REMARKS INTENDED FOR DELIVERY ON THE ACCEPTANCE OF THE AMERICAN ANTITRUST INSTITUTE'S 2019 AWARD FOR ANTITRUST ACHIEVEMENT

BY STEPHEN CALKINS*

[The vagaries of travel resulted in Professor Stephen Calkins's arriving eight hours late for the American Antitrust Institute's 2019 Annual Meeting, June 20, 2019, at which he was scheduled to accept the 2019 Alfred E. Kahn Award for Antitrust Achievement. The many attendees thus heard neither Federal Trade Commission Chair Joseph Simons's introduction of Professor Calkins nor Professor Calkins's acceptance. Professor Calkins agreed to type up his informal notes to approximate the remarks as they would have been delivered.]

Thank you, FTC Chairman Joe Simons. I appreciate the kind remarks and, indeed, your agreeing to introduce me. You and I both support energetic, bi-partisan competition enforcement, so it is especially appropriate that a Republican Chair would introduce a Pitofsky General Counsel.

AAI President Diana Moss gave me my assignment by email: "the goal would be to connect your diversity of experience in academia and domestic and international enforcement to the challenges facing the antitrust enterprise, in the U.S. and abroad. How you do that is totally up to you!" The schedule allowed me ten minutes.

TWO GIANTS

Given my limited time I'm going to skip the usual thanks (a few acknowledgments are appended), but two antitrust giants who have been called to that great antitrust conference in the sky played such an oversized role in my career that I cannot fail to mention them. Ernie Gellhorn used to preside over the annual Conference Board sessions with grace and style; it was there that I started doing the annual commentaries on the state of antitrust that have marked much of my career. Later, Ernie invited me to join the Ernie Gellhorn-Bill Kovacic team to bring out the 5th edition of the Antitrust Nutshell, a very happy experience. (And, yes, Bill and I are overdue for a new edition!)

Probably the key role in my career, however, was played by the great Bob Pitofsky. It was at his conference[1] that I first wrote about "equilibrating tendencies"[2] (and I have to give a shout out to Andy Gavil for promoting that concept more than anyone other than my mother). Bob had a central role on the second Kirkpatrick Committee on the FTC, for which I played the role of counsel that he'd played for Kirkpatrick I.[3] Later, he arranged for me to be the first General

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1 PRIVATE ANTITRUST LITIGATION: NEW EVIDENCE, NEW LEANING (Lawrence J. White, ed., 1988).

2 Stephen Calkins, *Summary Judgment, Motions to Dismiss, and Other Examples of Equilibrating Tendencies in the Antitrust System,* 74 GEO. L.J. 1065 (1986); *see also* Stephen Calkins, *Reflections on* Matsushita *and 'Equilibrating Tendencies': Lessons for Competition Authorities, 82* ANTITRUST LAW JOURNAL 201 (2018).

3 *Report of the American Bar Association Section of Antitrust Law Special Committee to Study the Role of the Federal Trade Commission*, 58 ANTITRUST L.J. 43 (1989). In an eloquent tribute to Bob given at the AAI's second annual conference, then-FTC

Counsel of the Pitofsky FTC; still later to contribute a paper to an important conference on the Chicago School. All along the way, Bob set an example for each of us to follow.

That conference is worth special mention. Today we regularly read about how antitrust has failed, how the Chicago School overshot the mark, how it's critical to think about more than pricing (see below). Sometimes one gets the impression that these are novel concerns. But more than a decade ago Bob Pitofsky wrote (or at least edited) the book, HOW THE CHICAGO SCHOOL OVERSHOT THE MARK.[4] Indeed, Bob, along with Eleanor Fox, Louis Schwartz, and others have long raised questions about arguable limitations of the Chicago School. There is nothing wrong with each generation asking questions anew, but it is important to do so based on an understanding of history–and Bob Pitofsky was an essential part of the history of antitrust.

Thus, it was with special pleasure that I learned only yesterday that Joe Simons presided over a ceremony marking the naming of Room 432, the big FTC Conference room, after Robert Pitofsky. Many of Bob's friends have already expressed their pleasure at this class act. It is yet another celebration of Joe's and my shared interest in energetic, bi-partisan antitrust enforcement.

