THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

International Antitrust

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This article outlines the most important developments in key areas of antitrust enforcement in fourteen selected jurisdictions during 2013.[1] Prepared by antitrust law practitioners and the International Antitrust Law Committee, this article summarizes a more detailed publication to be released in spring 2014 covering antitrust developments in more than thirty jurisdictions worldwide.[2]

I. Australia

A. LEGISLATIVE DEVELOPMENTS

There have been no relevant amendments to the *Competition and Consumer Act 2010* (Cth) (CCA) in 2013. However, the recently elected Liberal-National Party coalition have committed to a "root and branch" review of competition law in the first 100 days of their term. The relevant minister has criticized the operation of competition laws in Australia, particularly the misuse of market power provisions, which he has described as a "hunting dog that won't leave the porch."[3]

1. For developments during 2012, see Maria Cecilia Andrade et al., *International Antitrust*, 47 INT'L LAW. 41 (2012). For developments during 2011, see Maria Cecilia Andrade et al., *International Antitrust*, 46 INT'L LAW. 41 (2011).

2. This 2013 report will be available online at http://apps.americanbar.org/dch/committee.cfm?com=IC722000.

3. Anna Vidot, *Minister Wants Competition Law With Bite*, ABC RURAL NEWS (Oct. 30, 2013), http://www.abc.net.au/news/2013-10-30/food-and-grocery-forum-competition-law/5057728.

PUBLISHED IN COOPERATION WITH
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B. Mergers

While many of the merger reviews in 2013 have received strong media interest, only two proposed acquisitions have been opposed by the Australian Competition and Consumer Commission (ACCC). These opposed mergers involved the proposed acquisition of a supplier of infant food by its major competitor[4] and a proposed acquisition of a supermarket site by a major supermarket chain in western Sydney.[5] The ACCC has recently released an updated version of its Informal Merger Process Guidelines, which sets out the procedure for the most widely used process for obtaining merger clearance in Australia.

C. Cartels and Other Anticompetitive Practices

The ACCC has stated that, as of September 2013, it "has more than twenty current in-depth cartel investigations or matters before the courts."[6]

The ACCC has continued to pursue proceedings against airlines relating to an alleged price fixing cartel for air freight services. The ACCC has also successfully prosecuted a Japanese cable supplier for cartel conduct,[7] a concrete company for entering into anti-competitive arrangements,[8] and a supplier of bearing products for entering into two separate cartel arrangements.[9] In a private action seeking damages under the CCA, the Federal Court took a wide view of whether two parties were competitors and found that a company, as well as its chairman (a former Premier of New South Wales) and its chief executive, had breached the bid rigging prohibitions.[10] The orders, however, were later set aside following a settlement between the parties.

The ACCC has announced that it is reviewing its immunity policy for cartel conduct and has issued a discussion paper.[11]

D. Abuses of a Dominant Position

In a clear case of the ACCC not shying away from difficult and high profile litigation, it has commenced proceedings against Visa Inc. and a number of related entities, alleging breaches of misuse of market power and exclusive dealing prohibitions in relation to dy-

4. Press Release, Austl. Competition & Consumer Comm'n, ACCC to Oppose Proposed Acquisition of Rafferty's Garden (June 6, 2013), http://www.accc.gov.au/media-release/accc-to-oppose-proposed-acquisition-of-raffertys-garden.

5. Press Release, Austl. Competition & Consumer Comm'n, ACCC to Oppose Woolworths' Proposed Acquisition of Glenmore Ridge Site, (June 6, 2013), http://www.accc.gov.au/media-release/accc-to-oppose-woolworths-proposed-acquisition-of-glenmore-ridge-site.

6. *Id.*

7. Austl. Competition and Consumer Comm'n v Prysmian Cavi E Sistemi Energia S.R.L. (No. 5) [2013] FCA 294 (Austl.).

8. Austl. Competition and Consumer Comm'n v Cement Austl Pty. Ltd. & Ors. [2013] FCA 909 (Austl.), *available at* http://www.australiancompetitionlaw.org/cases/2013cement.html (last visited Mar. 24, 2014).

9. Austl. Competition and Consumer Comm'n v Koyo Austl Pty. Ltd. [2013] FCA 1051 (Austl.).

10. Norcast S.ár.L v. Bradken Ltd (No 2) [2013] FCA 235 (Austl.).

11. Press Release, Austl. Competition & Consumer Comm'n, ACCC Releases Discussion Paper in Cartel Immunity Policy Review (Sept. 30, 2013), http://www.accc.gov.au/media-release/accc-releases-discussion-paper-in-cartel-immunity-policy-review.

namic currency conversion services.[12] Following media interest, the ACCC has also confirmed that it is investigating the major supermarket chains, Coles and Woolworths, for various breaches of the CCA in relation to their dealings with suppliers.[13]

II. Brazil

A. Legislative Developments

After the first year of effectiveness of the New Antitrust Law No.12.529/11,[14] it can be concluded that the pre-merger notification system reduced the time in which the Administrative Council for Economic Defense (CADE) issues its decisions. Now, the average time for reviewing mergers under the fast track procedure (available for cases in which vertical integration or horizontal overlap is below 20 percent) is nineteen days and under ordinary proceedings is sixty-one days, compared to 154 days under Law No.8.884/94.[15]

Law No. 12.846/13,[16] the New Brazilian Anticorruption Law (applicable, e.g. to bid rigging), contemplates fines that may vary from 0.1 percent to 20 percent of the gross sales of the companies involved in the last fiscal year preceding the initiation of the investigation.

B. Mergers

CADE's Tribunal subjected the approval of two transactions[17] to a Merger Control Agreement,[18] in cooperation with the European Commission.

For the first time, the practice of gun jumping was reviewed by CADE in the case of OGX's acquisition of 40 percent of the participation of Petrobras in an oil block located in the Santos Basin. OGX agreed to pay BRL 3 million (U.S. $1.4 million).[19]

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12. Sharon Henrick, *ACCC Takes on Visa*, King and Wood Mallesons (Nov. 2, 2013), http://www.mallesons.com/publications/marketAlerts/2013/Pages/ACCC-takes-on-Visa.aspx.

13. Malcolm Maiden, *Coles, Woolies Could be Facing Some Heartburn*, Sydney Morning Herald, Feb. 15, 2014, at 6, *available at* http://www.smh.com.au/business/coles-woolies-could-be-facing-some-heartburn-20130214-2eg11.html.

14. Lei No. 12.529, de 30 de Novembro de 2011, Diário Oficial da União [D.O.U.] de 12.1.2011 (Braz.), *translation available at* http://www.cade.gov.br/upload/LAW%20N%C2%BA%2012529%202011%20%28English%20version%20from%2018%2005%202012%29.pdf.

15. Lei No. 8.884 de 11 de Junho de 1994, Diário Oficial da União [D.O.U.] de 13.6.1994 (Braz.), *translation available at* http://www.cade.gov.br/english/internacional/Law-8884-1994b.pdf.

16. Lei No. 12.846, de 1 de Agosto de 2013, Diário Oficial da União [D.O.U.] de 2.8.2013, *available at* http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2013/Lei/L12846.htm.

17. Parecer Técnico No. 109, Ato de Concentração No. 08700.009882/2012-35, Muskjö AB e Ahsltrom Corporation, Superintendência-Geral, Coordenação-Geral de Análise Antitruste 3 (May 28, 2013) (Braz.); Parecer Técnico No. 125/2013, Ato de Concentração No. 08700.006437/2012-13, Syniverse Holdings, Inc. e WP Roaming III S.A.R.L., Superintendência-Geral, Coordenação-Geral de Análise Antitruste 4 (May 2, 2013) (Braz.).

18. Agreement entered into by CADE and the parties involved in the transactions approved with restrictions, providing structural or behavioral commitments.

19. Parecer Técnico No. 182, Ato de Concentração No. 08700.005775/2013-19, OGX Petróleo e Gas e Petroleo Brasileiro S/A, Advocacia-Geral du União, Procuradorio-Geral Federal, Procuradorio Federal Especializada Junto AO CADE (July 24, 2013) (Braz.).

C. Cartels and Other Anticompetitive Practices

On March 20, 2013, CADE fined the Central Office of Collection and Distribution (ECAD), a musical artists' copyright collection agency, for cartel activity, jointly with six associations representing copyright holders. The fines imposed amounted to roughly BRL 38 million (U.S. $19 million).[20]

On July 4, 2013, CADE's General Superintendence (GS) carried out raids at the headquarters of thirteen companies in the rail construction and metro lines markets.[21] The ongoing investigation was prompted by a leniency application filed by Siemens indicating the existence of bid rigging.

D. Abuses of Dominance

On July 17, 2013, GS initiated an administrative proceeding aimed at investigating an alleged abuse of dominance in the market of stainless steel,[22] and on October 11, 2013 three administrative proceedings addressed to investigating potential anticompetitive practices carried out by Google in the Brazilian market of online searches.[23]

E. Court Decisions

On September 25, 2013, a federal judge substantially reduced the fines imposed by CADE on ECAD (for a reference to the case, please see point C above) and six associations representing musicians, for alleged cartel practices. The fines were reduced from roughly BRL 38 million to roughly BRL 3 million.[24]

III. Canada

A. Legislative Developments

There were no significant legislative changes in 2013. But the Competition Bureau (the Bureau) published revised Immunity and Leniency Program Frequently Asked Questions documents, providing further guidance on the Bureau's approach.[25] The Bureau also

20. Parecer Técnico No. 309/2011, Processo Administrativo No. 08012.003745/2010-83, Associação Brasileira de Televisão por Assinatura, Advocacia-Geral du União, Procuradorio-Geral Federal, Procuradorio Federal Especializada Junto AO CADE (Aug., 2011) (Braz.).

