law when we think the courts are wrong. I think that happened with hospital mergers; I think it happened with reverse payments; I think it happened with state action — there is a pretty long and quite distinguished list of issues where the agencies have really pushed back on court decisions that had it wrong.

But I also think that we should be very clear about the fact that what courts do is and should be a real decision. Antitrust enforcement is in very significant measure an exercise in allocating very scarce enforcement resources, people and dollars, and if the things we think about — you know, we think about the impact of bringing a particular case, but we also think about our ability to fix it, and of course judicial practice is a huge element of that.

Just by way of some examples, I am going to talk about mergers, but I think the same is true of conduct as well — we could talk about *Amex;* we could talk about *Qualcomm* — but just to talk about merger

cases.

To take one from the FTC, *Evonik/PeroxyChem* in February of this year was a case where we assembled a pretty powerful record demonstrating that the right way to think about market definition in a particular space was through the lens of supply-side substitutability. It is not often seen, but the concept is that it is easy for firms to switch backwards and forwards between making red widgets and making blue widgets, then firms producing both of those things can be in the same market because it is easy to move between them.

While recognizing the validity and principle of that theory, the court applied a very restrictive approach that I think in practical terms is going to cast a very long shadow over efforts by private plaintiffs or by the government to bring that kind of case.

You mentioned *Sabre/Farelogix*. I think that is a great example. Obviously, one major theme in the

discussion that we will have in a minute is platform competition. Aspects of the *Sabre* decision are very striking. You have a long evidentiary record of parties regarding each other as competitors, the court even concluding that they were competitively significant in really distinctive ways, and then the court turns around and says, "But as a matter of antitrust law a multisided two-sided platform cannot compete with a single-sided business." That really strains economics and law, which I think is grounded in some of the more troubling aspects of *Amex*.

You also mentioned *Sprint/T-Mobile*. That is the one of some of these recent examples with which I am least personally familiar. It was very clear that there was a pretty robust structural case at least. I think there was a HHI delta of 600–700. The court, looking at some combination of efficiencies and a weakened competitor defense and then some sort of institutional deference, concluded that the parties had successfully rebutted that structural presumption.

I do not have a strong view and I am not sophisticated enough in the details of that case to have a strong view about the bottom line. But I will say (1) weakened competitor defenses are ten a penny before the agencies; and (2) when it comes to efficiencies, we usually require pretty significant showings of efficiency in order to offset a strong structural case.

I think those are a good selection of examples. If I were going to add one more, I would add the *AT&T/Time Warner* merger, but I am cognizant of time, so let me hand back the baton.

MR. SOVEN: I appreciate it. All good there.

As I have signaled to my panelists, we are going to pivot a little bit. We have been dancing around killer acquisitions, nascent acquisitions, speculative merger cases, so I am going to ask all of the panelists to comment on that topic. They can comment both rhetorically and substantively.

Rhetorically, if you have a favorite label to give these, by all means, this is a good opportunity to stake your claim as to the right term of art. More to the point, what do you think about them?

To kick it off, the way I think about these, for what it's worth, is Bill Baer testified just a few days ago before Congress that it is virtually impossible under U.S. law to win one of those cases. Now, he didn't really say why. My explanation of "why" is there are usually probabilistic bets that you could tell a story that a large technology company — including some of the ones we are talking about — is buying something that could six years down the road with a 10 percent probability be a really big deal and be disruptive; or there is a 90 percent chance nothing is going to happen — nothing is going to happen if no merger happens and nothing is going to happen if the company buys it.

I think that issue has been both challenging for the U.S. enforcement agencies as to whether to

bring the case or not and even more challenging for courts as to what to do with that.

Isabelle, you have talked about those and you alluded to those in your comments. Why don't I kick it back to you?

MS. DE SILVA: Thank you, Josh.

I think first there is the issue of whether we are able to look at those mergers. We talked already about Article 22 of the Merger Regulation 2004.