THREE LESSONS FROM IRELAND

My more recent government service was in Ireland, and it is to that experience—based solely on publicly available information—that I turn for three quick lessons.

Attempted Combination of the Two Irish Book Wholesalers

In August 2012 there was proposed a non-reportable acquisition by Eason & Son Limited of Argosy Libraries Limited, which would have combined Ireland's only two book wholesalers (one the leading retailer). The Competition Authority (as it was then called) voted to initiate proceedings to prevent the acquisition, which the parties eventually abandoned.[5]

Some might have argued that the Authority should have applied a "consumer welfare" standard and reasoned that although a merger of wholesalers could harm retailers, the proposed merger would not harm ultimate, human book purchasers because retailers could not raise prices without losing too many sales to Amazon and other online sources. This reasoning is strikingly similar to the approach taken by Justice Gorsuch when he hi-jacked the start of oral argument in *Ohio v. American Express Co.*[6] and asserted that only real consumers count.[7]

Chair Tim Muris explained my role as follows: "Steve Calkins was counsel to the ABA committee, and much of his effort involved negotiating what might modestly be called a Pitofsky/Muris view of the FTC." Timothy J. Muris, *Robert Pitofsky: Public Servant and Scholar* (June 12, 2001), https://www.ftc.gov/public-statements/2001/06/robert-pitofsky-public-servant-and-scholar (visited July 3, 2019).

[4] HOW THE CHICAGO SCHOOL OVERSHOT THE MARK: THE EFFECT OF CONSERVATIVE ECONOMIC ANALYSIS ON U.S. ANTITRUST (Robert Pitofsky, ed., 2008).

[5] The incident is reported in the agency's 2012 annual report at 30-31; *see also* Barry O'Halloran, *Eason set to abandon purchase of rival due to regulator's move,* THE IRISH TIMES, Oct. 2, 2012, https://www.irishtimes.com/business/media-and-marketing/eason-set-to-abandon-purchase-of-rival-due-to-regulator-s-move-1.546322 (visited July 3, 2019).

[6] 138 S.Ct. 2274 (2018).

[7] Transcript at 4-6:

> We're not here to protect competitors, right, Mr. Murphy?...Or…necessarily even merchants. The antitrust laws are aimed at protecting consumers; you'd agree with that?...

The Irish Competition Authority made the right call and blocked what would have been a merger to monopoly of Irish book wholesalers.[8] The merger likely would have harmed competition, increased prices, and lowered quality—whether or not human book purchasers would have directly paid higher prices.

"Consumer welfare" is the right concept but the wrong wording. Even though it is conceptually correct, it suffers from three flaws: (1) Competition law is not concerned only with human book purchasers or credit card users or other living "consumers," but also with retailers, and suppliers, and employees; (2) Robert Bork repeatedly used the term "consumer welfare" to serve as a synonym for total welfare, which regularly results in uncertainty and confusion ("are you using the term the way Bork did?"); and (3) for reasons not entirely clear to me, a number of commentators have objected that "consumer welfare" is concerned exclusively with price—an assertion that is not and never has been true, but, well, has resulted in additional confusion.

"Consumer welfare" has confused people long enough. If the concept is right but the wording is wrong, we should change the wording. Carl Shapiro shared this insight when he testified before at the FTC Hearings and advocated a new label, the "Protecting Competition Standard ®."[9] An even better label would be "competition welfare." Simple, straightforward, and sound: The "competition welfare" standard.

Attempted Purchase of Tiny Distiller

Shortly after I arrived in Ireland, Beam Inc. announced plans to buy Cooley Distillery, an independent Irish distillery founded in 1987.[10] Beam didn't make Irish whiskey and it was a non-event for competition analysis and indeed stimulated competition by freeing Cooley's owner John Teeling to found Great Northern Distillery which provides bulk product for other brands, while Teeling's sons, with initial supply contracted from Beam, established the first new distillery in Dublin in 125 years. Today Ireland has more than 30 distilleries in production or close to it.[11]

> …And you have an increase in price to merchants, but do we have any evidence that consumers, at the end of the day, including the rewards aspect of what they get back, actually pay a net price increase? …My question is, do you have any evidence that, on a net basis, consumers pay more? And I don't believe you have. [Mr. Murphy: "…I think merchants are consumers in this context."] I'm asking about consumers.

