Information Exchanges Among Competitors in Europe and the United States

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-- Dalai Lama

Competitors often collaborate to achieve legitimate ends, such as joint ventures expanding into new markets, funding expensive innovation, enhancing efficiencies, and lowering production and other costs.[1] The results are procompetitive outcomes, which generally shield the collaborations from violating antitrust laws.[2] But not all information sharing aspires to the same lofty purpose or achieves a positive outcome. When the ends are not so legitimate, competitors who share their knowledge may achieve undesirable outcomes, including imprisonment -- if not infamy.

Both in Europe and the United States, the antitrust concern remains the same: information exchanges may facilitate anticompetitive harm by allowing competitors to collude and tacitly coordinate their prices or output in a manner that reduces competition. Information exchanges among competitors are therefore scrutinized to determine whether the effects truly are procompetitive.

As antitrust scrutiny ramps up around the world, the treatment of information exchanges under the antitrust laws of various jurisdictions will undoubtedly play an important role in assessing the antitrust risk facing companies and individuals. This article focuses attention on the risk information exchanges pose under American and European antitrust laws and provides guidance on navigating information exchanges to reduce the risks of enforcement actions and private lawsuits.

At the ABA Antitrust Section's Spring Meeting in Washington, D.C. in April 2022, a Department of Justice ("DOJ") official said the Department intends to bring more rule of reason cases, including cases involving tacit collusion,

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[1] Concurrences, *Exchanges of information and judicial review; recent EU and national cases: an update*, October 18, 2021, available at: https://www.concurrences.com/en/conferences/exchanges-of-information-and-judicial-review-recent-eu-and-national-cases-an.

[2] EC, Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (2011/C11/01), "EC Horizontal Guidelines," § 57, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011XC0114(04)&from=EN.

because the DOJ believes it plays an important role in these types of conduct cases and has tools that private plaintiffs might not have to uncover and redress such practices.

In Europe, the legal approach towards exchanges of information has become wider and tougher over the past 15 years.[3] European and national agencies increasingly bring *per se* cases (*i.e.*, "infringement by object" under the European terminology) where the type of information exchanged (*e.g.*, future pricing strategy) reveals such a sufficient degree of harm to competition that it may be found that there is no need to examine their effects. Although these infringements can in theory be objectively justified under European Union ("EU") competition law, they are in practice considered as *per se* prohibitions. [4]

Information Sharing in the United States

In the United States, information exchanges among competitors are examined either under the "rule of reason" standard or condemned as *per se* violations of Section 1 of the Sherman Act.[5] Under the "rule of reason" standard, the antitrust analysis distinguishes legitimate information sharing from illegal information sharing by balancing the anticompetitive effects against potential procompetitive benefits.[6]

In *United States v. Container Corp. of America*, the Supreme Court held that information exchanges may be challenged as a stand-alone unreasonable restraint of trade when the effect of the information exchanges leads to "price uniformity" or "stabilizing prices." [7]

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[3] Case C-8/08 - *T-Mobile*, June 4, 2009, available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=74817&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=4035490

[4] Case C-439/09 - *Pierre Fabre*, October 13, 2011, available at: https://curia.europa.eu/juris/document/document.jsf;jsessionid=AE47D9537102A30AF158E1416618CC42?text=&docid=111223&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=636518.

[5] 15 U.S.C. § 1.

[6] Kenneth Khoo & Jerrold Soh, *The Inefficiency of Quasi-Per Se Rules: Regulating Information Exchange in EU and U.S. Antitrust Law*, 57 Am. Bus. L.J. 45, 55 (2020).

[7] 393 U.S. 333 (1969).

In *Container Corp.*, competitors had a reciprocal arrangement in which they would periodically verify prices that they had charged to a specific customer.[8] Underlying this arrangement was an understanding and expectation that they each would comply with a request to furnish data to each other.[9] Put another way, the competitors agreed that "I'll scratch your back if you'll scratch mine."

