Insights

From Consolidation to Big Tech Self-Preferencing: Benjamin Sirota Previews Landmark 2022 in U.S. Antitrust Law

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2022 looks set to be a landmark year for U.S. antitrust law as Congress considers multiple competition bills aimed at curbing corporate consolidation and the self-preferencing of technology companies. Kobre & Kim's Benjamin Sirota, a former U.S. federal antitrust prosecutor, previewed the proposals with *Law360*.

The broadest bills are the Competition and Antitrust Law Enforcement Reform Act and the Tougher Enforcement Against Monopolies, or TEAM Act, both of which aim to change the standards and presumptions of the current general antitrust regime to make enforcement easier. There are also tech-focused bills banning platforms from preferencing their own content and services and from making certain acquisitions, as well as to promote app store competition.

Mr. Sirota said that while the broader bills seek to make the existing legal system work more smoothly, the tech-focused bills are more regulatory in nature because they target conduct by specific companies. "It's not that there's no precedent. There are lots of industries that are regulated," Mr. Sirota said. "The difference is that it's harder to pin down what exactly should be regulated, given how widespread in our economy some of these challenged practices are."

In addition, the bill against self-preferencing, the American Innovation and Choice Online Act, imposes rules that paint with a "broad brush" and risk causing harm by capturing conduct that is actually beneficial, Mr. Sirota said. "I think it's legitimate to talk about whether in particular instances a platform steering people to products that it makes or that it's otherwise affiliated with is problematic," he added. "It's just hard to paint with a broad brush."

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