

INTRODUCTION: THE INSTITUTIONAL DIMENSIONS OF ANTITRUST ADJUDICATION: EXPLORING THE BASES OF JUDICIAL DECISION MAKING IN THE UNITED STATES AND EUROPE

William H. Rooney*

On September 19, 2012, the Antitrust Law Section of the New York State Bar Association sponsored a program designed to foster collaboration between the scholarly and practicing dimensions of the antitrust bar in the United States and Europe. To that end, we invited a prominent scholar and an esteemed practitioner to examine a subject of common interest—namely, the criteria for judgment that guide courts in resolving antitrust cases. We are pleased and appreciative that the *Columbia Business Law Review* has agreed to join our collaboration by publishing an article and a comment that resulted from the program.

The program was entitled *The Institutional Dimensions of Antitrust Adjudication: Exploring the Bases of Judicial Decision Making in the United States and Europe*, and featured Professor Daniel Crane of the University of Michigan Law School and Mr. Jean-François Bellis, managing partner of the Brussels firm, Van Bael & Bellis. We asked Professor Crane to extend to antitrust adjudication the exploration of the institutional dimensions of antitrust enforcement that he undertook in his recent book, *The Institutional Structure of Antitrust Enforcement* (2011). He rewarded us richly with an engaging discussion of the interplay among judicial virtues, including substantive purism (deciding cases on the merits) and institutional realism, incrementalism and generalism, harmony and candor, and stare decisis and rule development, all within

* Chair, Antitrust Law Section, New York State Bar Association.

the common-law approach that informs antitrust adjudication.

Professor Crane's article is followed by a comment from Mr. Bellis, who addresses the subject of "good judging" from a European perspective. Mr. Bellis examines the specific attributes of the European Commission and European courts, and the manner in which those institutions have shaped antitrust decision making and policy in Europe. In particular, Mr. Bellis discusses the special features of antitrust enforcement in Europe, as well as the evolution of the jurisdiction and organization of the European courts. Mr. Bellis then reviews an important decisional development by the European Court of Justice and considers how those decisions might influence future antitrust adjudication.

The Antitrust Law Section would like to thank Professor Crane and Mr. Bellis for their contributions to the antitrust literature. We are also grateful to the *Columbia Business Law Review* for its participation in our project and for opening the pages of its premier journal to the provocative writings of Professor Crane and Mr. Bellis. With the assistance of the *Columbia Business Law Review*, the remarks of Professor Crane and Mr. Bellis will provide a resource for the bench, the bar, and the enforcement agencies on both sides of the Atlantic in formulating antitrust law and policy in the years to come.

Finally, the Section is grateful to the New York State Bar Association and to the many practitioners and academics whose presence and participation made the program a great success. We look forward to sponsoring future collaborations between the academy and the practicing bar on subjects of contemporary antitrust interest.

On behalf of the Antitrust Law Section of the New York State Bar Association, I invite you to embark upon your own exploration, with Professor Crane and Mr. Bellis as your guides, of *The Institutional Dimensions of Antitrust Adjudication*.