

American Antitrust Institute

15th Anniversary



**15 YEARS OF EDUCATION, RESEARCH
AND ADVOCACY**



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LETTER FROM THE PRESIDENT

We incorporated the AAI as a non-profit education, research, and advocacy organization in 1998, after consultation with a number of experts and advocates who emphasize the value of consumer-oriented antitrust enforcement. The plan, based on my prior experience as a Federal Trade Commission official and business executive, was to build an organization around a multidisciplinary expert corps within the antitrust community. The group would occupy the center and the center-left of the antitrust spectrum, neither libertarian nor populist, but believing strongly that antitrust is necessary to promote and maintain competition and to protect consumers. We would be a counterweight to the conservative think tanks and abusers of market power who routinely oppose antitrust efforts.

Now, 15 years later, the American Antitrust Institute has become a player on the world stage while remaining the focal point for those who believe that a vigorous role for antitrust is essential for the public interest.

This year we celebrate the AAI's achievements and look forward to fulfilling our role in preserving competition in the public interest. The AAI's involvement in competition issues has always been made possible by contributions from supporters, revenue generated at our various conferences, and periodic cy pres grants from the courts.

Your ongoing support enables the AAI to:

- Answer the call of consumers, industry, and government to testify and participate in major antitrust and regulatory policy events, often via amicus briefs
- Support regular publication in the trade press, economic journals, and law reviews
- Advise the media on antitrust developments
- Examine newly emerging competition issues
- Develop interventions and white papers on major mergers and other investigations, and
- Educate the public on the value of antitrust.

Thank you for supporting the AAI during these past 15 years. We look forward to your continuing involvement in the future.

Sincerely,

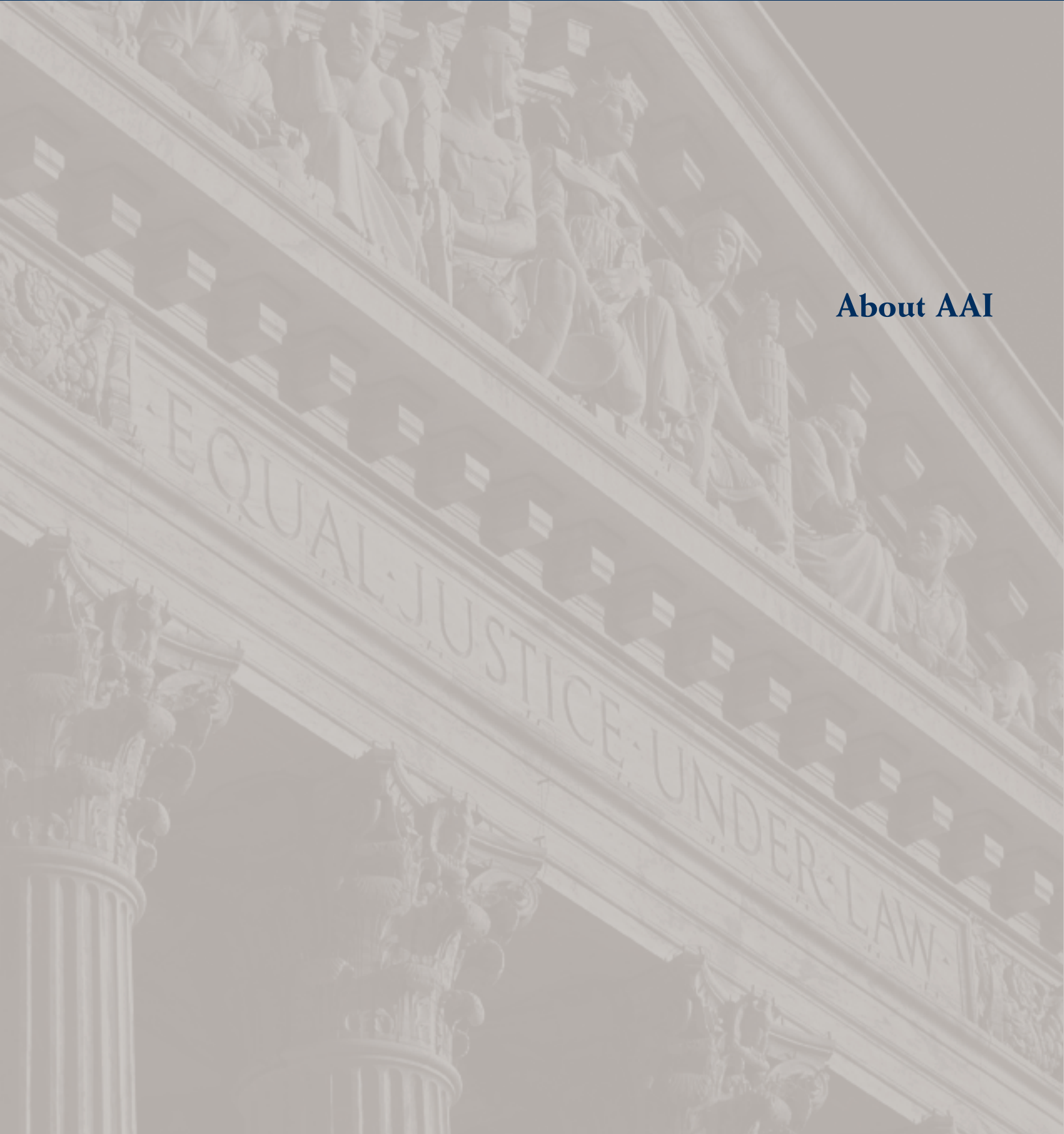


Albert A. Foer
President, American Antitrust Institute

section ONE

AAI 15TH ANNIVERSARY

About AAI



ABOUT THE AMERICAN ANTITRUST INSTITUTE

The American Antitrust Institute is an independent Washington-based non-profit education, research, and advocacy organization. Our mission is to increase the role of competition, assure that competition works in the interests of consumers, and challenge abuses of concentrated economic power in the American and world economy.

Through its education and advocacy work, the AAI provides valuable legal and economic information, analysis, and perspective on U.S. and international antitrust law, litigation, and legislation, with a particular focus on the effects of anticompetitive practices on consumers.

Founded in 1998, the AAI's work includes research and commentary, public testimony, briefings, and conferences — examples of which can be found at www.antitrustinstitute.org. Our team includes a highly respected staff of five, an active Advisory Board numbering more than 130 from around the world, and innumerable volunteer lawyers and economists.

