

**FORDHAM UNIVERSITY SCHOOL OF LAW
FORDHAM COMPETITION LAW INSTITUTE**

**47TH ANNUAL CONFERENCE ON INTERNATIONAL
ANTITRUST LAW AND POLICY**

Day 2 — Friday, October 9, 2020

**In-House Counsel Roundtable: Competition and Other Issues
in a Pandemic Environment**

Moderator:

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Panelists:

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Associate General Counsel, Antitrust & Strategic Projects, Verizon

Jon Lutinski

Vice President and Chief Antitrust Counsel, American Express

Rob Mahini

Senior Counsel, Google

Suzanne Wachsstock

Chief Antitrust Counsel, Walmart

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MS. LENT: Good morning, everyone. Welcome to the last panel of the Fordham Conference for 2020. This is the in-house counsel panel, and we are talking about competition and other issues in a pandemic environment.

I am Karen Lent. I am a Partner at Skadden, Arps in New York in the antitrust group. I am also the Associate Director of the Fordham Competition Law Institute, so I worked with James to plan the conference this year. I am delighted to be moderating a panel with this really terrific lineup of in-house antitrust specialists.

We have all been operating in this global pandemic for the better part of this year, and it has had profound aspects on every part of our life. Our panelists today are going to talk about a sliver of that life, an inside view about how the pandemic has impacted their work, as well as some of the other issues that they have had to navigate during this year.

After some guided discussion and questions among us, we will open it up to questions from the audience. If you have questions, please put them in the Chat feature, and hopefully at the end of the session we will be able to get to those.

Before we get started, I will take a few minutes to introduce the panelists.

First is Gabrielle Kohlmeier, the Associate General Counsel for Antitrust and Strategic Projects at Verizon. Gabrielle leads the company's FTC and competition policy strategy and is responsible for counseling Verizon's businesses on all aspects of competition law issues. She represents the company before U.S. and international competition agencies. She is also on Verizon's Public Policy Law and Security, Diversity, and Inclusion Council.

She is a frequent writer and speaker on competition, technology, compliance, business, and diversity issues, and she is an active participant in the ABA, where she chairs the ABA Antitrust Section Privacy Legislation Task Force and is the co-chair of Women.Connected.

Thank you, Gabrielle, for being with us today.

Next we have Jon Lutinski, a Vice President and Chief Antitrust Counsel at American Express, where he focuses on all antitrust-related aspects of litigation, transactions, counseling, and compliance issues.

Prior to working in-house at Amex, Jon was a Senior Associate at Wilson Sonsini for six years and a staff attorney prior to that in the Healthcare Division of the FTC's Bureau of Competition. He also is active in the ABA's Antitrust Section where he serves as co-chair of the Insurance and Financial Services Committee.

Thank you and welcome, Jon.

Next is Rob Mahini, a Senior Counsel at Google. Rob has been at Google for a while. He previously served as a policy counsel on privacy, competition, consumer protection, and patent policy issues. He also currently teaches a course on Big Data and artificial intelligence for Georgetown University's McCourt School of Public Policy and he

teaches government law at The George Washington University School of Law.

Before Google, he was a Senior Attorney at the FTC, working in the FTC's Office of the General Counsel on regulatory, legislative, and litigation matters in areas including competition, privacy, and consumer protection. Prior to that, he clerked for then-Chief Judge Thomas Hogan of the United States District Court in Washington, D.C., and was an Associate at Hogan & Hartson.

Welcome, Rob.

Last but not least, Suzanne Wachsstock, Chief Antitrust Counsel at Walmart, has global responsibility for Walmart's antitrust policy and strategy. She is also a leader in the ABA's Antitrust Section and a frequent speaker on antitrust topics. She was recently elected a member of the Section's Leadership Council. She was previously a Co-Chair of the Section's Corporate Counseling Committee and has held leadership roles on the International, Financial

Services, and Distribution and Franchising Committees. She currently sits on the Antitrust Council of the U.S. Chamber of Commerce and the Board of Women@Competition Americas.

Before joining Walmart last year, she spent eleven years as the Chief Antitrust Counsel at American Express after a career in private practice, which started at Davis Polk and ultimately was a Partner at Wiggin and Dana LLP, where she co-led the firm's antitrust and consumer protection group and was active in the firm's hiring, ethics, and diversity committees.

Welcome, Suzanne.

As you can tell, we have an amazing panel for you today and I am excited to get started and hear their insights.

Let's get started. I am going to direct this first question to Jon initially, but I would love for everyone to jump in and give us their insights.

Shortly after the pandemic began, the DOJ and FTC issued a Joint Antitrust Statement Regarding Covid-19 that recognized the pandemic would require unprecedented cooperation between federal, state, and local governments, and among private businesses, but since then it has maintained that the same antitrust rules would apply to competitor collaborations, seemingly a little bit of an inconsistent message.

How are you approaching this subject, given the tension between remaining vigilant about the antitrust rules but the need in some cases for increased competitor collaborations?

MR. LUTINSKI: I should start this off, as I expect most of us may, by saying these are my general views but not disclosing any particular advice I have given my clients or given American Express.

I think it is first most relevant to talk about is what did the Joint Antitrust Statement Regarding Covid-19 do, and what did it not do?

What did it do? First, it established an expedited review process for the DOJ's business review letter process and for the FTC's advisory review process for collaborations addressing public health and safety.

It also noted that the agencies will account for exigent circumstances in evaluating joint efforts to address the spread of Covid-19. A couple of examples they gave are healthcare facilities may need to work together to provide personal protective equipment to underserved communities; businesses may need to temporarily combine production, distribution, and service networks for Covid-19-related supplies. So I think what it actually did do was pretty narrow.

My second point: What did it not do? It did not establish any sort of public health emergency or exception to the antitrust laws. In this same statement itself, it actually noted toward the bottom of that statement that the agencies will not hesitate to prosecute those that use the pandemic as an

opportunity to "subvert competition." They basically said, "We are going to stand ready to pursue civil violations of the antitrust laws, including horizontal and vertical agreements."

As you mentioned, this was reinforced by Ian Conner's FTC blog, Antitrust review at the FTC: staying the course during uncertain times. He noted similarly that "there are no emergency exceptions to the antitrust laws. The FTC is going to stay the course and continue its rigorous approach to uncovering anticompetitive conduct."

So what I think of this and what my advice has been is, to the extent that our executives or frankly anybody else who reads about this, don't take too much comfort in the agencies' Joint Statement. In the public health business really it is sort of "business as usual" with respect to antitrust enforcement. In fact, I would view it as you need to be even more vigilant in the entire environment.

Obviously, in an unprecedented time people are working outside their normal work environment, we are no longer in offices, we are dealing with serious and common problems, and folks are trying to come together to solve these historically difficult issues. I think in such circumstances you can see circumstances where companies or individuals may let their normal guard down.

In light of this risk, my guidance is we've got to be even more vigilant, maybe even put forth specific guidelines related to Covid-19 competitor collaborations, when you are advising your clients.

You want to note that we shouldn't have any discussions with competitors about any particular competitive response or strategy in light of this crisis. We shouldn't coordinate with competitors on whether to deal with third parties that may fail to adopt what we view as adequate safety measures to protect workers or customers. Those sorts of decisions of course need to be made.

