No. 15-1672

In the United States Court of Appeals
for the Second Circuit

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs-Appellees,

v.

AMERICAN EXPRESS COMPANY, *et al.*,

Defendants-Appellants.

(Full caption commences on inside cover)

On Appeal from the United States District Court
for the Eastern District of New York

BRIEF OF *AMICI CURIAE* 23 ANTITRUST LAW PROFESSORS AND SCHOLARS IN SUPPORT OF PETITION FOR REHEARING *EN BANC*

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UNITED STATES OF AMERICA, STATE OF MARYLAND, STATE OF MISSOURI, STATE OF VERMONT, STATE OF UTAH, STATE OF ARIZONA, STATE OF NEW HAMPSHIRE, STATE OF CONNECTICUT, STATE OF IOWA, STATE OF MICHIGAN, STATE OF OHIO, STATE OF TEXAS, STATE OF ILLINOIS, STATE OF TENNESSEE, STATE OF MONTANA, STATE OF NEBRASKA, STATE OF IDAHO, STATE OF RHODE ISLAND, *et al.*,

Planiitffs-Appellees,

STATE OF HAWAII,

Plaintiff,

v.

AMERICAN EXPRESS COMPANY, AMERICAN EXPRESS TRAVEL RELATED SREVICES, COMPANY, INC.,

Defendants-Appellants,

MASTERCARD INTERNATIONAL INCORPORATED, VISA INC.,

Defendants,

CVS PHARMACY, INC., MEIJER, INC., PUBLIX SUPER MARKETS, INC., RALEY'S, SUPERVALU, INC., AHOLD U.S.A., INC., ALBERTSONS LLC, THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., H.E. BUTT GROCERY CO., HYVEE, INC., THE KROGER CO., SAFEWAY INC., WALGREEN C., RITE-AID CORP., BI-LO LLC, HOME DEPOT USA INC., 7-ELEVEN, INC., ACADEMY, LTD., DBA ACADEMY SPORTS + OUTDOORS, ALIMENTATION COUCHE-TARD INC., AMAZON.COM, INC., AMERICAN EAGLE OUTFITTERS, INC., ASHLEY FURNITURE INDUSTRIES INC., BARNES & NOBLE, INC., BARNES & NOBLE COLLEGE BOOKSELLERS, LLC, BEALL'S, INC., BEST BUY CO., INC., BOSCOVS, INC., BROOKSHIRE GROCERY COMPANY, BUC-EE'S LTD., THE BUCKLE, INC., THE CHILDRENS PLACE RETAIL STORES, INC., COBORNS INCORPORATED, CRACKER BARREL OLD COUNTRY STORE, INC., D'AGOSTINO SUPERMARKETS, INC., DAVIDS BRIDAL, INC., DBD, INC., DAVIDS BRIDAL CANADA, INC., DILLARD'S, INC., DRURY HOTELS COMPANY, LLC, EXPRESS LLC, FLEET AND FARM OF GREEN BAY, FLEET WHOLESALE SUPPLY CO. INC., FOOT LOCKER, INC., THE GAP, INC., HMSHOST CORPORATION, IKEA NORTH AMERICA SERVICES, LLC, KWIK TRIP, INC., LOWE'S COMPANIES, INC., MARATHON PETROLEUM COMPANY LP, MARTIN'S SUPER MARKETS, INC., MICHAELS STORES, INC., MILLS E-COMMERCE ENTERPRISES, INC., MILLS FLEET FARM, INC., MILLS MOTOR, INC., MILLS AUTO ENTERPRISES, INC., WILLMAR MOTORS, LLC, MILLS AUTO CENTER, INC., BRAINERD LIVELY AUTO, LLC, FLEET AND FARM OF MONOMONIE, INC., FLEET AND FARM OF MANITOWOC, INC., FLEET AND FARM OF PLYMOUTH, INC., FLEET AND FARM SUPPLY CO. OF WEST BEND, INC., FLEET AND FARM OF WAUPACA, INC., FLEET WHOLESALE SUPPLY OF FERGUS FALLS, INC., FLEET AND FARM OF ALEXANDRIA, INC., NATIONAL ASSOCIATION OF CONVENIENCE STORES, NATIONAL GROCERS ASSOCIATION, NATIONAL RESTAURANT ASSOCIATION, OFFICIAL PAYMENTS CORPORATION, PACIFIC SUNWEAR OF CALIFORNIA, INC., P.C. RICHARD & SON, INC., PANDA RESTAURANT GROUP, INC., PETSMART, INC.,