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 U.K.: Philip Marsden, *British Institute of International and Comparative Law*

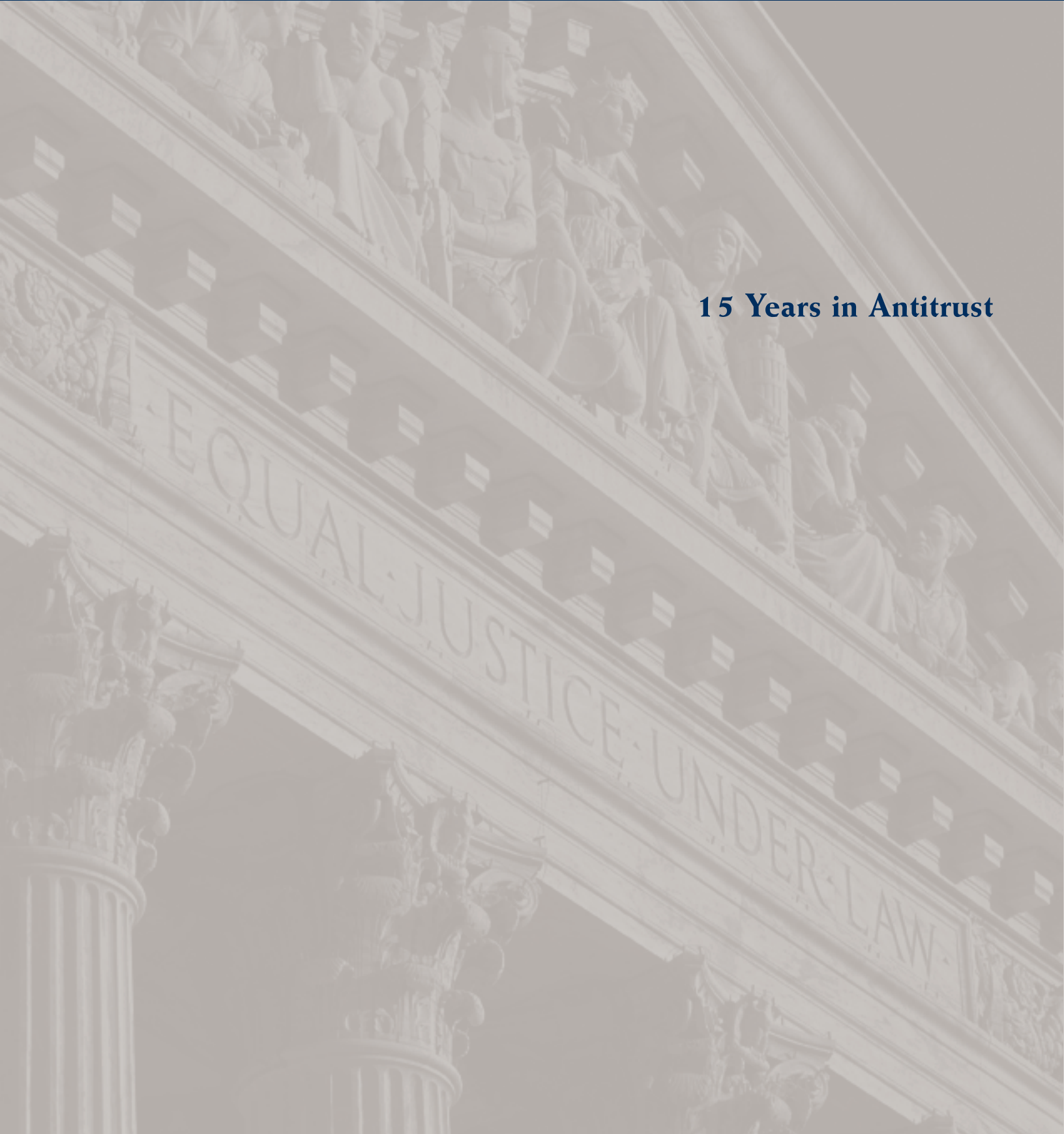
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section TWO

AAI 15TH ANNIVERSARY

15 Years in Antitrust



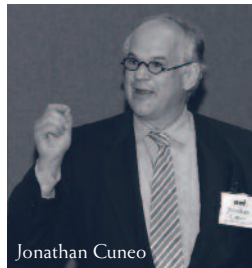
1998

The American Antitrust Institute was founded on April 15, 1998 as an independent Washington-based non-profit education, research, and advocacy organization. After conversations with consumer advocate Ralph Nader and antitrust law professor Robert H. Lande, antitrust attorney Albert A. Foer incorporated the Institute. The founding Board of Directors included Foer, Lande and Jonathan Cuneo, an antitrust lawyer whose clients include the Committee to Support the Antitrust Laws (COSAL). The three directors developed the mission: to increase the role of competition, assure that competition works in the interests of consumers, and challenge abuses of concentrated economic power in the American and world economy. Based on a centrist legal-economic ideology, they began recruiting an advisory board that could help promote the vigorous use of antitrust as a vital component of national and international competition policy.



Robert H. Lande

AAI's first substantive product was a comment to the Department of Transportation (DOT) endorsing the DOT's efforts to deal through rulemaking with predation at airline hubs. The AAI believed intervention here would be an opportunity to make a statement in favor of the idea that price predation should remain a viable theory of antitrust violation. Also in its first year, the AAI encouraged the reinvention of Federal Energy Regulatory Commission for deregulated electricity, urged the Department of Energy not to cease publishing investor-owned public utility statistics, and asked the DOT to investigate airline caps on travel agent commissions.



Jonathan Cuneo

1999

In 1999, the AAI continued its growth and launched a website intended to provide useful information about antitrust to journalists, academics, lawyers,

economists, businesses, the government, and others concerned about anticompetitive practices. Found at www.antitrustinstitute.org, the website was soon considered "probably the best one-stop antitrust site out there" by *Legal Times*.

Throughout the year, the AAI urged an aggressive stance by Federal Trade Commission (FTC) on the Exxon/Mobil merger. AAI's Jonathan Cuneo testified in the Senate on the merger. The AAI was also involved in issues regarding Microsoft, Ticketmaster, the proposed acquisition of ARCO by BP Amoco, electricity regulation and market power, and supermarket mergers. The AAI also led a coalition of 32 organizations that banded together to urge Senate and House appropriations conferees to increase antitrust budgets.

The AAI Advisory Board first began to grow in 1999. AAI strove for a balance of professional and political backgrounds, excluding only current federal employees and those whose ideology did not seem generally compatible. Eventually, the Advisory Board grew to more than 90 and included business people and business school professors as well as eminent antitrust experts trained in law and economics.