We also did some proposals at the national level that were twofold. The first one was to create an *ex post* merger control, which would be quite close to the one you have in the United States or in other countries in Europe, to look at those mergers. The second was to create a new mandatory obligation for some big platforms to inform us of all the acquisitions that they do. That doesn't mean that each and every acquisition should be notified formally, but at least to give us this information

about what types of companies they buy.

I think one of the most difficult questions is: How do we analyze those cases and which are the cases which should be blocked?

We set up a number of questions related to that in a paper we published a few months ago about competition issues in digital. We set up a list of the questions that seem most important for us.

One was when we do competition analysis, how do we take into account the nonprice parameters? This, in a way, should be the simplest question, but it still needs to be said that we have a lot of tools for impact on price but we do not have as many tools for impact on privacy or quality of service, so that can remain a challenge.

The second question is: Should we take a longer timeframe into account? I alluded to that already. Should we go to a five-year timeframe to have a broader perspective? Of course, it is more difficult to predict what is five years away than two

years away.

Another point we really underlined is that new criteria are becoming crucial. I am thinking about the use of data and how a merger can impact the community of users. I think that in that respect the acquisitions of Instagram and WhatsApp by Facebook are really very good examples of the types of advantages that come from buying a company that was thought to be in a different market than that of Facebook when it was bought and now today we see that those three services are completely merging. They remain different, but they are merging even in terms of messaging applications.

I think we must look very closely to see how we can decide which mergers should be blocked. I think that one of the key criteria, for me at least, is: Is their position going to entrench the position of the dominant or very strong company in a way that would substantially lessen the competition in one or several digital markets? That is one of the questions

that we need to ask.

Also we propose in our paper the fact that we should take into account behavioral remedies. They might be in some cases quite fit for some digital mergers.

We have a case today that has been dealt with at the European level that raises some of these questions, *Google/Fitbit*. I will only mention it by name because a lot of those questions I mentioned arise in that case, especially the use of data and how it can impact the position in the market of using health data to create value. So you see that those questions that we raise are not theoretical; they are today the questions that need to be answered to define if we say "yes" or "no" to this type of merger.

MR. SOVEN: Thanks very much.

Bruce, I'm hearing some risk in those remarks for U.S. companies. Let me ask you the question this way, but given that we are in the debate season you should feel free to answer it the way you

wish to answer it.

MR. HOFFMAN: Can I interrupt you too? I'm just kidding.

MR. SOVEN: Yes, absolutely. I should underscore that I am saying this all in the most apolitical way in all respects.

The challenge again is a bunch of these deals seem to create, let's say, a 20 percent chance of a problem. My question to you is: If that is right, is that unlawful under the U.S. antitrust laws; and, if it is not, should it be? What members of Congress and a bunch of people seem to be saying is, "Look, we hear you — we can't prove it — we hear you the risk may not trip the threshold. But we think overall the aggregate problem is so big that we should bump the standard down and not take the chance."

MR. HOFFMAN: Josh, I think there is a huge risk here to the economy at large. I will start by saying I don't think there is anything wrong conceptually with the idea of nascent acquisitions

being problematic, or killer acquisitions or whatnot.

I have spoken about this a lot, I have a lot of stuff out there, so I won't waste everybody's time by reiterating things I have previously said, other than to say that these are certainly areas where the agencies have taken action.

I will say I thought Bill Baer's comments were interesting and they underscore for me a couple of points that get to the risk that I want to highlight.

There is not an empirical basis to say there are a large number of acquisitions of nascent competitors that should have been blocked and weren't and that caused competitive harm. There is no evidence to support that proposition, period, full stop.

It is a myth. It is something that people have just said as if it was true without providing any evidence to support it. And when they are asked for evidence, they usually cite one specific merger or

another specific merger which when they have been studied have generally been unable to conclude by any kind of rigorous analysis whether in fact that prior acquisition was actually anticompetitive.

