

## International Antitrust

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This article outlines the year's most important antitrust developments in thirteen jurisdictions.

### I. Australia

#### A. LEGISLATIVE DEVELOPMENTS

There were no relevant amendments of Australian law in 2014. The Competition Policy Review released a draft report in September with recommendations on misuse of market power prohibitions, cartel prohibitions, replacing bespoke price signaling laws with “concerted practices” laws, changing the unused formal merger clearance process, and removing *per se* prohibitions on third line forcing.<sup>2</sup>

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2. *The Draft Report*, COMPETITION POLICY REV. (Sept. 22, 2014), <http://competitionpolicyreview.gov.au/files/2014/09/Competition-policy-review-draft-report.pdf>.

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**B. MERGERS**

The Australian Competition and Consumer Commission (ACCC) opposed four proposed transactions, including the acquisition of a state-owned electricity generator by an electricity retailer. Subsequently, the Australian Competition Tribunal (ACT) authorized the merger on public benefit grounds, the first ever merger authorization from ACT.<sup>3</sup>

**C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES**

The ACCC unsuccessfully prosecuted two airlines on price fixing charges for airfreight services, as the relevant conduct was found not to have occurred in a “market in Australia.”<sup>4</sup> The ACCC has not announced whether it will appeal.

In late 2013, the ACCC unsuccessfully prosecuted ANZ Bank for allegedly entering into an anticompetitive agreement with a distributor (mortgage broker).<sup>5</sup> In considering a similar distribution relationship, the Federal Court found that a travel agent attempted to enter into anti-competitive arrangements with several airlines and imposed a fine of A\$11 million.<sup>6</sup> Both decisions have been appealed.<sup>7</sup>

The ACCC released a revised immunity policy for cartel conduct, removing the “clear leader” exception and clarifying immunity process and requirements.<sup>8</sup>

**D. ABUSE OF DOMINANCE**

Pfizer faced proceedings alleging misuse of market power and exclusive dealing in relation to the supply of a generic version of the “blockbuster” drug atorvastatin, ahead of the expiry of Pfizer’s patent.<sup>9</sup> Judgment is expected in 2015.

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3. *Application for Authorisation of Acquisition of Macquarie Generation by AGL Energy Ltd.* [2014] ACompT 1 (Competition Tribunal) (Austl.).

4. *ACCC v Air New Zealand Ltd.* [2014] FCA 1157 (Fed. Court of Austl.).

5. *ACCC v Australia & New Zealand Bank. Grp. Ltd.* [2013] FCA 1206 (Fed. Court of Austl.).

6. *ACCC v Flight Centre Ltd. (No 3)* [2014] FCA 292 (Fed. Court of Austl.); *ACCC v Flight Centre Ltd. (No 2)* [2013] FCA 1313 (Fed. Court of Austl.); see also Press Release, Austl. Competition & Consumer Comm’n, \$11 million penalties imposed on Flight Centre (Mar. 28, 2014), available at <http://www.accc.gov.au/media-release/11-million-penalties-imposed-on-flight-centre>.

7. *ACCC v Flight Centre Ltd.*, AUSTRALIAN COMPETITION LAW, <http://www.australiancompetitionlaw.org/cases/2013flightcentre.html#appeal> (last visited Jan. 23, 2015).

8. *ACCC immunity and cooperation for cartel conduct*, AUSTRALIAN COMPETITION & CONSUMER COMM’N (Sept. 2014), [https://www.accc.gov.au/system/files/884\\_ACCC%20immunity%20and%20cooperation%20policy%20for%20cartel%20conduct\\_FA.pdf](https://www.accc.gov.au/system/files/884_ACCC%20immunity%20and%20cooperation%20policy%20for%20cartel%20conduct_FA.pdf).

9. Press Release, Austl. Competition & Consumer Comm’n, ACCC takes action against Pfizer Australia for alleged anti-competitive conduct (Feb. 13, 2014), available at <https://www.accc.gov.au/media-release/accc-takes-action-against-pfizer-australia-for-alleged-anti-competitive-conduct>.

## II. Brazil

### A. LEGISLATIVE DEVELOPMENTS

The Administrative Council for Economic Defense's (CADE) Resolution No. 2 sets out the procedures for filing merger transactions and prescribes the requisite filing form.<sup>10</sup> It also addresses: (i) the concept of an economic group, (ii) what transactions should be filed under the summary proceeding, and (iii) when minority shareholdings must be notified. In 2014, Resolution No. 2 was amended to: (i) alter the concept of economic group for investment funds, (ii) exempt proposed consolidation of control from notification, and (iii) increase market share thresholds for vertically integrated companies eligible for the summary proceeding from twenty percent to thirty percent.<sup>11</sup>

CADE published another resolution in 2014<sup>12</sup> defining the concept of "associative agreement" for mandatory filing.<sup>13</sup> According to this resolution, an agreement shall be considered associative if its term exceeds two years and results in horizontal or vertical cooperation or in risk sharing, creating an interdependent relationship between parties. Now, an interdependent relationship arises when the joint market share in horizontal agreements exceeds twenty percent, or, for vertical agreements, one of party's share exceeds thirty percent and (i) the parties share revenues or losses or (ii) the agreement mandates exclusivity.

### B. MERGERS

CADE rejected the first proposed merger under the New Antitrust Law. The acquisition of Solvay Indupa by Braskem was rejected on grounds that it would harm competition in the polyvinyl chloride market in South America.<sup>14</sup>

CADE's General Superintendence (GS) recommended the approval of the multijurisdictional merger of Holcim and Lafarge, conditional on a Merger Control Agreement, because the transaction would result in a high market concentration in the cement and ready-mix concrete markets in parts of Brazil.<sup>15</sup>

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10. Resolução No. 2, de 29 de maio de 2012 (Resolution No. 2), DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 1.10.2014 (Braz.).

11. Resolução No. 9, de 1 de outubro de 2014 (Resolution No. 9), DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 7.10.2014 (Braz.).

12. Resolução No. 10, de 29 outubro de 2014, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 4.11.2014 (Braz.).

13. Lei No. 12.529, de 30 de novembro de 2011, DIÁRIO OFICIAL DA UNIÃO [D.O.A.] de 1.12.2011 (Braz.).

14. C.A.D.E. [Administrative Council of Economic Defense], Ato de Concentração No. 08700.000436/2014-27, Relator: Conselheiro Gilvandro Vasconcelos Coelho de Araujo, 12.11.2014, 215, DIÁRIO OFICIAL DE UNIÃO [D.O.U.], 6.11.2014, 32 (Braz.); *Químicos Defendem Venda da Solvay a Braskem*, ABCD MAIOR (Nov. 13, 2014), [http://www.abcdmaior.com.br/noticia\\_exibir.php?noticia=63021](http://www.abcdmaior.com.br/noticia_exibir.php?noticia=63021).

15. C.A.D.E. [Administrative Council of Economic Defense], Ato de Concentração No. 08700.007621/2014-42, Relator: Conselheiro Alessandro Serafin Octaviani Luis, 10.12.2014, 235, DIÁRIO OFICIAL DE UNIÃO [D.O.U.], 17.12.2014, 32 (Braz.).

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C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

CADE censured a cement cartel, marking the first ever imposition of divestitures in a cartel case.<sup>16</sup> R\$3.1 billion in fines were imposed on companies, individuals, and organizations. A motion for clarification is pending.

D. ABUSE OF DOMINANCE

The GS accused Telemar Norte Leste of abusing its dominance in telecommunications.<sup>17</sup> The company is said to have previously monitored its clients' phone calls to a new entrant's call center in 2000, when Telemar had roughly ninety percent market share.<sup>18</sup>

E. COURT DECISIONS

CADE has appealed from a Supreme Federal Court's (SFC) decision allowing any federal court to hear challenges to CADE's decisions. CADE argues that such claims should be filed before the Supreme Federal Court in Brasilia.<sup>19</sup>

In June, the SFC denied CADE's extraordinary appeal regarding jurisdiction over bank mergers, confirming the Brazilian Central Bank's exclusive jurisdiction over bank mergers.<sup>20</sup>

### III. Canada

A. LEGISLATIVE DEVELOPMENTS

There were no significant legislative amendments in Canada this year, but the Competition Bureau (Bureau) released new guidance regarding communications during the course of its inquiries;<sup>21</sup> price maintenance;<sup>22</sup> and intellectual property.<sup>23</sup>

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16. C.A.D.E. [Administrative Council of Economic Defense], Processo Administrativo No. 08012.011142/2006-79, Relator: Conselheiro Gilvandro Vasconcelos Coelho de Araujo, 21.5.2014, 96, DIÁRIO OFICIAL DE UNIÃO [D.O.U.], 22.5.2014, 24 (Braz.).