The Court held that these stand-alone instances of information exchanges, when taken together, were best understood as an agreement to exchange price information, and "the inferences [were] irresistible that the exchange of price information had an anticompetitive effect in the industry, chilling the vigor of price competition."[10]

Container Corp. is often cited to argue that stand-alone, periodic, instances of information exchanges can create a plausible inference of a standing agreement to exchange competitively sensitive information, the effect of which may harm competition.[11]

To determine whether information exchanges in and of themselves limit competition, and thereby violate Section 1, several factors must be considered, such as the structure of the industry and the nature of the information exchanged.[12] The DOJ, very helpfully, provides various criteria, elucidated from

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[8] Id. at 335.
[9] Id.
[10] Id. at 337. Justice Fortas's concurrence notes that a "tacit agreement to exchange information about current prices" is in itself an antitrust violation since it facilitates price coordination, which has the effect of limiting price competition. *Id.* at 340.
[11] *See In re Static Random Access (SRAM) Antitrust Litig.*, 580 F. Supp. 2d 896 (N.D. Cal. Feb. 14, 2008) (partially denying defendants' motion to dismiss because plaintiffs alleged a plausible Section 1 conspiracy by citing stand-alone instances of periodic information exchanges as evidence of a standing agreement to exchange information); *In re Flash Memory Antitrust Litig.*, 643 F. Supp 2d 1133 (N.D. Cal. Mar. 31, 2009) (denying defendants' motion to dismiss because direct purchaser and indirect purchaser plaintiffs alleged a plausible Section 1 conspiracy by alleging facts suggesting defendants routinely exchanged highly sensitive competitive information to show an ongoing pattern of collusion).
[12] *United States v. Gypsum Co.*, 438 U.S. 422, 441 n.16 (1978).

case law, to use in determining the anticompetitive effect of information exchanges[13]:

	Based on U.S. Department of Justice "Information Exchange" Criteria
1.	**Nature and quantity of the data**: specifics of what was exchanged, such as extensive pricing, capacity, production costs, new product development, and/or market allocation by quarter or year.
2.	**Recency of exchanged data**: information for current or upcoming quarters.
3.	**Intent**: why was the information exchanged. Establishing that the information exchanges were for an anticompetitive purpose is powerful evidence.
4.	**Industry structure**: exchanging information in an industry with fewer participants enhances the likelihood of anticompetitive injury.
5.	**Method of exchange**: direct competitor communications are often powerful evidence of anticompetitive conduct compared to sharing information with legitimate, independent intermediaries.
6.	**Frequency**: the more frequent the information exchanges, the more likely the exchanges are harmful to competition.
7.	**Public availability**: non-public sources of information provide stronger evidence of a potential illegal information exchange.
8.	**Safeguards**: did the companies safeguard each other's information to limit access and ensure no anticompetitive injury?

The case examples below show strong and weak applications of these criteria in seeking to allege a Section 1 violation and survive a motion to dismiss.

[13] Adapted from Roundtable on Information Exchanges Between Competitors under Competition Law, Note by the Delegation of the United States, at 4 (Oct. 21, 2010).

In some cases, the analysis will not end simply at weighing the anticompetitive effects against the procompetitive benefits. Even where information exchanges may not violate antitrust laws, the substance of the information exchanged may violate confidentiality provisions in supplier contracts and non-disclosure agreements between suppliers and customers that give rise to a breach of contract claim in lieu of a Sherman Act Section 1 claim.

Cases Successfully Alleging the DOJ Criteria to Survive a Motion to Dismiss

The DOJ applied their own criteria in *U.S. v. Sinclair Broadcast Group, et. al.,* to allege that the information exchanges resulted in anticompetitive conduct.[14] In *Sinclair*, the DOJ alleged that twelve broadcasting station groups exchanged competitively sensitive information to reduce competition in the sale of broadcast television spot advertising.