RACETRAC PETROLEUM, INC., RECREATIONAL EQUIPMENT, INC., REPUBLIC SERVICES, INC., RETAIL INDUSTRY LEADERS ASSOCIATION, SEARS HOLDINGS CORPORATION, SPEEDWAY LLC, STEIN MART, INC., SWAROVSKI U.S. HOLDING LIMITED, WAL-MART STORES INC., WHOLE FOODS MARKET GROUP, INC., WHOLE FOODS MARKET CALIFORNIA, INC., MRS. GOOCH'S NATURAL FOOD MARKETS, INC., WHOLE FOOD COMPANY, WHOLE FOODS MARKET PACIFIC NORTHWEST, INC., WFM-WO, INC., WFM NORTHERN NEVADA, INC., WHOLE FOODS MARKET, ROCKY MOUNTAIN/SOUTHWEST, L.P., THE WILLIAM CARTER COMPANY, YUM! BRANDS, INC., SOUTHWEST AIRLINES CO,

Movants.

STATEMENT OF CONSENT TO FILE *AMICUS*

I, David A. Balto, am admitted to practice in this Court and state that I have received the consent of the Plaintiff-Appellee Movants to file the attached *Amicus* brief and that the counsel for the Defendants-Appellants do not oppose the filing of the attached *Amicus Curiae* brief in support of Plaintiffs-Appellees' Petition for Panel Rehearing and Rehearing *En Banc*.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. Interest and Identity of the *Amici Curiae*

Amici curiae are 23 antitrust law professors and scholars.[1] *Amici* believe that the enforcement of antitrust law is critical to the economy and the public welfare. *Amici* support rehearing *en banc*, because the Panel Opinion risks undermining antitrust enforcement in many sectors of the economy.[2]

II. Introduction and Summary

We assume – as does the Panel – that a payment card network is a "two-sided platform." A platform is two-sided if it sells different services to two distinct groups of customers and the demand by one group has an impact on the demand by the other. For example, as more merchants accept a particular payment card, more customers will want to use that card, and vice versa. Each group, however, has its own economic considerations and demand for the services it purchases.

There are many two-sided platforms. Newspapers, for example, serve both advertisers and readers. As advertisers place more ads, readership increases, and vice versa. Examples of two-sided platforms include sports leagues (teams and fans), cable TV (content providers and subscribers), software platforms (application developers and users) and many others. Household names such as eBay, Microsoft,

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[1] The *Amici* and their professional credentials are listed on Exhibit 1.

[2] No portion of this brief was authored by counsel for any party. No party or party's counsel contributed any money intended to fund the preparation of this brief; and no person, other than the *Amici* or their counsel, contributed any money intended to fund the preparation or submission of this brief.

Google, Apple, Expedia, Facebook and Amazon are all two-sided platforms.

The Panel holds that both merchants and cardholders must be lumped into a single "two-sided relevant market," notwithstanding the different demand for different services made by merchants on the one hand and cardholders on the other. This Court should clarify that the different services offered to different sides of a two-sided platform are in different relevant markets because they are not reasonably interchangeable or substitute services.

For over half a century, courts have applied conventional antitrust principles to two-sided platforms. That includes the Supreme Court's treatment of relevant markets, market power, and competitive effects. Critically, the courts have used these conventional principles to measure the injury to competition in the relevant market on the side of the platform to which the restraint is applied. The courts then appraise that competitive effect in that relevant market under the rule of reason. Thus, the plaintiff bears the initial burden of proving anticompetitive effects in that market; the burden then shifts to the defendant to show offsetting procompetitive virtues; and the burden then shifts back to the plaintiff to prove that the anticompetitive effects outweigh the procompetitive benefits.

The Panel holds—contrary to all prior cases—that the plaintiff must initially prove that anticompetitive effects suffered by the buyers on one side of the platform are not outweighed by procompetitive effects experienced by the buyers on the other

side of the platform *before* the burden of offering a procompetitive justification shifts to the defendant. No court has previously required the plaintiff to bear such an initial burden. Requiring proof of net effects on both sides of the platform not only requires the plaintiff to anticipate defendant's purported justifications. It also requires an extremely complex tracing of competitive effects across two markets, just the type of rule of reason analysis the courts have rejected. *Amici* respectfully submit that the burden placed on the plaintiff by the Panel is an incorrect and unwarranted departure from the rule of reason that will needlessly harm to antitrust enforcement.

