

GCR Live 4th Annual Cartels

MARCH 26, 2019
WILMERHALE

Global Competition Review will host its fourth annual GCR Live Cartels on Tuesday, March 26 in Washington DC, chaired by WilmerHale Partner Thomas Mueller. Mr. Mueller and fellow Partner Heather Nyong'o will speak at the event. Program topics include:

- **Forex Case Study**

When the US Department of Justice negotiated guilty pleas with banks and individuals over the manipulation of foreign exchange benchmarks, it obtained billions in fines. But when three former traders went to trial against the DOJ last year, they won acquittals after the jury deliberated for less than a day. Whether other agencies will perform better in court remains to be seen, as the Competition Commission of South Africa will not bring its forex charges against more than a dozen banks to trial until later this year. And Brazil's Administrative Council for Economic Defence has thus far avoided courts by settling its forex allegations through its administrative proceeding process, in which several banks have signed cease-and-desist orders and paid tens of millions. How can enforcers explain the complex world of financial benchmarks to juries? And how can defense counsel fight back when prosecutors have cooperating witnesses on their side?

- **No-poach agreements and other labour market concerns**

Regulators in the U.S., Europe and elsewhere have increased their focus on so-called "no poach" or "no hire" agreements and other labour market practices, such as sharing of sensitive HR information; civil litigation in the U.S. is on the upswing as well. Panelists will discuss why momentum has been building, where things are heading, and what are the implications for employers, their counsel, and regulators.

- **The state of leniency**

The state of leniency seems in decline in much of the world, as the practical burdens of multi-jurisdictional cooperation and the spread of follow-on damages actions have reportedly made it increasingly attractive for companies simply to hope that enforcers won't

detect cartels on their own. While US law attempts to advantage immunity applicants in private civil litigation by making them liable only for single damages, the prevalence of settlements means that few companies will ever actually pay treble damages. Yet the news isn't bad everywhere; in Brazil, for example, the use of administrative proceedings may be encouraging companies to cut a deal with the enforcer. What might older leniency regimes have to learn from newer ones? How can private litigation avoid killing its golden goose?

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Speakers



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