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NETWORKING SESSION WITH HEADS OF AUTHORITY**

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**Panel 1: Antitrust Economics Workshop:
Econometrics and Modeling for Mergers Globally**

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MS. DUPLANTIS: Good morning, afternoon, and evening to all of our participants out there. Thank you so much for joining us for Brattle's workshop on

Econometrics and Modeling for Mergers Globally.

My name is Renée Duplantis, and I am a Principal at Brattle and also the head of our competition practice. We have a distinguished group of panelists here today. Their bios are included in the Fordham materials, but we have a relatively short panel session, so I will just quickly introduce them all.

First, we have Justin Stewart-Teitelbaum, who is a Partner in Freshfields' antitrust, competition, and trade practice, based in Washington, D.C. Next we have Thorsten Mäger at Hengeler Mueller, who is a Partner in their Düsseldorf office. Third, we have Loren Smith, who is a Principal at Brattle in our Washington, D.C., office, and he heads up our U.S. merger practice. Finally we have Konstantin Ebinger, who is a Principal at Brattle, and he heads up our Brussels office. All of our panelists bring an extensive amount of experience in mergers globally, and we are delighted to have you all as part of the

panel.

So let's jump in. Our panel today is titled "Econometrics and Modeling for Mergers Globally," but we thought that while the tools economists use to analyze mergers are the same across jurisdictions, the way in which they use these tools or engage with the agencies on their econometric analyses may differ across those jurisdictions.

Justin, let me start with you on big-picture strategic considerations when engaging an economist on a global merger. When do you consider retaining an economist and under what circumstances?

MR. STEWART-TEITELBAUM: Sure. Thanks, Renée, and I would say thank you to you to Brattle and to Fordham for having me. It is a pleasure to be here even with some limitations virtually.

Since your question is on big picture and when, I think it won't be a surprise to anyone that my view is the earlier the better. Economists can help with your initial assessment; they can inform

strategic defenses; they can inform market dynamics across different jurisdictions; and, importantly, they can help you build your long-term strategic end goal to include them in the defense going forward.

Naturally, there are sometimes limitations about how quickly you can bring economists onboard early on in a transaction or in front of the agencies, but you always want to have a plan from the start, especially in complex merger control, to have the economist involved and joined up globally from the start.

With that, Thorsten, I doubt there is much of a difference across the Atlantic, but I thought I would kick it over to you.

MR. MÄGER: Yes, thank you, Justin.

Let me start with some anecdotal evidence. Some time ago, when I brought an economist to a meeting with an agency, the case team asked, "Is your case that bad that you need an economist?"

Before you disconnect me, Renée, let me

quickly clarify. This was twenty years ago, it was Germany-specific, and of course things have changed. Obviously, one would bring in an economist early on in complex cases.

As far as the European Commission is concerned, we see economists in practically all Phase II cases. Still, if it comes to the national competition authorities (NCAs), there are even Phase II cases – which is the equivalent to the U.S. Second Request – where there are no economists involved. This has something to do with the different setup here in Europe. It is a little bit complex. Let me explain that.

As far as the European Commission is concerned, you have the Chief Economist team, which was introduced fifteen years ago. The idea was that, after several court defeats of the European Commission, to create a peer review panel. The Chief Economist team directly reports to the Director-General who is just below Commissioner Vestager, and

they really can have an impact on the outcome of cases. They are also accessible for external advisors.

The situation is different in many national competition authorities. As an example, the German Federal Cartel Office has also created a Chief Economist team, but that is more an internal resource for case teams. The case teams are the decision makers and they also decide whether to involve economists or not. The economist team has no direct mandatory role. That is quite a difference to be taken into account, but otherwise I totally agree with Justin.

So, back to Renée.

MS. DUPLANTIS: Thanks, Thorsten. Let me stick with you on the next question then. When do you consider going in to the agencies with econometric analyses?

MR. MÄGER: I also would like to distinguish between the situations if you end up before the

European Commission or national authorities. As everybody knows, that has to do with thresholds.

The process with the European Commission starts with submitting a draft filing. In that draft you describe the products and the markets. At that point, it would be too early to introduce econometric analysis, but, depending on the feedback of the Commission, requests for information (RFIs), etc., you might want to introduce that at a later point, still prior to formal filing. The advantages are obvious: you could discuss availability of data, try to shape the RFIs, preference for specific modeling models, or coordinate a survey, and so on.

