



The AAI's Antitrust Decade in Review: The Best and the Worst

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The 10 *most positive* antitrust developments of the last decade (in no particular order):

1. The emergence of Europe as a true equal of the U.S. in the enforcement of competition law.
2. The rise of post-Chicago antitrust, marinated by behavioral economics, both gradually and a result of factors such as disenchantment with the undue consolidation of a number of industries and the *laissez faire* attitude that produced the 2008 -09 financial crisis.
3. Continued development of the DOJ's leniency program, including significant increases in cartel fines.
4. The cases against Intel - collectively, from the EU, FTC, private, and foreign sources.
5. The FTC's Section 2 activity in the standard-setting area.
6. The FTC's actions in the pharmaceutical reverse payments area.
7. The election of President Obama and the appointments of AAG Varney and Chairman Leibowitz.
8. Competition advocacy on the part of the FTC and the large number of valuable FTC and DOJ reports that were produced.
9. The ICN. Whatever expectations one had for the organization, the ICN far surpassed them.
10. The emergence of the AAI as an effective voice in the antitrust world.

The 10 *least helpful* antitrust developments of the last decade (in no particular order):

1. Every Supreme Court antitrust decision during the last decade, including *Trinko* and *Twombly*, and the lower courts' subsequent decimation of notice pleading.
2. The appointments of Justices Roberts and Alito to the Supreme Court and a large number of judges to the lower courts who are not favorably disposed to antitrust.
3. DOJ's settlement with Microsoft in 2001.
4. The Bush Administration's non-enforcement record, including DOJ's decision not to challenge the Whirlpool-Maytag deal.
5. The DC Circuit's Rambus opinion.
6. The Oracle/PeopleSoft opinion, including Judge Walker's disregard for consumer testimony.
7. Every DOJ antitrust amicus brief filed from 2001 to 2008.
8. Judge Jackson's predilection for interviews and, partially for this reason, the loss of much of his Microsoft decision.
9. The DOJ's Section 2 report; fortunately the FTC refused to sign on and it was DOA.
10. Runaway intellectual property rights, led by the Federal Court of Appeals. However, the Supreme Court is beginning to restore some balance with competition concerns.