So the theory is certainly sound — there could be anticompetitive acquisitions of nascent competitors — but there is no empirical evidence that this is a widespread problem. Nor, parenthetically, is there any such evidence in relation to "digital platforms" or "digital companies" — whatever that means, by the way, because I think a lot of the companies that get lumped into that category have lots of differences — but the mere fact that those firms have made a lot of acquisitions does not tell you anything about whether those acquisitions were pro- or anticompetitive.

My next point — getting back to the risk — the idea that you change the enforcement calculus here so that we should more aggressively prohibit mergers that we do not know were anticompetitive or don't know

if they are likely to be anticompetitive strikes me as foolhardy to say the least for a number of reasons.

First point: A lot of what you hear today sounds like "Efficiencies Offense Part 2" — "This acquisition is going to make this firm a much better competitor. It is going to serve its customers better. It is going to give them better products. They are going to really like it. They will become more loyal."

"This is bad. We should stop it."

Wait. Why? If it is providing better services, better goods, making its customers happier so they are more likely to stay with it, how did that become a bad thing? This turns forty years of antitrust on its head.

So we need to be very careful about confusing efficiencies offense with actual anticompetitive effects.

Second point: If you do not know if the acquisition is likely to be anticompetitive, why

should you stop it? If it truly is anticompetitive, we can always go back — the agencies do challenge consummated mergers and you have Section 2 as a backstop. There are mechanisms by which you can deal with problems after the fact. If you cannot predict confidently ahead of time or even with some degree of error ahead of time that the merger is going to be anticompetitive, the notion you should stop it I think is highly problematic.

Third point: A policy like that has potentially substantial effects on the markets both for funding for innovation and on innovation itself. If you make it very difficult for startups to be acquired, you are going to reduce the capital available for startups, and that will have negative effects on innovation. I think that effect needs to be taken carefully into account.

MR. SOVEN: That was clear and to the point. I've got it. Helpful.

Axel, if I am in Europe I am still worried.

In the United States we have a challenging landscape. I think your competitive landscape or enforcement landscape is logarithmically more complex. Notwithstanding that the probability of a negative outcome for one of these acquisitions may be low, it seems like there is a lot to think about strategically when counseling clients in Europe. What are your thoughts on that?

MR. SCHULZ: I just want to add with regard to the nascent competition debate, which is currently in a way starting only, similar types of problems have been addressed already for quite a while by the European Commission and other European agencies under the label of "pipeline overlaps" or "innovation."

You will remember that for many, many years now the European Commission has looked into particular pharma cases, and they also looked into not only products on the market and whether there were overlaps with relation to those products, but also pipeline products. In particular, it used to be pipeline

products in Phase III development, pretty advanced, a year or so before launch. That was totally accepted.

Then came down *Dow/DuPont* with the concept of innovation. There was the idea of "Oh, there's a lot of innovation. There are a lot of R&D people in the lab. Over time, somehow, they will come up with something smart. If we have two companies with a lot of R&D people and scientists, then chances are that the one-plus-one, the two together, will be even stronger." The result is known.

This concept is not really entirely new. It is just now merging over to the digital industry. That seems to be the new element here.

MR. SOVEN: That is a really relevant point and it's a good segue to Daniel. The FTC has responsibility for pharma and life sciences and medical devices.

Daniel, Axel's point is competition lawyers both in the public sector and private sector always want to say they are coming up with something new and

in fact we have come up a new way to invent the wheel.

The flip side is all of this is the same only with a different title. Those who do pharma work have been worried about pipeline production in terms of the FTC's scrutiny — "Well, it's Phase II, Phase III; where are we?" The Commission has done a lot of work stopping a lot of transactions or modifying transactions for products that haven't come close to the market.

More generally, what is your take on the issue? Do you see a distinction between tech and pharma or pretty much are the tools we have good?

MR. FRANCIS: Again there is a lot there. Let me start by saying a couple of things. Just to be clear, I know others have touched on specific companies or specific investigations, but I shouldn't be understood to be talking about any of that and I am not going to talk about specific thresholds or tests. Let me say two things to start.

(1) To agree with Bruce, if there is a

systematic claim that there is a programmatic failure of antitrust enforcement to respond to a set of phenomena that are widespread in practice and harmful in practice, that is an empirical claim that requires proof that I have never seen. So I agree with that as an observation about a programmatic historical failing of antitrust.

(2) But, to disagree with Bruce, I do not think that, at least in its most interesting form, this question is a question about making antitrust law more aggressive either in general or as applied to some sector that we might call the "tech sector" — I'm not sure what that is or how to define it — or "nascent acquisitions."

I think this is in its most interesting form a question about how to apply the antitrust laws and standards that we already have and for which we spend so much time emphasizing to the market, to others, their flexibility and their sensitivity to deal with real competitive problems on familiar theories in

markets across the economy.

I think Axel touches on something really important when he emphasizes the consistency of this project with what antitrust enforcers have been doing for a long time. Our orienting concerns are always anticompetitive agreements; anticompetitive exclusion by dominant firms, by single firms with monopoly power; and anticompetitive acquisitions. Same here as in any other context.

Everybody agrees that the acquisition of a competitor can be — sometimes is — unlawful, the paradigm of anticompetitive conduct directed at a promising or significant competitor to remove them. So the question that we are talking about here is how to apply that very familiar rule in settings where the full scale of the competitive threat of either the target or the acquirer, because it is not always the case that the incipient party is the target in markets such as these. I'd say a couple of brief things about that.

First, Uncertainty of this kind is familiar to us. It is a part of the competitive process. In fact, the fact that competitive trajectories and competitive effects are unpredictable is a huge part of what we value about competition in the first place.

But it is true, I think, that in digital markets, and in some of the markets that we have been talking about today, some of that complexity and unpredictability is particularly pronounced — particularly nonprice effects, which can sometimes be difficult to identify or measure. Let me agree with Isabelle's observation that we really would appreciate some better tools for measuring and talking in an organized way about some of these things that are not easily quantifiable in our familiar ways.

This unpredictability flows from unpredictable competitive trajectories, complexity of nonprice effects, and also the fact that in markets that are distinguished by strong network effects some of the most significant competitive threats may come

from products or services that are not close like-for-like substitutes of the dominant incumbent.

This is a huge policy question, and in responding to it I am going to just identify a couple of guideposts that I find quite helpful.

(1) Just to emphasize, I think this is about how we apply our existing standards; it is not about special pleading for tech or for nascent competition. It is not about increasing the aggression of our antitrust standards; it is about applying them.

(2) We start, as we always do, from faith in the competitive process. We know that in cases where there is a very close tie between the competitive process on the one hand and a static reduction in marginal cost on the other, our baseline preference is for competition.

That is particularly important in the acquisition context. When we are talking about conduct, often the hardest question is: Defendant is doing practice *XYZ*. Should we think of that as merits

competition or should we think of that as something else? That is not typically the question on the table when we are dealing with an acquisition.

There is great language in the Horizontal Merger Guidelines that says something like "the antitrust laws give the competitive process, not operational efficiency, primacy in protecting consumers." I find that a very helpful guidepost.

(3) Bruce talked, I think very importantly, about error costs and our risks of chilling all kinds of procompetitive activity in the economy. I wholeheartedly agree, but I often think we talk asymmetrically about error costs and chilling. I think there are error costs to inaction — in tolerating harm to consumers, harm to competitors, harm to potential innovation, and in chilling investment and entry and innovation in the markets that are affected by anticompetitive conduct. So I there are error costs and there are risks of chilling on both sides.

(4) In this case and in this setting, as in all our others, ordinary course evidence is a very helpful guide. Understanding what monopolists, merging parties, defendants, or companies actually expected, actually intended, based on their irreplicable market knowledge that we as regulators cannot hope to generate ourselves is a very helpful guide in close cases where we otherwise find ourselves less certain than we would like to be.