III. Proper Analysis of Relevant Markets

Brown Shoe Co. v. United States, 370 U.S. 294 (1962), sets forth the test for defining a relevant market. It holds that "[t]he outer boundaries of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it." *Id.* at 325. The analysis begins with identifying the relevant purchasers and their use of the product or service. It then asks what buyers will do when faced with a small but significant non-transitory price increase; if they shift to other products, those products are properly within the relevant market.

The Panel reversed the relevant market ruling below because the district court "expressly 'decline[d] to . . . collaps[e]" the markets for the services sold to cardholders and the services sold to merchants "into a single platform-wide market."

Panel Opinion ("PO") at 36. The services sold to merchants, however, are completely different than the services sold to cardholders. A merchant does not buy the services sold to cardholders and cardholders do not buy services sold to merchants. The services are not close substitutes and are not reasonably interchangeable in use. There is no cross-elasticity of demand between the two services. In response to an increase in price for network services a merchant cannot switch to purchasing cardholder services. Under *Brown Shoe*, the merchant and cardholder services cannot be placed in the same relevant market.

The Supreme Court has expressly stated that the two sides of a two-sided platform are in "separate though interdependent markets." *Times-Picayune Publ'g Co. v. United States*, 345 U.S. 594, 610 (1953) (newspaper advertisers and readers). This Court has expressly so held in *United States v. Visa U.S.A., Inc.*, 344 F.3d 229, 238-39 (2d Cir. 2003) (merchants network services and cardholders payment card services). There is no contrary legal authority. The Panel erred by departing from this well-established and controlling precedent.

IV. Proper Application of the Antitrust Rule of Reason

The rule of reason employs a three-step burden-shifting analysis. *Geneva Pharm. Tech. Corp. v. Barr Labs, Inc.*, 386 F.3d 485, 509 (2d Cir. 2009). First, the plaintiff bears the burden of demonstrating "an adverse effect on competition as a whole." *Id.* at 506-07. The meaning of the phrase "as a whole" is that the injury

must be to market competition and not just to a competitor.[3] Second, if the plaintiff shows an adverse effect on competition, the burden shifts to the defendant to come forward with evidence of offsetting procompetitive effects. Third, if the defendant presents evidence of procompetitive effects, the burden shifts back to plaintiff to prove, on balance, that the conduct is anticompetitive. *Id*.

The Supreme Court has repeatedly applied this test to two-sided platforms and held that net harm to competition on one side of the platform violates the Sherman Act. For example, the Court held anticompetitive a newspaper's monopolization of the advertising market, even though higher advertising revenues might have benefited readers in the form of lower newspaper prices, higher-quality articles, or better services. *Lorain Journal Co. v. United States*, 342 U.S. 143 (1951). *See also NCAA v. Bd. of Regents*, 468 U.S. 85, 109 (1984) (holding unlawful, without "elaborate industry analysis," restrictions on televised college football games notwithstanding benefits of higher revenues to the colleges and the promotion of amateur football).

Those cases follow the well-established rule that it is improper to balance anticompetitive effects in one market against procompetitive effects in another. *See United States v. Topco Assocs., Inc.*, 405 U.S. 596, 610 (1972) ("[The freedom to

[3] *See Cap. Imaging Assocs. v. Mohawk Valley Med. Assocs.*, 996 F.2d 537, 543 (2d Cir. 1993); *K.M.B. Warehouse Dist., Inc. v. Walker Mfg. Co.*, 61 F.3d 123, 127 (2d Cir. 1995); *Tops Mkt., Inc. v. Quality Mkts., Inc.*, 142 F.3d 90, 96 (2d Cir. 1998).

compete] cannot be foreclosed with respect to one sector of the economy because certain private citizens or groups believe that such foreclosure might promote greater competition in a more important sector of the economy."). Courts have an "inability to weigh, in any meaningful sense, destruction of competition in one sector of the economy against promotion of competition in another sector." *Id.* at 609-10.