[8] The decision had a personal side benefit: My wife, traveling in rural Ireland, mentioned to a small bookseller that her husband had worked on the matter, which yielded a warm hug and effusive thanks—probably the only time any part of my career directly benefitted by wife.

[9] Carl Shapiro, *Breathing New Life Into the Consumer Welfare Standard: The Protecting Competition Standard®,* Hearings on Competition and Consumer Protection in the 21st Century (Nov. 1, 2018), https://www.ftc.gov/system/files/documents/public_events/1415284/ftc_hearings_5_georgetown_slides.pdf (visited July 3, 2019). (Carl also does a nice job of explaining why the concept is right.)

[10] *Beam Announces Agreement to Purchase Cooley Distillery, Award-Winning Irish Whiskey Company,* BUSINESS WIRE (Dec. 16, 2011), https://www.businesswire.com/news/home/20111216005123/en/Beam-Announces-Agreement-Purchase-Cooley-Distillery-Award-Winning (visited July 3, 2019).

[11] See Jake Emen, *The Explosion of Irish Whiskey Distilleries*, DISTILLER BLOG (Aug. 19, 2017), https://blog.distiller.com/new-irish-whiskey-distilleries/; *The Great Irish Whiskey Bubble?*, IRISH INDEPENDENT (July 3, 2019), https://www.independent.ie/business/irish/the-great-irish-whiskey-bubble-34137905.htm; *Teeling Story*, https://teelingwhiskey.com/our-story/ (all visited July 3, 2019).

The Irish Competition Authority deserves a big assist in this story. Cooley did not have an easy time entering the market. Whiskey has to be aged, and Cooley sold its first branded whiskey only in September 1992. Financial problems resulted in distilling operations being closed in early 1993. That October, Teeling agreed to sell Cooley to Irish Distillers Group ("IDG"), the only other distiller in Ireland (Jameson, Bushmills, etc.), which intended to close down the business. The Authority blocked the transaction, viewing Cooley as a potential entrant that did not qualify for the failing company defense.[12] Teeling responded by redoubling his efforts, finding economies, raising money, and eventually making Cooley both a success as a company and an inspiration for other start-up Irish distillers.[13]

By blocking the acquisition, the Authority helped make possible the rebirth of Irish whiskey distilling. Cooley's start had been "facilitated by the availability of a disused alcohol plant which it was able to acquire at a relatively modest price."[14] The Authority explained that although Cooley has "financial difficulties . . . it is certain that if the arrangement proceeds any possibility of Cooley becoming a competitor will be eliminated, while the barriers to entry . . . make it unlikely that any other new entrant would emerge."[15] The Authority correctly perceived the importance of preserving the potential for deconcentration—and, what is also important, of worrying as much about false negatives as false positives.[16]

"Craft" Beer

Finally, one incident at an office outing to a pub—and, yes, office outings often are to a pub, and, yes, Irish pubs really are the best in the world[17]—stuck with me. A high agency official who shall remain nameless said that instead of having a Guinness they'd have a "craft beer"—and ordered Blue Moon. Of course, Blue Moon is not a craft beer but rather a mass-produced global brand of Molson Coors. I'm biased, because I care about true craft beer and many people who brew and sell it, but I think craft beer has important lessons for competition law and policy.

Ever since at least 2008, when the Antitrust Division mistakenly allowed SABMiller and Molson Coors Brewing Company to combine their U.S. operations, U.S. beer lovers have endured a beer

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[12] Notification No. CA/62/93 - Distillers Group plc/Cooley Distillery plc., Decision No. 285 (Feb. 25, 1994), at ¶ 85 ("The Authority rejects the claim that the arrangements will have no impact on competition because Cooley's present level of sales is low. Such an argument is tantamount to a claim that the elimination of a new entrant has no impact on competition in a market. It must therefore be rejected as wrong."); *id.* at ¶ 88 ("On balance, while the Authority recognises that the survival of Cooley is by no means certain, it remains a distinct possibility and Cooley cannot therefore be dismissed as a potential competitor to IDG.").