21. Samantha Pearson, *Brazil Casts Net Over Transport Groups in Cartel Probe*, Fin. Times, http://www.ft.com/cms/s/0/b5d824d6-ed9f-11e2-8d7c-00144feabdc0.html#axzz2sHk669tz.

22. Nota Técnica No. 254/2013, Processo Administrativeo No. 08700.010789/2012-73, APERAM Inox América do Sul S.A., Superintendência-Geral, Coordenação-Geral de Análise Antitruste 3 (Jul. 16, 2013) (Braz.).

23. Nota Técnica No. 349/2013, Procedimento Administrativeo No. 08012.010483/2011-94, Google Inc. e Google Brasil Internet Ltda., Superintendência-Geral, Coordenação-Geral de Análise Antitruste 01 (Oct. 10, 2013) (Braz.).

24. CADE filed a clarification motion against the decision. Pending judgment before the First Federal District Court. (Lawsuit No. 27455-03.2013.4.01.3400).

25. Press Release, Can. Competition Bureau, Competition Bureau Publishes Revised Immunity and Leniency FAQs (Sept. 25, 2013), *available at* http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03609.html.

launched its criminal cartel whistle blowing initiative in May 2013, encouraging the public and businesses to provide information about possible criminal cartels.[26]

B. Mergers

The Bureau entered into a number of consent agreements in 2013. One, in March, involved the acquisition of Astral Media by BCE and required the divestiture of a significant number of television channels. Remedies (largely divestitures) were also required in several retail mergers, including Cineplex's acquisition of Empire's movie theaters,[27] Safeway grocery's acquisition by Sobeys,[28] Viterra's agri-products business sale to Agrium,[29] and La Coop fédérée's proposed acquisition of a minority interest in Groupe BMR[30] (regarding hardware and building materials).

C. Cartels and Other Anticompetitive Practices

The Bureau was active against price fixing and bid rigging. It obtained convictions related to price fixing in the retail gas sector.[31] Charges were laid against Nestlé, Mars, and ITWAL (a national network of independent wholesale distributors), as well as three individuals, for price fixing.[32] Also, a Japanese supplier of motor vehicle components was fined CAN $30 million for its role in an international bid-rigging conspiracy.[33]

D. Abuses of Dominance

The Commissioner of Competition lost an abuse of dominance case and a retail price maintenance action. The Competition Tribunal rejected the abuse application challenging rules of the Toronto Real Estate Board (TREB), which restrict how its members communicate information about listings to customers. The Tribunal ruled that TREB, an incorporated trade association, does not compete with its own members in the real estate brokerage market and therefore did not contravene the abuse of dominance provision.

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26. Press Release, Can. Competition Bureau, Competition Bureau Launches Whistleblowing Initiative (May 28, 2013), *available at* http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03573.html.

27. Press Release, Can. Competition Bureau, Competition Bureau Concerns Result in Changes to Proposed Movie Theater Merger (Oct. 10, 2013), *available at* http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03617.html.

28. Press Release, Can. Competition Bureau, Competition Bureau Requires Significant Divestiture in Sobeys/Safeway Deal (Oct. 22, 2013), *available at* http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03618.html.

29. Press Release, Can. Competition Bureau, Competition Bureau Secures Remedy in Sale of Agri-Products Business to Agrium (Sept. 5, 2013), *available at* http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03601.html.

30. Press Release, Can. Competition Bureau, Agreement Preserves Competition in the Retail Sale of Hardware Products and Building Materials in Rural Quebec (Nov. 1, 2013), *available at* http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03625.html.

31. Press Release, Can. Competition Bureau, Three Individuals Sentenced in Quebec Gas Cartel (Aug. 16, 2013), *available at* http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03591.html.

32. Press Release, Can. Competition Bureau, Charges Laid in a Price-Fixing Cartel in the Chocolate Industry (June 6, 2013), *available at* http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03569.html.

33. Press Release, Can. Competition Bureau, Record $30M Fine Obtained by Competition Bureau Against Japanese Auto Parts Supplier (Apr. 18, 2013), *available at* http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03560.html.

The decision followed earlier interpretations that an anticompetitive act must be one intended to have a negative impact on a competitor. The Commissioner has appealed.[34]

Regarding price maintenance, in June 2013, the Competition Tribunal dismissed the Commissioner's application against Visa and MasterCard regarding "merchant restrictions."[35] This decision too was based on a technical interpretation of the provision rather than whether the impugned practice had anticompetitive effects.

E. Court Decisions

The Alberta Court of Appeal allowed an appeal that awarded significant damages in a private lawsuit alleging an agreement by Husky Oil Operations and Exxon Mobil to use a single fluid hauling service provider for their jointly and separately owned facilities. The Court determined that the conduct was not covered by Section 45, the criminal cartel provision.[36]

Most of the Commissioner's deceptive marketing allegations against one of Canada's major wireless communications companies, Rogers Communications, were dismissed by the Ontario Superior Court.[37] The Court did confirm, however, the constitutionality of significant administrative monetary penalties for deceptive marketing practices. The plaintiff has applied to the Supreme Court of Canada for leave to appeal.[38]

The Supreme Court of Canada granted leave to appeal in *Tervita Corporation, et al. v. Commissioner of Competition*,[39] in which the Commissioner successfully argued that a transaction would lead to a substantial prevention of competition in the hazardous waste disposal market. *Tervita* is the Commissioner's first court challenge of a merger since 2005 and the first case involving a non-notifiable merger.[40]

IV. China

A. Legislative Developments

In 2013, the National Development and Reform Commission (NDRC) issued several rules under China's Anti-Monopoly Law (AML), including (i) the Evidence Rules for Price-Related Administrative Penalties, specifying the rules and procedures for the collection, review, and evaluation of evidence during NDRC investigations and (ii) the Rules on Handling and Review of Cases on Price-Related Administrative Penalties, specifying the

34. Press Release, Can. Competition Bureau, Competition Bureau Appeals Competition Tribunal Ruling in Toronto Real Estate Board Case (May 14, 2013), *available at* http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03567.html.

35. Press Release, Can. Competition Bureau, Competition Bureau Will Not Appeal Credit Cards Decision (Sept. 30, 2013), *available at* http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03614.html.

36. *See* 321665 Alberta Ltd. v. Husky Oil Operations, 2013 ABCA 221 (Can. Alta. CA).

37. *See* Canada (Competition Bureau) v. Chatr Wireless Inc., 2013 ONSC 5315 (Can. Ont. Sup. Ct. J.).

38. *See Docket: 35529, 321665, Alberta Ltd. v. Husky Oil Operations Ltd., et al.*, Supreme Ct. of Can. (Dec. 3, 2012), http://www.scc-csc.gc.ca/case-dossier/info/dock-regi-eng.aspx?cas=35529.

39. *See Docket: 35314, Tervita Corporation, et al. v. Commissioner of Competition*, Supreme Ct. of Can. (Dec. 3, 2012), http://www.scc-csc.gc.ca/case-dossier/info/dock-regi-eng.aspx?cas=35314.

40. Press Release, Can. Competition Bureau, Federal Court of Appeal Decision Clears the Way for Restored Competition in Hazardous Waste Disposal Market (Feb. 11, 2013), *available at* http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03535.html.

rules and procedures for handling and reviewing price-related cases after investigation and before making final penalty decisions.[41] The Ministry of Commerce (MOFCOM) published two draft rules for public comments, one fleshing out procedures for imposing and implementing merger remedies[42] and the other listing the types of transactions eligible for simplified review.[43] The State Administration for Industry and Commerce (SAIC), the agency responsible for non-price non-merger antitrust enforcement in China, is understood to have been drafting rules on issues at the intersection of antitrust and intellectual property rights (IPRs) but has not yet published any official draft for public comments.

B. Mergers

So far during 2013, MOFCOM has imposed conditions in four cases, (i) *Glencore/Xstrata*: MOFCOM required Glencore to divest its ownership interest in a copper project being developed by Xstrata and the parties to continue to offer to supply Chinese customers on the same terms using long-term contracts, including setting minimum volume and benchmark pricing for copper concentrate; (ii) *Marubeni/Gavilon*: MOFCOM required the parties to hold separate their soybean export businesses to China for two years; (iii) *Baxter/Gambro*: MOFCOM required Baxter to divest its global Continuous Renal Replacement Therapy business and to gradually terminate the China portion of an OEM supply agreement with competitor Nipro relating to hemodialysis filters; and (iv) *Mediatek/MStar*: MOFCOM required the parties to hold separate their liquid crystal panel display (LCD) television semiconductor chip business with Mediatek, which was entitled only to very limited shareholder rights such as receiving dividends.[44]

C. Cartels and Other Anticompetitive Practices

The NDRC and its local branches (DRCs) investigated and issued monetary fines in several cases, including (i) the highest fine in China's AML history, totaling RMB 669 million, imposed on six milk powder manufacturers for resale price maintenance (RPM) (three companies were exempted from fines based on their voluntary submission of evidence, cooperation during investigation, and active correction of their business practices);[45] (ii) six global LCD manufacturers were fined a total of RMB 144 million plus confiscation of RMB 36.75 million in illegal gains and restitution of RMB 172 million in

41. Jiage Xingzheng Chufa Anjian Shenli Shencha Guize (价格行政处罚案件审理审查规则) [Rules on Handling and Reviewing Cases on Price-Related Administrative Penalties] (promulgated by the National Development and Reform Commission, Sept. 30, 2013, effective Jan. 1, 2014) (China), *available at* http://www.ndrc.gov.cn/fzgggz/jggl/zcfg/201310/t20131017_562815.html.