2000

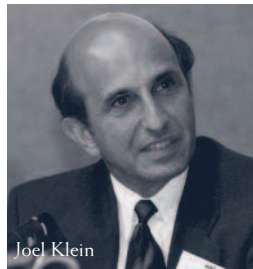
In 2000, the AAI issued a critique of the FTC's analysis of the proposed tobacco settlement. It also was active in opposing the BP/ARCO merger, attacking Alcoa's proposed acquisition of Reynolds, keeping antitrust reviews active in the Nuclear Regulatory Commission, questioning the AOL/Time Warner merger, commenting on Microsoft, promoting the Minge Antitrust Enforcement Improvement Act of 2000, and outlining the competitive issues in food retailing and food supplying sectors. On the Hill, the AAI gave testimony against the proposed United/USAirways merger before the Senate Commerce Committee and urged the House Judiciary Committee to overturn *Illinois Brick*.

The AAI's first annual national conference was held on June 15, 2000. The theme of the first conference was "An Agenda for Antitrust in the 21st Century."



Bert Foer, Janet Reno, AAI Advisory Board Member Senator Howard Metzenbaum, Joel Klein

Participants included FTC Chairman Robert Pitofsky whose keynote address called attention to intellectual property law's increasing sway in the antitrust arena. At the luncheon, U.S. Attorney General Janet Reno delivered her first and only major antitrust speech, a review of the achievements of Joel Klein's term as Assistant Attorney General for Antitrust. Mr. Klein then became the first recipient of the Antitrust Achievement Award. The various papers that were delivered at the conference were published in a special edition of *62 Univ. of Pittsburgh Law Review*. This conference set the tone for all annual future conferences which were all held at the National Press Club in Washington, DC and followed by symposium law review issues.



Joel Klein

Also in 2000, the AAI began adding Senior Fellows to its team. They quickly became important to the Institute's success. The Senior Fellows are eminent antitrust scholars or practitioners who constitute an inner circle of the Advisory Board and make a significant pro bono commitment of time to the AAI.

2001

In 2001, the AAI staff expanded with the addition of Dr. Diana L. Moss as Vice President. She publishes and speaks widely on energy regulation and antitrust issues and is also adjunct professor at the University of



Dr. Diana L. Moss

Colorado, Department of Economics. Dr. Moss's addition helped the AAI focus on promoting competition in the U.S. electricity industry through reviews of policy issues and by issuing recommendations.

This year, the AAI also focused on the EchoStar/DirecTV merger, the states' Microsoft proposal, the Supreme Court tobacco settlement, Major League Baseball's downsizing, the acquisition of Newport News Shipbuilding Inc. by General Dynamics Corp, government bailout of the airlines, the Hewlett Packard-Compaq merger, collegiate student aid, the Johnson & Johnson contact lens settlement, and per se rules in drug patent cases. The AAI joined other consumer groups in urging the DOJ to modify the Orbitz launch vehicle and also formed a coalition to oppose the Nestle-Ralston merger. At the World Bank Seminar in April, the AAI submitted its proposal for an International Academy for Competition Policy.

The 2001 annual conference followed an election and was appropriately titled, "New Economy, New Regime." The newly appointed Chairman of the FTC Timothy Muris presented the Antitrust Achievement Award to his predecessor Robert Pitofsky. This was Mr. Muris' first speech as the new Chairman of the FTC, which he used as an opportunity to set forth a theme of continuity with his predecessor. The keynote address "Some Principles for Post-Chicago Antitrust Analysis" was presented by F.M. Scherer. The papers for this conference were published in *52 Case Western Reserve Law Review*.



Timothy Muris

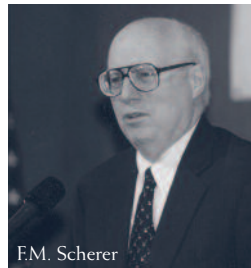


Bert Foer & Robert Pitofsky

2002

During 2002, the AAI concentrated its efforts on the ADM-Minnesota Corn merger, Wal-Mart's growing dominance, the Dee-K Enterprises case, the Carnival/Princess and Royal Caribbean/Princess cruise line mergers, the Voters News Service monopoly, the proposed air alliance of United/US Airways and Delta/Northwest/Continental, the Terazosin generic drug case, the Visa/MasterCard case, and the Microsoft Tunney Act litigation. In the spring, the AAI held the Research Workshop and Conference on Marketing, Competitive Conduct, and Antitrust Policy at Notre Dame's Mendoza School of Business. The AAI also co-sponsored a Forum on Supplier-Owned Joint Ventures with the National Consumers League.

The 2002 annual conference, "Stretching the Envelope," explored (1) what is taught in business schools about the nature of competition, and how it can be used to enhance antitrust analysis and (2) the relationship between trade and antitrust.



F.M. Scherer

The keynote speaker was Commissioner Thomas B. Leary of the FTC. The luncheon speaker was Philip Lowe, Director General of the Commission's Directorate General for Competition of the European Union, who was introduced by FTC Chairman Muris. This was Mr. Lowe's first public appearance after being named head of the Directorate General. John Kwoka presented the Antitrust Achievement Award to F.M. Scherer. The Jerry S. Cohen Award for Antitrust Writing was presented to Joseph Brodley, Patrick Bolton, and Michael Riordan for their article "Predatory Pricing: Strategic Theory and Legal Policy," in 88 *Georgetown Law Journal*. The papers were published in 47 *New York Law School Law Review*.

2003

In 2003, the AAI conference, "Antitrust and Access," raised transparency issues to a new height. "The godfather of deregulation," Alfred E. Kahn, accepted the Antitrust Achievement Award from Bert Foer. The Jerry S. Cohen Award for Antitrust Writing was presented to John Connor for his book *Global Price Fixing: Our Customers Are the Enemy*. Papers of the conference were published in 51 *Buffalo Law Review*.



Alfred E. Kahn & Bert Foer

In 2003, the AAI was active in opposing a Spanish-language tv-radio merger, the First Data/Concord merger, a big trucking merger, Smithfield's acquisition of Farmland Foods, the European Microsoft case, the DOJ's Orbitz investigation, the Supreme Court's *Trinko* case, the *Cardizem* case, and antitrust relief to indirect purchasers. In addition, the State of Utah awarded a research grant to the AAI to study the medical waste industry.

2004

As AAI entered its seventh year, it focused attention on the emergence of market power in the hands of a small number of very large buyers, suggesting the antitrust community needed to re-think its reluctance to question what happens in vertical relationships. The 2004 annual conference was titled "Buyer Power and Antitrust." The keynote speaker was S. Robson Walton, chairman of Wal-Mart. The Chief Economist of the European Union spoke about the treatment of buyer power in Europe. The various papers were published in a symposium issue of 72 *Antitrust Law Journal*. New York Attorney General Eliot Spitzer and FTC Commissioner Pamela Jones Harbour presented AAI's Antitrust Achievement Award to Lloyd Constantine, managing partner of Constantine and Partners in New York City,



Lloyd Constatine

for his leadership role in developing the states as an effective antitrust enforcement mechanism.

