

## **22.º SEMINÁRIO INTERNACIONAL DE DEFESA DA CONCORRÊNCIA**

### **PAINEL 6 - Buying group: análise antitruste de compra coletiva |**

Competitors' buying groups

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# Competitors' Buying Groups: A U.S. Law Perspective

IBRAC Seminário Internacional De Defesa Da Concorrência

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# Applicable U.S. Laws and FTC/DOJ Guidelines for Buying Groups

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- Sherman Act § 1, 15 U.S.C. § 1
- U.S. DOJ/FTC Competitor Collaboration Guidelines, § 3.31(a) (2000)
- U.S. DOJ/FTC Statements of Antitrust Enforcement Policy in Health Care (1996)
- U.S. DOJ Antitrust Division Business Review Letters
- U.S. FTC Advisory Opinions
- Court Decisions

# Key Issues in Assessment of Buying Groups

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- Rule of Reason vs. Per Se Analysis?
- Potential for Competitive Harm?
  - Monopsony buyer?
    - Market power. Combined share of participants.
  - Coordination facilitated by standardizing costs?
    - Input's % of total cost of finished good is key
  - "Spillover communications"?
- Efficiencies generated by buying group independent of aggregated purchasing power?

# Examples: Good and Bad

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- Buying groups in distribution industries:
  - Office supply distribution
  - Foodservice distribution
- *Todd vs. Exxon Corp. et. al.*

# Key Principles Emerging from US Law

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- "Safe harbor" for competitor buying groups:
  - Collective market share <35%
  - Input comprises <20% of total product cost
- Exclusivity requirement increases risk
  - Minimum purchase commitments less risky
- Negotiation with supplier by third party preferable
- Minimize communications between buying group members
  - Otherwise spillover effects always a risk

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