42. On Business Concentration Restrictive Conditions Attached Provisions (draft) for Public Comment (promulgated by the Ministry of Commerce of the People's Republic of China, Mar. 27, 2013), *available at* http://tfs.mofcom.gov.cn/article/as/201303/20130300068492.shtml.

43. Focus on the Simple Case of Operators Interim Provision Applicable Standard (draft) for Public Comment (promulgated by the Ministry of Commerce of the People's Republic of China, Apr. 3, 2013), *available at* http://fldj.mofcom.gov.cn/article/zcfb/201304/20130400076870.shtml.

44. *See* Press Release, Ministry of Commerce of China, Announcement No. 61 of 2013 (Aug. 8, 2013), http://file.mofcom.gov.cn/search.shtml?file_cate=17.

45. *See* Press Release, Nat'l Dev. and Reform Comm'n, Synbiotics and Other Milk Producers in Violation of "Anti-Monopoly" of Restricting Competition be Punished 6.6873 One Hundred Million Yuan (Aug. 7, 2013).

customer overpayments due to the illegal price manipulation;[46] and (iii) two China luxury liquor manufacturers were each fined over RMB 200 million for RPM restraints on distributors.[47]

So far, penalties in thirteen cases have been publicized by SAIC, mostly involving cartels. These include the following two cases this year: (i) a provincial tourism association was fined RMB 400,000,[48] with other participating companies also sanctioned between RMB 1 and 3 million each for price collusion and other price manipulation[49] and (ii) three local brick and tile manufacturers in a city-wide cartel were fined a total of RMB 1.06 million.[50] In addition, press releases have indicated another dozen competition-related cases now under SAIC investigation,[51] including Tetra Pak for alleged abuse of dominance by tying its technological advantage in the liquid food packaging market to the sales of packing materials, as well as for other discriminatory conduct.[52]

D. Court Decisions

The courts issued judgments in several prominent AML cases in 2013.

(i) *360 vs. QQ*. The Guangdong Higher Court denied 360's claim against QQ for abuse of dominant market position by way of refusals to deal and illegal tying or bundling of sales. In the ruling, the Court defined a global relevant market and found that QQ did not have monopoly power in that market, given fierce competition with other social media outlets such as Weibo (a Chinese provider similar to a Twitter-Facebook hybrid). Thus, the Court denied 360's RMB 150 million compensation claim as unsubstantiated and required 360 to pay RMB 796,800 to QQ for litigation costs.[53]

(ii) *Rainbow vs Johnson & Johnson*. The Shanghai Higher Court overturned a first instance ruling in this case, ordering Johnson & Johnson (J&J) to pay RMB 530,000 to

46. *See* Press Release, Nat'l Dev. and Reform Comm'n, Six Foreign Enterprises Investigated and Penalized for Monopolizing the Price of LCD Panels (Jan. 4, 2013).

47. Cathy Lin & Yang Ning, *What's Wrong With High Spirits?-Moutai and Wuliangye Got Fined for Vertical Monopoly Behaviors*, *Lexology* (Mar. 5, 2013), http://www.lexology.com/library/detail.aspx?g=d766e05d-81e5-4dcc-a5ac-d001c0c21d3e; Zhou Rui, *Guizhou, Maotai Price Monopoly Bureau Announced Ticket Fined 247 Million*, China News (Feb. 22, 2013, 4:22 PM), *available at* http://finance.chinanews.com/cj/2013/02-22/4588648.shtml.

48. Press Release, State Admin. for Indus. & Commerce of China, Competition Law Enforcement, Bulletin No. 12 of 2013, Xishuangbanna, Yunnan Tourism Association, Association of Xishuangbanna Travel Industry Operators Engaged in the Case of a Monopoly Agreement (July 29, 2013), http://www.saic.gov.cn/zwgk/gggs/jzzf/201307/t20130726_136768.html.

49. *See* Press Release, Nat'l Dev. Reform Comm'n, Price Violations Disturbing the Order of Tourist Market were Severely Penalized (Sept. 29, 2013).

50. *See* Press Release, State Admin. of Indus. & Commerce of China, Competition Law Enforcement Bulletin No. 11 of 2013, Case Against Monopoly Agreements by Industry Operators Organized Under the Auspices of Brick and Tile Association of City of Yi Bin in Sichuan Province (July 29, 2013), *available at* http://www.saic.gov.cn/zwgk/gggs/jzzf/201307/t20130726_136767.html.

51. *See* Press Release, State Admin. of Indus. & Commerce of China, Sword Care Enforcement Fairness-A Summary of Antitrust Enforcement AICs (Aug. 28, 2013), http://www.saic.gov.cn/jgzf. ./fldyfbzljz/201308/t20130828_137651.html.

52. *See* Press Release, State Admin. of Indus. & Commerce of China, Investigation was Initiated Against Tetra Pak for being Suspected of Abusing Market Dominance (July 10, 2013), http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201307/t20130714_136373.html.

53. Beijing Qihoo Tech. Co. v. Tencent Tech. (Shenzhen) Co., at 30 (Guangdong Provincial Higher People's Ct. Mar. 20, 2013).

Rainbow, a former distributor that had been terminated for violating J&J's RPM requirements.[54] The court decision found that RPM was not *per se* illegal, but that given J&J's market position and its control over prices in the suture market (in which prices remained unchanged for fifteen years), the RPM restrictions in J&J's distribution agreement had anti-competitive effects with no obvious benefits and thus were illegal.

(iii) *Huawei vs. Interdigital.* The Guangdong Higher Court confirmed a judgment of the Shenzhen Intermediate Court finding Interdigital liable for abuse of dominance arising out of unfairly high pricing and improper tying or bundling in the licensing of its standard-essential patents. The court ordered Interdigital to pay compensation of RMB 20 million.[55]

V. European Union

A. Legislative Developments

In 2013, the European Commission (EC) issued its proposal for legislation to facilitate damages claims by alleged victims of antitrust violations.[56] The EC also continued its review of the rules for technology transfers[57] and considered extending the merger notification system also to the acquisitions of minority shareholdings.[58]

B. Mergers

The EC blocked UPS's proposed acquisition of rival TNT Express, a deal that would have reduced the number of major players from three to two in many European Union (EU) countries.[59] The EC also blocked low-cost air carrier Ryanair's third attempt to acquire Irish compatriot Aer Lingus.[60] In contrast, it cleared Greek carrier Aegan Airlines' second attempt to acquire national rival Olympic Air, in light of Olympic Air's im-

54. Beijing Rui Bang Yong & Trade Co. v. Johnson (Shanghai) Medical Equipment Co., at 61–62 (Shanghai Higher People's Ct. Aug. 1, 2013).

55. Mao a Bamboo, *Guangdong High Court of Final Appeal Ruling United IDC Huawei 20 Million Yuan Compensation Constitutes a Conopoly*, XINHUANET (Oct. 30, 2013, 9:33 AM), http://news.xinhuanet.com/fortune/2013-10/30/c_117928934.htm.

56. *The Commission's Proposal for a Directive on Antitrust Damages Actions*, EUR. COMMISSION (Oct. 12, 2013), http://ec.europa.eu/competition/antitrust/actionsdamages/proposed_directive_en.html.

57. *Draft Proposal for a Revised Block Exemption for Technology Transfer Agreements and for Revised Guidelines*, EUR. COMMISSION, (Oct. 6, 2013), http://ec.europa.eu/competition/consultations/2013_technology_transfer/index_en.html.

58. *Towards more effective EU merger control*, EUROPEAN COMMISSION, (Oct. 6, 2013), http://ec.europa.eu/competition/consultations/2013_merger_control/index_en.html.

59. Press Release, Eur. Comm'n, Mergers: Commission Prohibits Proposed Acquisition of TNT Express by UPS – Frequently Asked Questions (Jan. 30, 2013), *available at* http://europa.eu/rapid/press-release_MEMO-13-48_en.htm.

60. Press Release, Eur. Comm'n, Mergers: Commission Prohibits Ryanair's Proposed Takeover of Aer Lingus – Frequently Asked Questions (Feb. 27, 2013), *available at* http://europa.eu/rapid/press-release_MEMO-13-144_en.htm.

minent market exit.[61] The EC also cleared the merger of U.S. Airways and American Airlines, subject to slot releases.[62]

C. Cartels and Other Anticompetitive Practices

The EC has issued only one cartel decision thus far in 2013, imposing fines totaling €141 million (approximately U.S. $189 million) against automotive wire harnesses suppliers.[63] Vice President Almunia has announced that more fines are to be expected in the ongoing car parts investigations.[64] Additionally, in its first ever decision concerning reverse-payment patent settlements, the EC imposed fines totaling €146 million (approximately U.S. $195 million) on Lundbeck and four generic pharmaceutical companies.[65]

D. Abuses of Dominance

The EC continued its investigation of Google's search and related advertising services and has consulted on two rounds of commitments offered by Google to resolve the EC's concerns.[66] The EC also continued its investigation of Motorola and Samsung concerning standard-essential patents and market-tested commitments offered by Samsung.[67] On the issue of net neutrality, the EC started investigating Orange, Deutsche Telekom, and Telefónica based on the concern that these network providers may have favored their own services and degraded access to competing services.[68] In the energy sector, the EC moved forward with its probe into alleged excessive pricing by Russia's Gazprom.[69]

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61. Press Release, Eur. Comm'n, Mergers: Commission Approves Acquisition of Greek Airline Olympic Air by Aegean Airlines (Oct. 9, 2013), *available at* http://europa.eu/rapid/press-release_IP-13-927_en.htm.