In 2004, AAI also filed briefs and commentary on price-fixing overcharges, an industrial organization perspective on the influenza vaccine shortage, FERC and electricity mergers, antitrust exemptions for satellite carriers, the FTC Rambus appeal, and the Microsoft case. In addition, the AAI filed its first comments with the Antitrust Modernization Commission.

2005

With the Antitrust Modernization Commission reviewing critical remedial issues, the American Bar Association and the DOJ's Antitrust Division publishing new reports, the adoption of class action legislation (CAFA), and renewed concern over remedies addressed at Microsoft's monopoly trials, the AAI's 6th annual conference on "Thinking Creatively About Antitrust Remedies" couldn't have come at a better time. The keynote was delivered by Judge Thomas P. Jackson (ret.). The conference papers were published in the *Tulane Law Review*. Former FTC General Counsels Stephen Calkins and William Kovacic addressed the luncheon audience as the AAI's Antitrust Achievement Award was presented to outgoing FTC Commissioner Thomas B. Leary. Leary, a Republican, spoke about the bipartisan legacy of antitrust. The Jerry S. Cohen Award for Antitrust Writing was presented to Andrew Gavil for his article, "Exclusionary Distribution Strategies By Dominant Firms: Striking A Better Balance," *72 Antitrust Law Journal*.

AAI's Network Access Project, which included three annual workshops at Northeastern University, was

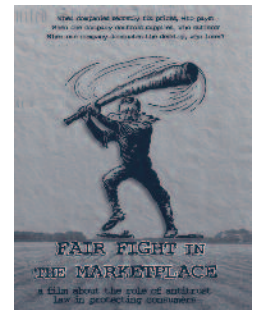


FTC Commissioner Thomas B. Leary & Bert Foer

published as the book *Network Access, Regulation and Antitrust*, edited by Diana Moss. This year, the AAI also published 13 working papers, including important new analyses of the harm caused by cartels; submitted amicus briefs to the Supreme Court in *Independent Ink* and *Dagher*; provided extensive comments to the Antitrust Modernization Commission prepared by ten different working groups; and presented a briefing paper concluding the Whirlpool-Maytag merger should be blocked.

2006

In 2006, with funding from a cy pres grant, the AAI entered the filmmaking business, producing "Fair Fight in the Marketplace," a documentary film that would be shown on approximately 75 public television stations throughout 2007. The AAI also produced the accompanying educational curriculum for high school classes and the website www.fairfightfilm.org.



Another major project of the year was providing extensive comments to the Antitrust Modernization Commission, including a unique empirical report on private enforcement, new data on the inadequacy of cartel remedies, and critical analyses of several tentative AMC recommendations. The AAI also submitted 10 appellate amicus briefs, including five to the U.S. Supreme Court; prepared white papers on the ATT/Bell South, Exelon/PSEG, and Monsanto/Delta Land and Pine mergers, and participated in Tunney Act proceedings on the Verizon and ATT mergers; testified in Brussels at the invitation of the European Commission on their Article 82 proceedings; published 10 working papers on a variety of antitrust topics, such as Wal-Mart, multidisciplinary practice, oil refining, indirect purchaser settlements, cartel sanction, and regional sports networks; and hosted a symposium on aftermarket.

The annual conference, "The I.P. Grab – The Struggle Between Intellectual Property Rights & Antitrust," cast new light on important aspects of the increasingly controversial struggle between intellectual property rights and antitrust. Speakers included FTC Chair

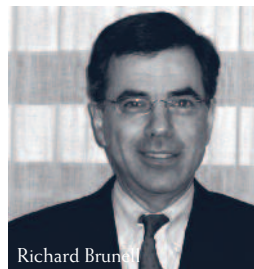


Senator Herb Kohl, Bert Foer & Senator Mike DeWine

Deborah Majoras, Harry First, Michael Carrier, Phil Nelson, Howard Morse, Jonathan Rubin, and Bruce Abramson. Papers were published in 38 *Rutgers Law Journal*. Senators Mike DeWine (R-OH) and Herb Kohl (D-WI), the Chair and Ranking Member of the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, accepted the Antitrust Achievement Award from FTC Commissioner Jonathan Leibowitz. The Jerry S. Cohen Award for Antitrust Writing was presented to Barry Nalebuff for his article, "Exclusionary Bundling," in 50 *Antitrust Bulletin*.

2007

In 2007, the AAI expanded its staff by hiring Richard Brunell as the director of legal advocacy. A former editor of the *Harvard Law Review*, he has been a visiting law professor at Boston College, Boston University and the Roger Williams School of Law. Brunell began spearheading the AAI Amicus Brief Program. This year, the AAI Board of Directors grew with the addition of Diana Moss and Robert Skitol, and the Advisory board increased to more than 90 members.



Richard Brunell

The AAI re-launched its website with a new design and new features. Interested parties could now sign up for the "e-bulletin" which alerts users as new material is published.

"The Future of Monopoly and Monopolization" was the topic of the eighth annual conference. The

Antitrust Achievement Award was presented to Maxwell M. Blecher, renowned antitrust expert who has litigated significant cases resulting in many precedent-setting antitrust decisions. He is a partner in Blecher & Collins in Los Angeles and a member of the AAI Advisory Board. A special award to career civil servants was inaugurated. The Jerry S. Cohen award for antitrust writing was awarded to Lawrence Sullivan and Warren Grimes for *The Law of Antitrust: An Integrated Handbook, second edition*. The conference was repeated later in the year at the University of Wisconsin whose law review will publish the papers.



Johathan Cunco, Maxwell Blecher, Warren Grimes & Bert Foer

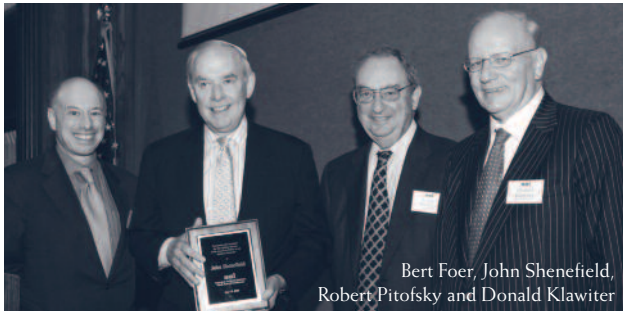
In addition to the annual conference, AAI held symposia and workshops on electricity restructuring, enhancing coordination of state agencies and the plaintiffs' bar, buyer power, systems competition, and the future of private enforcement.