It is apparently okay to discuss, for example, best practices on things that I would consider us not to compete in – for example, office safety and sanitation or how to do remote working in this new environment. But on [inaudible] any other circumstance need to be carrying the agenda. You can't align on any particular approach. You can't spill over into any sort of improper discussion about, for example, salaries or benefits of employees as opposed to workplace safety issues.

My last point here before I turn it over to the other panelists is that there has been some antitrust litigation in this exact space. There was a case filed against major banks that alleged that they agreed to limit applications under the Paycheck Protection Program loans to existing customers only. People may have seen that complaint, but I thought it was not the most well-written complaint. That case is still moving forward, and if there is evidence of some conspiracy, that could have some legs.

There was also an example in Canada of grocery stores there. I think the Loblaw, Metro, and Empire companies were called before the Canadian Parliament to discuss announcements made within a few days of each other in June that they would be ending their basic Covid-19 wage bonus of \$2.00 an hour. Of course, they said these decisions were independent, but it seems some members of the Canadian Parliament were skeptical of the timing of those announcements, which seemed to be tracking one another.

All of this is to say that I have stayed even more vigilant and have not taken much comfort at least in the Joint Statement, but I am also curious as to what my colleagues' reaction has been to this.

MS. LENT: Thanks, Jon.

Rob, do you want to take the next stab at that?

MR. MAHINI: Sure, but first let me thank you and thank the conference organizers for inviting me to the panel. This is one of my favorite

conferences of the year, so I am very honored to be on the panel. I know it is the last panel, so thanks to all the participants for staying with us all the way through to the end here.

I will also do what Jon did and say that these are my own personal views and are not meant to reflect any advice I have given to the company or the views of Google as well. These are basically my own thoughts.

Speaking of my own thoughts, it is hard to disagree or do anything more than just say "I agree with Jon." He very much covered the waterfront.

A key takeaway of what he said for me, which I agree with, is that while the agencies have given very specific moments where they viewed the need to give different advice, they have made it very clear that there is no carte blanche approach here and that companies need to be very careful about not using the Covid-19 pandemic as some sort of excuse to do

anything but the norm, which is to rigorously follow the antitrust laws.

What we have seen time and time again are agencies in the United States and Canada and elsewhere emphasizing that the antitrust laws continue to apply even in times of crisis. I think that is an important message for us, to continue working as we are and not feel like we can deviate from the norm just because everything else is different in society today.

MS. WACHSSTOCK: Karen, if I can add just a thought.

I will say the same as everybody: Thanks for including me, and the views I will provide are my own and not those of my company or any former client.

I think the Canadian matter that Jon mentioned is actually quite interesting. As Jon said, Parliament called the CEOs of those three supermarket companies to testify about the fact that they ended their bonuses essentially simultaneously.

But what has been interesting has been the question of whether the Competition Bureau in Canada will investigate, has investigated, or has the ability to investigate. John Pecman, the former Bureau Chair, had some interesting comments about this and noted that under Canadian competition law this kind of supply-side coordination, assuming it happened, is not or may not be actionable under the law as it has been interpreted on the theory, as I understand it, essentially that suppressed wages may actually benefit consumers because it could lead to lower prices; so, under a consumer welfare theory, a collusion or alignment on wages not be actionable.

That is interesting, given that one of the areas where I think companies might be inclined to want to coordinate is on employment-side benefits. Are they going to pay for sick time? How do you treat people who come up in a contact-tracing test; do you send them home and maybe not pay them? So it is

interesting to see the discussion of how this is playing out in Canada.

Confirming what everybody else has said, I certainly would not want to rely on this view. I would be pretty conservative and my advice to clients would be: "Don't align on any employment-related decisions just like you wouldn't align on other elements of competition, even though it may be that in certain countries around the world that kind of coordination might not be actionable."

The only other thing I would say is that this has been an opportunity to remind people of the guidance relating to benchmarking generally. This is obviously a particular moment, but benchmarking happens often. This has been an opportunity to remind people of the fact that "You are benchmarking with companies on things that may not feel like competitive elements; it may be more nuanced than that; and you need to get advice, and we will help you figure out

how to engage in appropriate benchmarking without taking undue risk.”

MS. KOHLMEIER: Thank you, Karen and Fordham. My remarks are also my own.

Overall I agree with everyone. It has been a time to be more vigilant. One thing I would note is that for the way I approach this – we saw the statements out of DOJ and then flooding across the world where everyone had those same statements about antitrust law still applied – but I think the nice thing with antitrust is that there is the flexibility, the agility, and facts matter and context matters, and I think Covid-19 is a different context.

There were situations where we were very closely counseling, but when there were things that we needed to do to get network deployment, get broadband out to different customers very quickly to make sure that things are in place, the overall context within which decisions were made reflected that we are in

this very specific situation, that it is a limited time period during which these things will take place.

I think it did factor into some of our decisions. We were very closely working with the business and in discussions – to the extent that ones were taking place – with others and making sure that everything that we were doing would be very defensible based on limited situation, very pro-consumer, short time periods. But I think in some areas I counseled a little bit differently than I would have if there was not the overarching pandemic context.

MS. LENT: Right, right. It certainly sounds like it was necessary to make sure that people didn't think they had a free Covid-19 pass for the antitrust laws, that we are operating in a pandemic, but that doesn't mean that you can do things you would not otherwise do if there is this public health situation that Jon was mentioning – maybe we can talk about that – but let's be careful that we don't think, *Oh, it's Covid-19, so don't worry.*

Thank you all for those reactions.

Speaking about the antitrust agencies and their focus on making sure everyone understands that the antitrust rules are applying just the way they would have outside of the pandemic, have your interactions with the agencies in the merger review context or in any other context changed during the pandemic, whether it is the intensity of investigations or the theories that are being put forward? How have you seen changes, if any, in those dealings?

Maybe we can start with Suzanne.

MS. WACHSSTOCK: First, I will say that I have certainly read reports — I am sure we all have — that M&A activity is actually down and that regulators may have more time on their hands to spend on conduct investigations or third-party inquiries, and also that the failing-firm defense may be coming more into play as the successful companies are snapping up ones that

may be failing. I can't speak personally to any of those things.

I can say from my personal experience the biggest impact I have seen in terms of engagement with the agencies is that they have had to adjust to virtual work alongside the rest of us.

The first point – to the extent that there are agency folks on the call – I would express appreciation that universally people have been very sensitive to some of the challenges. My company is fully engaged in dealing with day-to-day work, so people have been very sensitive about how it may be harder to schedule interviews with certain businesspeople because they are focused on actually addressing day-to-day needs, so they are very willing to work with us on scheduling and those things, so I am very appreciative.

Again, the agencies are dealing with some of the challenges alongside the rest of us. One memorable moments was when we were in a third-party

interview, and all of a sudden the attorney leading the questioning suddenly stopped and said, "Hold on, my cat just jumped on my desk and I need to get him off my keyboard." [Laughter]

We are all in this together. All our kids are climbing all over the place and we are all dealing with these issues. We are all going through this. We are all trying to figure out how to engage in this new world.

