

Geoffrey Manne Oral Senate Testimony on why US antitrust law should not emulate the EU  
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On December 19, 2018, ICLE President and Founder, Geoffrey A. Manne testified before the US Senate Committee on the Judiciary's Subcommittee on Antitrust, Competition Policy and Consumer Rights to discuss the differences between the antitrust regimes in the US and the EU, and the inadvisability of importing EU policy into the US. Mr. Manne noted:

An increasing number of scholars and advocates have argued recently that US antitrust law should be “reformed” in order to invigorate antitrust enforcement and sidestep the judicially-imposed constraints that have developed over antitrust’s 100 year history. Explicitly or not, these efforts seek to bring about a shift in US antitrust that would make it more closely resemble competition law in Europe. While these scholars and advocates assert that their proposals would improve economic conditions in the US, economic logic and the apparent reality from Europe suggest otherwise.

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Although the differences between US and EU antitrust law can appear minor or superficial at a glance, even small differences can have important consequences, and the cumulative effect of the differences is significant. Although the Commission is often quite careful to couch its decision-making in economic language, in practice, analytical economic administration of antitrust is far from the norm.

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Despite asserting that EU competition law is “better” than that of the US, and that emulating the EU will improve economic conditions in the US, references to the likely outcome — positive or negative — of the expanded antitrust experiment in the EU are not provided. Moreover, as noted below, to the extent the European experience is assessed at all, these assessments are manifestly unreliable.

The full testimony documents the many relevant differences, in particular the way that

competition law in the EU and its member states vests enforcers with broad discretion. By comparison, the US standards impose requirements of conducting careful economic analysis in order to prove a competitive harm. The net effect is that the US antitrust approach provides both certainty for firms and consumers, and discipline for enforcers.

The oral testimony is [available here](#).

The full video of the hearing is [available here](#).

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