Again, it is different before the national competition authorities. In most Member States the process would typically start with a filing, not with a draft but with a filing as such, and also here you would not introduce too complex economic thinking but reserve that for later. Sometimes, for example in Germany, the case teams are quite small and not really

interested to start with economic analysis. If they are convinced about a case without that, they could clear it because in Germany the system doesn't go up in hierarchy; there is just a case team, and if they decide, that's it.

MS. DUPLANTIS: Would you be proactive with your advocacy or reactive, and how do you make that determination?

MR. MÄGER: Ultimately, I think it depends on the quality and the power of your argument. If you have strong arguments, you will want to come in proactively, if you think you will not regret that later on if things develop. If you are less strong or if you don't have data yet or have not analyzed data yet, you might want to wait and see in a reactive mode, to try to poke holes into theories of harm presented, but not be proactive.

MS. DUPLANTIS: Justin, how would that differ or be similar on the other side of the pond in the United States?

MR. STEWART-TEITELBAUM: I think it is similar. It is ultimately a tactical decision. That is to say, is my case of sufficient complexity from an economic side that I want to go in with a proactive message to try to narrow issues, to try to join issues with the staff and the economist; or is it something where I want to wait and see what the agency is going to react to in my Hart-Scott-Rodino (HSR) filing?

To Thorsten's point, there is a difference in the U.S. process with respect to the Form CO and an HSR filing. The Form CO has a lot more information and various more positions need to be taken by the parties, whereas in the United States you are putting in your HSR filing, your deal documents, etc. So, to the extent that you want to go in and prenotify and have an economic message underlying that, that is certainly a consideration, and, at minimum, it is a consideration to inform that messaging even if you don't bring the economists along in the first instance. Otherwise, if you think there is a

straightforward question or the agencies might not take a material interest, I think it is best to hang back and wait and see.

MS. DUPLANTIS: So, proactive or reactive?

MR. STEWART-TEITELBAUM: I think it is both, Renée. You want to be positioned to be proactive, and then you want to assess your initial engagement with the agencies about what level of positions you are going to need to take, what detailed data analysis you might need to do or might be asked about, and then you can be reactive. But you want it ready to go.

Then, if you know from the start that you have material issues, lots of overlaps to deal with, lots of data analysis to be conducted, and a lot of economic arguments that are going to be put forward – for example, in a vertical case – you want to be out there in front proactive. So it is really be prepared and then decide at the last possible minute after you have built your strategy.

MS. DUPLANTIS: It is really interesting.

You were talking about the fact that the Form CO has so much information and it is your choice as to whether you put some of that in there.

In Canada we have to file essentially a white paper and ARC letter, so we have to put more information in there. It raises the question: how do you ensure that your arguments and analyses do not undercut arguments in other jurisdictions, especially given that you are doing these at different times?

Justin, why don't we start with you?

MR. STEWART-TEITELBAUM: I think that is a great question, and it has to be your consideration from the start in today's merger control. So many deals are going to be cross-border, whether it is two jurisdictions or twenty-five, and you want to position all of your advocacy to be aligned.

Obviously, markets differ in different jurisdictions, or can differ, so you can account for the differences, but you certainly do not want it – to use your word – undercut anything. That, I think,

underscores the importance of what Thorsten and I were talking about earlier, which is the earlier you get the economists involved the more you can shape that global message and then deal with the specific market dynamics of each jurisdiction in their own.

Then you can layer on to that, Renée, a proactive approach or reactive approach, but always in line and in step so that you are not harming yourself in this part of the world to help yourself in another.

MS. DUPLANTIS: Thorsten, is that the same in Europe in the different national agencies? How might that differ?

MR. MÄGER: Yes, Renée, it is the same in Europe. What you see sometimes is national authorities or the Commission and national authorities looking at the same or similar markets but having developed in the past different market definitions.

As you know, market definition and market share as a proxy for market power still plays a significant role under both the German and European

systems. If you don't realize upfront that there might be established case law on market definition – for example, in France – and you shape and design your argumentation without taking it into account and realize that later, there could be a problem. Sometimes the markets differ, and it might well be that you apply different argumentation in different jurisdictions, but sometimes not. As Justin said, it is so important to align upfront.