The DOJ's allegations read like a checklist addressing each of the above criteria. The DOJ alleged in its complaint that the defendants regularly exchanged pacing information. Pacing compares a broadcast station's revenues booked for a certain time period to the revenues booked for the same point in time in the previous year and provides information on how each station is performing versus the rest of the market.[15] The defendants allegedly exchanged real-time pacing information, and typically the exchanges included data on individual stations' booked sales for current and future months as well as comparisons to past periods.[16]

Even where defendants received the information through a third party, once the information was in defendants' possession, they provided it to their sales managers and other individuals with pricing authority.[17] These exchanges helped defendants anticipate whether competitors would likely raise, maintain, or lower

[14] Complaint, *U.S. v. Sinclair Broadcast Group, et. al.*, Case No. 1:18-cv-2609-TSC, (D.D.C. Nov. 13, 2018), ECF No. 1.
[15] *Id.* at 5.
[16] *Id.* at 6.
[17] *Id*.

spot advertising pricing and understand what inventory was available, information not otherwise publicly available.[18]

Sinclair Broadcast Group and other defendants settled the DOJ's charges with behavioral remedies to prevent the conduct from reoccurring.[19]

In the fall of 2021, the Direct Purchaser Plaintiffs ("DPPs") in *In re Farm-Raised Salmon and Salmon Products Antitrust Litigation* moved to amend their Section 1 price fixing complaint against producers of salmon to clarify that they were also pursuing a rule of reason "information sharing" claim, simultaneous with the Section 1 *per se* claim. The DPPs alleged that information exchanges between competitors amounted to anticompetitive conduct that could be condemned as a violation of Section 1 under the alternative standard.[20]

DPPs moved to amend after defendants told DPPs that they did not view the complaint asserting a rule of reason information exchange claim. DPPs sought leave to amend out of an abundance of caution that defendants would raise arguments of undue surprise later in the proceedings, such as immediately before trial.[21]

In DPPs' Third Consolidated Amended Complaint ("Complaint"), they allege a slew of instances of information exchanges between executives at various meetings where "cooperation and synergies between the companies" was discussed.[22] The allegations seek to satisfy nearly all of the DOJ criteria. The

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[18] *Id.* at 7.

[19] [Proposed] Final Judgment, *U.S. v. Sinclair Broadcast Group, et. al.*, Case No. 1:18-cv-2609-TSC, (D.D.C. Nov. 13, 2018), ECF No. 2-2. Recently, King Furs, Inc., a purchaser of broadcast television spot advertising, filed an antitrust class action against Sinclair Broadcast Group, Inc., *et al.* alleging, among other possible violations of antitrust law, exchanges of information similar to the DOJ's complaint, but not with the same level of detail. *See Complaint, King Furs Inc. v. Dreamcatcher Broadcasting, LLC et. al.*, Case No. 2:22-cv-02301, (W.D. Tenn. May 17, 2022), ECF No. 1.

[20] Direct Purchaser Plaintiffs' Motion for Leave to Amend Complaint, *In re Farm-Raised Salmon and Salmon Products Antitrust Litig.*, Case No. 19-21551-CIV-ALTONAGA/Louis, (S.D. Flo. Sept. 23, 2021), ECF No. 423 at *7.

[21] *Id.*

[22] Direct Purchaser Plaintiffs' Third Consolidated Amended Complaint, *In re Farm-Raised Salmon and Salmon Products Antitrust Litig.*, Case No. 19-21551-CIV-ALTONAGA/Louis, (S.D. Flo. Oct. 28, 2021), ECF No. 447 at *39.

Complaint includes dozens of instances of alleged information sharing at various meetings, via email, and phone at all levels of the companies between midlevel managers to executives and shareholders.[23] For instance:

- The companies allegedly shared real-time future information on quantity, sizing, and price for fish.[24]

- The executives allegedly knew that their cooperation was necessary to stabilize salmon prices in the face of market volatility caused by a Russian import ban and in general to avoid salmon market volatility.[25]

- The industry allegedly is very close knit, there are few market players, and it is common practice for employees to move from one company to another for employment.[26]

- Allegedly, there were dozens of specific instances of direct exchanges of information between executives and midlevel managers on pricing, volumes, market allocation, and generally agreement to cooperate rather than compete, and these exchanges happened frequently as they were needed.[27]

A fact-finder will need to determine whether the information exchanges thoroughly alleged in the complaint amount to unlawful conduct and/or create a sufficient inference of an unlawful agreement. Regardless, one thing is certain: the complaint alleges facts covering most, if not all, of the DOJ's criteria and provides a helpful model to consider in future cartel cases.