In this context I read Assistant Attorney General Delrahim's comments on the opening day of this conference at Fordham a couple of days ago, and I liked this quote. I will read it because I thought it was a nice little quote. He said:

"That mindset of embracing flexibility and adaptability served us well as we pivoted to telework and pandemic-related competition challenges. In many ways, the pandemic actually reinforced our perspective that experimenting with new ways of doing things provides opportunities to learn, grow, and ultimately

make us better – or, as I have noted before, anti-fragile.”

I like that. I guess we will talk a little bit more as we go ahead, but I feel like that is something that we have all had to do.

For example, one of the challenges I face – and I suspect others have as well – is we are all doing presentations like this, Zoom presentations.

When you are thinking about live antitrust compliance trainings, for example, I was finding it pretty challenging. You worry that if you have a big group, people are multitasking more than they could if you were sitting in a room with all of them. It is just harder to know that we are getting through. We have had to be creative in thinking about adapting the way we train and making things more interactive.

I do hope that some of those learnings – the flexibility, the adaptability, and the creativity – will continue and we will take some of those learnings

with us when we hopefully get to the other side and go back to regular life.

Really no huge changes in the way we engage with agencies, just we appreciate that they are going through the same learnings that we are.

MS. LENT: Yes, and some added patience and grace for all of us under these circumstances is a good thing to come away with.

Gabrielle, do you have some thoughts on this as well?

MS. KOHLMEIER: I think Suzanne is exactly right. I feel like I have not seen a tremendous difference in terms of the substance and the types of arguments.

I do not see DOJ all of a sudden, or any of the other agencies, being much more receptive to efficiency arguments or whatever it is. I think they are still very focused on substantive antitrust and evidence and all of the things that we are very used to, but I think there are practical issues that we are

working through. As Suzanne said, how we communicate – some regulators don't even do video calls for some of these interviews, and I find that very challenging. I think that it is challenging for my clients that cannot read body language –

[audio breaks up]

MS. LENT: Gabrielle, we are having some connectivity issues with you right now. Maybe we'll just shift away because it seems like you are frozen on the screen, and I will throw this open to Jon or Rod.

MS. KOHLMEIER: I was going to say technical issues is one of the challenges.

MS. LENT: We see it in action.

MR. MAHINI: I was going to mention this and then it happened in real time.

I think Gabrielle was talking about this sort of difficulty, especially with regulators who are not doing video calls and some of the challenges there.

There are also different kinds of technology that you have to get used to for different agencies that are using different platforms.

Before the call we were joking about how even for conferences where you may be using Zoom or some other technology all at the same time, you have law firm and company firewalls you have to fight through. You have to make arguments to your IT folks about why it's okay to use this one - "We have to. The regulator is only using this digital platform."

A lot of those challenges need to be worked through as well, which I think is a testament to the times.

But flexibility is important, and a lot of regulators are embracing that and looking for different ways to engage with companies, which is definitely welcome.

MR. LUTINSKI: Luckily, I have not been in this seat recently, but just have investigational hearings (IHs) and depositions work in this

environment. As somebody who did that a lot in my past role at Wilson Sonsini, I feel like a lot of IHS and depositions are reading body language and there is a real advantage to being across the table from the witness and getting that information and having some sort of connection with that individual, with that person. I view that as probably and likely more challenging in this virtual environment, even with video conferences.

I probably shouldn't ask this question, but I would be curious what the agency folks think about having to do depositions, and the folks that do litigation too.

MS. LENT: Gabrielle, I think you are back.

MS. KOHLMEIER: I am back. I was talking about technical difficulties, practical difficulties, so that was actually a demonstration of what we have to deal with.

MS. LENT: It was all planned. [Laughter]

MS. KOHLMEIER: One of the things is coordinating delivery of documents. For example, we have had a couple of issues with certain state attorneys general having very specific statutes about how they can receive documents and how they need to provide certain notifications, and they do not have statutory flexibility, so I think it demonstrates certain challenges in terms of just the logistics of getting things through.

MS. LENT: I hear you. Those logistical issues added on top of the regular issues that you have to face each and every day in your job compound each other and make this even more difficult for us, and I'm hopeful that we can get past it soon.

MS. WACHSSTOCK: Just another quick example of that, which I just thought about, Gabrielle. Often, if we get a subpoena or something, it may be mailed in hardcopy and it goes to my office, but nobody is in my office. Thankfully, nowadays agencies generally will provide a courtesy copy by email. But

that is an issue. I do worry that things may be falling through the cracks because there isn't somebody physically in the office to receive mail. Just an example.

MS. LENT: That's a good one.

We have seen, surprisingly I think, a lot of themes from before the pandemic coming to the forefront in the past few months. Even as we have all tried to overcome the challenges that we have discussed, some other themes are bubbling up.

For example, scrutiny of Big Tech is not new to the pandemic, but we had the House Judiciary Committee hearings that were conducted earlier in the summer, and then we got a report released this week on competition in the digital markets.

We have also seen commentators citing back to some longstanding concerns about increased concentration as a cause of some of the supply chain issues that we have seen during the pandemic, so sort

of hearkening back to prior issues but heightened now during the pandemic.

Do you think that the pandemic has changed the way people are thinking about any of these issues?

A follow-up to that would be: Have you seen increased interest from the business side in antitrust issues as they have come to the forefront with the publicity of the House Judiciary Committee investigation and a lot of news about antitrust topics?

I think we see businesspeople more focused on them, and that must impact you all in-house. I am wondering your thoughts on that. Maybe we can throw it back to Jon to kick that off.

MR. LUTINSKI: I don't know that Covid-19 has changed it drastically, but you can make an argument that it has further increased scrutiny of Big Tech. I say "drastically" because these issues were hot before Covid-19; they are still hot now. The House Judiciary Committee report that just came out -

I have to admit I have not made it through all of the 450 pages yet – was a hot issue before and is a hot issue now.

There was recently a *Washington Post* article that was talking about tech giants are potentially profiting and even getting more powerful as the global economy tanks. That was the headline. I think there were several articles like that, so you could argue that there is increased focus based on that.

Think about lockdown life. Amazon is critical, at least to me, in lockdown life. A lot of people are shopping from home. Facebook and Instagram usage – I don't have statistics to back up my views here, but I can imagine the use of those social media platforms is up during the time of lockdown as people stay connected without physically seeing each other and physically being in the same space. Folks are probably spending even more time, to the extent that is possible, on their iPhones during the pandemic.

In that same article I was thinking of, there was a point at which the author was saying that Big Tech is benefiting from these new consumer habits initiated during lockdowns that analysts believe could turn into longer-term shifts in how people shop, how people work, and how people entertain themselves.

Even without going into some complicated [inaudible], there is the general argument that one may make is that there is too much power in the hands of too few companies. That may resonate with people. Like I said, it was a hot issue before, it was something people paid attention to before, but it may be even more powerful now as you are engaging in these new consumer habits during lockdown.

The real question is: Will this ethos or will this feeling translate into real legislative change? That is the issue we are all thinking about in the form of some of what I view as more radical proposals in the House Judiciary report. Is that going to be just something that is interesting in the

report for us or is this something that is going to translate into actual legislative change at some point?