The district court found that Amex's anti-steering rules obstructed horizontal price competition among the payment-card networks for sales to merchants and caused the prices that those networks charge merchants to increase "dramatically." 88 F. Supp. 3d 143, 151, 207-09, 215. The Panel holds that to be an insufficient showing of an adverse effect on competition to shift the burden to Amex to present evidence of offsetting procompetitive effects. PO at 54-55, 57-58. According to the Panel, the Government first had to show that purported procompetitive benefits to *cardholders* did not outweigh the adverse effects on horizontal price competition on the merchants. *Id*. at 57-59.

The burden placed on the Government by the Panel is unprecedented and undue. Consistent with the Supreme Court's longstanding treatment of two-sided platforms, the destruction of price competition for sales to merchants among all the payment networks constitutes an adverse effect on competition which (1) shifts the burden to the defendant to present evidence of offsetting procompetitive benefits and (2) can only be justified by procompetitive benefits to the merchant side of the

platform. The Panel erred as to both of those points.

The plaintiff should not have to speculate as to what evidence of procompetitive effects a defendant might offer on the other side of the platform and then refute that hypothetical evidence in order to meet its initial burden. The rule of reason properly places on defendant the burden of demonstrating procompetitive effects because it is the defendant who has the incentive to present such evidence. *California Dental Assoc. v. FTC*, 526 U.S. 756, 792 (1999) (Breyer, J., concurring) (agreeing with majority that burden of presenting evidence of procompetitive effects falls on the defendant because it "alone would have had the incentive to present such evidence"). If the plaintiff must initially prove that anticompetitive effects are not outweighed by procompetitive effects, then the burden of presenting evidence of procompetitive effects never shifts to the defendant. The entire burden rests on the plaintiff from the start. That result cannot be reconciled with the well-established burden-shifting formulation of the rule of reason.

The Panel's approach not only places the burden on the wrong party, but also requires a complicated tracing of the effects of Amex's merchant price increases from the merchants to the cardholders. Antitrust law disfavors that kind of tracing, in large part because the courts are ill-equipped to engage in such a complex exercise. *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 737, 741-42 (1977) (tracing pass-on effects between different purchaser groups is not permitted because "it

would add whole new dimensions of complexity to treble-damage suits and seriously undermine their effectiveness," even if "economic theory provides a precise formula"); *Simon v. KeySpan Corp.*, 694 F.3d 196, 202 (2d Cir. 2012) (holding there are "too many 'uncertainties and difficulties in analyzing price and output decisions in the real economic world rather than an economist's hypothetical model'" to permit pass-on analysis). Here, the Panel holds that tracing the effects of high merchant prices on cardholders is not only permitted, but required. PO at 57-60. And it does so without any recognition that such a standard is inconsistent with *Illinois Brick* and would render antitrust enforcement difficult, if not impossible, in the many industries with two-sided characteristics.

Amici respectfully submit that rehearing *en banc* should be granted.

Dated: November 21, 2016

Respectfully submitted,

s/ David A. Balto
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CERTIFICATE OF SERVICE

I certify that on November 21, 2016, I caused a copy of the foregoing brief to be served on counsel of record by filing the brief on the Court's ECF system.

s/ David A. Balto

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 29 and Rule 32(a)(7) of the Federal Rules of Appellate Procedure, I certify under penalty of perjury that the foregoing Brief of *Amici Curiae* 23 Antitrust Law Professors and Scholars in Support of Petition for Rehearing *En Banc* is prepared in a proportionally-spaced typeface (14-point Times New Roman) and contains 1,846 words, as calculated by the Microsoft Word 2013 word processing program and excluding parts of the Brief exempted by Rule 32(a)(7)(B)(iii).

s/ David A. Balto

Exhibit 1

Identity and Interest of *Amici Curiae*

The *amici* listed below are distinguished antitrust law professors and scholars. Their affiliations are set forth below for purposes of identification. The *amici* join this *amicus* brief in their individual capacities only.

- **Herbert Hovenkamp**, Ben and Dorothy Willie Chair and Professor of Law, University of Iowa College of Law. He has been the Rockefeller Foundation Fellow, Harvard Law School; Fellow of the American Council of Learned Societies, Harvard Law School; Faculty Scholar, University of Iowa; Presidential Lecturer, University of Iowa; and the recipient of the University of Iowa Collegiate Teaching Award. He is the senior surviving author of *Antitrust Law* (formerly with Phillip Areeda & Donald Turner), currently 22 volumes.