In *In re Ductile Iron Pipe Fittings ("DIPF") Direct Purchaser Antitrust Litigation*, 2014 U.S. Dist. Lexis 111988, Case No. 12-711 (D. N.J. Aug. 13,

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[23] *See* Direct Purchaser Plaintiffs' Third Consolidated Amended Complaint, *In re Farm-Raised Salmon and Salmon Products Antitrust Litig.*, Case No. 19-21551-CIV-ALTONAGA/Louis, (S.D. Flo. Oct. 28, 2021), ECF No. 447.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*

2014), Direct Purchaser Plaintiffs ("DPPs") survived defendants' motion to dismiss because they sufficiently alleged that communications among defendants over the phone and through public letters to coordinate parallel price increases stated a plausible Section 1 violation claim.[28]

DPPs overcame defendants' arguments that conspiratorial communications were "vague and unpersuasive" because they identified several specific communications between defendants.[29] Moreover, defendants were in a highly concentrated market for a product that has inelastic demand, and information exchanges in this context can be indicative of anticompetitive behavior.[30]

DPPs' allegations survived a motion to dismiss because they went directly to factor numbers 1 – 4, 6, and 7 from the DOJ's guidance and alleged facts that met the criteria to state a plausible Section 1 violation.

Unsuccessful Attempts to Allege a Claim Centered on Information Sharing

Recently, in *In re Dynamic Random Access Memory (DRAM) Indirect Purchaser Antitrust Litigation*, the Ninth Circuit Court of Appeals affirmed a district court's grant of a motion to dismiss a putative class of indirect purchasers' ("IPPs") complaint that memory chip makers Samsung, SK Hynix, and Micron's parallel conduct suggested a conspiracy given certain plus factors, such as information exchanges between defendants regarding future supply and demand.[31]

IPPs alleged that defendants had two opportunities to exchange information regarding their supply plans: (1) through participation in the same trade association, and (2) through communications with third-party research firms that produce industry trend reports as a means to signal to competitors and

[28] *See In re Ductile Iron Pipe Fittings ("DIPF") Direct Purchaser Antitrust Litig.*, 2014 U.S. Dist. Lexis 111988, Case No. 12-711 (D. N.J. Aug. 13, 2014).
[29] *Id.* at *24-25.
[30] *Id.* at *25.
[31] *In re Dynamic Random Access Memory (DRAM) Indirect Purchaser Antitrust Litig.*, Case No. 4:18-cv-02518-JSW, (9th Cir. Mar. 7, 2022), ECF No. 127.

exchange information. The Ninth Circuit affirmed dismissal as insufficient to state a plausible case for a conspiracy for two reasons.

First, IPPs did not allege facts that defendants exchanged information at trade association meetings, much less that they entered into an agreement to coordinate. Furthermore, courts generally are reluctant to infer a conspiracy from trade association participation since trade associations often serve legitimate functions.[32]

Second, IPPs did not allege that defendants had any control over what information was included in third-party industry trend reports nor any evidence that the other defendants read the reports and gleaned information about each other's future supply plans.

IPPs allegations of information exchanges did not allege facts meeting the criteria provided by the DOJ and therefore, not surprisingly, failed to allege plausible facts to suggest a conspiracy. Unlike the DOJ's specific and particularized allegations of information exchanges in its complaint against Sinclair Broadcasting Group and other broadcasting stations and the thorough allegations in the DPPs amended complaint against the salmon producers, IPPs asked the court to infer from trade association participation and information exchanges that supposedly took place through third-party produced industry trend reports that a conspiracy was afoot. Unsurprisingly, the court declined to find the conspiracy allegations plausible.

Another case where allegations stemming from participation in industry associations fell short is *Llacua v. Western Range Ass'n.*[33] In *Llacua*, Peruvian shepherds working for sheep ranchers under the H-2A agricultural visa sued the ranchers alleging a conspiracy to fix wages and using two industry associations as a means to communicate and further their alleged conspiracy.