The second big question for me is: If so, if there is proposed legislation put forward, is that going to reverberate beyond tech companies and have an effect of changing antitrust more broadly beyond those companies and have an impact beyond Big Tech?

The second question you asked was: Is there more interest or entry from senior management given all of the antitrust in the news? I think there is, both from my legal department and from other business executives within the company. Obviously, I wouldn't consider us one of the big tech companies, but we are following closely the worldwide scrutiny of big platforms and whether that is going to be a big catalyst for broader changes in antitrust and approaches by the regulators.

Antitrust is in the news, at least for my career, even more than ever. I always considered

myself somewhat of an antitrust nerd, but it is a bit interesting to see this come to the forefront in broader culture, to the extent that you have John Oliver doing bits on antitrust and concentration. It's a hot issue.

The other thing is that Big Tech scrutiny may be one of the few issues that both Democrats and Republicans agree on. They agree for different reasons, but they both seem to have the view that Big Tech has too much power. On the left they are viewing it from an economic power standpoint. On the right, with Jim Jordan's report that came out, they are viewing it as this conservative bias issue, that Big Tech has too much political power. You see it being hit from both angles. This may be another reason why there is this tremendous focus on it and lots of interest and intrigue from folks at my company, and I suspect from my counterparts up here as well.

MS. LENT: Suzanne, do you want to pick up on that?

MS. WACHSSTOCK: The point I would make is that, yes, I definitely see a lot of interest from management. Everybody is reading articles.

To Jon's point, I would say I am almost cool - I'm not quite cool. I always use as a gauge the fact that my sixteen-year-old nephew sent me some article he read about antitrust. I said, "Okay, if kids are aware of antitrust as a concept, I must be almost cool."

I spend a lot of time in terms of talking to management educating them on what is accurate and what is not accurate in the press because the reality is that not every reporter actually is an antitrust expert and a lot of what you read is simply incorrect. For example, one theme is this whole push that "the agencies should break up X, Y, or Z company, and are they going to break them up?"

I spend a lot of time talking about the tools the agencies have and do not have, and the fact that the agencies may bring cases, but they have a

long haul to get through trials and then appeals and possibly even the Supreme Court, and that they can't simply announce "We are going to break up X, Y, or Z company."

There is a lot more interest. People are circulating articles they read. But again, I am spending a lot of time helping people understand the actual facts and the actual legal principles rather than assuming that what they read in the press is accurate.

MS. LENT: Okay, great.

Covid-19 isn't the only topic that has been uprooting business as usual this year. Sometimes it felt like the hits just kept on coming this year.

One of the things that we have all dealt with is historic protests around the country and the world that have brought racism and social justice to the forefront of the conversation. I know this isn't really an antitrust topic, but you all as in-house

counsel have some insights that could be interesting for our audience.

I am wondering how your workplaces have been responding to calls for more inclusive and diverse workplaces. I know the outside counsel practitioners on the call would probably also be interested in hearing what you are expecting of them as well.

Gabrielle, do you want to kick us off in addressing that topic?

MS. KOHLMEIER: For us this has been a tremendous focus from the CEO level down. There have been very direct conversations taking place since the murder of George Floyd about structural racism and creating a space for our employees.

One of the things that for me has been different, and special frankly, moving from a big law firm to in-house is that in big law I was surrounded by my cohort that is very much like me. We might be from different cultural backgrounds and things like

that, but being a part of Verizon, we have people all across the country and all across the world.

We have people who are laying networks. We've got people working in retail stores that are very directly confronted with things that are happening in the streets. We have innovators and entrepreneurial types who are building new products. So it is a very broad and very diverse population in terms of viewpoints, in terms of geography, and in terms of whether you are working from home or working in the field.

Having those conversations taking place and figuring out ways to support such a broad populace has been fascinating to see and really heartening to see because it has been extremely head-on.

There have been these conversations, as I said, from the CEO level down, and people have had conversations where they have said, "You know, I've worked here for thirty years, and I have never talked about this with my colleagues before."

There has also been very specific programming around creating this space that supports our employees – whether it's wellness programs; making sure that we are assessing all of the ways in which employees are being affected; ways that we can support social justice and criminal justice initiatives.

That was important because it was something that had such a big impact on so many people across our workforce. For our business to work, that had to take place and continues to take place.

Diversity has been a big pillar and an important part of our company long preceding all of this, so it has also been heartening to see that all of the things that we have been pushing for for many years are positively contributing because others are asking: "What are you doing? How are you doing this?"

We have been able to mobilize things very quickly. We released our metrics across the whole workforce in terms of demographics, focusing on: "Okay, where are there gaps, and where can we create

more opportunities?" We do that with our outside counsel too.

Most interesting, to the extent that anyone has not already been flooded with so many educational materials, I have been so impressed with the racial justice toolkits and things that we have put together.

We also are having these conversations with our vendors, our outside law firms, our economists, our discovery vendors – all of it on the legal side as well as from the business side, about who is staffing our cases; what opportunities are they getting; who is getting equity credit – and digging into are we making sure that the people we have represent us also reflect those values.

We have these different stakeholders that go beyond shareholders to employees, and society is a big one of those. So making sure that is reflected and that our interactions of our lawyers and our employees generally are positive with outside counsel I think is a big deal.

MS. LENT: Great. Thank you,
Suzanne, do you want to add anything?

MS. WACHSSTOCK: It is always interesting to hear from people at other companies because I think a lot of companies are investing heavily in exactly that, and we definitely are.

Particularly in this virtual environment, it can be challenging because we are isolated and just doing our jobs, but I will say Walmart has placed a real priority in ensuring that we have opportunities to learn, understand, and dialogue.

There are the big public things. Walmart committed \$100 million to create a racial equity center, and that has been a big focus.

But also there has been a steady stream of programming, of opportunities. There are fireside chats and we have multi-day racial equity trainings, but really opportunities to learn more and for all of us to be more educated and to really understand each other.

Our CEO, Doug McMillon, this week published an article talking about the importance of communication and empathy and making individual connections and how important that is both for the company but also for our communities and for the nation. I think they are living those values.

In addition to the opportunities to learn and understand others who may be coming from different backgrounds, it creates opportunities to make connections in a world where again we are all in our kitchens or offices and don't always have those opportunities. There is a lot of value in those open lines of the culture of collaboration, encouraging communication, and encouraging open dialogue. It's very important.

MS. KOHLMEIER: As a tip for people who are outside counsel, I think it is a great opportunity to connect with people in-house because it is so front-and-center and because it is something that we are dealing with.

I have seen that with our close partner firms, but I think that these conversations are going on, and it is an opportunity to dialogue, but at least "don't look tone-deaf" would be my recommendation.

The other thing I would add is that it is beyond the racial justice thing. I don't know how much everyone else has been focusing on the studies that came out basically last week about the impact of Covid-19 on women and women in the workplace. Between August and September, 1.1 million people left the workplace and 860,000 of those were women. So it is kind of: What are we doing? What are our law firms doing?