AAI also filed briefs and commentary on Northwest Airlines' investment in Midwest Airlines, cy pres remedies, the merger of Google and DoubleClick, removal of the antitrust exemption for major U.S. railroads, FERC's electricity merger review process, Intel's monopolistic conduct in microchips, a health insurance merger in Nevada, Whole Foods' acquisition of Wild Oats, the XM-Sirius merger, concentration in the U.S. petroleum industry, the DDAVP class action, indirect purchaser class actions, the Nine West RPM matter before the FTC, and the Leegin case in the Supreme Court.

2008

The AAI celebrated its tenth anniversary during its annual conference which focused on the presentation of draft recommendations from The Next Antitrust Agenda: The American Antitrust Institute's Transition Report on Competition Policy to the 44th President of the United States. The 415-page report was the result of a year-long effort undertaken by 11 committees of the AAI Advisory Board. It outlined both the philosophy and the policy agenda of the AAI, while offering specific suggestions for legislation and enforcement priorities to the next administration. It is available for downloading on our homepage.

AAI Director of Legal Advocacy Richard Brunell presented oral argument to Supreme Court as amicus in the linkLine case. An AAI symposium issue was published on the Review of Industrial Organizations on Electricity Restructuring.



Bert Foer, John Shenefield, Robert Pitofsky and Donald Klawiter

Annual Conference:

- "The Next Antitrust Agenda"
- John H. Shenefield, a partner in Morgan Lewis's Antitrust Practice, received the Antitrust Achievement Award.
- An Antitrust Civil Servant Award was presented to Bernard Hollander who had been continuously employed by the DOJ's Antitrust Division in Washington since 1949.
- The Jerry S. Cohen Award for Antitrust Scholarship was presented to Robert H. Lande of the University of Baltimore School of Law and Neil Averitt, Esq. of the Federal Trade Commission for their article "Using the 'Consumer Choice' Approach to Antitrust Law," and Maurice E. Stucke of the University of Tennessee College of Law for his article "Behavioral Economics at the Gate: Antitrust in the Twenty-First Century."

Symposiums and Conferences:

- The eighth annual energy roundtable, "The Role of Competition in Ensuring Future Resource Adequacy in U.S. Electricity Markets," identified the major issues associated with adding needed resources to the electric power system in the U.S.
- The second annual Future of Private Enforcement Symposium featured a luncheon address by Harvard Law School's Einer R. Elhauge.

Selected Papers:

- The Proposed Google-Yahoo Alliance by Norman Hawker
- The Merger off Delta Air Lines and Northwest Airlines by Diana Moss
- Competition Policy for the Media Sector by Maurice Stucke and Allen Grunes
- The United States Department of Justice Antitrust Division's Cartel Enforcement: Appraisal and Proposals by John M. Connor
- The Audit Industry: World's Weakest Oligopoly? By Bernard Ascher
- International Consumer Advocacy For Competition Policy: Learning From the AAI Model by Bert Foer
- Under Threat: Competition in the Automotive Service Aftermarket by Norman Hawker
- Daubert Challenges of Antitrust Experts by James Langenfeld and Chris Alexander

Amicus Program:

- FTC v. Whole Foods Market, Inc. – D.C. Circuit
- Rambus v. FTC – D.C. Circuit rehearing
- Pacific Bell, Tel. v. linkLine – Supreme Court
- FTC v. Rambus Inc. – Supreme Court cert.



Bert Foer and Richard Brunell in front of the U.S. Supreme Court following oral argument in the linkLine case.

2009

The AAI joined a coalition of more than 35 groups to urge lawmakers to restore the *Conley v. Gibson* pleading standards that were dismissed in the recent *Twombly* and *Iqbal* Supreme Court decisions. AAI Vice President Diana Moss drafted a widely read white paper about competition in the transgenic seed industry. Other AAI papers called for investigation of Express Scripts-Wellpoint merger and for stopping the Ticketmaster-Live Nation merger. The AAI also called for continued investigation into Intel following the company's settlement with AMD.

In testimony before the House Subcommittee on Courts and Competition, the AAI asked Congress to create a new position within the DOJ's Antitrust Division to protect competition policy during the recession, including during emergency consolidation situations.

The AAI provided two sets of comments to the FERC on cross-ownership issues and on transmission planning issues.

Annual Conference:

- "International Antitrust in a World without a Center"
- The Antitrust Achievement Award was presented to Eleanor M. Fox who teaches antitrust, European Union law, international and comparative competition policy at New York University School of Law.
- DOJ Antitrust Division attorney Larry Frankel received the 2008 Jerry S. Cohen Award for Antitrust Scholarship for his Utah Law Review article, "The Flawed Institutional Design of U.S. Merger Review: Stacking the Deck Against Enforcement" that contends that the institutional design of U.S. federal merger review leads to systematic under-enforcement of merger law as a result of two fundamental aspects of that design.

Symposiums and Conferences:

- An invitational symposium focusing on recent policy changes surrounding systems competition.
- The ninth annual energy roundtable, "Competition Challenges in Electricity Markets – Private Equity Financing and Market Design," discussed the major competitive issues associated with private equity investment in the electricity sector and the design of electricity markets.



John Fingleton, Christine Varney, Ilene Gotts, Eleanor M. Fox, Bert Foer, and Mario Monti

- The third annual Future of Private Enforcement Symposium was so popular that there was a waiting list to attend. The panel discussions covered the *Empagran* opinion, reverse payments in the pharmaceutical industry, Congress's action on ACPERA, *Iqbal's* expansion of *Twombly's* reach, and the ongoing challenges to class certification.

Selected Papers:

- Transgenic Seed Platforms: Competition Between a Rock and a Hard Place? by Diana L. Moss
- The FTC Should Issue a Second Request on Express Scripts' Proposed Acquisition of Wellpoint's PBM Business by David Balto
- Refusals to License and Installed-Based Opportunism in the Mainframe Computer Industry by Andrew Chin
- Ticketmaster-Live Nation: An AAI White Paper by James D. Hurwitz
- On the Paternity of a Market Delineation Approach by F. M. Scherer
- Wintel Working Paper Updated to Cover E.C. Decision in Intel case by Norman Hawker
- Governments as Cartel Victims by John M. Connor
- The Potential Cartelization of Natural Gas: Challenges for Energy and Antitrust Policy by Diana Moss
- The Competition Policy in China: Past, Present and Future by Wu Hanhong
- Cartels and Antitrust Portrayed: Private International Cartels from 1990 to 2008 by John M. Connor

Amicus Program:

- In re DRAM Antitrust Litigation – 9th Circuit
- Arkansas Carpenters Fund v. Bayer AG (Cipro Fed Cir) – Supreme Court cert.
- PSKS v. Leegin – 5th Circuit
- American Needle v. NFL – Supreme Court
- Stolt-Nielsen v. Animalfeeds – Supreme Court

2010

In 2010, the AAI undertook a new study on competition in the U.S. airline industry. The study was motivated by the 2008 merger of Delta and Northwest, and the proposed merger of United and Continental, both of which the AAI opposed. In testimony, the AAI encouraged Congress to ban “pay-for-delay” patent settlements and restore competition in the generic drug market.