17. Processo Administrativo [Administrative Proceeding] No. 08012.003918/2005-04, Telemar Norte Leste S/A., Judgment.

18. *Telemar Norte Leste Highlights From 4th Quarter/01*, SEC, [http://www.sec.gov/Archives/edgar/containers/fix029/1066113/02/000106611302000010/t3\\_exp-010302.txt](http://www.sec.gov/Archives/edgar/containers/fix029/1066113/02/000106611302000010/t3_exp-010302.txt) (last visited Jan. 25, 2014).

19. S.T.F. [Supreme Federal Trib.], Recurso Extraordinário No. 627.709 D.F., Relator: Min. Ricardo Lewandowski, 20.8.2014, 170, DIÁRIO OFICIAL DE UNIÃO [D.O.U.], 3.9.2014, 34 (Braz.).

20. S.T.F. [Supreme Federal Trib.], Recurso Extraordinário No. 664.189 D.F., Relator: Min. Dias Toffoli, 9.6.2014, 148, DIÁRIO OFICIAL DE UNIÃO [D.O.U.], 31.6.2014, 644, 644–645 (Braz.).

21. *Bulletin: Communication During Inquiries*, CAN. COMPETITION BUREAU (June 26, 2014), [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-doc-com-inquiries-e.pdf/\\$FILE/cb-doc-com-inquiries-e.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-doc-com-inquiries-e.pdf/$FILE/cb-doc-com-inquiries-e.pdf).

22. *Enforcement Guidelines: Price Maintenance (Section 76 of the Competition Act)*, CAN. COMPETITION BUREAU (Sept. 15, 2014), [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-eg-price-maintenance-e.pdf/\\$file/cb-eg-price-maintenance-e.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-eg-price-maintenance-e.pdf/$file/cb-eg-price-maintenance-e.pdf).

23. *Enforcement Guidelines: Intellectual Property*, CAN. COMPETITION BUREAU (Sept. 18, 2014), [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-eg-ipegs-e.pdf/\\$file/cb-eg-ipegs-e.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-eg-ipegs-e.pdf/$file/cb-eg-ipegs-e.pdf).

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**B. MERGERS**

The Bureau sought structural and behavioral merger remedies, notwithstanding its traditional preference for the former.<sup>24</sup> For example, Loblaw's acquisition of Shoppers Drug Mart was approved subject to the divestiture of certain stores and behavioral restrictions regarding suppliers.<sup>25</sup>

Burger King's C\$12.5 billion acquisition of Tim Hortons was cleared without remedies due to remaining competition.<sup>26</sup>

**C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES**

The Bureau ceased its LIBOR investigations but remained active in international and domestic cartel investigations.<sup>27</sup> For example, the Bureau obtained fines from Japanese bearings manufacturer NSK and Panasonic.<sup>28</sup>

**D. ABUSE OF DOMINANCE**

The Bureau settled against two water heater companies regarding return policies that allegedly prevented consumer switching.<sup>29</sup> Settlements were also reached following eBook pricing investigations,<sup>30</sup> although retailer Kobo is challenging those settlements.<sup>31</sup>

**E. COURT DECISIONS**

A Competition Tribunal decision concerning access restrictions for the Toronto Multiple Listing Service was overturned.<sup>32</sup> This decision establishes that an industry association can be found to engage in anticompetitive behavior under the abuse of dominance provisions.

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24. *Bulletin: Merger Remedies in Canada*, CAN. COMPETITION BUREAU (Sept. 22, 2006), [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/Mergers\\_Remedies\\_PDF\\_EN1.pdf/\\$FILE/Mergers\\_Remedies\\_PDF\\_EN1.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/Mergers_Remedies_PDF_EN1.pdf/$FILE/Mergers_Remedies_PDF_EN1.pdf).

25. *Competition Bureau Review of the Proposed Acquisition of Shoppers Drug Mart Corporation by Loblaw Companies Limited, Position Statements*, CAN. COMPETITION BUREAU (Mar. 21, 2014), <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03703.html>.

26. Press Release, Can. Competition Bureau, Competition Bureau clears Burger King/Tim Hortons merger (Oct. 28, 2014), *available at* <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03828.html>.

27. Press Release, Can. Competition Bureau, Competition Bureau Discontinues Its LIBOR Investigation (Jan. 3, 2014), *available at* <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03642.html>.

28. Press Release, Can. Competition Bureau, Japanese Bearings Manufacturer Fined \$4.5 Million (Jan. 30, 2014), *available at* <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03652.html>; Press Release, Can. Competition Bureau, Panasonic Fined \$4.7 Million for Rigging Bids (Feb. 20, 2014), *available at* <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03669.html>.

29. Press Release, Can. Competition Bureau, Competition Bureau Strengthens Competition in Ontario's Water Heater Industry (Nov. 6, 2014), *available at* <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03836.html>.

30. Press Release, Can. Competition Bureau, Competition Bureau Takes Action to Promote Competition for eBooks (Feb. 7, 2014), *available at* <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03658.html>.

31. *Kobo Inc. v Commissioner of Competition*, 2014 Comp Trib 2 (Can.).

32. *Comm'r of Competition v. Toronto Real Estate Bd.*, 2014 F.C.A. 29 (Can. Fed. C.A.).

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A class action concerning alleged price fixing for polyether polyol was certified in March,<sup>33</sup> following the Supreme Court of Canada's "Trilogy," which decided that indirect purchasers have a cause of action.<sup>34</sup>

#### IV. China

##### A. LEGISLATIVE DEVELOPMENTS

The Ministry of Commerce (MOFCOM), responsible for merger review under the Anti-Monopoly Law (AML), published Rules on Thresholds for Simple Cases<sup>35</sup> and updated the Guidelines for Notification of Concentration.<sup>36</sup> The National Development and Reform Commission (NDRC), responsible for non-merger price violations, issued Rules on Reporting of Price Related Violations<sup>37</sup> and Rules on Administrative Penalty for Price-Related Violations.<sup>38</sup> The State Administration for Industry and Commerce (SAIC), responsible for non-merger non-pricing antitrust enforcement, issued draft rules on antitrust and intellectual property rights for comment.

##### B. MERGERS

MOFCOM unconditionally cleared over 150 mergers<sup>39</sup> and cleared twenty-three under the simple case procedure.<sup>40</sup> MOFCOM imposed conditions in four cases<sup>41</sup> and blocked the proposed P3 Network alliance of major shipping companies.<sup>42</sup>

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33. *Crosslink Technology Inc. v. BASF Canada*, 2014 ONSC 1682 (Can. Ont. S.C.J.) (unreported).

34. *Infinion Tech. AG v. Option consommateurs*, [2013] 3 S.C.R. 600 (Can.); *Sun-Rype Prods. Ltd. v. Archer Daniels Midland Co.*, [2013] 3 S.C.R. 545 (Can.); *Pro-Sys Consultants Ltd. v. Microsoft Corp.*, [2013] 3 S.C.R. 477 (Can.).

35. Guanyu Jingyingzhe Jizhong Jianyi Anjian Shiyong Biaozhun de Zanxing Guiding [Interim Provisions on the Standards Applicable to Simple Cases of Concentration of Undertakings promulgated by the People's Rep. of China MOFCOM, Feb. 11, 2014, effective Feb. 12, 2014] (China), available at <http://fldj.mofcom.gov.cn/article/c/201409/20140900743277.shtml>.

36. Guanyu jingying zhe jizhong shenbao de zhidao yijian [Guiding Opinions on the Application for Concentration of Undertakings (promulgated by the People's Rep. of China MOFCOM, June 6, 2014, effective June 6, 2014) (China), <http://fldj.mofcom.gov.cn/article/c/201406/20140600614679.shtml>].

37. Jiage Weifa Xingwei Jubao Chuli [Rules on Reporting of Price Related Violations promulgated by National Development and Reform Commission, Jan. 15, 2014, effective May 1, 2014] (China), available at [http://jjs.ndrc.gov.cn/zcfg/201401/t20140121\\_576448.html](http://jjs.ndrc.gov.cn/zcfg/201401/t20140121_576448.html).

38. Guifan Jiage Xingzheng Chufaquan de Ruogan [Rules on Reporting of Price Related Violations promulgated by National Development and Reform Commission, June 7, 2014, effective July 1, 2014], (China), available at [http://jjs.ndrc.gov.cn/zcfg/201406/t20140618\\_615520.html](http://jjs.ndrc.gov.cn/zcfg/201406/t20140618_615520.html).

39. See generally Unconditional Clearance of Concentrations of Undertakings webpages (the People's Rep. of China MOFCOM) (China), <http://fldj.mofcom.gov.cn/article/zcfb/201404/20140400540463.shtml>; *id.* available at <http://fldj.mofcom.gov.cn/article/zcfb/201407/20140700650711.shtml>; *id.* available at <http://fldj.mofcom.gov.cn/article/zcfb/201410/20141000755915.shtml>.

40. Simple Case Procedure Cases the People's Rep. of China MOFCOM) (China), available at <http://fldj.mofcom.gov.cn/article/jyzizyajs/>.

41. Conditional Approval Decisions webpage (the People's Rep. of China MOFCOM) (China), available at <http://fldj.mofcom.gov.cn/article/ztxx>.

42. Notice of Antitrust Review Decisions on Prohibiting Concentration of Maersk, MSC, and CMA to Establish Network-Centric Business Promulgated by the People's Republic of China MOFCOM, June 17, 2014) (China), <http://fldj.mofcom.gov.cn/article/ztxx/201406/20140600628586.shtml>.

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C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

Examples of NDRC and SAIC investigations and penalties include: (1) fines of US\$195 million against auto parts manufacturers for price fixing;<sup>43</sup> (2) fines of US\$3 million against glasses and contact lens companies for price maintenance;<sup>44</sup> (3) settling with InterDigital regarding allegations of, among other things, unfairly high royalties;<sup>45</sup> and (4) investigations against Microsoft, Qualcomm, TetraPak, and others for potential abuses of dominance.<sup>46</sup>

Dawn raids were employed in cartel, vertical restraint, and abuse of dominance cases.

D. COURT DECISIONS

China's Supreme People's Court (SPC) rendered its first decision under the AML,<sup>47</sup> setting a precedent for market definition, the assessment of dominance and abusive conduct, and the use of economic analysis.

V. European Union

A. LEGISLATIVE DEVELOPMENTS

In November, Margrethe Vestager succeeded Joaquín Almunia as the European Commission's (EC) Competition Commissioner, with a mission to promote a more economic approach to antitrust enforcement, focusing on financial services, energy policy, the digital single market, state aid, and tax evasion.<sup>48</sup>

Before this transition, the EC adopted revised technology transfer rules,<sup>49</sup> and considered extending the merger notification system to acquisitions of minority shareholdings.<sup>50</sup> Legislation was adopted to facilitate damages claims for antitrust violations.<sup>51</sup>

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43. Administrative Penalty Decisions Promulgated by National Development and Reform Commission (China), *available at* <http://jjs.ndrc.gov.cn/fjgld>.

44. Press Release, Nat'l Dev. and Reform Comm'n, Glasses and Contact Lens Companies Fined for Retail Price Maintenance (May 29, 2014).

45. Press Release, Nat'l Dev. and Reform Comm'n, NDRC Suspends Investigation against InterDigital Regarding Alleged Price Monopoly (May 22, 2014).

46. Press Release, China, Anti-trust Law Enforcement (Sep. 11, 2014). *Microsoft Targeted in China Antitrust Probe*, FT, July 28, 2014, <http://www.ft.com/cms/s/0/355714d0-1665-11e4-93ec-00144feabdc0.html#axzz3JyPjLJzx>.

47. Press Release, SPC, The Supreme Court Announced Final Decision on the First Anti-trust Case (Oct. 16, 2014).

48. Margrethe Vestager, *Letter of mission* (Nov. 1, 2014), [http://ec.europa.eu/commission/sites/cwt/files/commissioner\\_mission\\_letters/vestager\\_en.pdf](http://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/vestager_en.pdf).

49. Press Release, Eur. Comm'n, Antitrust: Commission adopts revised competition regime for technology transfer agreements (Mar. 21, 2014), *available at* [http://europa.eu/rapid/press-release\\_IP-14-299\\_en.htm](http://europa.eu/rapid/press-release_IP-14-299_en.htm).

50. *Towards more effective EU Merger control*, WHITE PAPER (July 9, 2014), *available at* [http://ec.europa.eu/competition/consultations/2014\\_merger\\_control/mergers\\_white\\_paper\\_en.pdf](http://ec.europa.eu/competition/consultations/2014_merger_control/mergers_white_paper_en.pdf).

51. Press Release, Eur. Comm'n, Antitrust: Commission welcomes Council adoption of Directive on anti-trust damages actions (Nov. 10, 2014), *available at* [http://europa.eu/rapid/press-release\\_IP-14-299\\_en.htm](http://europa.eu/rapid/press-release_IP-14-299_en.htm).

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**B. MERGERS**

The cement industry generated several deals in 2014: the EC cleared asset swaps between Holcim and Cemex in France, Germany, the Netherlands,<sup>52</sup> and Spain.<sup>53</sup> The EC also gave its green light to the proposed “megamerger” between Holcim and Lafarge, subject to conditions.<sup>54</sup>

The EC imposed a \_20 million fine on Marine Harvest for failure to notify of its acquisition of Morpol,<sup>55</sup> the second largest EC “gun jumping” fine since *Electrabel*.

**C. ANTICOMPETITIVE PRACTICES**

The EC issued nine cartel decisions, with fines totaling \_1.7 billion,<sup>56</sup> and announced that more fines are to be expected in the ongoing auto parts investigations.<sup>57</sup> Additionally, in its second decision concerning reverse-payment patent settlements, the EC imposed fines totaling \_428 million on Servier and five generic pharmaceutical companies.<sup>58</sup>

**D. ABUSE OF DOMINANCE**

In its first smartphone “patent wars” decision, the EC found that Motorola abused its dominance by seeking an injunction against Apple on the basis of its standard essential patents.<sup>59</sup> The investigation of Google’s search and advertising services continues, after Google’s three successive remedy packages were considered unsatisfactory.<sup>60</sup>

**E. COURT DECISIONS**

The EU Court of Justice underscored that the concept of infringement “by object” (which is close to a *per se* infringement) must be reserved to the most serious types of (i.e.,

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52. Press Release, Eur. Comm’n, Mergers: Commission approves acquisition of Cemex West by Holcim in the building materials sector (June 5, 2014), *available at* [http://europa.eu/rapid/press-release\\_IP-14-639\\_en.htm](http://europa.eu/rapid/press-release_IP-14-639_en.htm).

53. Press Release, Eur. Comm’n, Mergers: Commission approves acquisition of Holcim assets by Cemex in the building materials sector (Sept. 9, 2014), *available at* [http://europa.eu/rapid/press-release\\_IP-14-985\\_en.htm](http://europa.eu/rapid/press-release_IP-14-985_en.htm).

54. Press Release, Eur. Comm’n, Mergers: December 15, 2014, Commission approves acquisition of Lafarge by Holcim, subject to conditions (Dec 15, 2014), *available at* [http://europa.eu/rapid/press-release\\_IP-14-2683\\_en.htm](http://europa.eu/rapid/press-release_IP-14-2683_en.htm)

55. Press Release, Eur. Comm’n, Mergers: Commission fines Marine Harvest \_20 million for taking control of Morpol without prior EU merger clearance (July 23, 2014), *available at* [http://europa.eu/rapid/press-release\\_IP-14-862\\_en.htm](http://europa.eu/rapid/press-release_IP-14-862_en.htm).

56. EC cartel, *available at* <http://ec.europa.eu/competition/cartels/cases/cases.html>.

57. Joaquin Almunia, *Some highlights from EU competition enforcement* (Sept. 19, 2014), *available at* [http://europa.eu/rapid/press-release\\_SPEECH-14-608\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-14-608_en.htm).

58. Press Release, Eur. Comm’n, Antitrust: Commission fines Servier and five generic companies for curbing entry of cheaper versions of cardiovascular medicine (July 9, 2014), *available at* [http://europa.eu/rapid/press-release\\_IP-14-799\\_en.htm](http://europa.eu/rapid/press-release_IP-14-799_en.htm).

59. Press Release, Eur. Comm’n, Antitrust: Commission finds that Motorola Mobility infringed EU competition rules by misusing standard essential patents (April 29, 2014), *available at* [http://europa.eu/rapid/press-release\\_IP-14-489\\_en.htm](http://europa.eu/rapid/press-release_IP-14-489_en.htm).

60. Joaquin Almunia, *EU competition policy and sectoral challenges* (Sept. 12, 2014), *available at* [http://europa.eu/rapid/press-release\\_SPEECH-14-592\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-14-592_en.htm).



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cartel-like) anticompetitive arrangements.<sup>61</sup> It also ruled that umbrella price damage claims are allowed,<sup>62</sup> and confirmed the EU's tough stance on fidelity- or exclusivity-type rebates by dominant companies, despite the effects-based analysis advanced by Intel.<sup>63</sup>

## VI. France

### A. LEGISLATIVE DEVELOPMENTS

A law, entered into force in October, organizes class actions and enables a limited number of government-approved consumer protection associations to bring actions before civil courts and seek damages caused to consumers. The home court of the defendant will have jurisdiction for handling the complaints, and the Paris court will have jurisdiction for foreign defendants. The model contemplates an opt-in mechanism: consumers will have to adhere to the class action and mandate a consumer association to conduct the proceedings.

### B. MERGERS

The French competition authority reviewed more than 150 merger filings, and received four referrals of cases from the European Commission. Among notable decisions, an April decision is interesting because the acquisition of exclusive control was not based on a change in the target's shareholder structure, but on a long-term contract that gave the acquirer control over production processes and sales policies.<sup>64</sup>

### C. CARTELS AND OTHER ANTI-COMPETITIVE PRACTICES

In November, the competition authority imposed fines below \_1 million to three companies regarding transportation services.<sup>65</sup> It also announced an investigation, at the request of the Minister for the Economy, into joint purchasing entities created by several retailers.

### D. ABUSE OF DOMINANCE

There were several dominance cases in telecommunications, in one example, the Competition Authority sanctioned SFR for engaging in price discrimination between so-called "in-net" and "off-net" phone calls.<sup>66</sup> Another notable decision concerned Nespresso for

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61. Case C-67/13 P *Groupement des Cartes Bancaires*: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=157516&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=443608>.

62. Case C-557/12 *Kone*: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=153312&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=493805>.

63. Case T-286/09 *Intel*: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=153543&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=444292>.

64. *Autorité de la Concurrence*, Decision No. 14-DCC-57 of 17 April 2014 on the Acquisition of Sole Control by Orlait Company Affiliate, Activity Shelf Milk Consumption (May 28, 2014).

65. *Autorité de la Concurrence*, Decision No. 14-D-16 of 18 November 2014 relating to Practices Implemented in the Military Moving Industry Affected in Martinique.

66. *Autorité de la Concurrence*, Decision No. 14-D-05 of 13 June 2014 relating to practices Implemented in the Mobile Phone Industry to Residential Customers in Reunion and Mayotte.

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bundling and tying in the markets for portioned coffee machines and for Nespresso capsules.<sup>67</sup> Nespresso and Nestle have committed to eliminate and modify a number of practices and representations regarding their machines' compatibility with capsules other than Nespresso's.

**VIII. India**

**A. LEGISLATIVE DEVELOPMENTS**

To plug loopholes in the merger notification rules, the Competition Commission of India (CCI) amended merger control regulations to include a "substance test," whereby notification requirements are based on the substance of the transaction, not just its form.

**B. MERGERS**

In separate cases, the CCI imposed its first penalties for gun-jumping on Etihad Airways,<sup>68</sup> and on Thomas Cook and Sterling Holidays.<sup>69</sup>

The CCI also held that acquisitions of shares and voting rights below 25 percent may raise competition concerns where there is horizontal overlap or a vertical relationship between acquirer and target.<sup>70</sup> Previously, such acquisitions made solely as investments or during the ordinary course of business were exempt from notification.

**C. CARTELS AND OTHER AGREEMENTS**

In its first sector-wide investigation, the CCI imposed penalties on fourteen automobile parts manufacturers.<sup>71</sup> It also intervened in the healthcare sector, imposing a penalty on Hiranandani Hospital for exclusive anticompetitive agreements.<sup>72</sup>

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67. Autorité de la Concurrence, Decision No. 14-D-09 of 4 September 2014 on Practices Implemented by Nestlé Companies Nestec, Nestlé Nespresso Nestlé Nespresso France and Enterprises in the Espresso Machine Industry.

68. COMPETITION COMM'N OF INDIA, COMBINATION REGISTRATION NO. C-2013/05/122 (Dec. 19, 2013), *available at* <http://cci.gov.in/May2011/OrderOfCommission/CombinationOrders/Order%20191213.pdf>.

69. COMPETITION COMM'N OF INDIA, COMBINATION REGISTRATION NO. C-2014/02/153 (May 21, 2014), *available at* <http://cci.gov.in/May2011/OrderOfCommission/CombinationOrders/C-2014-02-153R.pdf>.

70. COMPETITION COMM'N OF INDIA, COMBINATION REGISTRATION NO. C-2014/08/202 (Nov. 10, 2014), *available at* <http://cci.gov.in/May2011/OrderOfCommission/CombinationOrders/C-2014-08-202.pdf>.

71. COMPETITION COMM'N OF INDIA, SHRI SHAMSHER KASTARIA V. HONDA SIEL CARS INDIA LTD & OTHERS, CASE NO. 3 OF 2011 (Aug. 25, 2014), *available at* <http://cci.gov.in/May2011/OrderOfCommission/27/032011.pdf>.

72. COMPETITION COMM'N OF INDIA, RAMAKANT KINI V. DR. L.H. HIRANANDANI HOSPITAL, CASE NO. 39 OF 2012 (Feb. 5, 2014), *available at* <http://cci.gov.in/May2011/OrderOfCommission/27/392012.pdf>.

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D. ABUSE OF DOMINANCE

CCI pursued government-owned companies, finding Coal India Limited to have abused its dominance with onerous supply agreements.<sup>73</sup> It also held the Indian Trade Promotion Organization abused its dominance over exhibition space licenses.<sup>74</sup>

E. COURT DECISIONS

The CCI has faced numerous challenges from the judiciary. Its jurisdiction in examining abuses by standard essential patent holders was successfully challenged before the High Court. The Competition Appellate Tribunal, while upholding an order against real estate giant DLF for abuse of dominance, observed that while the CCI can direct a party to discontinue abusive conduct, it cannot modify agreements that contravene the Act.<sup>75</sup>

**IX. Israel**

A. LEGISLATIVE DEVELOPMENTS

The Israeli Restrictive Trade Practices Law (Law) excludes certain arrangements from the Law, so they are not considered restrictive arrangements. An amendment effective next March limits statutory exclusions for agricultural producers and wholesalers.

B. MERGERS

In 2012, the Israeli Antitrust Authority (IAA) blocked an acquisition by the Azrieli Group (Azrieli), a large commercial real estate group, of a shopping complex from Mashhar Shopping and Leisure Centers (Mashhar). Azrieli appealed in 2013, but the appeal was dismissed as “theoretical” because the transaction had since been abandoned. Its further appeal to the Supreme Court in 2014 succeeded, arguing that the 2013 decision immunizes the IAA from judicial review, as parties rarely maintain a merger throughout the appeal process. The case has been sent back to the Antitrust Tribunal (AT).<sup>76</sup>

In July, ShuferSal, Israel’s largest supermarket chain, and its executives were convicted of violations, *inter alia*, of merger conditions regarding the merger between ShuferSal and ClubMarket. The executives were fined and sentenced to prison and community service, while ShuferSal had to pay a fine of US\$800,000.<sup>77</sup> An appeal is pending.

Following an investigation into alleged violations of merger conditions by the Israeli bookstore chain, Steimatzky, the IAA issued a decision regarding a merger between Steimatzky and another bookstore chain. Suspicions arose following Steimatzky’s alleged de-

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73. COMPETITION COMM’N OF INDIA, SHRI BIJAY PODDAR V. M/S COAL INDIA LIMITED AND ITS SUBSIDIARIES, CASE No. 59 OF 2013 (Oct. 27, 2014), *available at* <http://cci.gov.in/May2011/OrderOfCommission/27/592013.pdf>.

74. COMPETITION COMM’N OF INDIA, INDIAN EXHIBITION INDUSTRY ASSOCIATION V M/O COMMERCE & INDIAN TRADE PROMOTION ORGANIZATION, CASE No. 74 OF 2012 (Apr. 3, 2014), *available at* <http://cci.gov.in/May2011/OrderOfCommission/27/742012.pdf>.

75. COMPETITION APP. TRIB., M/S DLF LIMITED V. CCI & OTHERS, APPEAL No 20 OF 2011 (May 19, 2014), *available at* [http://compat.nic.in/upload/PDFs/mayordersApp2014/19\\_05\\_14.pdf](http://compat.nic.in/upload/PDFs/mayordersApp2014/19_05_14.pdf).

76. CA 6426/13 Azrieli Group Ltd. v. General Dir. of the IAA [2014] (Isr.).

77. CC 118/10 Antitrust Auth. v. Rozenhaus (2014) (Isr.).

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mand for exclusive rights to sell certain titles at discounted prices. In July, the AT approved a Consent Decree between the IAA, Steimatzky, and its CEO with no admission of liability. Steimatzky paid approximately US\$400,000 to the State Treasury and its CEO paid approximately US\$14,000.<sup>78</sup>

C. CARTEL AND OTHER ANTICOMPETITIVE PRACTICES

In August, the IAA published a Draft Policy Paper regarding unilateral public disclosure statements and publications potentially harming competition. The IAA notes the guidelines provided will bring policies in line with OECD Best Practices and the antitrust laws of the EU and United States.<sup>79</sup>

In September, it published a non-binding paper setting trade association contact standards, stating that though trade associations are important institutions, their activity may threaten competition by enacting restrictive arrangements, facilitating the exchange of sensitive information or boycotts.<sup>80</sup>

D. COURT DECISIONS

The IAA reached an agreement with Israel's five largest banks regarding alleged restrictive arrangements of bank fee information. In June, the AT approved the agreement as a Consent Decree. The banks had to pay approximately US\$19 million to the State Treasury, without admission of liability.

E. ABUSE OF DOMINANCE

In April, the IAA published Guidelines regarding the Prohibition on Excessive Pricing by a Monopoly. These Guidelines state excessive pricing might be deemed an abuse of dominance by a monopoly.<sup>81</sup>

In November, the IAA published a decision (Determination) stating that Bezeq, Israel's leading telecommunication company, abused its monopolistic position by engaging in a "margin squeeze" by offering internet access infrastructure, an essential service for internet based telephone services, to competitors at a higher price, thus putting them at a disadvantage.<sup>82</sup>

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78. AT 42033-06-14 General Dir. of Restrictive Trade Practices v. Steimatzky (2005) Ltd. (2014) (Isr.).

79. Israeli Antitrust Auth., *Draft Policy Paper: Unilateral Public Disclosures May Facilitate Cartel-Like Pricing*, (Aug. 3, 2014), <http://www.antitrust.gov.il/subject/131/item/33262.aspx>.

80. Israeli Antitrust Auth., *Trade Associations Policy Paper*, (Sept. 4, 2014), <http://www.antitrust.gov.il/subject/130/item/33332.aspx>.

81. Israeli Antitrust Auth., *Excessive Pricing Policy Paper*, (Apr. 09, 2014), <http://www.antitrust.gov.il/subject/130/item/33113.aspx>.

82. Israeli Antitrust Auth., *Determination on the ground of section 43(A)(5) to the Israeli Restrictive Trade Practices Law 5748-1988-Bezeq-The Israel Telecommunication Corp, Ltd - abuse of dominant position*, (Nov. 16, 2014), <http://www.antitrust.gov.il/subject/126/item/33396.aspx>.

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**X. Mexico**

**A. LEGISLATIVE DEVELOPMENTS**

A new competition law came into force in July, strengthening the Federal Economic Competition Commission's (Cofece) powers, and introducing new powers and novel legal concepts, some of which are controversial.

The law contemplates: (i) strengthened dawn raid powers (allowing access to any place, storage or electronic device, or other source of evidence and compelling explanations regarding any document or information obtained during the raid) and coercive measures (Cofece may order the arrest of individuals for obstructing an investigation); (ii) decisions to initiate an investigation will no longer be published in the Federal Official Gazette; and (iii) Cofece will have powers to file a claim or complaint regarding presumed criminal conduct in antitrust matters, with no need to wait until a final resolution is issued by the Plenary in the administrative stage.

New offenses have been created: (i) the exchange of information between competitors, when resulting in, or having the purpose of, price fixing, allocation of markets, restricting output or rigging bids, has been incorporated as an independent cartel violation; and (ii) companies with a dominant position may not restrict or grant discriminatory access to "essential inputs" or engage in conduct resulting in a margin squeeze. Additionally, Cofece will have authority to order measures to eliminate "barriers to free competition", to conduct studies to look for market power, and to order divestitures.

For mergers: (i) filing thresholds were modified so that only annual sales originating in Mexico or assets in the Mexican territory are taken into consideration; (ii) mergers cannot be completed until clearance is obtained, making Mexico's a suspensory regime; (iii) the time for assessing mergers increased from thirty-five to sixty business days (plus an additional forty days in complex cases); and (iv) Cofece is obliged to inform the parties of any possible risks to competition that may result from a transaction, in order for the parties to submit remedies or conditions proposals.<sup>83</sup>

**B. MERGERS**

Cofece resolved over eighty-five concentrations, all of which were authorized (four with conditions). Significant authorizations included: (i) the acquisition of Merck's consumer care business by Bayer; (ii) the acquisition of Farmacias Ahumada by Alliance Boots; and (iii) the clearance of the alliance between Toyota and Mazda to jointly manufacture a new compact car.<sup>84</sup>

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83. Decreto por el que se expide la Ley Federal de Competencia Económica y se reforman y adicionan diversos artículos del Código Penal Federal [Decree on the Federal Antitrust Law amending and supplementing the Federal Penal Code], Diario Oficial de la Federación [DO], 23 de mayo de 2014 (Mex.).

84. Comisión Federal de Competencia [Federal Commission of Competition], Bayer Aktiengesellschaft/Merck & Co., Inc., Report No. CNT-045-2014; Comisión Federal de Competencia [Federal Commission of Competition], AB Acquisitions Holdings Limited/Alliance Boots GMBH/Walgreen Co./Walgreen Scotland Investments LP/Walgreen Swiss International GMBH, Report No. CNT-082-2014; Comisión Federal de Competencia [Federal Commission of Competition], Mazda Motor Manufacturing de Mexico, S.A. de C.V./Toyota Motor de Mexico, S. de R.L. de C.V., Report No. CNT-052-2014.

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C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

Cofece initiated six investigations for cartel conduct in: (i) healing materials; (ii) airport ground transportation; (iii) cranes and dragging services in Guerrero; (iv) maritime transportation in Quintana Roo; (v) music rights licenses; and (vi) latex products.<sup>85</sup> There are currently fourteen ongoing investigations.<sup>86</sup>

Furthermore, Cofece sanctioned diverse real estate agents (companies and individuals) for a total amount of approximately US\$4 million for price fixing of commissions.<sup>87</sup> Cofece sanctioned five appliance companies for approximately US\$14.7 million for price fixing in the market for hermetic compressors.<sup>88</sup>

D. ABUSE OF DOMINANCE

Cofece initiated only one new investigation for abuse of dominance conduct, in the market for air gases. Specific conduct being investigated includes tying agreements, exclusivity, and raising of rivals' costs.<sup>89</sup> There are eight ongoing abuse of dominance investigations.

**XI. Russia**

A. LEGISLATIVE DEVELOPMENTS

In 2014, the procedure for post-transaction notifications was abolished in order to decrease the administrative burden on the Federal Antimonopoly Service of the Russian Federation (FAS).

The government also approved a draft law which significantly amends the Competition Law and referred it to the State Duma (lower house) of the Russian Parliament for consideration. These amendments are commonly called the "Fourth Antimonopoly Package."<sup>90</sup>

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85. Comision Federal de Competencia [Federal Commission of Competition], Mercado de materiales de curación de polietileno adquiridos por el sector salud en el territorio nacional, Report No. DE-020-2014; Comision Federal de Competencia [Federal Commission of Competition], Servicios de arrastre de vehiculos, Report No. DE-023-2013; Comision Federal de Competencia [Federal Commission of Competition], De los servicios de transporte marítimo de pasajeros en el estado de Quintana Roo, Report No. DE-002-2014; Comision Federal de Competencia [Federal Commission of Competition], Otorgamiento de licencias para la comunicación o utilización pública de obras musicales, sus interpretaciones o ejecuciones, de fonogramas y videogramas en el territorio nacional, Report No. DE-025-2013; Comision Federal de Competencia [Federal Commission of Competition], Producción, distribución y comercialización de productos de látex adquiridos por el sector salud en el territorio nacional, Report No. DE-024-2013.

86. Note that as of July 7, 2014 Cofece no longer publishes decisions to initiate investigations and therefore additional investigations might have been initiated.

87. Comision Federal de Competencia [Federal Commission of Competition], Servicios proporcionados por asesores en bienes raíces, corredores, agentes, administradores y, en general, profesionales del ramo inmobiliario, Report No. DE-019-2007.

88. Comision Federal de Competencia [Federal Commission of Competition], Producción, distribución y comercialización de compresores herméticos, Report No. IO-002-2009.

89. Comision Federal de Competencia [Federal Commission of Competition], Producción, distribución y comercialización de gases del aire, Report No. DE-006-2014.

90. Draft of the Federal Law No. 5906?-?13 of Sept. 12, 2014 amending Federal Law No. 135-FZ of Oct. 26, 2006, available at [http://asozd2c.duma.gov.ru/addwork/scans.nsf/ID/3D7F7ECD370205AC43257D51005F7B90/\\$FILE/602468-6.pdf](http://asozd2c.duma.gov.ru/addwork/scans.nsf/ID/3D7F7ECD370205AC43257D51005F7B90/$FILE/602468-6.pdf).

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Further, after being considered by the State Duma, the draft bill on collective actions is now being revised. One amendment, developed by non-governmental organizations and academics, would increase the number of plaintiffs necessary for filing a class action suit from five to twenty.<sup>91</sup>

**B. MERGERS**

Based on the decreased number of applications and notifications considered by the antimonopoly authorities, the number of transactions considered by the FAS likely will increase as a result of the forthcoming amendments to the Competition Law. According to those amendments, the list of transactions under the jurisdiction of the FAS will include joint venture agreements where specific thresholds are met.

**C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES**

Russia's economy is permeated by thousands of foreign entities, some of which engage in practices that violate the Russian antimonopoly regime. In response, the FAS believes that protecting the economic interests of Russia from international cartels must be done through strengthening antimonopoly regulation. Accordingly, the FAS is deepening cooperation with foreign competition agencies in investigations of domestic and international cartels.

Moreover, although the Criminal Code of the Russian Federation has criminalized cartels since 2009, it is only recently that this provision has actually been used. In 2014, the first cartel conviction was issued. Undoubtedly, this decision will have a significant impact in future cases.

**D. ABUSE OF DOMINANCE**

In 2013, there was a marked increase in the number of publicized cases of violations of Article 10 of the Competition Law (abuse of dominance).<sup>92</sup> According to the 2013 FAS report, 3,370 violations were publicized in 2013, a 10% increase from 2012.<sup>93</sup>

**XII. South Africa**

In 2014, the South African competition authorities focused more on public interest factors in merger reviews and exercised their new powers to initiate market inquiries. The government also addressed staff shortages which plagued the authorities in 2013.<sup>94</sup>

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91. Press Release, FAS, Lawyers are trying to change the requirements for class action] (Feb. 7, 2014), [http://fas.gov.ru/fas-in-press/fas-in-press\\_38287.html](http://fas.gov.ru/fas-in-press/fas-in-press_38287.html).

92. О защите Конкуренции №. 135-ФЗ (с изменениями и дополнениями) [On Protection of Competition No. 135-FZ, as amended], *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* [SZ RF]. 2006. No. 31 (1). ST. 3434 [Russian Federation Collection of Legislation] 2006, No. 31 (1 p.). Art. 3434 (Russ.).

93. FAS, *Report on the State of the Competition in Russia, 2014*, (2014), available at [http://www.fas.gov.ru/netcat\\_files/225/164/h\\_9b92126b92a13bcf9f26422c223d22ef](http://www.fas.gov.ru/netcat_files/225/164/h_9b92126b92a13bcf9f26422c223d22ef).

94. Press Release, Econ. Dev. Dep't of S. Afr., Minister Patel Announces Appointment of New Competition Commissioner, (May 16, 2014), <http://www.compecom.co.za/wp-content/uploads/2014/09/Minister-Patel-announces-appointment-of-new-Competition-Commissioner.pdf>; Press Release, Competition Trib. S. Afr., Appointment of Chairperson and Members of the Competition Tribunal, (Aug. 11, 2014), <http://www>

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A. LEGISLATIVE DEVELOPMENTS

There were no relevant legislative changes in South Africa in 2014, but the Minister of Economic Development has suggested amendments to extend the authority's powers to order divestitures by dominant firms in abuse cases.<sup>95</sup>

B. MERGERS

In Oceana's acquisition of Foodcorp, the Tribunal required the divestment of Foodcorp's fishing quota because the combination of the merging parties' rights was said to enable an already dominant player to increase its power and undermine competition from other players.<sup>96</sup> The decision was successfully appealed.<sup>97</sup>

The authorities' increasingly broad view of their powers to impose conditions on mergers in the "public interest" is illustrated by AgriGroupe's buyout of Afgri, in which the Tribunal required the establishment of a fund and a development program for emerging farmers.<sup>98</sup> In response, merging parties have had to be more proactive in ameliorating potentially adverse employment effects before seeking merger approval, as was done in the Nashua Mobile transactions.<sup>99</sup>

C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

The Commission has referred cartel complaints in the power-cable,<sup>100</sup> fishing,<sup>101</sup> and construction industries<sup>102</sup> (despite having settled numerous construction cartel complaints

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[.comptrib.co.za/publications/press-releases/appointment-of-chairperson-and-members-of-the-competition-tribunal/](http://www.comptrib.co.za/publications/press-releases/appointment-of-chairperson-and-members-of-the-competition-tribunal/).

95. Carol Paton, *Patel Reworks Competition Act against Excessive Pricing*, BUSINESSDAY, (Aug. 11, 2014), <http://www.bdlive.co.za/business/2014/08/11/patel-reworks-competition-act-against-excessive-pricing>.

96. Ann Crotty, *Oceana Set to Battle for Foodcorp's Fishing Business*, BUSINESS TIMES, (July 06, 2014), <http://www.bdlive.co.za/business/2014/07/06/oceana-set-to-battle-for-foodcorp-s-fishing-business>.

97. *Id.*

98. Case No. 017939 (Competition Tribunal) (S. Afr.), available at <http://www.comptrib.co.za/assets/Uploads/017939.pdf>.

99. *Altech Autopage Cellular (Pty) Limited v. Nashua Mobile (Pty) Limited in respect of its Cell C subscriber base (Nashua)*, 2014 Case No. 019166 (Competition Tribunal) (S. Afr.), available at <http://www.comptrib.co.za/assets/Uploads/019166.pdf>; *Mobile Telephone Networks (Pty) Limited and Nashua*, 2014 Case No. 019018 (Competition Tribunal) (S. Afr.), available at <http://www.comptrib.co.za/assets/Uploads/019018.pdf>; *Vodacom (Pty) Limited and Nashua*, 2014 Case No. 019034 (Competition Tribunal) (S. Afr.), available at <http://www.comptrib.co.za/assets/Uploads/27.pdf>.

100. Press Release, Competition Comm'n of S. Afr., Comm'n Refers Cable Investigation (Mar. 19, 2014), <http://www.compcom.co.za/wp-content/uploads/2014/09/Media-Release-Commission-refers-cable-investigation.pdf>.

101. Press Release, Competition Comm'n of S. Afr., The Commission Refers Fishing Collusion Investigation (Mar. 27, 2014), <http://www.compcom.co.za/wp-content/uploads/2014/09/The-Commission-refers-fishing-collusion-investigation.pdf>.

102. Katy Oglethorpe, *SA takes World Cup Riggers to Court*, GLOBAL COMPETITION REVIEW (Nov. 13, 2014), <http://globalcompetitionreview.com/news/article/37261/sa-takes-world-cup-riggers-court/>.

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through the “fast-track” settlement process).<sup>103</sup> The Commission also conducted dawn raids in the edible oil<sup>104</sup> and auto body repair<sup>105</sup> industries.

The Commission exercised its new market inquiry powers by publishing terms of reference for inquiries into private healthcare<sup>106</sup> and liquefied petroleum gas.<sup>107</sup>

**D. ABUSE OF DOMINANCE**

The Tribunal found that Sasol Chemical Industries charged excessive prices for inputs in plastics manufacturing.<sup>108</sup> It was critically important that Sasol’s acquisition of dominance was achieved through State support, and that the relevant inputs are low-cost because they are by-products of Sasol’s fuel production process. The matter is being appealed.<sup>109</sup>

**E. COURT DECISIONS**

The Constitutional Court held that costs cannot be awarded against the Commission in Tribunal proceedings and that the Competition Appeal Court should only award such costs in its own proceedings where the Commission has not litigated in good faith.<sup>110</sup>

In the healthcare inquiry, the High Court dismissed a case brought by hospital group Netcare seeking to interdict KPMG, which had previously performed consulting work for Netcare, from being appointed as the Commission’s healthcare inquiry technical service provider.<sup>111</sup>

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103. Norton Rose Fulbright, *2011 – a year in review – competition law in South Africa*, (Jan. 9, 2012), <http://www.nortonrosefulbright.com/news/61536/2011-a-year-in-review-competition-law-in-south-africa>.

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108. *Competition Comm’n of S. Afr. v. Sasol Chem. Indus. Ltd.*, 2014 48/CR/Aug10, available at <http://www.comptrib.co.za/assets/Uploads/Non-Conf-Decision-011502.pdf>.

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111. Netcare Hospitals (Pty.) Ltd. v. KPMG Services (Pty.) Ltd., 2014 ZAGPJHC Case No. 47505 at para. 140 (S. Afr.), available at <http://www.saflii.org/za/cases/ZAGPJHC/2014/186.html>.

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**XIII. United Kingdom**

A. LEGISLATIVE DEVELOPMENTS

Last year heralded significant change to the institutional structure of the U.K. competition law regime with the creation of a new, single competition authority, the Competition and Markets Authority (CMA).<sup>112</sup> The CMA fully took over in April, replacing the Office of Fair Trading (OFT) and the Competition Commission.

The Enterprise and Regulatory Reform Act 2013<sup>113</sup> created the CMA and introduced changes to the U.K. antitrust, mergers, and markets regimes. In particular, the CMA can compel individuals to answer questions in Competition Act 1998 investigations.

The dishonesty requirement was removed from the U.K. criminal cartel offense, but new exemptions and defenses were introduced.

The U.K.'s merger notification regime remains voluntary. But the CMA now has enhanced powers to impose hold-separate undertakings; businesses which fail to comply risk significant penalties.

B. MERGERS

In June, the CMA referred the proposed Pure Gym-The Gym merger for a detailed Phase II inquiry.<sup>114</sup> Unusually, the CMA raised concerns that the merger might affect both actual and potential competition.<sup>115</sup> The parties abandoned the merger, using a new procedural right of parties to suspend the Phase II review for up to three weeks to consider whether to proceed with the merger proposal.<sup>116</sup>

In August, the CMA relied on the failing firm defense to clear the merger of Alliance Medical and IBA Molecular at Phase II.<sup>117</sup>

C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

In March, the former OFT fined Hamsard £387,856 for cartel conduct.<sup>118</sup> The OFT found that Hamsard and Lloyds Pharmacy had agreed to share the market for the supply

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112. Enterprise and Regulatory Reform Act, 2013, c. 24 (U.K.), *available at* <http://www.legislation.gov.uk/ukpga/2013/24/contents/enacted>.

113. *Id.*

114. Press Release, Competition and Markets Authority, CMA Refers Gyms Merger for In-Depth Investigation (June 26, 2014), <https://www.gov.uk/government/news/cma-refers-gyms-merger-for-in-depth-investigation>.

115. *Id.*

116. Press Release, Pure Gym, Pure Gym and The Gym Group Terminate Merger Plan After Regulator Refers Transaction for In-Depth Investigation (July 16, 2014), <http://www.thegymgroup.com/blog/article/pure-gym-and-the-gym-group-terminate-merger-plan-after-regulator-refers-transaction-for-in-depth-investigation-6469/>.

117. Press Release, Competition and Markets Auth., Radioactive Tracer Merger Cleared (Aug. 15, 2014), <https://www.gov.uk/government/news/radioactive-tracer-merger-cleared>.

118. Press Release, Office of Fair Trading, OFT Issues Decision in Care Home Medicine Cartel Case (Mar. 20, 2014), <http://webarchive.nationalarchives.gov.uk/20140402142426/http://oft.gov.uk/news-and-updates/press/2014/17-14>.

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of prescription medicines to care homes in England. The OFT also issued a decision regarding pricing restrictions for online mobility scooter sales.<sup>119</sup>

D. COURT DECISIONS

In *Skyscanner*,<sup>120</sup> the U.K. Competition Appeal Tribunal heard the first ever judicial review of a U.K. commitments decision in the *Hotel Online Booking* case and quashed the former OFT's decision, remitting the matter back to the new CMA.

In relation to time limits for follow-on damages actions, the U.K. Supreme Court ruled that a European Commission (Commission) decision establishing an infringement constitutes a series of individual decisions addressed to its addressees.<sup>121</sup> Further, "the only relevant decision establishing infringement in relation to [a non-appealing] addressee . . . is the original Commission decision" (even if another addressee successfully appeals against it).<sup>122</sup>

**XIV. United States**

A. LEGISLATIVE DEVELOPMENTS

The Judiciary Committee of the U.S. House of Representatives approved a bill to amend the Clayton and Federal Trade Commission Acts to align the standards and processes for Federal Trade Commission (FTC) or Department of Justice (DOJ) review of proposed mergers and acquisitions.<sup>123</sup> If it becomes law, the FTC would review mergers under the Clayton Act's standards (as the Attorney General currently does) and would no longer engage in the administrative adjudication of mergers and other transactions.<sup>124</sup>

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119. Press Release, Office of Fair Trading, OFT Issues Decision in Mobility Scooters Sector (Mar. 27, 2014), <http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/news-and-updates/press/2014/23-14>.

120. *Skyscanner v. Competition and Markets Auth.*, [2014] CAT 16 at paras. 1, 174 (Eng. & Wales), available at [http://www.catribunal.org.uk/files/1226\\_Skyscanner\\_Judgment\\_CAT\\_16\\_260914.pdf](http://www.catribunal.org.uk/files/1226_Skyscanner_Judgment_CAT_16_260914.pdf).