- **Harry First**, Charles L. Denison Professor of Law at New York University School of Law and Co-Director of the law school's Competition, Innovation, and Information Law Program. From 1999-2001 he served as Chief of the Antitrust Bureau of the Office of the Attorney General of the State of New York. Professor First is the co-author of the casebook Free Enterprise and Economic Organization: Antitrust (7th Ed. 2014). He was twice a Fulbright Research Fellow in Japan and taught antitrust as an adjunct professor at the University of Tokyo. Professor First is a contributing editor of the *Antitrust Law* Journal, foreign antitrust editor of the *Antitrust Bulletin*, a member of the executive committee of the Antitrust Section of the New York State Bar Association, and a member of the advisory board and a Senior Fellow of the American Antitrust Institute.

- **Einer R. Elhauge**, Petrie Professor of Law at Harvard Law School, where he writes and teaches on Antitrust Law and Economics. Professor Elhauge is author of U.S. Antitrust Law & Economics, co-author of Global Antitrust Law & Economics, co-author of Areeda, Elhauge & Hovenkamp, Vol X, Antitrust Law,editor of the Research Handbook on the Economics of Antitrust Law, and the author of articles on antitrust law and economics that have won awards and appeared in peer-reviewed economics journals and top law reviews. He is also President of Legal Economics, LLC, former FTC Special Employee on Antitrust Issues, member of the editorial board for Competition Policy International, and member of the advisory boards for the

Journal of Competition Law & Economics and for the Social Sciences Research Network on Antitrust Law & Policy.

- **Eleanor M. Fox**, Walter J. Derenberg Professor of Trade Regulation at New York University School of Law. She was awarded an inaugural Lifetime Achievement Award in 2011 by the *Global Competition Review* for "substantial, lasting, and transformational impact on competition policy and practice." She received the inaugural award for outstanding contributions to the competition law community in 2015 by the Academic Society for Competition Law, the world network of academic law and economic competition experts.

- **Stephen Calkins**, Professor of Law, Wayne State University. Professor Calkins is the author of one of the seminal Antitrust text books - *Antitrust Law: Policy and Practice* (4th ed. 2008) (with C. Paul Rogers III, Mark R. Patterson and William R. Andersen). He is also the author of *Antitrust Law and Economics in a Nutshell* (5th ed. 2004) (with Ernest Gellhorn and William Kovacic) and served as a co-editor of the *ABA Antitrust Section, Consumer Protection Law Developments* (2009). Professor Calkins is a life member of the American Law Institute, a fellow of the American Bar Foundation and a member of the advisory boards for the American Antitrust Institute, Sedona Conference and National State Attorneys General Program Advisory Project at Columbia Law School. For the American Bar Association, he has served on the Councils of the Sections of Administrative Law and Regulatory Practice and the Section of Antitrust Law (two, three-year terms). He is a former chair of the Association of American Law School's Antitrust and Economic Regulation Committee.

- **Spencer Weber Waller**, Interim Associate Dean for Academic Affairs, Professor and Director for Consumer Antitrust Studies at Loyola University of Chicago, School of Law.

- **Andrew Chin**, Professor of Law, University of North Carolina School of Law. Professor Chin is the recipient of a Rhodes Scholarship and a National Foundation Graduate Fellowship. He clerked for Judge Henry H. Kennedy Jr. of the United States District Court for the District of Columbia and

assisted Judge Thomas Penfield Jackson and his law clerks in the drafting of the findings of fact in *United States v. Microsoft Corporation*.

- **Peter Carstensen**, Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School. He previously served as an attorney in the Antitrust Division of the United States Department of Justice. Professor Carstensen is also a Senior Fellow of the American Antitrust Institute.

- **Shubha Ghosh**, Vilas Research Fellow & George Young Bascom Professor in Business Law, University of Wisconsin School of Law. He is also member of the American Law Institute and the American Antitrust Institute.

- **Darren Bush**, Professor of Law and Law Foundation Professor, University of Houston Law Center. Professor Bush served as a co-author with Harry First and the late John J. Flynn on the antitrust casebook FREE ENTERPRISE AND ECONOMIC ORGANIZATION: ANTITRUST (7th Ed.) with Foundation Press.

- **Robert H. Lande**, Venable Professor of Law, University of Baltimore School of Law. Professor Lande is a co-founder and a Director of the American Antitrust Institute, a past chair of the AALS Antitrust Section, and has held many positions in the ABA Antitrust Section. He is also an elected member of the American Law Institute.

- **Robin Feldman**, Harry & Lillian Hastings Professor of Law & Director of the Institute for Innovation Law, U.C. Hastings College of Law. Professor Feldman previously chaired the Executive Committee of the Antitrust Section of the American Association of Law Schools and clerked for The Honorable Joseph Sneed of the U.S. Court of Appeals for the Ninth Circuit. She is also a Fellow of the American Antitrust Institute.

- **Gregory T. Gundlach**, Coggin Distinguished Professor of Marketing in the Coggin College of Business at the University of North Florida. He is also a Director and Senior Fellow at the American Antitrust Institute. Before coming to the University of North Florida in 2003, Professor Gundlach was the John Berry, Sr. Professor of Business at the University of Notre Dame.

- **John B. Kirkwood**, Professor of Law, Seattle University School of Law. He is a Senior Fellow of the American Antitrust Institute and an Adviser to the Institute of Consumer Antitrust Studies. Professor Kirkwood previously directed the Planning Office, the Evaluation Office, and the Premerger Notification Program at the FTC's Bureau of Competition in Washington, D.C. and later managed cases and investigations at the Northwest Regional Office.

- **Joshua P. Davis**, Associate Dean for Academic Affairs, Director of the Center for Law and Ethics, Professor, and Dean's Circle Scholar, University of San Francisco, School of Law. Dean Davis is on the board for the American Antitrust Institute, and he previously served as a Fellow at the Center for Applied Legal Studies at Georgetown University Law Center and as the clerk to the Hon. Patrick E. Higginbotham on the Fifth Circuit Court of Appeals.

- **Norman W Hawker**, Professor of Finance and Commercial Law, Western Michigan University. He is also a Senior Fellow of the American Antitrust Institute.

- **Chris Sagers**, James A. Thomas Distinguished Professor of Law. He is a member of the American Law Institute, a Senior Fellow of the American Antitrust Institute, and a leadership member of the ABA Antitrust Section.

- **Thomas J. Horton**, Professor of Law and Heidepriem Trial Advocacy Fellow at the University of South Dakota School of Law.

- **Thomas L. Greaney**, Chester A. Myers Professor of Law & Co-Director, Center for Health Law Studies, Saint Louis University School of Law. Professor Greaney has also been a Fulbright Fellow in Brussels. He is a member of the American Antitrust Institute Advisory Board and Academic Links Committee of the American Association of Health Lawyers.

- **Warren Grimes**, Associate Dean for Research and Irving D. and Florence Rosenberg Professor of Law, Southwestern Law School. Dean Grimes is co-author of the definitive antitrust law text for lawyers and law students,

The Law of Antitrust: An Integrated Handbook with the late Professor Lawrence Sullivan. Dean Grimes has chaired the Los Angeles County Bar Association Antitrust and Trade Regulation Section and is a member of the Executive Committee, and he serves on the Advisory Board of the American Antitrust Institute.

- **Mark R. Patterson**, Mark R. Patterson, Professor of Law, Fordham University School of Law. Professor Patterson has also been a visiting professor at several law schools in the U.S. and at Bocconi University in Milan. He was a co-author of *Antitrust Law: Policy and Practice* (4th ed. 2008) (with C. Paul Rogers III, Stephen Calkins, and William R. Andersen) and is the author of the forthcoming book *Antitrust Law in the New Economy: Google, Yelp, LIBOR, and the Control of Information*(Harvard 2017).

- **Marina Lao**, Professor of Law, Seton Hall Law. Professor Lao was previously awarded a Fulbright Fellowship. She currently serves as a member of the advisory board of the American Antitrust Institute, and was Chair of the Section of Antitrust and Economic Regulation of the Association of American Law Schools.

- **Michael A. Carrier**, Professor of Law, Rutgers Law School. Professor Carrier is a co-author of the leading IP/antitrust treatise, *IP and Antitrust Law: An Analysis of Antitrust Principles Applied to Intellectual Property Law* (2d ed. 2009, and annual supplements, with Hovenkamp, Janis, Lemley, and Leslie). He is a member of the Board of Advisors of the American Antitrust Institute and is a past chair of the Executive Committee of the Antitrust and Economic Regulation section of the Association of American Law Schools.