Antitrust crackdown on the rise

By Jerry Crimmins
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With the pace of corporate mergers speeding up as the economy improves, antitrust enforcement in the U.S. and globally is heating up in a big way, according to a Loyola University Chicago School of Law professor and a national research firm.

In the U.S., the antitrust spotlight is currently on health care, says the "2013 Global Antitrust Trends" study from the research firm Policy and Regulatory Report (PaRR).

That approach can be spotted in in a major U.S. Supreme Court decision last week, in which the justices ruled that a local hospital authority's acquisition of a second hospital in Georgia was subject to antitrust laws - even though a local government agency was the acquirer.

"It's absolutely a landmark decision," said Cecile Kohrs Lindell, senior antitrust correspondent for PaRR. "The Supreme Court recognizes that competition is good for consumers."

The case was FTC v. Phoebe Putney Health System, Inc.

Last year, Lindell said, the Federal Trade Commission blocked a merger of two Rockford hospital systems on antitrust grounds.

"I think health care is front and center" in antitrust matters "for the Supreme Court, for agencies, and lower courts," said Spencer Weber Waller, director of the Institute for Consumer Antitrust Studies at Loyola University Chicago School of Law.

The PaRR report says the FTC's new focus results from the fact that health care now accounts for about one-third of the U.S. gross domestic product.

In global antitrust developments, the U.S. Department of Justice moved in January to block Anheuser-Busch InBev's acquisition of Grupo Modelo, the Mexican beer maker that produces Corona.

That same month, the European Commission, which rules on antitrust matters, blocked United Parcel Service's acquisition of Europe-based TNT Express.

The American move against InBev seems to represent traditional antitrust enforcement to prevent overconsolidation that could drive up beer prices, said Lindell, an attorney who formerly worked for the FTC.
Europe's move blocking UPS' acquisition, however, happened "in part because Europe's antitrust standards are based on politics," she said.

The European Commission wanted to prevent TNT from being "in the pocket" of an American company, Lindell said.

"There is some concern that in Europe and around the world, antitrust reviews will be hijacked, not for antitrust reasons, but for other grounds," Lindell said.

Reuben Miller, North American editor for PaRR, said some nations like to protect a company that is "a national champion or crown jewel asset" from foreign acquisition.

The blocked beer merger and the blocked UPS deal highlight the fact that multinational companies and lawyers today face antitrust enforcement efforts from more than 120 countries, Waller said.

Twenty years ago, he said, only "a couple dozen" countries had any serious antitrust enforcement.

In Waller's view, the growing number of countries that have antitrust enforcement "is a really a good thing if you believe in capitalism for the benefit of consumers."

Lindell, however, said it can be a bad thing "if it's misinterpreted and misused by regulators."

The PaRR report also says a probe by the European Commission into Google's online search services is "finally near its end."

The European Commission wants to find a way to tie up Google, making it a less effective search engine and letting European rivals gain a larger share of the technology market, Lindell said.

"Google has serious antitrust risks in Europe that they don't have in the U.S.," Waller said. "If you go back 20 years, that's simply unthinkable. But it's the world we live in now."