The Tenth Circuit affirmed the district court's grant of a motion to dismiss because plaintiffs did not allege an explicit agreement among the association

[32] *Maple Flooring Mfrs. Ass'n v. United States*, 268 U.S. 563 at 586 (1925).
[33] *Llacua v. Western Range Ass'n*, 930 F. 3d 1161 at 1168 (10th Cir. Jul. 16, 2019).

members to fix or settle wages.[34] Instead, plaintiffs alleged that since association members assisted in completing job offers and H-2A visa applications, they were also fixing or settling wages.[35] In other words, plaintiffs asked the court to conclude that their mere participation was enough to infer a conspiracy, which the Supreme Court has warned against concluding if such a conclusion "may be drawn from highly ambiguous evidence."[36]

A similar outcome resulted in *Brown v. 140 NM LLC*, in which the plaintiff alleged that defendants conspired to fix prices in the restaurant industry and eliminate the practice of tipping. The District Court granted defendants' motion to dismiss because the plaintiff's allegations that a conspiracy could be inferred from participation in industry conferences fell short of alleging a plausible Section 1 claim.

The complaint alleged that the defendants sat on a conference panel titled, "The Tipping Point: A Year Later" and exchanged information via presentations at the conference including pricing topics such as, "Should America Ban Tipping."[37]

In fact, the presentations and panels were more consistent with the procompetitive benefits of trade associations, "such as providing information to industry members, conducting research to further the goals of the industry, and promoting demand for products and services."[38]

Minimizing Risk

The table below provides a breakdown of enforcement and litigation risk depending on the type of information exchanges. The chart may help guide clients through antitrust risk assessment and designing compliance and training programs:

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[34] *Id.* at 1180-82.
[35] *Id.* at 1180-82.
[36] *Monsanto Co. v. Spray-Rite Serve Corp.*, 465 U.S. 752, 763 (1984).
[37] *Brown v. 140 NM LLC*, Case No. 17-c-05782-JSW, 2018 U.S. Dist. LEXIS 2819, at *32-33 (N.D. Cal. Jan 7, 2019).
[38] *In re Citric Acid Litig.*, 191 F.3d 1090, 1098 (9th Cir. Sept. 1, 1999).

Information Type	Degree of Antitrust Risk	
	Higher	Lower
Pricing – Historical		X
Pricing – Current	X	
Pricing – Future	X	
Costs – Historical		X
Costs – Current	X	
Costs – Future	X	
Output/Volume – Historical		X
Output/Volume – Current	X	
Output/Volume – Future	X	
Marketing strategies – Historical		X
Marketing strategies – Current	X	
Marketing strategies – Future	X	
Product Development – Historical		X
Product Development – Current	X	
Product Development – Future	X	
Individualized Data	X	
Aggregated Data		X
Publicly Available		X

Generally, antitrust risk is the highest when companies regularly exchange granular current and/or future information on topics listed above.[39] On the other hand, mere participation in legitimate trade associations and generalized signaling of pricing direction *via* third-party aggregated reports or ordinary course earnings calls has lower antitrust risk.

The DOJ's criteria and the case examples provide guidance to parties on either side of a Section 1 claim based on information exchanges. Plaintiffs should carefully study the criteria and application of it in prior successful cases to guide their practice. Plaintiffs should also heed the warning of prior cases when asking a court to make inferences of a conspiracy based on ambiguous facts will inevitably lead to dismissal.

[39] This is consistent with the EC risk assessment of information exchanges. *See* EC Horizontal Guidelines, §§ 57 et seq, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011XC0114(04)&from=EN.

On the other hand, defendants should be careful to study a complaint and assess the strength of the allegations made and whether they cover all or most of the DOJ's criteria. Courts will dismiss complaints with weak application of the criteria.

Information Sharing in Europe

The exchange of commercially sensitive information ("CSI") among competitors is also prohibited in Europe under both national and European competition laws.[40] The threshold for establishing an infringement is relatively low and, in some cases, the fines imposed on companies for participating in anticompetitive information exchanges reach levels which are just as high as those found in classic price-fixing cartel cases.[41]

Information is commercially sensitive if it provides valuable insight into a company's strategy and likely reduces the parties' decision-making independence by decreasing their incentives to compete.[42]

Antitrust enforcement in Europe depends on the type of information that is exchanged, and the legal and economic context in which the information exchange takes place.[43] Antitrust enforcement depends on three main factors:

1. The strategic nature of the data (price, quantities v. costs, investments);

2. The level of aggregation (individualized v. aggregated);

3. The age (forward-looking v. historical).[44]

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[40] At the EU level: Treaty on the functioning of the European Union, Article 101(1).
[41] EC, Case AT.40135 - *Forex*, December 2, 2021, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6548.
[42] EC Horizontal Guidelines § 86.
[43] Case C-08/08 - *T-Mobile*, June 4, 2009, §§ 27-35. See also EC Horizontal Guidelines, § 58.
[44] EC Horizontal Guidelines, §§ 86-94.