It is looking broadly at not just the one narrow area that is the hot item, but how are your associates and your partners doing, and will you be able to meet our diversity requirements going forward if you are not focusing on that?

MS. LENT: That's a great point.

Rob, would you like to chime in here?

MR. MAHINI: Yes. I just want to echo what we are hearing from Gabrielle and Suzanne. It is a top priority at Google as well to improve the diversity and inclusion at the company.

At Google one thing we did early on is start a diversity report every year that we use to report on what our numbers look like internally on these diversity metrics.

What we have learned – because Google is a data company and we want to look at this sort of data – is that we have a lot of work to do. We have made some strides. I think our diversity growth is outpacing overall growth at the company, but still we have a lot of work to do.

One thing we focused on at the company is using data to hopefully root out some of the systemic biases that exist at companies.

For example, one project that the company focused on is job announcements and to see whether or not the way our job announcements were written has any

sort of impact on the type of applications we are getting. We did find that the way they were written could have that kind of impact, and we used a data tool to figure out how to better frame them and to better write them in ways that actually did have an impact and increased applications from groups that were not actually applying at rates that we wanted.

I think a lot of companies have a lot of useful data that they can dig into to try to fulfill the mission of diversity that a lot of companies have.

I want to echo the point of my fellow panelists on outside counsel diversity. It is an important goal of our legal department. We have had many meetings about it and have a pretty robust plan about how to not only increase diversity at Google but also with vendors and others that we use, and for the legal department the outside counsel is a big part of that. It is something that we all look at and look to as we make our outside counsel choices. It is definitely an important area for our company.

But we also are looking outside. The donations we make are obviously important, but we are also working on our products to make sure that we can improve other people's ability to do more in this area.

For example, the Google Assistant recently added a feature that makes it easier to donate directly to important causes, trying to build in the ability not just at Google but also externally for our users to be part of this fight for change.

MR. LENT: Great. Thanks, Rob.

MR. LUTINSKI: I want to echo what everyone else had said.

I think one of the most interesting things of this time period is that we are having conversations even within small groups at work that we had never ever had at work. People have actually said, "Stay away from those types of conversations."

I am thinking of my own small team, which is the other subject matter experts within the Amex legal

department. We have done small cohorts where a group of people in our diversity initiative have pulled together all these resources – podcasts and articles and books – and these small groups have gotten together and discussed these things and presented back to our larger team people's thoughts on them and their reactions to them.

Having these conversations is the part that I think is most interesting and amazing in a positive way that this is happening in the workplace when, at least in my fifteen years, I have never seen anything like it, and I think it is really fantastic.

MS. LENT: That's great, that's great.

Earlier in the panel discussion, Suzanne mentioned a little bit of the challenges of dealing with compliance during the pandemic. We have our panelist Gabrielle, who recently won a writing award for an article that she and a few others wrote called "Create Your Own: Bespoke Antitrust Compliance

Programs for Effective Compliance.” So congratulations to you, Gabrielle.

I thought maybe we could start off talking about compliance issues and how those might have become a little bit more challenging to funnel through the workplace during this time of remote working.

Maybe you can give us a little bit of background about your article and then talk about the challenges you have faced in the last few months in this area.

MS. KOHLMEIER: The article was largely in response to the July 2019 announcement by DOJ that they were going to change their treatment towards corporate antitrust compliance programs and give credit for them even in the wake of subsequent potential violations.

The questions were then flying around: What does a robust antitrust compliance program that would get such credit look like? There were a number of

discussions that made it sound like there is a model way to do this.

I know that when I joined Verizon in 2016, I did a deep dive into understanding our approach to antitrust compliance and scouring materials on what other companies were doing. There were various different articles and almost a treatise on different components to effective compliance.

What I saw there is that there was a broad variety of approaches between different companies – and not because of varying levels of permissiveness, but because of different organizational models, different risk factors, frequency of contact with counsel, whether they had an in-house antitrust team or not, and industry characteristics. There were so many different factors that go into how can you ensure there is a robust program in place that employees know about, where they are getting the information that they need to help spot and help figure out how to get

the counsel that they need to avoid any kind of violations.

Our article discusses those factors and the important components to developing an effective antitrust program, including how to create a culture of compliance.

The thing that has been interesting is seeing that focus on compliance continues to be something that is clearly on the minds of regulators. There was a discussion at the International Competition Network's Advocacy Working Group last month about the value of these programs and a new project focused on building compliance programs and culture.

Ultimately, the point of the article is no one size fits all but robust and dynamic antitrust compliance is important.

To Suzanne's point from before, that changes a little bit in this environment because we do have to figure out ways to be creative in making sure that

people are paying attention and making sure that these materials are reaching people and – I think as Jon said before – that people remain very cognizant that just because there is a pandemic does not mean that antitrust rules are tabled until we get a vaccine. They need to continue coming to us and we need to continue being involved.

MS. LENT: What about you, Rob? Do you want to give us your perspective on the compliance issue and the pandemic?

MR. MAHINI: I totally agree with all of Gabrielle's and Suzanne's earlier points. I have one point to add.

There is one interesting wrinkle. Before we were in a remote workplace, when we all used to be in the same place – I know a lot of our companies are in different offices – you did have a lot of those "water cooler moments." I am based in Washington, D.C. There are business folks in Washington, D.C., and they do feel like they have the opportunity when you are in

the same office to pop by your desk, or they see you in the hallway and they want to have that conversation or that chat.

Being approachable in this way is really important for in-house counsel. It is critical for us to be able to do that to build this culture of compliance. You want to make sure that you are just a quick video chat or ping or a desk away – we don't have offices at Google – that you are right there, at that desk right over there on the other side of the room. That becomes more difficult when you are all virtual and everybody is silo-ed into their homes.

So we need to figure out ways to be creative about virtual connectivity. You definitely continue with the video chats and being able to be available over instant messaging, but also how do you create other ways to be connected? Do you create virtual office hours or do you create other ways to basically simulate those spontaneous moments that are really important to create that culture of compliance?

You want to continue to be approachable You want to continue to empower your employees to have the information they need to issue spot and to know when they need to come to you.

All of that becomes more challenging in the remote workspace, but I think we all as in-house counsel are working to figure out ways to continue that culture of compliance in this time of basically virtual work.

MS. WACHSSTOCK: I could actually give the flip side, Rob, because what you are saying just highlighted a point from my own thinking.

I think a number of us are similarly situated. I sit in Washington, D.C., our headquarters are in Arkansas, but it is a global role, so we have people all around the world.

In some ways this virtual environment has made this a little easier because I didn't have the actual physical water cooler, unless I was visiting

our headquarters, and you can't have that in every market and in every country.

So in a way, because everybody has now adjusted to the fact that all communications are virtual, I am actually finding more openness. Again, you have to create opportunities to invite the comments and invite the conversations, but in some ways it is almost easier to feel like I can be connected with everybody wherever they are because we are all in the same environment; everybody around the world is all working from their living room. So that "global water cooler" to some extent has actually helped.

Again I will say what I said before, which is that I hope some of these learnings and the innovative approaches and creativity will continue even after we have the immunization and we are able to go back to work, that we will continue to think globally, to be open to communications even when we

are not physically in the same place. So maybe there are opportunities there too.

