

## **Professor Kudrle Addresses the MSBA Antitrust Section**

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Minnesota antitrust lawyers and law students gathered on November 14, at the Crowne Plaza Hotel in Minneapolis to hear Professor Robert Kudrle speak about his recently completed research on antitrust law, a comparison of theory and practice in North America, Europe, and Asia. Kudrle is Freeman Professor of International Trade and Investment Policy at the Hubert Humphrey Institute of Public Affairs and the Law School, University of Minnesota.

Professor Kudrle focused on the similarities and differences in antitrust laws in North America, Europe, and Japan. European competition laws are similar to American antitrust laws, and European regulators often adopt policies that are modeled on the American counterparts. Japanese antitrust law was actually imposed by the Americans following World War II.

Professor Kudrle's research shows that although the laws are similar, the patterns of enforcement differ. One reason for this is that the policies underlying the antitrust laws are viewed differently in the U.S., Europe, and Japan. Since the 1970's, American antitrust law has focused on improving consumer welfare; this relatively recent development has not yet been wholly embraced elsewhere. The Europeans, for instance, view the protection of rivalry among firms as an important goal of antitrust law. In Europe, a merger that increases economic efficiency but decreases the number of competing firms is likely to be viewed negatively by regulators—which would not be the case in the U.S.

Enforcement of antitrust law in Japan is a relatively recent phenomenon. Japan's antitrust laws were imposed by the Americans after World War II, but were at odds with cultural norms and thus largely ignored. Economic troubles since the early nineties have led to a recognition that antitrust laws need to be enforced for the sake of Japan's own economic health. Still, enforcement of antitrust law has been so sparse that there is not enough information to determine exactly which policy goals are being pursued.

The influence of American antitrust law is not limited to the initial adoption of laws by other states. America continues to play a unique role in the process of development and convergence of antitrust law. There is a close connection between academic work and actual policy implementation in American antitrust law. This process is remarkably insulated from political influence. America thus leads the world in development and administration of antitrust laws. For this reason, past convergence has been towards American law, and Professor Kudrle expects this trend will continue.

Professor Kudrle is a strong advocate of convergence; it should happen gradually through voluntary cooperation among states. This process has already produced a high degree of convergence, and Professor Kudrle expects that this will grow in the future. Organizations such as the International Competition Network are likely to provide the means for exchange of ideas and information to speed the process of convergence, but Professor Kudrle is highly opposed to centralizing antitrust rulemaking and enforcement in a centralized body such as the WTO. The WTO would be ill suited to such a role; as an agency that deals with access to markets, it lacks

the expertise to regulate relations within a market. Effective antitrust enforcement requires constant monitoring of complex public-private relationships; Professor Kudrle doubts that a centralized authority could do this effectively.

Professor Kudrle took questions from the audience. When asked about the state of antitrust law in India and China, Kudrle was optimistic. He noted that both countries have very capable people developing antitrust policies. Both countries have realized that such laws are in their best interest, because the damage from anti-competitive actions is felt at home. Referring to the Japanese example, Professor Kudrle argued that the best approach was to let the internal development progress; imposing regulations from the outside will be ineffective. Even if those countries ultimately follow the U.S. model, the policy will be most effective if it comes about as a homegrown initiative. Professor Kudrle also addressed the issue of federalism and the development of antitrust law. State laws are an important aspect of antitrust law in the U.S., but this dynamic is unlikely to appear elsewhere. There is some parallel, however, with national antitrust laws in the EU, which deal largely with matters lacking union-wide significance.