62. Press Release, Eur. Comm'n, Mergers: Commission Approves Proposed Merger Between US Airways and American Airlines' Holding Company AMR Corporation, Subject to Conditions (Aug. 5, 2013), *available at* http://europa.eu/rapid/press-release_IP-13-764_en.htm.

63. Press Release, Eur. Comm'n, Antitrust: Commission Fines Producers of Wire Harnesses _ 141 Million in Cartel Settlement (July 10, 2013), *available at* http://europa.eu/rapid/press-release_IP-13-673_en.htm.

64. Joaquín Almunia, Vice President of the European Comm'n Responsible for Competition Policy, Address at the IBA 17th Annual Competition Conference: EU Competition Policy and Innovation (Sept. 13, 2013).

65. Press Release, Eur. Comm'n, Antitrust: Commission Fines Lundbeck and Other Pharma Companies for Delaying Market Entry of Generic Medicines (June 19, 2013), *available at* http://europa.eu/rapid/press-release_IP-13-563_en.htm?locale=en.

66. Joaquín Almunia, Vice President of the European Comm'n Responsible for Competition Policy, Address at the European Parliament Hearing: The Google Antitrust Case: What is at Stake? (Oct. 1, 2012).

67. Press Release, Eur. Comm'n, Antitrust: Commission Seeks Feedback on Commitments Offered by Samsung Electronics to Address Competition Concerns on Use of Standard Essential Patents – Questions and Answers (Oct. 17, 2013), *available at* http://europa.eu/rapid/press-release_MEMO-13-910_en.htm.

68. Press Release, Eur. Comm'n, Antitrust: Commission Confirms Unannounced Inspections in Internet Connectivity Services (July 11, 2013), *available at* http://europa.eu/rapid/press-release_MEMO-13-681_en.htm.

69. Joaquín Almunia, Vice President of the European Comm'n Responsible for Competition Policy, Address at the Fordham's Competition Law Institute Annual Conference: Abuse of Dominance: A View from the EU (Sept. 27, 2013).

E. Court Decisions

The EU Court of Justice confirmed that the EC can impose fines for antitrust infringements even if companies have received advice that the behavior is allowable from their external counsel or from a national competition authority.[70] The Court also confirmed that an agreement to exclude a competitor from the market is illegal even if that competitor is operating unlawfully.[71]

VI. France

A. Legislative Developments

The French Parliament is currently voting on a bill that would create an opt-in class action mechanism for antitrust infringements.[72] Only representative consumer associations could bring class actions and only after the French Competition Authority (FCA) or the European Commission has issued a final decision.

B. Mergers

Three transactions are especially worth mentioning. In *Casino/Monoprix*, the FCA cleared Casino's acquisition of sole control of the retailer Monoprix (which had been under joint control between Casino and Galeries Lafayette) after a phase two investigation. Due to the already significant market share of Casino in the Paris food retail market, the clearance was made subject to divestment of more than fifty food retail outlets.[73] In the bricks market, the FCA cleared the acquisition of Imerys assets by Bouyer-Leroux, subject to rather unusual behavioral commitments, i.e. a transfer of brick volumes to competitors at cost price.[74] Finally, the acquisition by Eurotunnel (the operator of the Channel Tunnel) of three cross-channel ferries (from liquidated SeaFrance ferry company) resulted in differing assessments on the two sides of the Channel. While the FCA only imposed commitments preventing price discrimination between freight carriers,[75] the U.K. Competition Commission went significantly further and ordered Eurotunnel either to divest two ferries or be subject to a ten-year commitment not to operate a ferry service from Dover in the U.K.[76]

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70. Case C-681/11, Bundeswettbewerbsbehörde v. Schenker, 2013 ECJ EUR-Lex LEXIS 4198 (June 18, 2013).

71. Case C-68/12 Protimonopolný úrad Slovenskej republiky v. Slovenská sporitel'ňa, 2013 ECJ EUR-Lex LEXIS 3907 (Feb. 7, 2013).

72. Projet de loi 1357 du 13 septembre 2013 relatif à la consummation [Bill 1357 of September 16, 2013 Relative to the Consumer], *available at* http://www.assemblee-nationale.fr/14/projets/pl1357.asp.

73. Autorité de la Concurrence [Competition Authority], July 11, 2013, Décision No. 13-DCC-90, *available at* http://www.autoritedelaconcurrence.fr/pdf/avis/13DCC90decision_version_publication.pdf.

74. Press Release, Autorité De La Concurrence, The Autorieté de la Concurrence Clears, Subject to Conditions, the Acquisition of Imerys TC Assets by Bouyer-Leroux (July 26, 2013), *available at* http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=483&id_article=2245.

75. Autorité de la Concurrence [Competition Authority], Nov. 7, 2013, Décision No. 12-DCC-154, *available at* http://www.autoritedelaconcurrence.fr/pdf/avis/13DCC90decision_version_publication.pdf.

76. Competition Comm'n, Groupe Eurotunnel S.A. and SeaFrance S.A. Merger Inquiry (June 6, 2013), *available at* http://www.competition-commission.org.uk/assets/competitioncommission/docs/2012/eurotunnel-seafrance/final_report_excised.pdf.

C. Cartels and Other Anticompetitive Practices

The FCA imposed fines that totaled €79 million on distributors of commodity chemicals for anticompetitive cartel behavior that included price coordination and customer allocation.[77] The FCA also imposed on MasterCard and Visa commitments to considerably reduce interbank fees.[78]

D. Abuses of Dominance

The FCA imposed a fine of €40.6 million against Sanofi-Aventis, a French pharmaceutical company, for implementing a strategy of disparaging generic versions of Plavix®, the fourth best-selling drug in the world used to prevent relapses associated with cardiovascular diseases.[79]

VII. Germany

A. Legislative Developments

On June 30, 2013, the eighth amendment to the German Act Against Restraints of Competition (ARC) entered into force.[80] The amendment brings German competition law more in line with EU law and introduces several changes to merger control, cartel enforcement, and control of other abusive practices. The most significant change is the introduction of the SIEC-Test, which replaces the "market dominance test."

Following a judgment rendered by the Federal Court of Justice (FCJ) in the cement cartel case,[81] the Federal Cartel Office (FCO) published new fining guidelines on June 25, 2013.[82] The new guidelines take into account that the FCJ interprets Section 81 (4) Sentence 2 of the ARC—which caps the maximum amount of fines at 10 percent of the total turnover of the company—as providing an upper limit within a framework of fines. Within this framework, the FCO will consider 10 percent of the domestic turnover achieved from the infringement during the infringement period as a starting point for the

77. Autorité de la Concurrence [Competition Authority], May 28, 2013, Décision No 13-D-12, *available at* http://www.autoritedelaconcurrence.fr/pdf/avis/13d12.pdf.

78. Autorité de la Concurrence [Competition Authority], Sept. 20, 2013, Décision No. 13-D-12, *available at* http://www.autoritedelaconcurrence.fr/pdf/avis/13d17.pdf; Autorité de la Concurrence [Competition Authority], Sept. 30, 2013, Décision No 13-D-18, *available at* http://www.autoritedelaconcurrence.fr/pdf/avis/13d18.pdf.

79. Autorité de la Concurrence [Competition Authority], May 14, 2013, Décision No 13-D-11, *available at* http://www.autoritedelaconcurrence.fr/pdf/avis/13d11.pdf.

80. Bekanntmachung der Neufassung des Gesetz gegen Wettbewerbsbeschränkungen [GWB] [German Act Against Restraints on Competition] Aug. 26, 1998, BGBL. I as amended Jun. 30, 2013, BGBL I at 26 (Ger.), *available at* http://www.bmwi.de/BMWi/Redaktion/PDF/Gesetz/achte-novelle-gwb,property=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf.

81. *See generally* Bundesgerichtshof [BGH] [Federal Court of Justice] Feb. 26, 2013, KARTELLBUßGELDSACHE [KRB] 20, 2012 (Ger.).

82. *See generally* Richtlinien für die Festsetzung von Geldbußen in Kartellbußgeldverfahren [Guidelines for the Setting of Fines in Cartel Administrative Offence Proceedings], Jun. 25, 2013, Bundeskartellamt [Federal Cartel Office] (Ger.), *available at* http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Leitlinien/Guidelines%20for%20the%20setting%20of%20fines.pdf?__blob=publicationFile&v=3.

calculation and will further take into account the size of the concerned company, as well as aggravating and mitigating factors.

In addition, the German legislature created a Market Transparency Unit (MTU), for Fuels at the FCO, that collects price information from oil companies and petrol station operators and passes it on to consumers. The MTU started its normal operation on December 1, 2013.[83]

B. Mergers

At the time of this writing, the FCO had issued two prohibition decisions for 2013. In February 2013, the FCO prohibited plans by Kabel Deutschland to acquire cable network operator Tele Columbus.[84] According to the FCO, the disappearance of Tele Columbus would have further strengthened the nationwide oligopoly of the two major regional cable network operators, Kabel Deutschland and Unitymedia KabelBW, in the retail TV services market. Moreover, the FCO retroactively prohibited a transaction in the hospital sector that was originally cleared with conditions, after hospital operator Asklepios, who had planned to acquire a 10.1 percent stake in rival Rhön-Klinikum, had informed the FCO that it no longer intended to comply with the conditions.[85] In October 2013, the German public broadcasting groups ARD and ZDF announced that they had abandoned their plans to set up a joint online video platform called "Germany's Gold" that was regarded as problematic by the FCO.[86] The FCO cleared the joint venture in 2011 but it subsequently instituted cartel proceedings to examine potential anticompetitive effects arising from the platform.