MS. LENT: Jon, I want to make sure that I don't cut you off this time if you want to weigh in before we move along to another topic.

MR. LUTINSKI: Suzanne, I think it is an interesting point about the equalizing effect of Covid-19 and everybody working from their living room. I feel both the way Rob does – I got a lot of those questions in the hallway as you are going to get lunch.

But I also feel, similarly to Suzanne, that particularly with my international colleagues, I feel like the connection now seems better. I don't know if that is a factor of I am making more of an effort recently of getting close to the legal department in various parts of the world or if it is this equalizing effect that Suzanne mentioned.

I feel similar and I agree with Suzanne, but I hope the positive learnings coming out of this

situation continue into the future even when we are back to whatever normal is going to be in the future.

MS. KOHLMEIER: On that, I think that again is an opportunity for outside counsel because you can bring in a lot more people. If you want to do a presentation, you can invite a much broader group to join. For people who are looking for those opportunities, I think, for the same reasons that Suzanne and Jon just said, that you have a wider audience.

MS. LENT: I think we are all starting to embrace technology, even given its challenges. Sometimes we are forced to embrace it in a way that is going to be good for us all moving forward and for this conference, bringing people together from around the world in a way that maybe we couldn't before because of the difficulties of travel and coming to New York for it. I am trying to put a positive spin on it all.

The last formal question I have for you all is just to ask you about some of the practical effects of the pandemic for you as in-house counsel. We have seen a lot of commentary about how businesses are contracting and trying to save money. Obviously, a big cost for you all is engaging outside counsel.

Has work been shifting more in-house and falling more on your shoulders as a cost-saving measure? At the same time, are you reducing the size of your group so it has been that much harder for you all? With these challenges that we have been discussing that you face in a remote environment, how has your work changed during this period, and how do you anticipate the landscape that you operate in, antitrust compliance and advice for your internal business clients, changing going forward?

I will start with Rob to kick us off.

MR. MAHINI: It is an interesting time. All companies are grappling with things like tighter budgets and constraints on head count, so it is this

interesting challenge you have when it comes to in-house versus outside counsel.

You often shift to in-house lawyers when you are trying to constrain your legal budget, but that's hard to do if you have a hiring freeze in your legal department. You have to balance this interesting challenge we have right now of figuring out how to actually maximize when you have constraints on both sides.

Our expectations of outside counsel have not changed, and I am sure that's true for everyone. You want them to be efficient and excellent and have creative work and be fun to work with, but at the same time we all need to be very cognizant of the challenges everyone is facing and very much to have patience.

Everyone is dealing with interesting work-from-home situations, the dual hats of handling the work but also at the same time maybe home-schooling and all the other things that go into that. I think

that is definitely something we are all dealing with and all trying to figure out as we work through litigation deadlines or discovery deadlines or all of the sorts of deadlines that we need as lawyers to get through.

So you have pros and cons of which way you go if you staff up with in-house counsel or if you staff up with outside counsel. It is definitely something that is not a "one size fits all" – not just depending on what company you are at, but depending on what moment you are in.

You might be in a moment where a lean-and-mean team makes sense, staying in-house. It might make sense to go outside when you have, let's say, specific needs like M&A or litigation or other sorts of things where it makes sense to scale up with outside counsel rather than build a team internally which you might not need after litigation is finished or the M&A has passed.

It is important to keep these things in mind as you figure out that balance between in-house and outside counsel.

MS. LENT: Jon, how about you? Has that balance that Rob has been talking about gotten more difficult along with everything else that has gotten more difficult in the past few months?

MR. LUTINSKI: Yes. I will also turn to the outside counsel piece. Hopefully I'm not divulging anything sensitive, like the other folks on this call.

I can say that our outside counsel budget is more scrutinized. It has been reduced, at least my budget and that of the whole legal department.

I don't know that that has changed what I look for in outside counsel. I think it confirms what I do currently even more so.

The two things that I look most for in outside counsel are (1) responsiveness, and (2) knowledge of the business, and both of those I think contribute to speed and efficiency, which is critical

in matters that demand quick and correct decisions for in-house counsel.

A lot of how I use outside counsel – and I suspect my colleagues on this panel do as well – is as a gut check. I map out the issue, I talk about how I plan to handle it, and seek to get outside counsel's reactions on do they agree with this approach or do they have any tweaks to this approach. The more outside counsel knows about the business and the issues we face, the quicker and more efficient these gut checks become.

I viewed this sort of approach as critical before, but it is even more critical to the extent that your outside counsel budget is reduced. It is an approach to outside counsel that devalues long memos and values, at least in my perspective, these quick, bullet-pointed emails or just even an email confirming an approach that I have already determined is maybe the right way to go.

For outside counsel this sort of feedback loop becomes self-fulfilling. The more that you use outside counsel that you trust, that meet the objectives that you view as important, the more they get to know the business, the more efficient your interactions become, and then the more business you send their way.

I think it confirmed the approach I had before, but in a time where decisions need to be made quicker but outside counsel budgets are reduced, it becomes even more critical.

Stepping away from outside counsel, in terms of how my work in particular has changed during the pandemic, I think there is increased intensity. That is something that maybe all in-house counsel, at least my colleagues, have felt whether they are in antitrust or outside of antitrust.

I start work far earlier than I used to. Now that I don't have a commute, as soon as I have had

my first cup of coffee and brushed my teeth, I am at my computer already starting to work.

On the flip side of that, I try to end a little earlier, but it has been hard – and I have heard this from other people – to turn off the computer in the evening. You are still getting emails, you are still “in your office” so to speak, even if you are in a different room. I’m in a two-bedroom apartment in Brooklyn, so my office is my home.

Lastly, I think the volume of work is very high right now, going to that intensity. I am not sure whether that is the external environment – hopefully I like to think I’m doing a good job by training, getting lots of questions, keeping my door open.

But you can see a circumstance where right now business decisions and business initiatives are speeding up like crazy. I think a lot of companies are trying to pivot based on this external environment

which is unprecedented and like nothing we have ever seen before. To the extent that you have new business initiatives based on the pandemic environment, that is more work for antitrust lawyers, more counseling, and more compliance to do.

It is partially that and then partially the fact that antitrust is in the news more than ever, it seems to be a hot topic, and I think all of those things contribute, at least to my work intensity and probably the other panelists' as well.

MS. WACHSSTOCK: I can jump in here, picking up on a couple of Jon's points.

The first question was has the pandemic impacted how we use outside counsel. I had been at the company almost exactly a year before the pandemic hit, and my role was a new one, so a lot of what I did in the first year was figure out what had been happening and what needed to be happening from an antitrust perspective, and to be honest, pulling a lot of work back from outside counsel to inside, for a lot

of reasons – to create consistency and efficiency. I know that is frustrating for a lot of outside firms that had been doing work for us.

I will say, echoing Rob's point and Jon's point, now I primarily use outside counsel on a day-to-day basis for the gut checks, and there it is firms that know the business really well so I can get that quick gut check.

