Applying the Rule of Reason In Antitrust Cases

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Among many topics explored by the Antitrust Section this past year, we devoted several programs to courts' interpretation and application of the "rule of reason," the presumptive mode of analysis for determining whether restraints of trade violate antitrust law. Although it varies from circuit to circuit, rule of reason analysis typically involves a burden-shifting approach designed to evaluate whether the restraint's anticompetitive effect outweighs the procompetitive effect for which the restraint is reasonably necessary. We examined how two courts—*O'Bannon* v. *Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049 (9th Cir. 2015) and *U.S.* v. *American Express*, 88 F. Supp. 3d 143 (E.D.N.Y. 2015)—applied the rule of reason.