

DoJ framework aims to raise global due process standards — Aspen Forum

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- DoJ invites 130 agencies to sign up
- More 'incredibly powerful' agencies – Qualcomm exec
- Importance of economic analysis, outreach noted

The antitrust community should rally behind the Department of Justice's (DoJ) efforts to further develop a newly launched multilateral framework on procedures (MFP) so that due process thrives worldwide, said panelists at a tech policy forum.

There are 130 antitrust jurisdictions worldwide that enforce competition rules but not all of these enforce the law "up to international standards," said Roger Alford, deputy assistant attorney general with the DoJ's Antitrust Division. The MFP in Competition Law Investigation and Enforcement, a work in progress announced last June by the DoJ, is a guideline that aims to help fix that, Alford said today (20 August) during a panel titled "Antitrust Today: Whose Rules and Which Standards" at the Technology Policy Institute's Aspen Forum

The DoJ has invited all 130 jurisdictions to sign on to the MFP, which proposes about a dozen core standards for antitrust enforcement, said Alford, who oversees the MFP. It is based in part on chapters from major trade agreements and all previous guidelines issued by the Organisation for Economic Co-operation and Development and the International Competition Network, as this news service previously reported.

The agency's next meeting on a draft of the MFP, which currently reflects input from a dozen antitrust authorities, will be held in New York on 4 September, Alford said.

Fellow panelist Alvaro Ramos, senior legal director and head of global antitrust at semiconductor chipmaker **Qualcomm** [NASDAQ:QCOM], said he supports the MFP and underscored the need to improve international standards. Last month, Qualcomm abandoned its planned acquisition of **NXP** [NASDAQ:NXPI] after failing to obtain regulatory approval in China.

There are more "incredibly powerful" agencies than ever before that "can tell you you cannot buy companies. They can tell you you have to get out of a deal ... [and] can impose fines that can be very significant," Ramos said. The MFP is "one of the first times that somebody has made a proposal that will significantly increase the standard of due process around the world," Ramos said.

The executive expressed frustration with procedural issues from country to country that can affect due process for companies. He said three areas are of particular concern.

The first is a company's lack of understanding about an agency's allegations against it because the agency is not forthcoming with important details on the case. A second issue arises when a company is denied access to its case file because the agency is not in possession of it, declines to share it with the parties or is "selective" in doing so, Ramos said.

The third concern is when there is no independent decision maker on a case. "The European Union has had a winning streak in the European Court of Justice. You see that in some other jurisdictions. But when you see [a jurisdiction] that for the last 50 years has won every single case filed, there's a problem," he added.

Joshua Wright, law professor and executive director of George Mason University's Global Antitrust Institute, said that while differences around competition statutes abound from country to country, a focus on the economic effects of mergers will help to bring everyone together.

"From where I sit, there's money on the table for not only the US agencies but for everybody to go to these 130 jurisdictions," said Wright, who was a former Federal Trade Commission (FTC) commissioner. "I think most of them have [a] high demand for help," Wright said, referring to a dearth of economists in some jurisdictions.

"My sense is that a lot of these agencies are hungry to do rigorous economic-based work and they all face slightly different problems," he said. For example, a jurisdiction may not have the budget for the economics work.

Wright said the US can help and should exploit the benefits of an economics-based approach when it goes to foreign jurisdictions. The FTC has 60 PhDs in economics and the DoJ also has 50 or 60, he said.

Alford agreed, adding that the DoJ ratio of economists to lawyers is 17% and the FTC ratio is about 25%. He said that on a recent trip to China he learned that the ratio of economists to lawyers there was about 5%.

US agencies put a great amount of quality economic work into thinking about cases, Wright said, adding that it is often not well advertised so some jurisdictions may not know about it.

by Esther D'Amico in Aspen, Colorado