The European Commission ("EC") also takes into account whether the exchange of information is public or not, the frequency of the information exchange, and the market coverage.[45]

The European enforcement risk is high when the companies exchange information on future product prices, granular information such as sales by countries or lists of customers including purchases, and/or other types of information that is not publicly available (*e.g.*, new product launch).[46]

However, the risk is lower when it comes to historical information (*e.g.*, more than one year old), aggregated information (*e.g.*, sales at a regional level, sales by product line at the global level), and genuinely public information (*i.e.*, information that is equally accessible in terms of costs of access to all competitors and customers).[47]

The EC currently focuses on practices such as price signaling, unilateral disclosure of information about pricing intentions, indirect exchanges of information (including through intermediaries), information exchange in IPOs and share placing, and information exchange between merging parties. In December 2021, the EC imposed a €344M ($405.6M) fine on UBS, Barclays, RBS, HSBC, and Credit Suisse for participating in a cartel, including exchange of commercially sensitive information and trading plans.[48]

In terms of sanctions, both the company sharing the information and the company receiving the information can be fined for anti-competitive exchange of information.[49] The burden of proof is on the company receiving the information to prove that it either did not receive the information or rejected it.

While the EC is not entitled to impose personal sanctions, the United Kingdom's Competition and Markets Authority ("CMA") has the power to

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[45] *Id*.
[46] EC Horizontal Guidelines, § 86.
[47] *Id*., §§ 89-92.
[48] EC, Case AT.40135 - *Forex*, December 2, 2021, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6548.
[49] Case C-74/14 - *Eturas*, January 21, 2016, available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=173680&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4033503.

petition a court to disqualify a director from holding company directorships or performing certain roles in relation to a company for a specified period, if a company which he or she is a director of has breached competition law.[50]

The CMA recently disqualified a pharmaceutical company director due to his involvement in illegal sharing of commercially sensitive information about the antidepressant nortriptyline.[51] In this case, three suppliers exchanged information about prices, the volumes they were supplying, and a potential entrant's plans to enter the market.

On March 1, 2022, the EC published draft revised horizontal cooperation guidelines for consultation.[52] The EC confirmed its strict approach to exchanges of CSI on topics such as unilateral disclosure and indirect information exchanges. The EC provided more guidance to identify the dividing line between object (*i.e.*, *per se*) and effect (*i.e.*, rule of reason) restriction in information sharing cases.

Key Takeaways

In both the United States and the European Union, information exchanges between competitors of individualized data related to their intended future prices or quantities carry the highest antitrust risk.

While US agencies and private plaintiffs most often bring rule-of-reason cases balancing the anticompetitive effects of information exchanges with procompetitive benefits, European agencies (at both national and EU levels) increasingly bring *per se* cases and define CSI broadly.

The EU guidelines dealing with information exchanges are currently under review, and businesses are well-advised to adopt a cautious approach pending any

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[50] Company Directors Disqualification Act 1986, available at: https://www.legislation.gov.uk/ukpga/1986/46/contents.
[51] UK CMA, *Nortriptyline investigation*, January 11, 2022, available at: https://www.gov.uk/cma-cases/suppliers-of-antidepressants-director-disqualification?cachebust=1598973475#disqualification-undertaking.
[52] European Commission press release, *Antitrust: Commission invites comments on draft revised rules on horizontal cooperation agreements between companies*, March 1, 2022, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1371.

clarifications which may follow from the updated guidance. In the US, businesses should refer to the latest antitrust agencies' guidelines and pay attention to recent enforcement actions and case law developments to understand the parameters of and enforcement trends concerning illegitimate versus legitimate information exchanges.

Sharing knowledge may be a path toward spiritual immortality, but depending on what that knowledge is, who it is shared with and for what purpose, sharing information may also lead to an investigation, litigation and criminal proceedings.