C. Cartels And Other Anticompetitive Practices

The FCO investigated Amazon[87] and online hotel booking platform operator HRS[88] for using a so-called best-price and price parity clauses.

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83. Deutscher Bundestag: Markttransparenz Einheit [BT] 17/10060 (Ger.), *available at* http://dip21.bundestag.de/dip21/btd/17/100/1710060.pdf.

84. Press Release, Bundeskartellamt, Bundeskartellamt Prohibits Takeover of Tele Columbus by Kabel Deutschland (Feb. 22, 2013), *available at* http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2013/22_02_2013_KDG.html.

85. Press Release, Bundeskartellamt, Participation of Asklepios Group in Rival Rhön-Klinikum Cleared Subject to Condition (Mar. 14, 2013), *available at* http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2013/14_03_2013_Asklepios_Rhön.html.

86. Press Release, Bundeskartellamt, Plans for ARD/ZDF Online Platform "Germany's Gold" Abandoned (Sept. 16, 2013), *available at* http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2013/16_09_2013_%20Germanys-Gold-aufgeben.html.

87. Press Release, Bundeskartellamt, Bundeskartellamt Surveys Amazon Marketplace Sellers (Feb. 20, 2013), *available at* http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2013/20_02_2013_Amazon.html.

88. Press Release, Bundeskartellamt, Bundeskartellamt Continues to View HRS's Best Price Clause Critically (July 25, 2013), *available at* http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2013/25_07_2013_HRS.html.

Cartel cases resolved in the course of 2013 include manufacturers of household porcelain, fined approximately €900,000 (approximately U.S. $1.1 million);[89] further fines on rail manufacturers amounting to €100 million (approximately U.S. $130 million);[90] manufacturers of drugstore products, €39 million (approximately U.S. $5.0. million);[91] flour mills, €65 million (approximately U.S. $83 million);[92] and confectionary manufacturers, €60 million (approximately U.S. $77 million).[93]

D. Court Decisions

In an April 16, 2013, decision, the Higher Regional Court Düsseldorf increased the fines imposed by the FCO on five members of the liquefied gas cartel from €180 million to €244 million.[94] In another decision of August 14, 2013, the same court overturned the FCO's clearance decision of December 15, 2011, concerning the acquisition by Liberty Global of Kabel BW.[95] Furthermore, the German Federal Constitutional Court held the Section 81 (6) ARC, which authorizes interest charges for cartel fines, to be constitutional.[96] Finally, in the above-mentioned decision in the cement cartel case, the FCJ confirmed the compliance of the fining provision with the German constitution.[97]

VIII. India

A. Legislative Developments

In 2013, loss-making and failing banking companies were exempted from the purview of merger control for five years.[98] The Competition Commission of India (CCI) amended the merger control Regulations to exempt "creeping acquisitions," where the acquirer al-

89. Press Release, Bundeskartellamt, Bundeskartellamt Concludes Cartel Proceedings Against Manufacturers of Household Porcelain (Oct. 17, 2013), *available at* http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2013/17_10_2013_Haushaltsgeschirr.html.

90. Press Release, Bundeskartellamt, Bundeskartellamt Punishes More Agreements Between Rail Manufacturers (July 23, 2013), *available at* http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2013/23_07_2013_Schienen.html.

91. Press Release, Bundeskartellamt, Bundeskartellamt Clears Hospital Merger in Bergstraße Region (Mar. 18, 2013), *available at* http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2013/18_03_2013_Bergstraß e.html.

92. Press Release, Bundeskartellamt, Bundeskartellamt Concludes Proceedings Against Flour Mills and Imposes Fines Totaling More than 65 Million Euros (Feb. 19, 2013), *available at* http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2013/19_02_2013_Mühlenkartell.html.

93. Press Release, Bundeskartellamt Imposes Fines of More than _ 60 Million on Confectionery Manufacturers (Jan. 31, 2013), *available at* http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2013/31_01_2013_S%C3%BC%C3%9Fwarenhersteller.html.

94. Press Release, Düsseldorf Higher Regional Court Increases Fines Against Liquefied Gas Cartel (Apr.16, 2013), *available at* http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2013/16_04_2013_Fl%C3%BCssiggaskartell-OLG.html.

95. Oberlandesgericht Düsseldorf [OLG Düsseldorf] [Higher Regional Court Düsseldorf] Aug. 14, 2013, VI Kart 1/12 (V) (Ger.).

96. Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Dec. 19 2012, 1 BvL 18/11 (Ger.).

97. *See generally* Bundesgerichtshof [BGH] [Federal Court of Justice] Feb. 26, 2013, Kartellbußgeldsache [KRB] 20, 2012 (Ger.).

98. Ministry of Corporate Affairs, Notification F. No. 5/63/2011-CS (Jan. 8, 2013), *available at* http://cci.gov.in/images/media/notifications/S.O.%2093%20(E)_08012013.pdf.

ready holds 25 percent to 50 percent of the shares/voting rights.[99] Intra-group transactions, where one enterprise has more than 50 percent shares/voting rights in the other or where an enterprise holds more than 50 percent shares/voting rights in both parties to the transaction are also exempt, provided there is no change in control.[100]

B. Mergers

The CCI imposed penalties of U.S. $79,085 on Temasek[101] for delayed notification and of U.S. $158,170 on Titan.[102] Non-compete obligations in transactions were allowed so long as they are reasonable in terms of duration, business activities, geographical areas, and person(s) subject to the restraint.[103]

C. Cartels and Other Anti-Competitive Agreements

Evidence on the basis of "preponderance of probabilities" was considered sufficient to prosecute parties involved in a cartel.[104] The CCI also recognized the legitimate role of industry bodies, finding that collective action by the members is not per se anti-competitive.[105]

The CCI imposed a penalty on the Board of Control for Cricket in India for abusing its dominant position.[106] It also held that the Department of Industrial Policy and Promotion is an "enterprise" under the Act while playing the role of policy-maker for foreign direct investment, whereas in earlier decisions it held that Central Bureau of Narcotics and Ministry of Civil Aviation were not enterprises due to their non-commercial regulatory and policy-making functions.[107]

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99. The Competition Commission of India (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations, 2011, Gazette of India, 17 (as amended Apr. 4, 2013).

100. *Id.*

101. *See* Competition Comm'n of India, Combination Registration No.C-2013/06/124 (Aug. 1st, 2013), *available at* http://cci.gov.in/May2011/OrderOfCommission/CombinationOrders/P-C-2013-06-124.pdf.

102. *See* Competition Comm'n of India, Combination Registration No. C-2013/02/109 (Apr. 2, 2013), *available at* http://cci.gov.in/May2011/OrderOfCommission/CombinationOrders/C-2013-02-109.pdf.

103. *See* Competition Comm'n of India, Combination Registration No.C-2012/09/79, 4 (Dec.21, 2012), *available at* http://cci.gov.in/May2011/OrderOfCommission/CombinationOrders/C-2012-09-79.pdf; Competition Comm'n of India, Combination Registration No. C-2013/04/116, 8-9 (June 20, 2013), *available at* http://cci.gov.in/May2011/OrderOfCommission/CombinationOrders/C-2013-04-116.pdf.

104. *See* Competition Comm'n of India, M/o Commerce v. Puja Enterprises & Ors, Ref. Case No. 01 of 2012, 12–13 (Aug. 6, 2013), *available at* http://cci.gov.in/May2011/OrderOfCommission/012012.pdf.

105. *See* Competition Comm'n of India, Advertising Agencies Guild v. Indian Broadcasting Federation, Case No. 35 of 2013, 4–5 (June 1, 2013), *available at* http://cci.gov.in/May2011/OrderOfCommission/352013.pdf.

106. *See* Competition Comm'n of India, Surinder Singh v. Board of Control for Cricket in India, Case No.61 of 2010, 36, 39 (Feb. 8, 2013), *available at* http://cci.gov.in/May2011/OrderOfCommission/612010.pdf.

107. *See* Competition Comm'n of India, Vineet Kumar v. Ministry of Corp. Affairs, Case No. 18 of 2013, 4 (Aug. 6, 2013), *available at* http://cci.gov.in/May2011/OrderOfCommission/182013.pdf; Competition Comm'n of India, Om Prakash v. CBN & Ors, Case No. 41 of 2013, 6 (Sept. 16, 2013), *available at* http://cci.gov.in/May2011/OrderOfCommission/412013.pdf.

D. Court Decisions

The Competition Appellate Tribunal held that CCI must provide reasons and consider mitigating circumstances while imposing penalties.[108] It also held that the "relevant turnover" of a company must be considered while imposing penalties.[109]

IX. Israel

A. Legislative Developments

Israel enacted a new block exemption (which includes a self-assessment mechanism) for non-horizontal arrangements without price restrictions.[110]

The Israeli Antitrust Authority (IAA) published draft guidelines for the enforcement of excessive pricing (Draft Guidelines),[111] which reflect a new approach toward monopoly pricing. According to the Draft Guidelines, the prohibition in the Restrictive Trade Practices Law 5748-1988 (the Law) on "unfair pricing" does not apply to predatory pricing only, but also to excessive pricing. The Draft Guidelines include a "safe harbor," whereby the IAA will not initiate enforcement actions against a monopoly that does not set its prices above 20 percent of its manufacturing costs.