121. *Deutsche Bahn AG v. Morgan Advanced Materials*, [2014] UKSC 24 at paras. 1, 28 (U.K.), available at [https://www.supremecourt.uk/decided-cases/docs/UKSC\\_2012\\_0209\\_Judgment.pdf](https://www.supremecourt.uk/decided-cases/docs/UKSC_2012_0209_Judgment.pdf).

122. *Id.*

123. Press Release, H.R. Judiciary Comm., Judiciary Committee Approves Antitrust Legislation (Sept. 10, 2014), <http://judiciary.house.gov/index.cfm/2014/9/judiciary-committee-approves-antitrust-legislation>.

124. Standard Merger and Acquisition Reviews Through Equal Rules Act of 2014, H.R. 5402, 113th Cong. (2014).

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**B. MERGERS**

Three companies—Embarcadero Technologies,<sup>125</sup> Flakeboard America Ltd.,<sup>126</sup> and Louisiana-Pacific Corp.<sup>127</sup>—abandoned proposed mergers after the DOJ expressed concern about “likely anticompetitive effects.”

In January 2013, in a rare post-acquisition challenge, the DOJ filed a civil suit against Bazaarvoice Inc., the leading provider of online reviews and ratings platforms, challenging Bazaarvoice’s acquisition of rival PowerReviews.<sup>128</sup> In January, following a three-week trial, the court found that Bazaarvoice had violated Section 7 of the Clayton Act by acquiring PowerReviews. In April 2014, the DOJ and Bazaarvoice agreed that Bazaarvoice would divest all assets of PowerReviews and take additional measures to restore competition in the market.

**C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES**

The DOJ Antitrust Division secured large criminal fines from its London Interbank Offered Rate (LIBOR) and auto parts investigations. Among others who pled guilty, Lloyds Banking Group agreed to pay US\$86 million for its actions in manipulating the LIBOR.<sup>129</sup> For their roles in a conspiracy to fix prices and rig bids for automotive parts, eight Japanese manufacturers agreed to plead guilty and, in combination, paid US\$753 million in fines.<sup>130</sup> The DOJ also prosecuted defendants in California, Georgia, and New Jersey for their roles in rigging bids at municipal foreclosure and tax lien auctions.<sup>131</sup>

The DOJ secured the first litigated extradition on an antitrust charge for a former executive of a rubber hose manufacturer who pled guilty to a “conspiracy to rig bids, fix prices, and allocate market shares of marine hoses sold in the United States.”<sup>132</sup>

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125. Press Release, U.S. Dept. of Justice, Embarcadero Technologies and CA Inc. Terminate Proposed Transfer of CA Inc.’s Erwin Data Modeler (Nov. 5, 2014), [http://www.justice.gov/atr/public/press\\_releases/2014/309752.pdf](http://www.justice.gov/atr/public/press_releases/2014/309752.pdf).

126. Press Release, U.S. Dept. of Justice, Flakeboard Abandons Its Proposed Acquisition of SierraPine (Oct. 1, 2014), [http://www.justice.gov/atr/public/press\\_releases/2014/309005.pdf](http://www.justice.gov/atr/public/press_releases/2014/309005.pdf).

127. Press Release, U.S. Dept. of Justice, Louisiana-Pacific Corp. Abandons Its Proposed Acquisition of Ainsworth Lumber Co. Ltd. (May 14, 2014), [http://www.justice.gov/atr/public/press\\_releases/2014/305936.pdf](http://www.justice.gov/atr/public/press_releases/2014/305936.pdf).

128. Press Release, U.S. Dept. of Justice, Justice Department and Bazaarvoice Inc. Agree on Remedy to Address Bazaarvoice’s Illegal Acquisition of PowerReviews (Apr. 24, 2014), <http://www.justice.gov/opa/pr/justice-department-and-bazaarvoice-inc-agree-remedy-address-bazaarvoice-s-illegal-acquisition>.

129. Press Release, U.S. Dept. of Justice, *Lloyds Banking Group Admits Wrongdoing in Libor Investigation, Agrees to Pay \$86 Million Criminal Penalty* (July 28, 2014), [http://www.justice.gov/atr/public/press\\_releases/2014/307355.pdf](http://www.justice.gov/atr/public/press_releases/2014/307355.pdf).

130. Press Release, U.S. Dept. of Justice, DOJ, Hitachi Metals Ltd. Agrees to Plead Guilty for Fixing Prices and Rigging Bids on Automotive Parts Installed in U.S. Cars (Oct. 31, 2014), [http://www.justice.gov/atr/public/press\\_releases/2014/309636.htm](http://www.justice.gov/atr/public/press_releases/2014/309636.htm).

131. U.S. Dept. of Justice Antitrust Div., *Antitrust Division 2014 Criminal Enforcement Update*, (Spring 2014), <http://www.justice.gov/atr/public/division-update/2014/criminal-program.html> (last visited Feb. 4, 2015).

132. Press Release, U.S. Dept. of Justice, Former Marine Hose Executive Who Was Extradited to United States Pleads Guilty for Participating in Worldwide Bid-Rigging Conspiracy (Apr. 24, 2014), [http://www.justice.gov/atr/public/press\\_releases/2014/305376.htm](http://www.justice.gov/atr/public/press_releases/2014/305376.htm).

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D. MONOPOLIZATION

The DOJ tried a case, under reserve, against American Express (AmEx), alleging that the company's "anti-steering" rules prohibiting merchants from encouraging customers to use other credit cards violated antitrust law.<sup>133</sup> During the trial, the parties hotly disputed numerous issues, including the relevant market, the effects on competition, and AmEx's market power.

E. COURT DECISIONS

In November, the Seventh Circuit Court of Appeals issued its ruling after rehearing *Motorola Mobility LLC v. Au Optronics Corp.*<sup>134</sup> The issue on appeal was whether Au Optronics Corp.'s sales of LCD panels to Motorola's foreign subsidiaries, that were then incorporated into phones and shipped to other countries, including the United States, were excluded from the reach of the Sherman Act because the conduct did not have a "direct" effect on U.S. commerce as required by the Foreign Trade Antitrust Improvements Act (FTAIA). While the court said it was possible for price fixing abroad to have a foreseeable, substantial effect on U.S. commerce, bringing it under the Sherman Act, Motorola's claim was barred by the FTAIA's requirement that "the effect of anticompetitive conduct on domestic U.S. commerce give rise to an antitrust cause of action." Thus, the court held that Motorola was not the proper plaintiff to bring an antitrust suit in the United States because the harm was incurred by Motorola's foreign subsidiaries and not the parent company itself. In a criminal case brought by the DOJ's Antitrust Division charging a price-fixing scheme of TFT-LCDs sold directly to U.S. companies, the Ninth Circuit upheld the convictions of AUO and its executives, holding that the FTAIA does not exclude import trade from the Sherman Act or activities that have a "direct, substantial, and reasonably foreseeable effect on U.S. commerce."<sup>135</sup>

The U.S. Supreme Court granted certiorari in *North Carolina State Board of Dental Examiners v. FTC* and heard arguments in October.<sup>136</sup> The Supreme Court is considering whether a quasi-public board of dental examiners could be found to have violated the antitrust laws for allowing only dentists to use teeth-whitening technology.<sup>137</sup>

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133. *United States of America v. American Express Co.*, No. 1:10-cv-04496-NGG-RER (E.D.N.Y. May 7, 2014).

134. *Motorola LLC v. Au Optronics Corp.*, No. 14-8003 (7th Cir. Nov. 26, 2014).

135. *United States v. Hui Hsiung*, 758 F.3d 1074, 1086 (9th Cir. 2014).

136. Transcript of Oral Argument at 1, *North Carolina Board of Dental Examiners v. FTC*, No 13-534 (US 2014), available at [http://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/13-534\\_8nj9.pdf](http://www.supremecourt.gov/oral_arguments/argument_transcripts/13-534_8nj9.pdf).

137. *Id.* at 12, 20.

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