MR. STEWART-TEITELBAUM: Renée, I'll just add, because I think Thorsten and I didn't make this clear for folks who might be relatively new to multijurisdictional merger control, we know that the agencies are going to engage with each other, and that can be to your advantage. You want to be telling a unified story around the world and making sure that each of the authorities gets what they need to do their assessment – whether it's a Form CO or a Canadian filing or an HSR filing – but at the same time they are going to be talking to each other about

the issues they are seeing, about market reaction, and about the trend and direction of their investigation. You always want to be cognizant of that.

MS. DUPLANTIS: Yes. When I was at the Canadian Competition Bureau, one of the first calls we made would be to the United States or to the Europeans to find out if they had the filings and to share whatever information we could. That's a really great point.

Okay, let's now turn to the economist's perspective and talk about strategic considerations that are coming into play when engaging with the agency's economists.

Loren, let's start with you. Why is it important to bring in an economist early?

MR. SMITH: I think there are multiple reasons.

First, I think strategically you want to be on the same page with the legal team before you go into the agencies. Typically, it is a matter of

perspective more than true disagreement, but it is important to understand each other prior to going in so that you are not stepping on each other's toes.

In my mind, the reason for doing that, as far as the review process goes, is that disagreements or changes in course, whether they are perceived or real, at best slow things down and at worst could damage credibility or set you back a little bit in the review process. I think it is important that everybody know each other's viewpoint before you go in.

Second, as a practical matter, economic work just takes time, especially empirical work. In my experience, getting data that you need from third parties can take weeks, and then you need some time to do good work. So if you are getting called right before the filing goes in, it is going to be problematic if they want to get the merger terminated early.

If the goal is to get the review process

done without a Second Request, for example, you are going to want to talk to an economist maybe a month or so before you file so that you can start the process of getting the data and position yourself so that, if you do go in in that first thirty days and you need to have an economist involved, that can happen effectively and efficiently.

Even theoretical analysis, if you are not doing empirical work or intending to do empirical work, or you don't think data is available to do empirical work, I think even good economic theory requires knowledge of the record, the facts of the case, and talking to the market participants before conducting an analysis. I think it is good, regardless of whether it is going to be empirical work, to get people involved in the conversation.

Konstantin, differences in Europe?

MR. EBINGER: No. I can really echo what you said, Loren. I fully agree that it is important to get onboard early.

I would add another aspect. I think one of the things that arises when you are submitting economic evidence is that you will have varying degrees of traction of that evidence with the authority. The authority might have follow-up questions and would like to know more. Again, those are all things that need to be considered in the timeline.

You do not want to be in a situation where you are rushed trying to follow up and clarify things. You want to be there and give the authority sufficient time to think about what you are saying, what your arguments are, and allow them the opportunity and the time to change their minds potentially on issues. I think doing that under pressure is putting them in a much tougher spot than if you are in early, so I can fully agree with you on everything you said.

MS. DUPLANTIS: Loren, you talked about the empirical work and how it takes time to get that done. What is your perspective on whether and how your

economist should help or review document productions?

MR. SMITH: In my experience, I think it is valuable to at least have the economist reviewing Item 4 documents before a matter is filed in the United States, for no other reason than to have a good understanding of what is said about the deal by the parties involved before the matter starts. It can be a little inconvenient if the economist gets involved in interactions with the FTC without having a good handle on that information.

It is also useful to get an economist's perspective on potentially relevant documents because there may be reasons that "good" or "bad" documents are not as good or bad as they seem from the economist's perspective. It is good to have that understanding before you start engaging with the agencies.

MS. DUPLANTIS: Konstantin?

MR. EBINGER: I think it is important, and that is why I would say even on transactions which

might on the face of them not seem too complicated it might make sense to have an economist onboard, even if it is not in a proactive role, agency-facing, but just to review the materials that are collected, to take an assessment from the economic side, and to think about what that might mean for theories of harm or for issues arising.

What I have seen a number of times is documents that were put in that looked harmless but, if read with a certain skepticism that an authority might have toward a transaction, can really throw them off-course in a negative way for the transaction. Avoiding that is something which is extremely valuable because, once the authority takes a certain stance, you are going to have to put quite a bit of effort into getting them off that again.