A legislative proposal amending the Law was published, empowering courts to award treble damages.[112]

The IAA published draft guidelines concerning the transfer of information between competitors prior to a merger (e.g. during due diligence) that indicate that this practice may constitute a restrictive arrangement.[113]

B. Cartels and Other Anticompetitive Practices

The General Director of the IAA (General Director) published a Determination—a decision that serves as prima facie evidence in any legal proceeding—declaring a global cartel existed in the electricity infrastructure sector (GIS).[114] It also issued hearing notices to members of alleged cartels in three alleged oligopolistic markets; and, a draft of operative provisions with respect to one of the alleged concerted groups, Ashdod and Haifa

108. *See* Competition Appellate Tribunal, Ideal Indus. Explosives Mfrs. & Others v. CCI & Ors., Appeal No. 82 of 2012, 57 (Apr. 18, 2013), *available at* http://compat.nic.in/upload/PDFs/aprilordersApp2013/18_04_13.pdf.

109. *See* Competition Appellate Tribunal, M/s Excel Corp. and Ors. v. CCI, Appeal No. 79 of 2012, 40 (Oct. 29, 2013), *available at* http://compat.nic.in/upload/PDFs/octordersApp2013/29_10_13.pdf.

110. Restrictive Trade Practices Law, 5748–1988, LSI 15a (2014) (Isr.).

111. *See generally* Press Release, General Dir. of the Israel Antitrust Auth., The IAA Draft Guidelines on the Enforcement of Excessive Pricing (Oct. 31, 2013).

112. Draft Bill Amending the Restrictive Trade Practices Law (No. 14), 2013, HH 801 (Isr).

113. Press Release, Gen. Dir. of the Isr. Antitrust Auth., The IAA Draft Guidelines on the Disclosure of Info. Pursuant to Due Diligence Prior to a Transaction Between Competitors (Mar. 14, 2013).

114. Press Release, Gen. Dir. of the Isr. Antitrust Auth., Determination Pursuant to Section 43(a) of the Restrictive Trade Practices Law Regarding a Restrictive Arrangement Between Gas Insulated Switchgear Producers (Sept. 16, 2013).

ports.[115] For the first time the General Director considered taking enforcement measures for "price squeezing."[116] The General Director published a Determination that a recycling corporation abused its position by preventing one of its customers from entering the market.[117]

The Supreme Court upheld the major banks' appeals of a District Court's decision to certify a class action regarding an alleged cartel with respect to interest rates and ordered the case be reheard by the District Court.[118] The District Court indicated that when a competing company becomes a minority shareholder in a rival company, anti-competitive concerns arise, and there may be unlawful conflicts of interest between the minority shareholder and the company.[119]

X. Mexico

A. Legislative Developments

In June 2013, the Mexican government enacted a major constitutional amendment on telecommunications and competition.[120] The most significant highlights are the following:

- The creation of a new Federal Economic Competition Commission (FECC) as a constitutional and autonomous entity, whose budget will directly allocate from the Congress, replacing the Federal Competition Commission, which was a de-concentrated agency under the Mexican Ministry of Economy. As such, its budget was allocated directly by the Ministry of Economy.
- The appointment of seven new Commissioners, instead of five, as in the former competition agency.[121]
- The creation of the Federal Institute of Telecommunications (FIT) as the authority responsible for competition matters and sectorial regulation with respect to the telecommunications sector.

115. Press Release, Gen. Dir. of the Isr. Antitrust Auth., The Gen. Dir. Published a Draft of Operative Provisions to the Members of Concentration Groups Pursuant the Restrictive Trade Practices Law (Nov. 7, 2013).

116. Press Release, Gen. Dir. of the Isr. Antitrust Auth., The IAA is Considering to Determine that Bezeq Abused Its Position As a Monopoly in the Internet and Tel. Mkt. (Feb. 11, 2013).

117. Press Release, Gen. Dir. of the Isr. Antitrust Auth., The Gen. Dir. Published a Determination: The Recycling Corp. Owned by the Big Drinks Cos. Abused Its Position As a Monopoly to Exclude a Competitor (July 14, 2013).

118. CA (Jer) 3259/08 Sharnoa Computerized Machines Tel-Aviv Ltd. v. Hapoalim Bank Ltd. [2013] (Isr).

119. DC (TA) 18327-12-11 Chemipal Ltd. v. NeoPharm Ltd. [2013] (Isr).

120. *See generally* Decreto por el que se Reforman y Adicionan Diversas Disposiciones de los Artículos 6o., 7o., 27, 28, 73, 78, 94 y 105 de la Constitución Política de los Estados Unidos Mexicanos, en Materia de Telecomunicaciones [Decree Amending and Supplementing Various Provisions of Articles 6o, 7o, 27, 28, 73, 78, 94 and 105 of the United Mexican States' Political Constitution Regarding Telecommunications Matters], *as amended*, Diario Oficial de la Federación [DO] 11 de Junio de 2013 (Mex.), *available at* http://www.dof.gob.mx/nota_detalle.php?codigo=5301941&fecha=11/06/2013. .

121. *Id.* (On September 11, 2013, the FECC and the FIT began their functions. In the case of the FECC, the Plenum—deciding body—is integrated by six economists and only one lawyer, indicating an inclination towards an economics-focused approach in competition cases.).

- The establishment of the indirect *amparo*[122] as the sole remedy available against the FECC's and FIT's final resolutions before the specialized courts.
- The inclusion of *must carry* and *must offer* obligations to require free-of-charge relay of open-air TV signals under specific conditions.[123]

B. Mergers

Up to November 2013, the FECC[124] has completed 93 merger reviews, 92 of which were authorized and only one denied.[125] Among the most relevant concentrations reviewed by the FECC were (i) the global transaction between Nestlé S.A. and Pfizer Inc., authorized with conditions on April 4, 2013; (ii) the transaction between Nestlé S.A. and Aspen Labs, S.A. de C.V. related to the compliance of conditions in the Nestlé-Pfizer merger, authorized on August 20, 2013;[126] (iii) the merger between Sherwin-Williams Company and Avisep, S.A. de C.V., denied on October 29, 2013, in the resolution of the motion of reconsideration;[127] and (iv) the merger between Cadena Mexicana de Exhibición, S.A. de C.V. and Cinemark Holdings México, S. de R.L. de C.V., authorized on October 22, 2013.[128]

C. Cartels and Other Anticompetitive Practices

Up to November 2013, the FECC had initiated four investigations for absolute monopolistic practices—three related to the sale of auto parts in Mexico (air compressors, angle sensors, and automotive harnesses) and the fourth one related to the commercialization of corn in Colima, Mexico.[129]

On September 10, 2013, the FECC fined six hospitals in Jalisco, Mexico and their employees for the amount of MXN 14 million (approximately U.S. $1,069,873) for conducting collusive practices in the market of services granted by hospitals and/or medical services establishments. The practice involved fixing prices of medical services covered by insurance companies from 2009 to 2011 and was performed by the managers of the hospi-

122. *Id.* art 28. (There are two sorts of *amparo* proceedings, the direct *amparo*, which proceeds against final judicial resolutions, and the indirect *amparo*, which proceeds against final resolutions by non-judicial authorities.).

123. *Id.* (Whereby open-air TV operators must allow the retransmission of their signals by pay TV operators, and the former must retransmit such open-air TV signals.).

124. The Federal Competition Commission up to June 2013 and afterwards the FECC. For purposes of this report, they are indistinctively referred to as the FECC.

125. *See Asuntos Resueltos* [*Resolved Issues*], Comisión Federal de Competencia Económica, http://www.cfc.gob.mx/cofece/index.php/sesiones/asuntos-resueltos (last visited Mar. 23, 2014).

126. Letter from Ali B. Haddou Ruiz, Exec. Sec., Comisión Federal de Competencia, to Guillermo González Camarena, Aspen Labs & Nestlé (Aug. 20, 2013), *available at* http://www.cfc.gob.mx/cfcresoluciones/docs/Concentraciones/V489/39/1763153.pdf.

127. Comisión Federal de Competencia, Expediente CNT-095-2012, Pleno de Sherwin-Williams Company y Avisep, S.A. de C.V., *available at* http://www.cfc.gob.mx/cfcresoluciones/docs/Concentraciones/V486/38/1760928.pdf (last visited Mar. 23, 2014). This concentration also was denied by an initial FECC's resolution issued on July 11, 2013; the parties submitted a motion of reconsideration against it, but the FECC confirmed its original resolution.

128. *México Aprueba Compra de Cadena Cinemark* [*México Approves Purchase of Cinemark Chain*], Gestión (Nov. 13, 2013) http://gestion.pe/empresas/mexico-aprueba-compra-cadena-cinemark-2080947.

129. *See Asuntos Resueltos*, *supra* note 125.

tals and the *Asociación de Hospitales Particulares de Jalisco*. In this case, the FECC conducted a dawn raid on the hospitals, obtaining relevant evidence that was key to finding liability.[130]

D. Abuse of Dominance

Up to November 2013, the FECC had decided seven investigations for relative monopolistic practices, three of which concluded with fines.[131] As part of those investigations, on August 20, 2013, the FECC issued a resolution to fine State-owned oil refining Pemex-Refinación for MXN 653.2 million (approximately U.S. $50,207,532) for selling fuel to gas stations subject to the condition of hiring transportation services for gasoline and diesel.[132]

In October 2013, and as a result of the above-mentioned reform on telecommunications and competition, the FECC formally transferred to the FIT the files of pending cases related to telecommunication matters which were being carried out with the previous competition agency and which now will be decided by the new telecommunications watchdog.