[13] See Cliona McNally, *An Act with Taste and Teeth* (1998), https://www.tcd.ie/Economics/assets/pdf/SER/1998/Cliona_McNally.html (visited July 3, 2019) (quoting Teeling: "Prices have fallen, there is a far greater variety of products, quality employment is growing as greater emphasis is placed on marketing, exports are up and there are more whiskey based products, e.g. cakes, sweets and jam.").

[14] Decision No. 285 at ¶ 83

[15] *Id.* at ¶ 86.

[16] "False positives" has been a central concern of 21st century American antitrust, to a much greater extent than in Europe. See Stephen Calkins, *Reflections on* Matsushita *and "Equilibrating Tendencies": Lessons for Competition Authorities,* 82 ANTITRUST L.J. 15, 25-26 (2018).

[17] A college project on what makes for a great Irish Pub eventually led to The Irish Pub Company, which packaged the Irish Pub for export. See http://irishpubcompany.com/the-story-of-the-irish-pub-company/ (checked July 3, 2019); NPR PLANET MONEY, *The Mastermind Behind the International Irish Pub* (April 7, 2017 transcript), https://www.npr.org/2017/04/07/523044318/the-mastermind-behind-the-international-irish-pub (visited July 3, 2019) (great pubs divide up space "into smaller nooks").

duopoly.[18] Happily, the American craft beer movement had been gradually bringing beer with flavor to American palates, and slowly the marketplace became competitive.[19] The beer duopoly aggressively fought back by buying up craft beers (Anheuser-Bush bought Goose Island in 2011 and went on to buy at least nine other craft breweries such that today it can be considered the nation's largest so-called craft beer company[20]); engaging in questionable distribution practices;[21] and misleading consumers.

On that last point, Blue Moon serves as exhibit A. Visit the Blue Moon website[22] and just try to find a hint that this is a Molson Coors beer. Click on "Story"[23] and read about the "Sandlot Brewery at Coors Field" without learning that Coors or Molson Coors has always owned that brewery.[24] Read about "our founder and head brewmaster Keith Villa" without learning that Villa left Molson Coors in January 2018 to co-found an apparently real "family business" making "quality craft beer"[25] and a brewing company with "sky-high standards" that infuses its beer with cannabis.[26] Click on the Blue Moon "brewery" tab and read about the Sandlot brewery at Coors Field and a second brewery, opened in 2016, in Denver's RiNo District, without learning that those are only two of the breweries that brew or brewed Blue Moon.[27]

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[18] Compare Nathan H. Miller & Matthew C. Weinberg, *Understanding the Price Effects of the MillerCoors Joint Venture,* 85 ECONOMETRICA 1763 (Nov. 2017) (joint venture increased prices substantially) with *Statement of the Department of Justice's Antitrust Division on its Decision to Close its Investigation of the Joint Venture Between SABMiller PLC and Molson Coors Brewing Company* (June 5, 2008), https://www.justice.gov/archive/atr/public/press_releases/2008/233845.pdf (visited July 3, 2019) (efficiencies were believed sufficient to prevent competitive harm).

[19] Nick Hines, *18 Defining Moments in the History of Craft Beer*, VINEPAIR (Feb. 22, 2017), https://vinepair.com/articles/18-most-defining-moments-craft-beer/ (visited July 3, 2019); Derek Thompson, *Craft Beer Is the Strangest, Happiest Economic Story in America*, THE ATLANTIC (Jan. 19, 2018), https://www.theatlantic.com/business/archive/2018/01/craft-beer-industry/550850/ (visited July 3, 2019).

[20] Josh Noel, *Anheuser-Busch on its way to becoming king of craft beer too*, CHICAGO TRIBUNE (Aug. 9, 2018), https://www.chicagotribune.com/dining/drink/ct-food-anheuser-busch-craft-beer-top-sales-0809-story.html (visited July 3, 2019). The definition of "craft beer" is controversial. Corporate brewers claim it is just a style of beer, whereas the Brewers Association employs a rigorous definition requiring the brewery to be small (annual production no more than 6 million barrels of beer) and independent, meaning less than 25% owned or controlled by a non-craft brewer. See https://www.craftbeer.com/breweries/what-is-a-craft-brewery (visited July 3, 2019); *see also* Carissa Stanz, *Why These 14 Breweries Aren't Considered Craft Beer Anymore*, WIDE OPEN EATS (Aug. 4, 2018), https://www.wideopeneats.com/14-breweries-you-didnt-realize-are-no-longer-craft/ (visited July 9, 2019).

[21] See, e.g., Comments from the Brewers Association to the U.S. Department of Justice Antitrust Division Regarding the Proposed Consent Order in United States v. Anheuser-Busch InBev SAQ/NV and SABMiller plc (Jan. 13, 2017), https://www.justice.gov/atr/case-document/file/928256/download (visited July 9, 2019).

[22] https://www.bluemoonbrewingcompany.com/en-US (visited July 3, 2019).

[23] https://www.bluemoonbrewingcompany.com/en-US/story (visited July 3, 2019).

[24] Jonathan Shikes, *Five things you didn't know about the Sandlot brewery at Coors Field*, WESTWORD (Sept. 8, 2011), https://www.westword.com/restaurants/five-things-you-didnt-know-about-the-sandlot-brewery-at-coors-field-5733550 (visited July 3, 2019).

[25] https://www.donavonbrewing.com/ourstory (visited July 3, 2019).

[26] https://ceriabrewing.com/ (visited July 3, 2019); see also Tara Nurin, *Blue Moon's Creator is Retiring and Putting his Expertise to Wrok for Himself*, FORBES (Jan. 4, 2018), https://www.forbes.com/sites/taranurin/2018/01/04/blue-moons-creator-is-retiring-and-putting-his-expertise-to-work-for-himself/#24be28ad3c29 (visited July 3, 2019).

[27] See *Being Keith Villa*, DRAFT (undated), https://draftmag.com/being-keith-villa/ (visited July 3, 2019) ("The company brews the Blue Moon sold in the United States in three facilities: in 400-barrel batches at its Golden Brewery; in 800-barrel batches in Eden, N.C.; and in 10-barrel batches at The Sandlot Brewery."); Cat Wolinski, *Blue Moon Has Secret Canadian Double Identity*, VINEPAIR (Jan. 23, 2018), https://vinepair.com/articles/blue-moon-belgian-name-canada/ (visited July 3, 2019) (at least for a time brewed in Montreal).

You might think that Blue Moon's packaging would reveal where the beer was brewed. Not so. Packaging might state "Brewed by Blue Moon Brewing Company Golden Colorado."[28] Or it might state "Blue Moon Brewing Company Golden, Co." followed by "Come and visit the Blue Moon Brewery: located at 3750 Chestnut Pl., Denver, Co."[29] But the beer inside that packaging might or might not have been brewed in Golden or in Denver.

In 1986, two years after Boston Beer Company joined Anchor and Sierra Nevada in making craft beer,[30] the predecessor to Treasury's Alcohol and Tobacco Tax and Trade Bureau ("TTB") eliminated the requirement that the place of bottling be disclosed.[31] In response to a petition from Anheuser-Busch, new language was added: "The bottler's or packer's principal place of business may be shown in lieu of the actual place where bottled or packed if the address shown is a location where bottling or packing operation takes place."[32] Previously, the brewer had to list either the actual brewery location or, if more than one, all locations along with an identifying code.

The agency explained its reasoning as follows:

> ATF does not believe that the listing of only the brewer's principal place of business on the label would be deceptive to consumers. **We believe that consumers today know that many large brewers operate more than one brewery**. Moreover, the present listing of all brewing locations on the label does not inform the consumer where beer in a specific bottle was produced because the consumer generally does not understand brewers' coding systems. . . . **Thus, ATF does not believe the actual place of production of beer produced by today's multiplant brewers is meaningful to consumers**."[33]

The agency probably was wrong at the time—after all, the craft beer movement had started—but it certainly is wrong today. *According even to Molson Coors and ABInbev in SEC-required annual reports*, in Canada and the U.S. "there has been a recent shift in consumer preferences . . . away from premium brands to 'craft beer' produced by small, regional microbreweries . . . ."[34] An "emerging trend" is "the increasing consumer preference for 'craft beers' produced by smaller microbreweries."[35] Yet

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[28] See https://www.google.com/search?q=blue+moon+label&rlz=1C1GCEU_enUS819US819&tbm=isch&source=iu&ictx=1&fir=ZUKcOf2klUqQlM%253A%252CYUiMZtPuHR0i3M%252C_&vet=1&usg=AI4_-kRsrQspcmO65Rnqhbry_lcJGt6-bA&sa=X&ved=2ahUKEwiIxtPeh6vjAhVDLs0KHfIcDS8Q9QEwDHoECAcQHA#imgrc=H5-79Is9mry06M:&vet=1 (visited July 9, 2019).

[29] Seen in my local grocery store, July 9, 2019.

[30] *Mapping the American Brewing Renaissance*, VINEPAIR, https://vinepair.com/map-american-craft-brewing-history/ (visited July 9, 2019). Anchor was acquired by Sapporo Holdings Limited in 2017. Press release available at https://www.anchorbrewing.com/connect/news/188 (visited July 9, 2019).

[31] 51 Fed. Reg. 8490-02 (March 12, 1986).

[32] 27 C.F.R. 7.25(a)(1) (2019) (adding: "The appropriate TTB officer may disapprove the listing of a principal place of business if its use would create a false or misleading impression as to the geographic origin of the beer."). The proposed amendment explained that the agency was concerned about misleading geographic references: "ATF is also concerned that use of some addresses as the principal place of business of a brewer could be misleading or deceptive in conjunction with certain geographic brand names or slogans used on malt beverage labels." 50 Fed Reg. 41701, 41702 (Oct. 15, 1985).

[33] 51 Fed. Reg. at 8491 (emphasis added).

[34] Molson Coors Brewing Company 2017 Annual Report Form 10-K at 22, http://www.annualreports.com/HostedData/AnnualReports/PDF/TSX_TAP_2017.pdf (visited July 9, 2019).

[35] ABInBev 2018 Annual Report at 66, https://www.ab-inbev.com/content/dam/universaltemplate/ab-

both companies work zealously to prevent consumers from knowing whether or not the companies' beers are in fact produced by "small, regional microbreweries;" ATF, having acceded to Anheuser-Busch's request, allows this to continue; and the antitrust agencies do nothing.

What lessons can be drawn from this tale? Enforcers need to be curious. Of course firms want to lessen competition, to acquire and maintain market power, to construct "moats," and to defend their positions.[36] Managers owe a duty to owners to maximize profits, after all. And if firms try to lessen competition, they may succeed. Enforcers must remain constantly on the alert so firms channel their aggressive instincts into legitimate competition on the merits.[37]

Enforcers also need to use all powers available to them. Deception harms consumers directly and also indirectly, by harming competition. We know—because Molson Coors and ABInBev have told us—that many consumers prefer to patronize "small, regional microbreweries," so if brewing giants can deceive consumers about where beer is brewed, that harms competition.

(Or consider "drip pricing," such as where consumers don't learn real prices until they have spent ten to fifteen minutes online making travel arrangements. That simply must be an unfair or deceptive act or practice.[38] But it is also anticompetitive. Markets drive firms to lower the prices that affect consumer behavior, which tend to be the prices for which consumers search online. If the prices for which consumers can search are not real prices but only initial teasers, competition is less effective.)

Advocacy also is important. The FTC engages in substantial advocacy.[39] More could done, however—such as suggesting to TTB that since consumers want to know where beer is brewed, they should be able to know it! Even if campaigns such as Blue Moon's generally are protected puffery,[40] consumers and, yes, competition, deserve protection.

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inbev/investors/reports-and-filings/annual-and-hy-reports/2019/190321_AB%20InBev%20RA2018%20EN.pdf (visited July 9, 2019).