Putting in the effort in advance and making sure that you can explain certain things that might not look great, or highlighting particular things that work for your case, is certainly an investment worth

making early on.

MR. STEWART-TEITELBAUM: Renée, if I can pick up the point here, I agree completely. I think it is important to understand, picking up on the points that Konstantin and Loren have made, that the earlier they can see documents – we understand that documentary statements are not always accurate from an economics perspective so if we are anticipating issues, that is one thing. It also gives the lead time and the ability to work with the client to go chase down the actual answer, versus some loose statement in an email or a slide deck that was circulated at the senior level because someone was trying to impress someone else.

MS. DUPLANTIS: That's a really great point.

Konstantin, let me come back to you. In these strategic considerations, how does the Chief Economist team play into this?

MR. EBINGER: The Chief Economist team in Europe, as Thorsten already mentioned, has an

important role in the transaction generally. They are quite independent of the actual case team handling it and are very well versed and very capable in the economic issues.

They can be a great ally in transactions, just getting them to see your view. Even if they might not agree with it fully, they will be able to talk about the issues as peers for the economists in particular, they will be able to understand concerns, and also may help the case team in particular get off certain views that they had which might not be founded in economics but seem problematic from the onset. So getting them involved early is important.

Generally, the way it is set up in transactions reviewed by the Commission is that the case team will have an economist from the Chief Economist team assigned to them. I think one important thing there is that the economists working on the case on the client's side should try to engage with the Commission's economist as early as possible,

and potentially even expand in the sense of asking for a larger economist team meeting, maybe involve the Chief Economist if these things become important. I think making sure that you involve the Chief Economist team and have them actively review the economic submissions is extremely important for the European proceedings.

MS. DUPLANTIS: Thanks.

Loren, how does that play in with the Bureau of Economics?

MR. SMITH: I think the same is true in the United States with the Bureau of Economics or the Economic Analysis Group at the DOJ. It is not always the case, but in general economists tend to be a little bit closer together in their views during the course of an investigation. If you can get on the same page with the economist, it can sometimes help the review process internally at the agencies, which is helpful for the client as well.

I find that it is especially true in complex

matters, in complex vertical matters in particular, where things can sound much worse than they are as a matter of competition economics.

"Exclusionary conduct", if you hear about it or see documents about it, or "trying to exclude a rival" can sound pretty bad, but if you understand the economics of it well, it may not always be the case that it is anticompetitive; it may harm a competitor without harming competition. Those are the kinds of things that economists can be helpful for, explaining that internally and externally, and could move an investigation toward a productive finish.

MS. DUPLANTIS: Loren, when do you think econometric analyses should be introduced to the agencies in these merger reviews?

MR. SMITH: In my view, I think it depends on what your goal is with a particular investigation. For example, if you have a merger that you think should be cleared early, that it should be cleared in the first thirty days, or it should be a pull-and-

refile and cleared in the first sixty days, then I think it is crucial that you get that econometric analysis if you think it is going to be required.

If you think that the agency economists are not going to agree to close an investigation without estimates of diversion ratios, for example, you need to get in there in the first fifteen days or so of an investigation with a presentation or a letter and backup materials so that they can evaluate it and have time to close that investigation early, if you and the legal team get together and agree that this should be closed, that this is not a matter that should involve a Second Request, we need to get in there and convince them. In that case, I think you need to go in early and you need to engage them early.

If it is clear from the outset that the investigation is likely to be more protracted, that it is likely to involve a Second Request and maybe a longer investigation, then I still think it is important to engage early, but you want to be a little

more careful because if the investigation is going to go on for six months, a lot can happen in six months. You want to be sure that something that you rushed to put in in the first thirty days is not going to come back to bite you four or five months down the road. In that case, I think the teams just need to work together to figure out the best course for putting in analysis and to make sure that the proper care is given, but also that you are helping the staff to move along their investigation at the same time.

MS. DUPLANTIS: Perfect.

Konstantin, similar situation in Europe, or how does that differ with Form CO and the different processes there?

MR. EBINGER: I think generally it is similar. It very much depends on the case. It very much depends on how strong your arguments are. I think, in particular, it very much depends on to what extent you think you are going to need the tool of econometrics to actually convince the case team or the

Chief Economist team.

One thing that certainly sticks out in Europe is that, in terms of the process, once you get to the Statement of Objections – which is when the Commission and the case team have come to conclusions and have decided that there might be an issue with this transaction that needs to be resolved by remedies or whatnot – once that has landed on the desks of the parties, you are at a stage where putting in significant econometric work that has not been shown until then is probably going to be quite difficult for the case team to digest. It will be difficult for the Chief Economist team to review in the remaining time they have.

Generally, in the process it becomes quite clear where the authorities are, where they stand, and what they think they are doing. If you notice that this is something that is likely going to happen, that they are not fully convinced, you want, in particular, to have analyses put in before that time or earlier in

order to give the authorities sufficient time to review, to assess, give feedback, and to find a jointly acceptable resolution of any issues that are still identified. I think that is very important.

Generally, the very strict timeline of the EC process provides that more of these transactions, in particular if they are more complex, will have a significant prenotification phase.

The prenotification phase is a good time to hear out the case team, the Chief Economist team, what their concerns are, how they might think, what kind of analyses are helpful for them to make a decision, and to design those, think about those, and maybe even to submit them. That very much depends on strategy and how strong one thinks those arguments can be and how helpful they can be.

But I think, as Loren rightly said, the earlier you engage the better it is, and at what point in time you submit then very much depends on the strength and positioning of your arguments.

But really in Europe one thing to note is that if you are in Phase II proceedings, you need to get the analysis in early because there is probably nothing that the case teams and the Chief Economist team dislike more than having a significant econometric analysis on the table they haven't heard of or seen before coming right after the Statement of Objections. That is just not going to work very well for them.

MS. DUPLANTIS: Okay, perfect.

Why don't we switch gears? Thorsten, I am going to turn to you next. I want to see if we can talk about the practical issues you encounter when engaging with the agencies on economic analyses from a legal standpoint. Anyone who has experienced a merger in the European Union recently has seen the extensiveness of the many RFIs that they issue. How do you engage with the agencies on the RFIs and ultimately in the United States and other jurisdictions at Second Requests?

MR. MÄGER: Again I need to distinguish between the European Commission and the national authorities in the European Union.

In the case of the European Commission, you see many RFIs, many questionnaires. This has something to do with the fact that the members of the case teams often fluctuate, and then new team members contribute new issues.

The main point is that the case team is not the ultimate decision maker, so even if they have formed a view, they need to prepare for the situation that the hierarchy disagrees. For that reason they need to be prepared also to have done the fact finding for alternative ways to assess a case. That and other aspects lead to these multiple RFIs.

Because of the staggered approach, one RFI after the other, there are, at least in theory, opportunities to steer the case team a little bit because you realize what they are heading to and then you could respond.

But, of course, there is also a question of whether you can manage that. The RFIs are typically data-heavy and come with a tight deadline, so you are busy responding to the deadlines and need to find a way that you can also pursue your own advocacy in parallel, so to speak – two work streams.

On the NCA level, it is again different, often with smaller case teams who produce fewer RFIs and are often less data-hungry. So there is more room for proactive advocacy, but, on the other hand, there are also fewer indications of where the NCA is heading.

MS. DUPLANTIS: Perfect.

Justin, thoughts from the U.S. perspective on that.

MR. STEWART-TEITELBAUM: Briefly, I think where you will see a procedural difference between the United States and Europe is Second Requests. While they can be very broad in scope, there is a lot more control for the merging parties themselves and how

they respond and when.

I think you have a practical point you are dealing with on the Second Request, which is making sure you are engaging with the staff and with the economists at the agencies to join issue on what data is actually being requested because it is never going to come out of the merging parties or the market in the same way in which it is particularly asked for in the exact specification. That has to happen quite quickly and early on because it does take time.

The second point is, what else can I sequence in there? Are there proactive points I want to be bringing out running in the background with the economist team, such that I can go on offense and attack issues and either whittle away overlaps and questions or theories of harm, or go head-on toward the core issue but alongside my response to the Second Request itself?

I think one of the things you want to keep in mind there, though, is while you are not responding

to RFIs with very short timeline turnarounds, you are preparing your document responses and your interrogatory responses, which are all going to need to line up with what you are saying on the front foot on the advocacy level.

MS. DUPLANTIS: Perfect.

Justin, let's skip ahead now to one of the more interesting questions: How do you typically work out the transition with U.S. agencies from staff to front office in the advocacy process when you are dealing with econometric analyses?

MR. STEWART-TEITELBAUM: I think it is an important strategic question and one that you want to be thinking of in advance. If you see your transaction and your investigation headed toward a recommendation of an enforcement action, or at minimum a conversation with the front office, I think what you want to do is try to join issue with staff and say: "What is it that would be most helpful for management? What would they like to see? What are their

questions?" – to the extent that you are able to disclose them – so that we can either point you to the evidence we have already submitted in response to the Second Request, or the advocacy we have already submitted in response to your questions, or we can think about a slightly different tack on that issue and work with the Lorens and the Konstantins of the world to zoom out a bit, to someone who is thinking about it at a slightly higher level.

I think the transition is important to keep an eye on. It is also important to know who the manager and the management are that you are dealing with and how they like to approach it. I think that a core alignment issue with the economist about this meeting coming up with management is actually different than the meetings we have had over the last five or six months.

MS. DUPLANTIS: Got it.

Thorsten, how does that work on the European side?

MR. MÄGER: In the case of the European Commission, the situation is slightly different from the U.S. authorities. You often have the opportunity to involve senior management at an earlier stage, often in the so-called "state of play" meetings during the process which they attend – it is not only the case team – and then the case moves upward, but there is a chance to involve them, so it is not a clear cut where you start with a new audience.

Also, in the case of the national authorities, it is specific, in that often, like in the German case, the case does not move elsewhere at all, it is the case team right from the beginning until the very end who makes the decision, and you do not have to consider several steps.

MS. DUPLANTIS: Let's turn back to the economists now. Are there practical ways to get the agencies to engage econometrically, and how do you engage with staff economists?

Konstantin, let's start with you.

MR. EBINGER: As mentioned earlier, I think generally, and in the European Commission in particular, the economists there are very open to having talks with the parties to get a download of where things are going, how they view the transaction, and what kind of analysis they think is helpful.

One thing that is important for the European side is just something to do with resource constraints. I think generally the European Commission is quite resource-constrained overall; the Chief Economist team certainly is. They have a lot of transactions to look at and they are very rich in the information they receive. Certainly Covid-19 has not made it any easier for them, given remote working and everything that comes with that.

The extent to which the parties can take some work off of their shoulders, which really takes the form of asking them what are the main concerns they see – what kinds of analyses would they like to see to dispel those concerns, what is it that they are

still missing – I think doing that early on is very helpful indeed.

If things get complex enough, reaching out to the Chief Economist himself and saying you would like a meeting with a broader economics team – always of course going through making sure the case team is onboard and is aware of these kinds of things – can be very helpful.

In Europe in particular, the Chief Economist team in complex matters will take a personal interest in them if the economics become quite complex to make sure that the issues are well considered, and reaching out and using that channel as well I think is something that certainly benefits the whole process.

MS. DUPLANTIS: Loren, how does it work in the United States? How do you engage with the staff economists?

MR. SMITH: I think the goal or the hope is that you can develop a sort of collegial relationship with them to the extent possible, understanding that

they have a job to do and you have a job to do, but at the same time you want to develop a rapport such that you are being productive and transparent with one another. Surprises are not good for either party when they are trying to do their job.

I think providing detailed backup for everything that you do during the course of the investigation is helpful, understanding that agency economists in the United States, regardless of what you present or put in, are going to want to do their own analysis and that that generally takes time.

Something that you need to build into your schedule if you have a longer investigation is that agency economists want to do their own analysis, and they generally do it by themselves, so they need time to do the work that you have worked with a team on. They generally need the time to do that with one or two people. So you need to build that into your thinking as you are doing your advocacy or going into the agencies.

I think that is about it. Just having an eye on the economists in the front office and what their viewpoints might be on particular issues is important as well, but that comes as the investigation goes on.

MS. DUPLANTIS: Konstantin, similar to the question that we posed to Justin and Thorsten, how do you practically deal with that transition from staff to front office, or in your case from the case team to the Chief Economist team to the Legal Service team as the case evolves?

MR. EBINGER: I think that is a difficult one, I will be honest. It is very much guided by the legal strategy, and of course the counsel is best placed to decide at which point in time it makes sense to go up the hierarchy or at which time it makes sense to involve others.

Certainly, in instances where analyses are not getting traction that they should be getting, I would just suggest listening to your economist. If

they are quite confident in the analysis that is there and really are pushing that this should make an impact and it is not, that is probably a time when one might want to consider reaching out and saying, "Okay, this is something the Chief Economist needs to look at because it is not getting the traction it should." Generally that works. That is not seen as something negative in the whole process overall to say, "Look, this is something that needs to be reviewed."

Of course, there are various other levels to go beyond that. At the end of the day, you can go all the way to the Commissioner, which is certainly a legal and strategic question. I think that is where the economists "bow out," so to say. I think that is true.

One thing that is also quite important is in the process when you are getting to a stage where things are looking really difficult, one thing to note is that the Legal Service will always be assessing the decision made by the case team with risks in mind -

basically, what are the risks that the actual decision may be taken to court and reviewed there? I think playing into and supporting counsel on how those risks can be highlighted potentially with analyses can be quite helpful at the end to provide a solution that works for everyone.

MS. DUPLANTIS: Loren, do you have similar considerations when you are moving up toward the front office?

MR. SMITH: Yes. I agree with everything that Konstantin said.

One additional thing that comes up not infrequently as you move toward the front office is whether the matter is likely to go to litigation or not. If it seems like it is more likely than not to go to litigation, that might play into the strategy of what you want to do with your economists at that point.

It may be the case that a second economist who is potentially the testifying expert may come in

at that point, depending on how much has been done through the course of the investigation that may compromise the economist who has been working with staff's ability to be that testifying expert.

Those are the types of considerations you may have to make as you get toward that front office that you were not necessarily anticipating when the Second Request first happened. I have had that happen a few times.

MS. DUPLANTIS: Okay, perfect.

We have a minute or so left, so in a very short amount of time we will wrap up. Final thoughts?

Let me start with Thorsten. Any final thoughts on any practical tips or anything you would like to leave us with?

MR. MÄGER: Yes. One observation. We have all seen over recent years the trend to the more economic approach, but there might be a setback.

Just look at the discussion around Big Tech. There is the feeling that the current tools are not

sufficient. Legislators think about regulation; antitrust agencies think about assumptions and different tools.

Here is a recent quote from the President of the German Federal Cartel Office, Andreas Mundt, who said in this context: "The pendulum may swing back from economic approach to a more normative approach." Let us see, but interesting times.

MS. DUPLANTIS: Interesting times definitely.

Justin, any last thoughts?

MR. STEWART-TEITELBAUM: I think this panel underscores the importance of the economist work streams and econometrics and planning.

Especially when you are talking about multijurisdictional merger control, you want to set a plan early if you can and drive toward it. There will be curveballs, there will be distractions, and there will be capacity limitations, but try to stay on that strategic trajectory with the endgame in mind.

MS. DUPLANTIS: Perfect.

Loren, parting thoughts?

MR. SMITH: I would say that takeaways for me are: engage early, be transparent, and treat economists at the agencies as another economist who is considering the same problem that you are. I think those are the things I would strive to do in any merger investigation.

MS. DUPLANTIS: Perfect.

Konstantin, the last word.

MR. EBINGER: Last word, okay.

Particularly with respect to the European Commission, be aware of the resource constraints at the agency. Take that into consideration and into your time plan. Submit things earlier, and get the Chief Economist team or the person from the Chief Economist team and the case team onboard with what you are doing, brief them on what you are doing, and they will be your ally, and they can really make or break a case, so to say. That would be my recommendation.

MS. DUPLANTIS: Perfect.

I would like to thank all of you for joining us today on this panel discussion. It was really a fascinating discussion. I thank everyone who is watching that we cannot see.

We have a second panel. The Brattle Workshop continues, and we will be covering some tech issues and two-sided platforms and network effects, so stick around. I believe that will be starting within the next few minutes.

Thank you all. Take care. Bye-bye.