

20TH ANNUAL ANTITRUST SYMPOSIUM:  
TWENTY YEARS IN ANTITRUST AND LESSONS FOR A  
NEW ADMINISTRATION

INTRODUCTION

*Terry Calvani\**

[Symposium Editor's Note: This edition of the *George Mason Law Review*—which corresponds to the 20th anniversary of this publication's antitrust symposium—captures a snapshot of the last twenty years in antitrust. As you will see in the enclosed essays, antitrust today differs dramatically from what it was twenty years ago. What was once a predominantly American endeavor is now a decisively global one, and the essays in this edition capture that diversity from thought leaders around the globe.

During the Symposium, Terry Calvani kicked off the afternoon session with an excellent summation of the globalization of antitrust and a brief illustration of this transformation within Brazilian competition law. These remarks are equally appropriate to set the stage for the essays in this publication. To that end, an excerpt of his remarks is included below to introduce this edition.]

I'm honored and delighted to be here to introduce this luncheon [of the symposium. As [Dean Butler]<sup>1</sup> mentioned this morning in his introductory remarks, this is the 20th anniversary of the *George Mason [ ] Law Review Symposium*. Welcome to this the celebratory lunch.

In thinking about what it was I was going to say to introduce this panel, I went to the law library to retrieve the first symposium edition of the *George Mason Law Review*].

When I got this volume and I opened it up, I examined the table of contents and was struck by the absence of any real treatment of global competition issues in this book. Almost nothing. So, I asked myself, "Were the young men and women back in 1997—were they asleep at the switch?" I don't think so. How did they ignore or miss all of the very important developments in global competition? Well, they didn't. There simply was very little taking place at that time when you compare it with the global issues that prevail today and which make up a very substantial part of today's program.

---

\* Of Counsel, Freshfields Bruckhaus Deringer US LLP; former Commissioner and Acting Chairman US Federal Trade Commission; former member of the board of the Competition Authority of Ireland and director of the Criminal Cartels Division.

<sup>1</sup> Referring to Henry N. Butler, Dean, Antonin Scalia Law School, George Mason University.

Now, it wasn't a null set. The EU Merger Regulation—it had been in effect for some number of years. But the dramatic changes in the international competition landscape, they were still to come.

I was just thinking about the last symposia held here at this school, and all three of them focused a session on the International Competition Network, the ICN. One of them focused on the ICN and convergence. Another focused on international cooperation. If twenty years ago you [asked] a knowledgeable antitrust lawyer what ICN stood for, that person would have said, "That's the IATA code for Incheon International Airport." If they didn't do much traveling they would have said, "It's the International Nursing Council." There simply was no ICN twenty years ago.

Indeed, the United States itself very much opposed the whole idea [of an ICN]. But as Randy Tritell<sup>2</sup> could tell you, "the rest is history." Suffice it to say that [in] the past twenty years, much has happened. [W]hat better way to think about these past twenty years than to focus on Brazil where there has also been dramatic change.

CADE [Brazil's Administrative Council for Economic Defense] is not new. CADE has been around, I think, from the early 1960s . . . . I remember well—not fondly, but well, the old CADE. I remember one occasion we represented a client doing an international deal. We were required to make a filing in Brazil, and did so. Nevertheless, within a short period of time the Brazilian authorities informed us that they were prosecuting us for making a late filing. I contacted local counsel. Together we contacted CADE and asserted that we made our filing on time. I remember the case officer saying, "Mr. Calvani, you made a timely filing of the acquisition, but you failed to make a timely filing of the confidentiality agreement that your client entered into months prior to the initiation of discussions about the merger." Never having encountered that before, I said, "What? If we had filed that confidentiality agreement with you, what would you have reviewed?" The case officer said, "Obviously nothing." "Well, why would you want a file that contained nothing to read?" He said, "We really wouldn't want that, because there is no real content to review." And I said, "Why is it you're prosecuting us for this?" He said, "Don't you understand the filing is required?"

There is a happy ending. We received a substantial fine, but years of litigation in the Brazilian courts challenging the fine ensued. My partners were ecstatic. Nice fees for both the U.S. and the Brazilian lawyers, but absolutely no public benefit that I could perceive came from that whatsoever.

CADE was hamstrung not only by weird regulations, but also by an organizational chart that could only have been devised by Franz Kafka, where the ministries of justice and economics sat with CADE in basically deciding the outcomes of competition cases—cumbersome to say the very least. Commissioner terms were two years in length, about enough time to

---

<sup>2</sup> Referring to Randy Tritell, Director, Office of International Affairs, U.S. Federal Trade Commission.

figure out where the bathrooms were before your term had ended. I could go on, but I won't.

Twenty years ago [was] the first symposium here at George Mason. Twenty years ago the modern story of CADE begins on almost the same date when a young economist . . . with a newly minted PhD in industrial organization economics from the University of California assumed the chairmanship of CADE. Gesner Oliveira and his senior staff, very able, and, I might add, very young, had grand plans to modernize the organizational structure, the process, and the law.

It didn't happen overnight, and it didn't happen under Oliveira's watch, but it did happen. And we have a new, modern CADE [that is an important player in most international merger reviews and cartel investigations].

\* \* \*