Let me stop there.

MR. SOVEN: Thanks very much, Daniel.

Our panel, predictably, has done a fantastic job covering almost all the topics we planned to talk about. There are a few we do not have time for.

I think we would be remiss in ending if we do not touch upon what has been an enormous drumbeat in the United States over the last twelve to twenty-four months of vertical mergers. The agencies issued new Vertical Merger Guidelines. Some thought they were great; some thought there wasn't enough in them.

People have been asking for guidance.

I will throw out as a proposition that I, perhaps simplistically, have never thought this concept was particularly complicated, at least in the United States. In the United States, if you have a really big durable market share and you do a vertical acquisition or engage in a collusionary conduct in which the anticompetitive effects are pretty clear, and the apple pie story is slim to nonexistent, you lose, and you lose consistently, and you lose no matter who is running the agencies. Some people may think that's right some people may think that's wrong, but that is really what has been going on if you look at the data. But maybe that's not right.

Let me allow everybody a few moments to talk about what is a complex subject, recognizing that, and end on let's think vertical.

Isabelle, again I will start with you.

MS. DE SILVA: At least at the national and European level, we look at vertical mergers with the

idea that if there is a serious risk, then we will be able either to block the merger or to have serious commitments.

For me, the most topical case in recent years was a case that involved the broadcasting industry, *Canal Plus/TPS*, which really was one of the biggest decisions in which the company had to comply with a very wide set of structural commitments to be allowed to go through with the merger. We now have some years to look back at that decision and see whether it was correct. This decision was confirmed by the Supreme Administrative Court. The idea is that this decision did a lot of good in terms of protecting those that might have been impacted by this vertical integration.

So I have to say that in our view this type of case can cause serious difficulties for the companies and they should be aware when they consider this type of merger that there will be difficulties with the competition authorities.

MR. SOVEN: Thank you.

Bruce, I think you may have a double-header today, so let me ask you to go ahead in case you have to jump.

MR. HOFFMAN: I will just make a couple of quick points.

One is, Josh, I will actually give a slight caveat to the point you made. As Dan O'Brien observed once, in vertical mergers the potential for procompetitive benefit is isomorphic with the conditions that you highlight as potentially creating the risk of anticompetitive effect. So I think it is just not the case that we can say in vertical, as we can in horizontal, bigger share equals bigger problem. In fact, often the inverse is true.

Second, I think the Vertical Merger Guidelines that came out are an enormously important step forward. They are not perfect — nothing ever is — but compared to what we had before they are enormously better.

Third, I think they recognize a critical point. They talk about it mostly in connection with elimination of double marginalization (EDM), but it is a really critical point that the Guidelines identify and that I think bears some real careful thinking about. That is, in vertical mergers, unlike in horizontal mergers, the mechanism by which output restrictions or price increases upstream translate into the required downstream harm — remember the Vertical Merger Guidelines specify that downstream harm is required because otherwise we just have rent transfers and nobody cares about that — but the mechanism by which those harms translate downstream is exactly the same as the mechanism by which benefits translate downstream. In other words, unlike in horizontal mergers, the passthrough of harm is identical to the passthrough of efficiency or benefit.

So in a vertical merger under the new Vertical Merger Guidelines, unlike in a horizontal merger, the treatment of efficiency passthrough and

harm passthrough is symmetric, as it should be because that is the correct economic framework.

I will leave those bombshells to let everybody debate while I bail out to go to another thing I have to attend. My apologies. This has been great. Thank you all very much.

MR. SOVEN: Awesome. Thanks so much.

To be clear, the big is not the dispositive factor in the out comes of U.S. vertical cases, be they mergers or conduct cases. Big and durable, as it should be, is a prerequisite, but the only cases in which we have had adverse findings under the U.S. antitrust laws have been cases where there has been a clear showing of anticompetitive effects — and, frankly, the parties really haven't had much to put forward in terms of procompetitive effects.