XI. Russia

A. Legislative Developments

In 2013, the Federal Antimonopoly Service of Russia (FAS Russia) prepared draft laws, known as the Fourth Antimonopoly Package, that would significantly amend the federal law "On the Protection of Competition" (Competition Law).[133] The amendments to the Competition Law relate to merger control, dominance, vertical agreements, and the powers of the competition authorities. The abolishment of the federal law "On Natural Monopolies" and the inclusion of provisions concerning state regulation of the activity of natural monopolies into the Competition Law are planned for the near future.

B. Mergers

In recent years, the number of applications submitted to antimonopoly authorities within the merger control procedures has steadily declined. At the same time, the administrative burdens for businesses engaging in merger activity continue to remain high. As a solution to this problem, it has been suggested that the grounds requiring post-merger notifications should be limited.

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130. *CFC Multa con 14 MDP a Seis Hospitales de Jalisco por Prácticas Monopólicas* [*CFC Fined 14 Million Pesos to Six Hospitals in Jalisco for Monopolistic Practices*], Proceso (Sept. 10, 2013), http://www.proceso.com.mx/?p=352391.

131. *See Asuntos Resueltos*, *supra* note 125.

132. *Impone Comisión Multa a Pemex por 653 Millones* [*Commission Fines Pemex 653 Million*], El Diario MX Nacional, http://diario.mx/Nacional/2013-08-25_113263a7/impone-comision-multa-a-pemex-por-653-millones/# (Pemex challenged this resolution through an indirect *amparo* trial; its outcome is pending.).

133. Federalńyj zakon Rossijskoj Federacii ot 26 iûlâ 2006 g. N 135-FZ (O Zasite Konkurencii) [Federal Law of 26 July 2006 No. 135-FZ (On Protection of Competition)], Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 2006, No. 31 (Russ.).

C. Cartels and Other Anticompetitive Practices

Cartel enforcement continued to be one of FAS Russia's priorities. In recent years, cooperation between competition authorities and the police has strengthened and continues to actively develop.

On June 18, 2013, the State Duma of the Russian Federation in its first hearing approved the draft of the federal law "On Amending Article 178 of the Criminal Code."[134] This draft places an obligation on FAS Russia to provide to the police all materials regarding violations of antitrust law that may contain evidence of criminal activity. Furthermore, the draft makes changes to the law "On Intelligence Investigations," which gives FAS Russia the ability to utilize the results of police investigations.

Finally, 2013 was the first year in which FAS Russia investigated several international cartels.

D. Abuses of Dominance

Looking back at the period from 2010 to 2012, there was a steady increase in the number of revealed violations of Article 10 (the abuse of dominant position) of the Competition Law. In 2013, FAS Russia kept its focus on the liberalization and streamlining of existing regulations and law enforcement and prefers to issue warnings before the actual initiation of proceedings against dominant entities.[135]

E. Court Decisions

In 2013, the courts considered remarkable cases against oil companies, transport companies, credit companies and insurance organizations. According to FAS Russia, the majority of decisions rendered by the competition authorities have been upheld by the courts.

Importantly, in respect of the court system, in the near future the introduction and establishment of group claims for protection of the rights and legitimate interests of a group of persons and the indemnification mechanism in the "multiple size" may be initiated.[136]

XII. South Africa

The South African competition authorities were active in 2013. In particular, the Competition Commission concluded numerous matters, most significantly a major cartel in-

134. *See Proekt Federalńogo Zakona «O Vnesenii Izmenenij v Statû 178 Ugolovnogo Kodeksa Rossijskoj Federacii»* [*Draft Federal Law "On Amending Article 178 of the Criminal Code of the Russian Federation"*], Fed. Antimonopoly Serv. (Apr. 23, 2013), http://www.fas.gov.ru/legislative-acts/legislative-acts_51154.html.

135. *See* Press Release, Fed. Antimonopoly Serv. of the Russ. Fed'n, The Head of FAS Igor Artemyev: The Institute of Warnings Showed Good Results (Sept. 24, 2012, 2:45 PM), http://en.fas.gov.ru/news/news_32478.html.

136. *See* Press Release, Fed. Antimonopoly Serv. of the Russ. Fed'n, Rossijskim Kompaniâm Grozât iski o Milliardnyh Ubytkah [Russian Companies Are Threatened By Lawsuits, Billions In Losses] (Apr. 19, 2013), *available at* http://fas.gov.ru/fas-in-press/fas-in-press_37451.html.

vestigation into the construction industry, despite leadership and staffing changes at the authority.[137]

A. Legislative Developments

Section 6 of the Competition Amendment Act 1 of 2009, which empowers the Competition Commission to conduct market inquiries, took effect on April 1, 2013. In addition, the Financial Markets Act 19 of 2012 (FMA) amended Section 18(2) of the Competition Act 89 of 1998 to oust the Commission's jurisdiction to assess mergers, which require approval in terms of the FMA.[138]

B. Mergers

A novel condition requiring a ten-year licensing of a brand was imposed by the Competition Tribunal in relation to Nestlé's acquisition of Pfizer's infant nutrition business.[139] The only merger prohibited in 2013 was a small merger between Van Schaik and Juta Bookshops.[140]

C. Cartels and Other Anticompetitive Practices

The Commission concluded settlement agreements with fifteen firms in the construction industry that admitted to collusive tendering. The firms agreed to penalties collectively totaling R1.46 billion. This was the culmination of the Commission's "fast-track" construction settlement process, which began in February 2011.[141] Civil damages actions, as well as possible criminal complaints, may arise from the contraventions. The Commission also published draft terms of reference for a market enquiry into the private healthcare industry. The enquiry is expected to commence at the start of 2014.[142]

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137. The South African Competition Commissioner was forced to resign in October 2013 and was replaced by an acting Commissioner. The Deputy Commissioner resigned earlier in the year and was replaced by two acting deputy Commissioners. Both the Chief Economist and the Head of Mergers resigned in 2013 and have not yet been replaced.

138. Competition Amendment Act of 2009 § 6 (S. Afr.); GN 70 of 1 Feb. 2013 (S. Afr.).

139. *See Nestle SA and The Infant Nutrition Business of Pfizer Inc.*, Case No. 65/LM/Jun12-015248 (Competition Trib., Mar. 18, 2013) *available at* http://www.comptrib.co.za/assets/Uploads/65LMJun12-015248.pdf.

140. *See* Press Release, Competition Comm'n of S. Afr., Comm'n Blocks Van Schaik From Acquiring Juta Bookshops (Sept. 4, 2013), *available at* http://www.compcom.co.za/assets/Uploads/Commission-blocks-Van-Schaik-from-acquiring-Juta-Bookshops.pdf.

141. *See* Press Release, Competition Comm'n of S. Afr., Construction Firms Settle Collusive Tendering Cases With R1.5 Billion In Penalties (June 24, 2013), *available at* http://www.compcom.co.za/assets/Uploads/AttachedFiles/MyDocuments/Construction-Fast-Track-Settlement-Process-Media-Release.pdf; *see also Consent Orders*, Competition Tribunal, http://www.comptrib.co.za/cases/consent-order/ (last visited Mar. 23, 2014).

142. *See* Competition Comm'n of S. Afr., Notice 116 of 2013, Terms of Reference for Market Inquiry into the Private Healthcare Sector (Nov. 29, 2013), *available at* http://www.compcom.co.za/assets/Uploads/AttachedFiles/MyDocuments/Government-Gazette-ToR.pdf.

D. Abuses of Dominance

The Commission reached a landmark settlement agreement with Telkom, the fixed-line telecommunications operator, which was accused of margin-squeeze in the leasing of access lines to internet services providers. The settlement requires Telkom to pay a fine of R200 million and to adopt numerous policies to avoid discriminatory and exclusionary practices.[143]

The Tribunal heard a number of abuse of dominance complaints in 2013, including (i) the Commission's complaint against South African Breweries (SAB) for discriminatory pricing and various other prohibited practices;[144] (ii) the Commission's complaint against Sasol Chemical Industries relating to excessive pricing; and (iii) the Commission's complaint that media group Media24 engaged in predatory pricing.[145]

E. Court Decisions

In the case of *Competition Commission v. Yara (SA)(PTY) Ltd.*,[146] the Supreme Court of Appeal (SCA) significantly reduced the procedural requirements imposed on the Commission to formally initiate a complaint and then ensure that its subsequent referral matches the terms of the initial complaint.

Both the SCA[147] and Constitutional Court[148] made way for class actions in cases dealing with applications for certification for instituting actions against the participants in the bread cartel. The High Court also confirmed that the Tribunal can certify that the conduct of the leniency applicant in the cartel was a prohibited practice.[149]

In the case of *Competition Commission of SA v. ArcelorMittal SA Ltd.*,[150] the SCA found that a leniency application was subject to litigation privilege, but that privilege was waived by the Commission when it referred to the contents of the application in its founding papers. The SCA therefore required the Commission to make the leniency application and its record available to the respondents to enable them to plead.

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143. *See* Non-Confidential Order, *Competition Commission of South Africa v. Telekom Ltd.*, No. 016865, 2013 (Comp. Trib) p. 8 para. 5.2, *available at* http://www.comptrib.co.za/assets/Uploads/016865-Telkom.pdf (S. Afr.).