[36] See TIM CALKINS, DEFENDING YOUR BRAND: HOW SMART COMPANIES USE DEFENSIVE STRATEGY TO DEAL WITH COMPETITIVE ATTACKS (2012).

[37] Commissioner Vestager set forth a colorfully memorable description of an agency's role in a speech to the OECD:

> One of my favourite lines is by Leonard Cohen who once sang: "there's a crack in everything - that's how the light gets in." Even in markets that are dominated by big platforms, there are still those little cracks, where innovative rivals can squeeze into the market. And our job is to make sure that big platforms don't go around sealing up those cracks, and making their position watertight, even in the face of innovation.

Margrethe Vestager, *Competition and the Digital Economy*, Speech to the OECD/G7 Conference June 3, 2019, https://ec.europa.eu/commission/commissioners/2014-2019/vestager/announcements/competition-and-digital-economy_en (visited July 9, 2019).

[38] The District of Columbia recently charged Marriott with this kind of illegal pricing. See https://oag.dc.gov/release/ag-racine-sues-marriott-charging-deceptive-resort (July 9, 2019).

[39] Filings are available at https://www.ftc.gov/policy/advocacy/advocacy-filings (visited July 9, 2019).

[40] Parent v. MillerCoors LLC, 2016 WL 3348818 (S.D. Cal. June 16, 2016) (dismissing amended complaint alleging state law deception, filed at a time when Keith Villa still worked for MillerCoors, with court noting that Blue Moon's marketing material never actually asserted that it was a "craft beer").

CONCLUSION

These are exciting times for competition law and policy. Presidential candidates talk about competition issues, a Supreme Court nominee was quizzed about antitrust opinions he authored, the House is holding hearings, the press is regularly reporting about competition issues, and academics are raising concerns about competition enforcement with new vigor. Indeed, one or more academics previously reluctant to raise concerns is newly emboldened to speak out.

The American Antitrust Institute, however, has never been reluctant to speak out. For more than two decades the AAI has been a voice crying in the wilderness. Today it is still promoting competition, while also cautioning that competition law should not be used for purposes other than competition enforcement.

Because of the key role that the AAI has played and is playing, I am particularly pleased and proud to accept the 2019 American Antitrust Institute Alfred E. Kahn Award for antitrust achievement.

ACKNOWLEDGMENTS

Receiving what is commonly known as a "lifetime achievement award" inevitably causes one to think about the many people who played essential roles in the journey. Even with severe time constraints—I am grateful to so many people with whom I worked in my various positions, but will single out almost none by name—a couple of people in addition to Professors Gellhorn and Pitofsky and a couple of institutions stand out as changing the direction I was headed:

Hugh Calkins, my distinguished uncle who gave me wise counsel as I started my career and later encouraged me to become a member of the American Law Institute.

Then-Professor Stephen Breyer, who suggested that I take an appointment as an FTC attorney-advisor, which led to a lifetime of association with that great institution.

Covington—represented at the luncheon by my friend Ted Voorhees—where I was working when I taught my first class (at U VA), gave my first speech (on *Illinois Brick*!), wrote my first article (on the HHI), and, thanks to Harvey Applebaum, forged lasting ties with the ABA Antitrust Section.

The ABA Antitrust Section and its incredible staff. The Section published so many articles (special thanks to the marvelous super-editor Tina Miller), sponsored so many speeches, and published Antitrust Law Developments (Second)[41] on which I had the privilege to serve on the editorial board with, among others, long-time friend and co-author and co–panelist John Briggs, who is here today. John always shared his love of good writing and energetic policy analysis, as did the final lawyer guest here today, the Brookings Institution's J. Mark Iwry.

Terry Calvani, former Member of the Competition Authority of Ireland, who sent me an email informing me that the Authority had openings and was accepting applications. I forwarded that email to my wonderful wife Joan Wadsworth, also here today (and whom I thank for all her support), asking whether she'd be willing to live in Dublin. Her instant reply: "In a heartbeat."

[41] ABA ANTITRUST SECTION, ANTITRUST LAW DEVELOPMENTS (2d ed. 1984).