And then, to Rob's point on the bigger matters, the deals, litigations, and otherwise, I am very sympathetic. I was in private practice for a long time. I know it is really challenging and there is a lot of pressure to bring in the business, and often I just can't provide it, those big matters because I am doing a lot of it in-house and I have a lot of pressure to do that. I think that is an ongoing process.

Over time, we will figure out that out. There may be more matters that we can farm out and need to farm out. But it is an ongoing process to

make sure we are doing things as efficiently, accurately, and quickly as we can because at the end of the day all of our collective goals are to make sure that our clients are served and have the guidance they need to do their jobs.

I would say on the question of how has our work changed during this period – and, I guess, echoing a bunch of Jon's points – I have been doing some form of virtual work for many years. Certainly when I was at American Express, work was in New York and I moved to Washington, D.C., about six years into my time at Amex, so I was going up one or two days a week. So I was already doing this sort of virtual thing.

I learned how to be productive and stay connected – and I think people appreciated that and I think I was getting my job done – but I always felt like there was a little bit of question or skepticism, like was I really at the beach or was I really spending my time doing laundry and cooking? How did

that work? It was kind of a foreign concept. How was I working day to day from home?

It has been fascinating for me to watch how quickly our executives, management, and otherwise have adjusted to this new model. I think they all surprised themselves and have come to realize that people are really able to be efficient and get a lot of work done.

To Jon's point, the real challenge in this environment is being able to find ways to stop working, to break free from Zoom and calls and emails and make time for the rest of life. It has been interesting to see that becoming a focus.

My General Counsel sends a weekly email: "Hey, this is what I did this week to try to break away. Everybody needs to get outside and take your paid time off time," focusing on getting people to not work all the time.

It has been interesting to see everybody trying to figure out this work/life balance. A lot of

people with kids have been struggling with that a long time. We are never going to get that perfect. There will always be adjustments. But another positive learning has been everybody realizing that it is possible to fit more life into work but also trying to figure out how not to have work overtake life.

The other thing I would just add – I think I mentioned this before – is that I have found in this period that it has been striking on a lot of global calls to see that all of us around the world are in the same place. Some of our regions – like in China, people have gone back to the office, sometimes with masks, sometimes not – but, generally speaking, we are all in this. I have met everybody's babies. I feel like it humanizes people and that in a way makes work more enjoyable. We get a sense that we are all figuring this out, we all have our lives – we may have messy backgrounds; we may pretend we don't have messy backgrounds on our Zoom calls – but I think over time it has also been nice to see people being less uptight

about life coming into the picture and all of us seeing that we are all doing this balance.

Again, I hope that kind of humanity remains as we get a vaccine and go back. I try to see the positives and how our future life can be a little better given some of the learnings we have had to come up with in this process.

MS. LENT: Thank you.

We have one question in the Chat. I encourage anyone else in the audience who has questions to pose them to the panelists.

The first one is pretty specific, and is for you, Suzanne, on some remarks you made earlier: "I am wondering regarding the Canadian case that you mentioned, what if the market is defined as the labor market? How would the labor market and the product market of the companies be reconciled to make the case actionable?"

MS. WACHSSTOCK: I am certainly not an expert on Canadian law and I am not going to opine on

the issue. I think it is worth reading John Pecman's comments.

I will tell you that I have heard similar analysis coming out of the United Kingdom, essentially the view that alignment on terms of employment may actually be beneficial for the end-consumer. I think that is a bit foreign to the U.S. ear, but it is a very good question.

My understanding – again more from reading John Pecman's comments than from focusing on this deeply – is that there is a sense that supply-side collusion is not actionable under at least the criminal provisions of Canadian law. Please do not take that as legal advice or any legal conclusions, but my sense is – and I think his suggestion is – essentially that maybe there needs to be a rethinking and that this may be judicial precedents rather than any language in the law itself.

Again, I don't want to get anywhere deep on that, but I do think it is interesting to look at that

and to think about might there be room there – my understanding is that the Bureau has not taken action, and you might think they otherwise would.

It doesn't change the way I think any of us would advise our clients, but I think it is an interesting area to look at.

MS. LENT: For sure. We certainly know in the United States that allegations of those kinds would likely be viewed as per se violations of the antitrust law. Despite the statutory regimes in other countries, that smacks everyone as something that is a big no-no, and we would not want to guide ourselves by something that seems a little bit more like an outlier, as you noted, Suzanne.

MS. WACHSSTOCK: I will say, just in terms of the press in Canada, there are certain members of Parliament who are very focused on this, and there have certainly been vocal voices to make sure that the law changes so that they can use the competition laws to address this conduct, which particularly during

this crisis period is seen as concerning, if in fact companies are aligning on the compensation they provide, particularly on the bonuses related to Covid-19.

MS. LENT: The only other comment I have in the Q&A is a big thank-you to our panelists, and I want to echo that. I appreciate the time you spent talking to us today and letting us get some insight into what it has been like for you all during the past few months as antitrust practitioners in-house during this pandemic. So thank you very, very much.

Here is another question before I wrap up: "Without going into too much detail, are any of you able to share your thoughts on whether Covid-19 has an impact on the posture or frequency of global competition authorities on an increase or decrease in conduct investigations?" Anyone want to take that one?

I know one of the comments that was made earlier was that we have certainly seen in the press

that due to decreased M&A filings, at least in the beginning of the pandemic era, that maybe the agencies had more time on their hands to spend on conduct investigations. Other than that reporting that we have seen, do any of you have insight into whether or not that is the case?

MS. WACHSSTOCK: I will just say – not answering the question because I don't have insight – that I was a little surprised when Makan Delrahim noted – and I should have realized this – there were only four business review letters under the expedited procedure. I am not sure of the numbers on the FTC side. That number seems lower than I would have expected. My sense is that there may be more informal communications with the agencies where the businesses decided not to seek a business review letter or an advisory opinion.

I do not have anything to say on the actual question, but I thought that was interesting. I would have thought there would be more requests for

expedited business review letters. I wonder if others have a view on that.

MS. LENT: I have looked into the business review letter process. It seems to have had a resurgence in part because of the expedited review. There have been more this year than I think in the past five or six years combined through the expedited review process and outside of it as well. Maybe we will see a resurgence of people trying to utilize that tool. It may be not as much as we would have thought, but it certainly has been revitalized to some extent.

MS. KOHLMEIER: One thing I would add is that, in terms of the posture that global enforcers are taking in investigations – I don't know about frequency and whether Covid-19 has been an impetus for more investigations – I think we saw certain merger challenges and I don't know if they would have taken place absent the pandemic.

There were concerns, for example, in the United Kingdom about delivery services being acquired.

There was a push by Democrats early on to halt all acquisitions during Covid-19, which obviously did not take place. There were discussions that FTC and DOJ would not have enough resources to adequately vet acquisitions that are taking place, and I think they very quickly demonstrated that "No, we've got this; we are still vetting and very much on top of things."

In terms of posture, though, unrelated to Covid-19 there are all of these investigations going on into so many different antitrust issues, but especially in digital markets, and many companies are getting third-party subpoena requests and so forth on.

There definitely has been an understanding and appreciation, perhaps because of what Suzanne was laying out about the human aspect, that people know that we are all dealing with this, we are all at home and have kids and dogs and parents or whatever it is, and that our businesses are also focused on continuing to deliver services to our customers and that that is more critical than ever.

For us, making sure that people have connectivity so that they can work, so that they can do virtual school and everything – I don't think there has ever been a time when it has been more important.

I feel like enforcers and regulators that we are dealing with are very understanding of "I am not going to be able to get this to you in this timeline, I am not going to be able to respond to this within thirty days," or whatever. There is still a lot of activity going on, but my experience at least has been a very human response by regulators.

We have also seen that they also will not be abused, or at least have a perception that their requests are being disregarded. There were fines that the CMA issued to a number of companies – not us, luckily – that were not responding to requests. So they are communicating that you still have to respond, but overall I think the dialogue has been very humane.

MS. LENT: I am getting a note in the Chat that one of the things that I think we have all seen

is abuse-of-pricing investigations looking at whether companies are taking advantage of the circumstances of the pandemic to raise prices and a dichotomy of how to address that and whether that is an antitrust issue or not.

On the one hand, it is just competition in the marketplace and supply and demand, but, on the other hand, if you are thinking about this from a consumer welfare standpoint, it is not so great to have people have to pay ten times what they would for a mask in the middle of a pandemic just because we are caught short in our response.

That is another area in response to that question where we have seen a little bit of a shift but some uncertainty as to how exactly to deal with that, and it varies across the globe.

MS. WACHSSTOCK: I want to turn a question around to you and ask: Representing outside counsel, is there anything that we collectively as inside antitrust lawyers can do better? Has there been

anything where you feel like we are making unusual demands or otherwise? I think it would be useful to hear that as well.

MS. LENT: No. I think there has been a lot of grace on all sides and understanding what people are going through in the pandemic. There are times when we sense the rate pressure that is coming back. There are a lot of nonsubstantive things that we are trying to satisfy for you all.

We understand the business demands. We are trying to get our arms around those. We understand that you are challenged with your budgets. We understand that sometimes you do not want to go to outside counsel right away, for some of the reasons you guys talked about earlier, but then we will come in when maybe it will boil over and you will need us.

Working with us a little bit earlier sometimes can be helpful in order to avoid those situations, but more clarity on what your expectations are.

We talked about the diversity, equity, and inclusion issues, and those are things that we are all thinking about in-house too, and I think we should partner on those things, and we are trying to partner with the clients and the business community on those to get everyone aligned. Sometimes it takes clients to push things forward, and I think you all know that and are using your own programs as tools to push your vendors to move things in the way you want as well.

Sometimes more of a partnership is important, and that is harder when we are all virtual in this way and we have all these extra hoops to jump through just to even communicate with each other. It feels like everything is so much more formal when you have to set up a Webex call to get together, whereas maybe we would pick up the phone and quickly chat before. I think we should all continue to focus on communicating, and communicating early, so that we are all aligned.

I appreciate the question.

I think this is a good time for us to wrap up. Again, many, many thanks to the panelists. It has been so interesting to hear your insights and what you have been going through and focusing on these last few months.

I will turn it back over to James to wrap up the conference. Thanks again.

MR. KEYTE: Thank you, Karen, and thank you to the in-house counsel roundtable. It is exactly what we hoped for when we put that together a few years ago. You get many different perspectives and insights talking to in-house counsel and understanding the scope of what they have to deal with. It is a heavy lift, very complicated, and very fast moving, both in the antitrust field and outside the antitrust field.

I do appreciate Suzanne's comments that at some point you do have to focus on not-work time, which we all can, at least from a conference perspective, be moving to pretty soon.

So, thank you for that panel, and, Karen, I will thank you also as our Associate Director doing so much in planning the conference and troubleshooting some of the issues we have had in terms of access. You have done a great job.

CLOSING REMARKS

MR. KEYTE: My closing remarks are mainly to thank everybody who has stayed with us for the third day. It is always a question about whether to have so much content in our conference with the workshops and then two days of keynotes and panels, but I think it works very well, and I thank you for staying on for the in-house counsel panel.

I want to thank our keynotes, our moderators, and our speakers. We had great discussions for three days both on policy and enforcement.

We did some new things that I think we will keep even when doing the live conference presumably next year.

With our keynotes we had panel discussions, and I think they were great. There was a lot of back-and-forth, very substantive.

We had a Heads of Authority Q&A that I moderated – selfishly, because I knew it would be fun.

That may be difficult because those heads of authority on Workshop Day will be in their own private workshop next year, but perhaps we can put together a panel in the main conference where there are a number of heads of authority. We had seven, I believe, and the way we ran it we got to hear from them all and had a good back-and-forth.

Our two fireside chats I think were fantastic. Talking to Barry Hawk, Bill Kovacic, and Fred Jenny was fascinating. We could hear from them for hours talking about antitrust and policy issues and some of the historical perspective and heavyweight thinking that they bring.

We did a few instant surveys, some that were a little cheeky with some questions. It was quite a bit of fun. Certainly we will do that when we do some virtual things going forward.

I would like to thank all of our sponsors, especially Skadden as the lead sponsor, and our

networking sponsors, Clifford Chance, Freshfields, Kirkland, and Davis Polk.

I thank *Competition Policy International* for partnering with us in media and getting the word out.

Thanks, Shannelle and Morgan at Fordham, who did an incredible job staying up with planning and executing a three-day virtual conference.

Vincent Allen at American Movie Company has done a tremendous job getting the conference ready technologically and in terms of presentation. It was flawless in terms of presentation. We learned along the way some things in terms of access, that when you build a new platform a lot of people who registered had their own security wall that they couldn't get around to get access. We tried to work with them.

We also knew that Remo is a very new technology and has a lot of kinks, and we worked with others to try to deal with those in terms of browsers and Chrome and all of that.

When it does work – and it worked with our fireside chats – it will be a great presentation technology to use where you can hop from table to table, visit with people, and then have a presentation.

During the course of the year we will plan to do some small virtual events in one technology or another. I think when they are small and focused they will be a lot easier in terms of execution, and we can take advantage of what we have learned from this event.

The idea would be we are going to work with the Advisory Board, who I also thank, to think of discrete interesting topics and pairings. I was thinking, for example, of in-house counsel talking to judges.

There are many things to think of in this environment or with this kind of leap, at least for me, in terms of working with technology, where we can do some virtual events that can really dig deep into

some very interesting subjects as well as relationships where people do not get a chance to talk to each other. That will be interesting.

Of course, we have already started planning for the live 2021 conference – subject areas, speakers. We have all heard about the House report, about some Big Tech issues, investigations, whether they are going to come to cases.

One thing about the conference that is great, because it is a global academic conference focusing on policy and enforcement and economics, is we get a great perspective of what is happening across the globe and what we all may be in store for in the coming year both academically in terms of theories, analytical frameworks, cases, and difficult policy decisions. Those will be great to follow and we will have a lot of content to work with next year.

We will keep you all posted about any new virtual conferences as well as our live conference for

September or October. As soon as we have the date, we will send that around.

Again, thank you very much. Please go focus on some not-work time.

I hope to see you all in future virtual events as well as at our live event in 2021.

Thank you very much.