144. *See* Amanda Visser, *SAB Distribution Deals Harm Independents, Tribunal Hears*, Business Day BDLive (July 22, 2013, 2:27 PM), *available at* http://www.bdlive.co.za/business/retail/2013/07/22/sab-distribution-deals-harm-independents-tribunal-hears.

145. *See Media24 Faces Competition Commission*, Bus. Rep., (Oct. 31, 2013, 1:48 PM), *available at* http://www.iol.co.za/business/companies/media24-faces-competition-commission-1.1600137#.Uu2O9KXnbns.

146. *Competition Commission v. Yara* 2013 (6) SA 404 (SCA) (S. Afr.), *available at* http://www.saflii.org/za/cases/ZASCA/2013/107.pdf.

147. *Children's Resource Centre Trust v. Pioneer Food* 2012 ZASCA 182 (SCA) (S. Afr.), *available at* http://www.justice.gov.za/sca/judgments/sca_2012/sca2012-182.pdf.

148. *Mukaddam v. Pioneer Foods Ltd.* 2013 ZACC 23 (CC) (S. Afr.), *available at* http://www.constitutionalcourt.org.za/site/MU.K.A.htm.

149. *Premier Foods Ltd. v. Norman Manoim N.O.* 2013 ZAGPPHC 236 (HC of S. Afr.) *available at* http://www.comptrib.co.za/assets/Uploads/38235-2012.pdf.

150. *Competition Commission of South Africa v. Arcerlormittal South Africa Ltd.* 2013 ZASCA 84 (SA) at 15 para. 37 (S. Afr.), *available at* http://www.comptrib.co.za/assets/Uploads/Competition-Commission-v-Arcerlormittal-final-680-12.pdf.

XIII. United Kingdom

A. Legislative Developments

The Enterprise and Regulatory Reform Act 2013 came into force.[151] The legislation creates a new, single competition authority, the Competition and Markets Authority (CMA), to replace the Office of Fair Trading (OFT) and the Competition Commission (CC).[152]

B. Mergers

The CC required airline Ryanair to reduce its 29.8 percent stake in airline Aer Lingus down to 5 percent.[153] This was accompanied by obligations on Ryanair not to seek or accept board representation or acquire further shares. The CC decided to prohibit the anticipated merger of two hospitals, finding that the proposed merger would give rise to a substantial lessening of competition in a range of hospital services.[154]

C. Cartels and Other Anticompetitive Practices

The OFT has issued a Statement of Objections to a number of pharmaceutical companies alleging that they acted to delay effective competition in the supply of paroxetine, an antidepressant medicine.[155] The allegations concern so-called "pay for delay" agreements. The OFT also announced that on-line retailer Amazon decided to end its price parity policy, which restricted its Amazon U.K. Marketplace sellers from offering lower prices on other online sales channels.[156] The OFT consulted on commitments put forward by two online travel agents (OTAs) and InterContinental Hotels Group (IHG), which were designed to address the OFT's competition concerns about the online offering of room-only hotel accommodation bookings by OTAs.[157]

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151. *See generally* Enterprise and Regulatory Reform Act, 2013, c. 24, *available at* http://www.legislation.gov.uk/ukpga/2013/24/pdfs/ukpga_20130024_en.pdf.

152. *Id.* at 42.

153. Press Release, Competition Comm'n, Competition Commision Requires Ryanair To Sell Shareholding In Aer Lingus Down To 5 Per Cent (Aug. 28, 2013), *available at* http://www.competition-commission.org.uk/media-centre/latest-news/2013/Aug/cc-requires-ryanair-to-sell-shareholding.

154. Press Release, Competition Comm'n, CC Makes Final Decision On Hospitals Merger (Oct. 17, 2013), *available at* http://www.competition-commission.org.uk/media-centre/latest-news/2013/Oct/cc-makes-final-decision-on-hospitals-merger.

155. Investigation into Agreements in the Pharmaceutical Sector, Off. of Fair Trading (Apr. 19, 2013), *available at* http://www.oft.gov.uk/OFTwork/competition-act-and-cartels/ca98-current/pharmaceutical/.

156. Press Release, Office of Fair Trading, OFT Welcomes Amazon's Decision to End Price Parity Policy (Aug. 29, 2013), *available at* http://www.oft.gov.uk/news-and-updates/press/2013/60-13.

157. Office of Fair Trading, OFT 1500, Hotel Online Booking: Notice of Intention to Accept Binding Commitments to Remove Certain Discounting Restrictions for Online Travel Agents and Invitation to Comment (Aug. 9, 2013), *available at* http://www.oft.gov.uk/shared_oft/ca-and-cartels/oft1500.pdf.

D. Court Decisions

The U.K. Competition Appeal Tribunal (CAT) awarded damages in a private claim for abuse of dominance.[158] The claim was based on the finding, also made by the CAT, that water company Dwr Cymru infringed the U.K. prohibition on abuse of dominance (it was therefore a "follow-on" claim).[159] The English High Court granted interim injunctions in two cases concerning an alleged refusal to supply by Barclays Bank plc.[160]

XIV. United States

A. Legislative Developments

The Federal Trade Commission (FTC) codified the so-called "pull and refile," an informal practice under Hart-Scott-Rodino Act review that allows a notification to be withdrawn at the end of the statutory waiting period and refiled without having to pay a new filing fee (thus allowing the FTC more time to consider a notification in hopes of avoiding a second request). Now, the procedure may be used only once, and only where (i) the proposed acquisition does not change in any material way, (ii) the resubmitted notification is recertified and updated, and (iii) the resubmitted notification is refiled within two business days of the withdrawal.[161]

B. Mergers

The Department of Justice (DOJ), six state attorneys general, and the District of Columbia challenged the proposed merger between US Airways Group Inc. and American Airlines' parent corporation, AMR Corp. The combined company would have control of 69 percent of the take-off and landing slots at Reagan National Airport in Washington, D.C. and would also have a monopoly on 63 percent of that airport's nonstop routes. The complaint alleges that a combined company would result in increased ticket fares and ancillary fees and would make it easier for the remaining carriers to coordinate fee increases.[162]

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158. *See generally* Albion Water Limited v Dwr Cymru Cyfyngedig, [2013] CAT 6 (Eng. & Wales), *available at* http://www.catribunal.org.uk/238-7977/Judgment.html.

159. *See generally* Albion Water Limited & Albion Water Group Limited v. Water Services Regulation Authority, [2006] CAT 36 (Eng.), *available at* http://www.catribunal.org.uk/237-610/1046-2-4-04-Albion-Water-Limited—Albion-Water-Group-Limited.html.

160. *See generally* Dahabshiil Transfer Services Ltd. v Barclays Bank and Harada Ltd. v. Barclays Bank, [2013] EWHC 3379 (Ch.) (Eng.), *available at* http://www.bailii.org/ew/cases/EWHC/Ch/2013/3379.html.

161. 16 C.F.R. § 803.12 (2013).

162. *See* Press Release, U.S. Dep't of Justice, Justice Department Files Antitrust Lawsuit Challenging Proposed Merger Between US Airways and American Airlines (Aug. 13, 2013), *available at* http://www.justice.gov/opa/pr/2013/August/13-at-909.html.

C. Cartels and Other Anticompetitive Practices

The DOJ Antitrust Division's ongoing auto parts investigation yielded additional guilty pleas by nine companies and two executives, as well as more than $740 million in fines.[163] It also altered its approach to naming uncharged third-party wrongdoers in corporate immunity deals in cartel cases. As of April, the DOJ (i) no longer carves out of non-prosecution protection provisions employees for reasons unrelated to culpability and (ii) no longer includes in the plea agreements the names of carved-out employees, instead listing them in a sealed appendix.[164]

D. Abuses of Dominance

Marion HealthCare LLC, an outpatient surgical center, sued hospital network Southern Illinois Healthcare and insurance provider Blue Cross & Blue Shield of Illinois. The complaint alleged that the defendants substantially suppressed competition for outpatient surgical services through exclusionary agreements, exclusive price dealing, price discrimination, and monopolization. The court dismissed the complaint on the basis of market definition but gave Marion permission to partly amend its complaint.[165]

E. Court Decisions

In *F.T.C. v. Phoebe Putney Health System, Inc.*, the U.S. Supreme Court held that a government entity acting pursuant to a clearly articulated and affirmatively expressed state policy to displace competition can be exempt from the antitrust laws but only where the anti-competitive effect was a foreseeable result of the State policy.[166] This significantly changes the rules for government-owned hospital transactions and will undoubtedly impact the types of transactions we see in this space going forward.

163. *See* Press Release, U.S. Dep't of Justice, Nine Automobile Parts Manufacturers and Two Executives Agree to Plead Guilty to Fixing Prices on Automobile Parts Sold to U.S. Car Manufacturers and Installed in U.S. Cars (Sept. 26, 2013), *available at* http://www.justice.gov/atr/public/press_releases/2013/300969.pdf.

164. *See* Press Release, U.S. Dep't of Justice, Statement of Assistant Attorney General Bill Baer on Changes to Antitrust Division's Carve-Out Practice Regarding Corporate Plea Agreements (Apr. 12, 2013), *available at* http://www.justice.gov/opa/pr/2013/April/13-at-422.html.

165. Marion Healthcare LLC v. S. Illinois Healthcare, 12-CV-00871-DRH-PMF, 2013 WL 4510168 at *11, *15 (S.D. Ill. Aug. 26, 2013).

166. F.T.C. v. Phoebe Putney Health Sys., Inc., 133 S. Ct. 1003, 1007, 1011 (2013).

THE YEAR IN REVIEW

AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW