

Susannah Torpey Provides Insights on Enforcement of Antitrust Law in the Digital Age at The 2022 World Technology Law Conference

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Susannah Torpey, co-chair of Winston's Technology Antitrust Group, recently presented at the ITech Law's 2022 World Technology Law Conference & 50th Anniversary Celebration in San Francisco. The conference brought together leaders in law and technology and covered topics ranking from artificial intelligence and biometric privacy to NFTs and cybercrime.

Susannah's workshop, "Enforcement of Antitrust Law in the Digital Age," explored the changes in competition laws that address the challenges of the digital age, supply chain shortages, and geopolitical tensions.

Key Takeaways

- The European Commission has announced the opening of an office in Silicon Valley to start a "regulatory dialogue" with U.S. tech companies.
- In response to concerns that antitrust law may be insufficient to resolve competition issues arising from data aggregation in digital markets, the EU and UK are proposing a complex framework of sector-specific regulation that will complement antitrust enforcement. Some proposals have a broad scope beyond platforms and may affect any companies generating IoT or cloud computing data.
- These regulations share the same objectives: data sharing and mobility, switching, interoperability, and FRAND terms. However, the mechanisms through which these objectives are achieved may differ. The EU proposes black and white lists of conduct applying to different market actors depending on their regulatory classification based on new statutory definitions, such as "gatekeeper". The UK proposes codes of conduct for companies with "significant market status" and the imposition of more tailored remedies based on ad hoc market investigations.
- In the U.S., the Biden administration has issued two executive orders addressing competition issues that reflect a number of tech enforcement priorities, including in the interoperability of digital payment architectures; the accumulation and unfair use of data; unfair methods of competition used by internet platforms, internet service providers, broadband, cable, and communications companies; restrictions on self-repair of third-party repair; and 5G.

- International pressures on supply chains and continuing political disruptions are increasing international disputes, but supply shocks are not a defense to antitrust violations in the U.S. To the contrary, the U.S. has a long history of investigating crisis cartels.
- There are a number of federal and state antitrust bills that have been introduced that would make it easier for plaintiffs to pursue private litigation. The 21st Century Antitrust Act in NY would authorize the first EU-style abuse of dominance claim in the U.S. and would make it unlawful to leverage a dominant position with only a 30-40% market share.
- Russia's war in Ukraine is putting new pressure on the tradition of competitive neutrality, highlighted by Russia's suspension from the International Competition Network.

Learn more about the conference [here](#).



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