



Antitrust and Consumer Law Section Newsletter

September 2008

From the Editors

Mike McNeely, Don Resnikoff

This edition of the newsletter summarizes the Section's recent and upcoming programs, and renews the call to volunteer for a rewarding pro bono experience.

*** Upcoming Section Events ***

September 24, 2008 - Antitrust and the Presidential Campaign: The Section will present this timely program, a debate between McCain and Obama supporters from the antitrust world. Co-sponsors are the D.C. Bar's International Law Section, and the Competition Law Center at the George Washington University Law School.

The debate will cover two perspectives on antitrust law. One focus will be particular antitrust policies such as the new administration's views on antitrust immunities, criminal penalties, merger enforcement, and vertical restraints. Another focus will be broad issues that worry the general population, such as oil companies' market power, that the candidates often address, even though it is not always obvious how to translate those concerns into antitrust enforcement initiatives. The speakers will address how an Obama or McCain administration will handle these issues, a topic that will affect our work as antitrust lawyers.

Panelists: William Kolasky, WilmerHale; James Rill, Howrey LLP. Moderator: Don Resnikoff, Senior Assistant Attorney General, District of Columbia.

12:15 to 2 pm, Jacob Burns Moot Court Room, George Washington University, 2000 H Street, NW (Foggy Bottom – GWU Metro stop). A limited number of telephone call-in lines will be available on a first requester basis.

*** Recap of Recent Section Events ***

June 26, 2008 – Lewis Bernstein Memorial Lecture: Thomas Barnett, the Assistant Attorney General in charge of the Justice Department's Antitrust Division, delivered this year's lecture. The Section and the Antitrust Division annually co-sponsor this event to honor Lew Bernstein, who served as Chief of the Antitrust Division's Special

Litigation Section from 1958 until his retirement in 1977. Special thanks to Hogan & Hartson for the use of their Conference Center, and Maribeth Petrizzi, who coordinated the program on behalf of the Section.

Bob Kramer of the Antitrust Division introduced the program with a discussion of Lew Bernstein's personal history and contributions to antitrust enforcement. Lew received many awards and acknowledgments during his life. He was the model of a public-spirited government attorney.

Tom Barnett's talk focused on issues in merger enforcement. Mr. Barnett commented on some of the reasons that merger enforcement has tended to focus on unilateral effects rather than coordinated effects in recent years. He warned, however, that enforcers must be careful not to neglect coordinated effects cases.

Mr. Barnett also discussed market definition in cases such as Oracle/Peoplesoft, where product differentiation can be subtle and complex. He explained that applying the Merger Guidelines to define markets in industries with differentiated products can produce narrow markets that may run counter to the initial intuition of a judge, creating a need for the antitrust agency to offer proof to overcome that initial reaction. This problem is complicated where the sale of differentiated products involves price discrimination.

Mr. Barnett also reviewed the Division's recent merger enforcement efforts and discussed some criticisms of the agency's recent antitrust work. He pointed out that a full review of enforcement decisions often requires access to facts that are not publicly available, and counseled against criticism based on speculation about such facts.

Volunteer and Outreach Opportunity

Leonor Velazquez (Lvelazquez@ftc.gov), Christine Naglieri (Cnaglieri@ftc.gov), Don Resnikoff (don.resnikoff@dc.gov), Coordinators

Bread for the City The Section has committed to sending at least one volunteer to the DC Pro Bono Program's Advice and Referral Clinic held at Bread for the City on the second Saturday of each month.

The minimal commitment only involves showing up from 9:30 to 12:30 and giving brief advice to civil clients from our DC community.

The clinic has resources to help find responses to the legal issues that may arise. Often, a matter can be solved with a simple letter or a phone call. We need volunteers from our Section on September 13, October 11, November 8, and December 13. Please contact one of the coordinators if you are interested or have questions.

Membership Opportunity

Section membership is not restricted to D.C. Bar members, so whether you are barred in another jurisdiction or simply an antitrust or consumer law enthusiast, we encourage you to join the Antitrust and Consumer Law Section. Non-D.C. Bar members receive major section benefits, including notifications of case law developments and invitations to section events. (Only D.C. Bar members may vote on section matters or hold section office.) To join or request information, contact Leonor Velazquez (Lvelazquez@ftc.gov), Christine Naglieri (Cnaglieri@ftc.gov) or Don Resnikoff (don.resnikoff@dc.gov)

Consumer Law Committee

Sondra Mills, Chair

Next Meeting of the Consumer Law Committee:

The Section's Consumer Law Committee will hold a brown bag luncheon meeting to plan future events on Wednesday, October 8, 2008, between 12:00 and 2:00 p.m. Please join us at the offices of Sam Hijab, Jackson & Campbell, 1120 Twentieth Street,

N.W., Suite 300, South Tower, Washington, DC 20036. The firm will provide soft drinks, so bring your lunch and help us develop consumer law programs! For further information about the Consumer Law Committee, please contact Sondra Mills at 202-616-2375 or Ron Isaac at (202) 326-3231.

Steering Committee

The Steering Committee members and their responsibilities are as follows:

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