In the parts of the *Microsoft* case that Microsoft lost they really did not have very much. In *Dentsply* and cases like that, they were all pretty straightforward that "These are a problem and we are

not seeing an efficiency story."

MR. SOVEN: Axel, appropriate for a European conference, let me flip it back to you.

MR. SCHULZ: Probably not time to say very much, but I think Isabelle has already touched upon the important points.

In Europe the review of vertical mergers is maybe more prominent than in the United States. In the United States, it is more of an oddity I understand. In Europe, it is more prevalent and there have been more cases in which vertical relations are being reviewed. There have been quite a number of cases.

Maybe one is really quite interesting, *EssilorLuxottica/GrandVision.* I think the clock has been stopped for the third time now. There had been the precursor to that case two years ago when Essilor and Luxottica merged, and that was somewhat a conglomerate/vertical merger. One was producing the lenses for glasses and the other one was producing the

frames. So is it vertical, is it conglomerate, or somewhere in between?

Interestingly, that case had already gone into Phase II in-depth investigation. It was a huge investigation — I think 4000 opticians had been consulted — because the two companies in their respective markets were the market leaders. But also their market shares were not above 20 percent in each of their respective markets, so it was not ultimately a big deal, and the deal was cleared.

Now EssilorLuxottica is trying to acquire GrandVision. GrandVision is a retail outlet with, I believe, 4000 stores or something like that. EssilorLuxottica has its own 1000 stores. I don't know the facts so I cannot really comment, but it seems that the clock is stopped for the third time, so it seems to be a bit more problematic to get that approved.

I really ought to say again that in Europe vertical mergers are being looked at routinely.

MR. SOVEN: Daniel, you get the challenge again of wrapping up a complex subject in just a minute or two. Go ahead.

MR. FRANCIS: I am not sure I have anything particularly interesting to add to the thoughtful comments we have just heard.

I think everyone understands that vertical transactions, just like horizontal deals, can be harmful, but perhaps in some ways that are specific to vertical deals the analysis can be more complex.

Bruce mentioned that foreclosure and EDM are two sides of the same coin. I would add by way of a footnote to that that foreclosure is not the only story of harm in a vertical transaction. Access to competitively sensitive information and coordinated effects are things that I think we should take seriously in the vertical context. This is not a "one-trick pony" in some sense. But otherwise I think his points and those of others are well taken.

Also, by way of echoing something that

others have said, in the vertical transaction context a big challenge for companies and others, including private plaintiffs and agencies, is the relative lack of clear guidance from the enforcement architecture.

I think it is wonderful that now, after so many years, we have Vertical Merger Guidelines out there. The agencies have spoken, but now it is over to the courts and to the diet of cases that will flow through the agencies under these Guidelines.

Like everyone else, and to recall one of our earlier discussions, it will be very interesting to see what the courts now do.

MR. SOVEN: Yes. I think what is clear from this fantastic panel and the great comments of the panelists is that we are not even close to the end of history in competition enforcement in the merger sphere.

Again I want to thank the panel for their work and effort.

I'll flip it over to you, James.

MR. KEYTE: Thank you so much. What an excellent panel.

It has been a great first day so far, with the tech panel, the mergers panel, the keynote speakers and discussion.

Normally, what I would do now is to invite everybody to exit the room and go get some food and a glass of wine. I will ask everybody to go get some food and a glass of wine or something else that you want to drink and then click back into our Plenary Networking Session, where you get to network. You can sit at tables. You can get up and go to other tables and meet people. You can find people. We will open that up right away so you can do that glass in hand. You just can't share anything.

We will have a Fireside Chat after about ten or twenty minutes of that with Barry Hawk, the founder of the Institute — and everybody knows Barry — and the iconic Bill Kovacic. That will be an interesting discussion.

Following that, Freshfields is putting on its networking event in the same technology. You have to exit and go back into their event.

We hope to see a lot of you in the networking session to talk to Barry and Bill and then onward to the Freshfields event.