The AAI provided comments to the FCC on the Comcast/NBCU mergers. Comments on transmission planning and cost allocation were provided to the FERC. The AAI got involved in revising horizontal merger guidelines via comments to the DOJ and FTC.

Pamela Gilbert joined the Board of Directors, filling the seat of departing AAI Director Jonathan Cuneo. As the former Executive Director of the U.S. Consumer Product Safety Commission, Gilbert’s background in consumer advocacy was a valuable addition to the AAI. Cuneo, one of the founding Directors, remained an Advisory Board member.



Randy Stutz joined the staff as Director of Special Projects, with special responsibility for overseeing the AAI’s new Curriculum Development and Judicial Education Program. With cy pres funds emanating from a class action settlement in the Superior Court of Massachusetts, the AAI began developing this educational program designed to inform judges about current concepts and controversies involving the interplay of law, business, and economics as they pertain to matters likely to impact competition that may come before the courts.

The AAI expanded the number of international advisors on its Advisory Board to include competition experts from Argentina, Germany, India, South Africa, South Korea, and Spain joined the Board in recent weeks. The new representatives joined experts from Brazil, Canada, Israel, and the E.U.

The Fair Fight in the Marketplace film, winner of two national awards for documentaries, was made available in six languages.

Annual Conference:

- “Public and Private: Are the Boundaries in Transition?”
- Steven Salop, a professor of economics and law at the Georgetown University Law Center in Washington, received the Antitrust Achievement Award



- Harvard Law School’s Einer Elhauge received the Jerry S. Cohen Award for Antitrust Scholarship for his Harvard Law Review article “Tying, Bundled Discounts, and the Death of the Single Monopoly Profit Theory”

Symposiums and Conferences:

- Invitational symposium to discuss the role of prediction in antitrust and the possible relevance to antitrust of various forecasting methodologies used in the corporate world
- Energy roundtable focused primarily on emerging competitive issues in markets that are complementary to electricity (e.g., carbon emissions markets, Smart Grid technologies), their implications for the electric power industry, and how the roles of regulation and antitrust are potentially affected
- The Future of Private Enforcement Symposium attendees were addressed by FTC Chairman Jonathan Leibowitz

Selected Papers:

- Analysis of the FTC’s Decision Not to Block Google’s Acquisition of AdMob by Randy Stutz and Richard Brunell
- Airline Mergers at a Crossroads: Southwest Airlines and AirTran Airways by Diana L. Moss
- Financial Reform and the Big 4 Audit Firms by Bernard Ascher and Bert Foer
- Competition Policy and the Transition to a Low-Carbon, Efficient Electricity Industry by Diana Moss and John Kwoka
- Indirect Purchase Settlement Data Base Updated by Patrick Cafferty
- China’s 2007 Anti-Monopoly Law – Competition and the Chinese Petroleum Industry by Yong Huang, Shan Jiang, Diana Moss and Randy Stutz

Amicus Program:

- *Princo Corp. v. Int. Trade Commission* – Fed. Circuit en banc
- *American Banana v. Del Monte* – 2nd Circuit
- *Arkansas Carpenters Health & Welfare Fund (Cipro)* – 2nd Circuit rehearing
- *Shames v. Cal. Travel & Tourism Commission* – 9th Circuit rehearing
- *New York Regional Interconnect v. FERC* – D.C. Circuit
- *Messner v. NorthShore University Health System* – 7th Circuit
- *Sullivan v. DeBeers Investments* – 3rd Circuit rehearing
- *AT&T Mobility v. Concepcion* – Supreme Court
- *Terry v. Tyson Farms* – Supreme Court cert.

2011

The AAI produced two major white papers in its fights against the Google/ITA and AT&T/T-Mobile mergers. The AAI opposed the Google/ITA transaction due to the potential harm to quality, innovation and consumer choice in the comparative flight search services market. Opposition to AT&T/T-Mobile centered on the merger's potential to replicate the original cell phone duopoly that years of public policy designed to promote wireless competition had sought to dismantle. The AAI was featured in a New York Times profile.

The AAI submitted comments to the FERC on merger guidelines and on the Exelon/Constellation merger. In a letter to FTC Chairman Leibowitz and Commissioners, the AAI asked the agency to look into the issue of potentially exclusionary bundled discounting practices involving pediatric vaccines.

The creation of a new civil antitrust jury instruction project was announced during the AAI's fifth annual Future of Private Antitrust Enforcement Conference. Believing the ABA model instructions are, in some situations, confusing, out of date, or not adequately effectuating the goals of the antitrust laws, the AAI began work under the leadership of Professor Joshua Davis of the University of San Francisco, to provide an alternative set of jury instructions that can be widely disseminated to lawyers and judges.

Annual Conference:

- "International Economics for Antitrusters: Learning from Two Decades of Deep Globalization"
- Former EC Commissioner for Competition Policy Mario Monti (soon to be named Prime Minister of Italy) was the recipient of the AAI's Alfred E. Kahn Award for Antitrust Achievement. The award was renamed this year to honor our former Advisory Board member, the "godfather of deregulation."
- Harvard Law School's Louis Kaplow received the Jerry S. Cohen Award for Antitrust Scholarship for his Harvard Law Review article "Why (Ever) Define Markets?"



Symposiums and Conferences:

- An invitational symposium focused on evolving developments in multi-channel distribution and shopper marketing which have profound implications for antitrust.
- The annual energy roundtable examined the role of market interventions in moving the U.S. electricity industry to a lower-carbon, more efficient sector, with a focus on wholesale market competition and benefits to consumers.
- The fifth annual Future of Private Antitrust Enforcement Conference featured a keynote address from Harvard Law School's Louis Kaplow

Selected Papers:

- Behavioral Merger Remedies: Evaluation and Implications for Antitrust Enforcement by John E. Kwoka and Diana L. Moss
- The Effect of AT&T's Acquisition of T-Mobile is Likely to Substantially Lessen Competition by Richard Brunell
- Generic Competition in Transgenic Soybeans by Diana L. Moss
- An Examination of the Antitrust Issues Posed by Google's Acquisition of ITA by Randy Stutz
- The Role of Competition Policy and Competition Enforcers in the EU Response to the Financial Crisis by Jonathan M. DeVito

- Live Aid? Assessing the Ability of the Ticketmaster-Live Nation Consent Decree to Restore Competition Levels in the Primary Ticketing Market by Aaron Silvenis
- A series by John M. Connor exploring implications of his unique database on cartels.
- Catels As Rational Business Strategy: New Data Demonstrates that Crime Pays by Robert Lande and John M. Connor
- Dismantling the Obstacles to TransAtlantic Cooperation in Cartel Enforcement by Michelle Chowdhury
- Optimizing the Deterrence of Cartels by Ke Li

Amicus Program:

- FTC v. Lundbeck – 8th Circuit
- Sullivan v. DeBeers – 3rd Circuit en banc
- Louisiana Wholesale Drug v. Bayer AG (Cipro 2nd Cir.) – Supreme Court cert.
- California v. Safeway – 9th Circuit en banc
- In re Hawaiian & Guamanian Cabotage Antitrust Litigation – 9th Circuit
- In re K-Dur Litigation – 3rd Circuit
- Brantley v. NBC Universal – 9th Circuit rehearing
- Simon v. KeySpan – 2nd Circuit
- Minn-Chem v. Agrium Inc. – 7th Circuit en banc
- FTC v. Lundbeck – 8th Circuit rehearing
- In re W. States Wholesale Natural Gas Litigation – 9th Circuit

2012

The AAI issued white papers on healthcare intermediaries, the Verizon-Cable deals, and restrictive paperless ticketing. The AAI testified on the competitive implications of refinery closures in the Northeastern U.S., standard essential patents, and restrictive paperless ticketing state-level legislation. Work progressed on planning for a judicial workshop in 2013 and on the jury instruction project.

In a letter to Congress, the AAI expressed concern over proposed House legislation that would restrict the FCC's ability to design incentive auctions for spectrum. The AAI also provided comments to the FERC on merchant transmission.

For the third year in a row, Bert Foer served as a non-governmental advisor to the International Competition Network. He and Diana Moss participated in international meetings and contributed to the ICN Advocacy Working Group and to the Curriculum Project's video efforts.

When Richard Brunell was recruited to advise the Chairman of the FTC, Randy Stutz took over the amicus program and Sandeep Vaheesan joined the AAI as Special Counsel to work on the amicus program and other projects. AAI Senior Fellow Gregory Gundlach, a business school professor at the University of North Florida, became a sixth member of the Board of Directors.

Annual Conference:

- "Civil Liberties and Competition Policy"
- Stanford University's Roger Noll, one of the greatest regulatory economists of his generation, was honored with the AAI's Alfred E. Kahn Award for Antitrust Achievement.
- The Jerry S. Cohen Award for Antitrust Scholarship was presented to the authors of "Plus Factors and Agreement in Antitrust Law" from 110 Mich. L. Rev. 393 (2011): William E. Kovacic, George Washington University Law School; Robert C. Marshall, Pennsylvania State University, College of the Liberal Arts, Department of Economics; Leslie M. Marx, Duke University, The Fuqua School of Business, Economics Group; and Halbert L. White, Jr. (1950-2012), University of California, San Diego (UCSD), Department of Economics.



Symposiums and Conferences:

- An invitational symposium examined complex, strategic pricing mechanisms and their implications for antitrust analysis and remedies.
- The energy roundtable examined emerging issues in electricity mergers, a timely question in light of several recent transactions and major antitrust and regulatory initiatives to revise and update merger guidelines.

- The sixth annual Private Antitrust Enforcement Conference featured a keynote address from Judge Diane Wood who discussed the en banc decision in *Minn-Chem, Inc. v. Agrium Inc.*
-

Selected Papers:

- Music Industry Consolidation: the Likely Anticompetitive Effects of the Universal/EMI Merger by Flavia T. Fortes

 - The Proposed Merger of US Airways and American Airlines: The Rush to Closed Airline Systems by Diana L. Moss and Kevin Mitchell

 - Healthcare Intermediaries: Competition and Healthcare Policy at Loggerheads? By Diana L. Moss

 - Verizon's Deals with Cable Companies Raise Significant Competitive Concern by Richard Brunell

 - Restrictive Paperless Tickets by James D. Hurwitz

 - A Primer on Green Technology and Antitrust: The Case of the Electric Car by Bert Foer

 - Antitrust Compliance: An Annotated Bibliography by Anoush Garakani

 - Private Recoveries in International Cartel Cases Worldwide – What do the Data Show? By John M. Connor

 - Competition Policy in the Financial Crisis By Kevin Kim
-

Amicus Program:

- *Simon v. Keyspan* – 2nd Circuit

 - *Comcast Corp. v. Behrend* – Supreme Court

 - *FTC v. Phoebe Putney* – Supreme Court

 - *Brennan v. Concord EFS* – 9th Circuit

 - *In re Cipro cases* – California Supreme Court

 - *ZF Meritor v. Eaton Corp.* – 3rd Circuit

 - *Brantley v. NBC Universal* – 9th Circuit rehearing

 - *Ritz Camera v. Sandisk* – Fed. Circuit

 - *Board of Dental Examiners v. FTC* – 4th Circuit
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An important part of the AAI's educational function has been our generation of working papers, white papers, commentaries, and published articles and other documents. Below is bibliography of our principal publications to date.

Books

Network Access, Regulation and Antitrust

Edited By Diana L. Moss
Routledge, New York, 2005

The Next Antitrust Agenda: The American Antitrust Institute's Transition Report on Competition Policy to the 44th President of the United States

Edited By: Albert Foer
Vandeplas Publishing, 2008

The International Handbook On Private Enforcement Of Competition Law

Edited by Albert Foer, Jonathan Cuneo, Randy Stutz, and Bojana Vrcek
Edward Elgar Publishing, 2011

Private Enforcement of Antitrust Law in the United States: A Handbook

Edited by Albert Foer and Randy Stutz
Edward Elgar Publishing, 2012

Selected Law Reviews and Reports Generated by the AAI

University of Pittsburgh Law Review

Volume 62, Issue 3, Spring 2001
Antitrust and the New Economy – Robert E. Litan

Case Western Law Review

Volume 51, Number 1, Fall 2001
Antitrust: New Economy, New Regime
Second Annual Symposium of the American Antitrust Institute

New York Law School Law Review

Volume 47, Number 1, Spring 2003
Antitrust: Stretching the Envelope:
Third Annual Symposium of the American Antitrust Institute

Buffalo Law Review

Volume 51, Number 4, Fall 2003
Symposium on Antitrust Law

The Antitrust Bulletin

Volume 49, Number 4, Winter 2004
Special Issue: The Implications of the Work of Robert L. Steiner
Gregory T. Gundlach and Albert A. Foer, Guest Editors

Antitrust Law Journal

Section of Antitrust Law, American Bar Association

Volume 72, Issue 2, 2005
Symposium: Buyer Power and Antitrust

Tulane Law Review

Volume 80, Number 2, December 2005
American Antitrust Institute Symposium: Thinking Creatively About Remedies
How High Do Cartels Raise Prices? Implications for Optimal Cartel Fines –
John M. Connor and Robert H. Lande

University Of San Francisco Law Review

Volume 40, Number 3, Spring 2006
Symposium: The Uncertain Future of Antitrust: Responding to the Antitrust Modernization Commission

The Antitrust Bulletin

Volume 51, Number 1, Spring 2006
Special Issue: Complexity, Networks, And The Modernization Of Antitrust
Gregory T. Gundlach and Albert A. Foer, Guest Editors

Real Estate Law Journal

Volume 35, Number 1, Summer 2006
Special Antitrust Issue

The Antitrust Bulletin

Volume 52, Number 1, Spring 2007
Special Issue: The Future of Aftermarkets in Systems Competition
Gregory T. Gundlach and Albert A. Foer, Guest Editors

Rutgers Law Journal

Volume 38, Number 2, Winter 2007
Symposium: The IP Grab: The Struggle Between Intellectual Property Rights and Antitrust

The Antitrust Bulletin

Volume 53, Number 2, Summer 2008
Special Issue: Buyer Power and Antitrust
Gregory T. Gundlach and Albert A. Foer, Guest Editors

The Wisconsin Law Review

Volume 2008, No. 2
Symposium: The Future of Monopoly and Monopolization

The Antitrust Bulletin

Volume 55, Number 2, Summer 2010
Special Issue: RPM After Leegin
Gregory T. Gundlach, Guest Editor

The Oregon Law Review

Volume 89, Number 3, 2011
Symposium: The AAI's 11th Annual Conference: Are the Boundaries Between Public and Private in Transition?

The Antitrust Bulletin

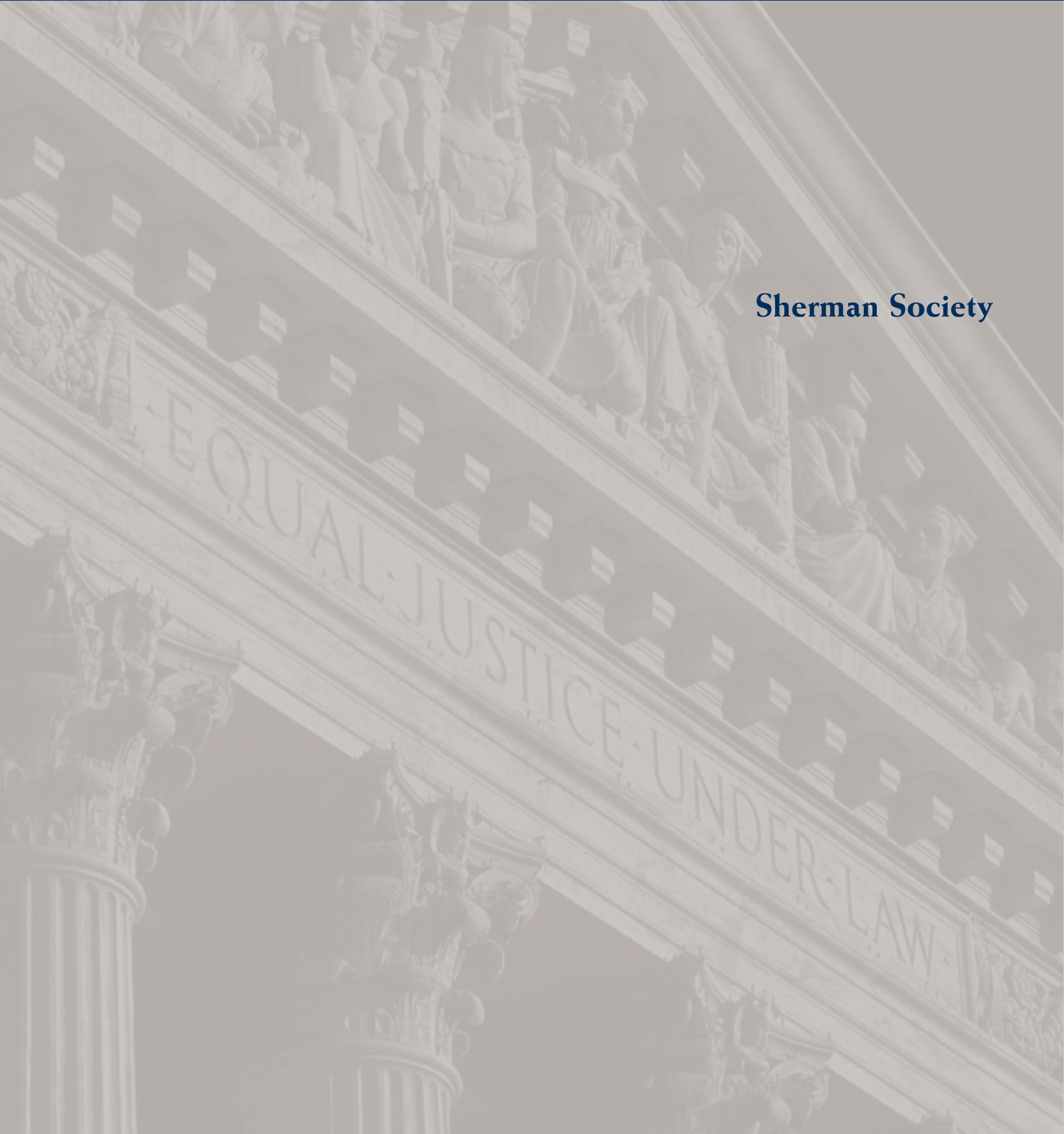
Volume 56, Number 3, Fall 2011
Special Issue: Prediction and Antitrust
Albert A. Foer, Guest Editor

section

THREE

AAI 15TH ANNIVERSARY

Sherman Society



The Sherman Society is an honorary recognition group named for John Sherman and the Sherman Antitrust Act of 1890, which is our quintessential protection against anticompetitive activities. The Sherman Society honors the foresight of those who have committed to designate the AAI as a beneficiary of their estate plan or have established a life income gift.

If you would like to discuss the various ways in which you might include the AAI in your will or living trust or name the AAI as a beneficiary of your retirement plan or life insurance policy, please call **Bert Foer at 202-276-6002** or email **bfoer@antitrustinstitute.org**.



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