

Q&A with Rebecca Kirk Fair of Analysis Group

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Rebecca Kirk Fair of Analysis Group

With the *GCR Live Cartels* conference coming up in Washington, DC next week, we asked panel moderator and managing principal Rebecca Kirk Fair of the Analysis Group a couple questions. Kirk Fair has conducted economic analysis and managed case teams in support of academic experts in a wide range of cases, including antitrust, class certification, intellectual property, false advertising and tax.

As an economist, what do you think are the biggest issues, national and international, that will affect the practice of antitrust law?

Cases involving new technologies, especially those in the realm of Internet search and e-commerce, have created fascinating new questions for economists and necessarily have both national and international implications for antitrust practitioners. Also, new technologies require the assessment of antitrust in the presence of intellectual property protection. Given my background in patent disputes and IP valuation, these issues are particularly exciting to track.

What aspects of your own research and experience made you want moderate the panel “Punishing global cartels -- are there any limits?”

I have been evaluating questions related to antitrust and competition at Analysis Group for 20 years. Over the last decade we have worked with defendants in a variety of industries facing investigations and multi-jurisdictional litigations related to alleged participation in global cartels. Given my economic focus, it is particularly exciting to explore the balance between deterrence, compensation, and fair penalties. The double jeopardy associated with multiple enforcement agencies and the emergence of private enforcement in Canada and Europe make this topic particularly timely since the goal of all these actions is to ensure fair competition.

Is there any antitrust litigation you are following closely? which cases?

In addition to the cases involving new technologies, another area I follow is class certification decisions because many antitrust cases, particularly those alleging cartels, are class actions. There has been a steady evolution in recent years in how the US courts evaluate class certification in both antitrust and non-antitrust matters, with cases like *Walmart*, *Comcast*, and *Rail Freight*, and most recently *Tyson Foods*. These cases often have a direct impact on economic testimony. It's notable that both the *Walmart* and *Comcast* decisions were authored by Justice Scalia, and Judge Garland was part of the panel that decided *Rail Freight*, so there is likely to be continued evolution in this area. Of course, class action law has also been evolving in other countries, including Canada and EU members, making this another area of global interest.

If you could have added one more panel to the programme, what would it have been and why?

Given that cultural, professional and political norms differ by geography, a panel exploring the role and risks of criminal prosecution in the US for foreign executives accused of participation in a cartel, and the potential for foreign prosecution of US executives, could be extremely interesting. More generally, a panel addressing the intersection between civil and criminal enforcement and their implications for deterrence and compensation are fascinating, particularly if criminal enforcement starts in foreign countries -- imagine American CEOs being criminally prosecuted for antitrust violations in China.