

The Year in Review

Volume 50 *International Legal Developments*
Year in Review: 2015

Article 5

January 2016

International Antitrust

Nikiforos Iatrou

Brownwyn Roe

Paul Schoff

Katrina Groshinski

Maria Ceclia Andrade

See next page for additional authors

Follow this and additional works at: <https://scholar.smu.edu/yearinreview>



Part of the [Antitrust and Trade Regulation Commons](#), and the [International Law Commons](#)

Recommended Citation

Nikiforos Iatrou et al., *International Antitrust*, 50 ABA/SIL YIR 45 (2016)
<https://scholar.smu.edu/yearinreview/vol50/iss1/5>

This Business Regulation is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in The Year in Review by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

International Antitrust

Authors

Nikiforos Iatrou, Brownwyn Roe, Paul Schoff, Katrina Groshinski, Maria Ceclia Andrade, Rafaela P. de Calcena, Eric White, Adam S. Goodman, Peter Wang, Yizhe Zhang, Laurie-Anne Grelier, Peter Camesasca, Aurdlien Condomines, Susanne Zuehlke, Vinod Dhall, Sonam Mathur, Tal Eyal-Boger, Ziv Schwartz, Gerardo Calderon-Villegas, Vassily Rudomino, Ksenia Tarkhova, Roman Vedernikov, Alla Azmukhanova, Heather Irvine, Lara Granville, Jonathan Tickner, Jasvinder Nakhwal, William F. Cavanaugh Jr., Robert P. LoBue, Dierdre A. McEvoy, Daniel A. Friendman, and Jake Walter-Warner

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

International Antitrust

NIKIFOROS IATROU AND BRONWYN ROE, Eds. PAUL SCHOFF, KATRINA GROSHINSKI, ERIC WHITE, MARIA CECILIA ANDRADE, RAFAELA P. DE CÁLCENA, ADAM S. GOODMAN, PETER WANG, YIZHE ZHANG, LAURIE-ANNE GRELIER, PETER CAMESASCA, AURÉLIEN CONDOMINES, SUSANNE ZUEHLKE, VINOD DHALL, SONAM MATHUR, TAL EYAL-BOGER, ZIV SCHWARTZ, GERARDO CALDERON-VILLEGAS, VASSILY RUDOMINO, KSENIA TARKHOVA, ROMAN VEDERNIKOV, ALLA AZMUKHANOVA, HEATHER IRVINE, LARA GRANVILLE, JONATHAN TICKNER, JASVINDER NAKHWAL, WILLIAM F. CAVANAUGH, JR., ROBERT P. LOBUE, DEIRDRE A. MCEVOY, DANIEL A. FRIEDMAN, AND JAKE WALTER-WARNER*

This Article outlines the year's most significant antitrust developments in thirteen jurisdictions. A more detailed publication will be released in 2016.

I. Australia

A. LEGISLATIVE DEVELOPMENTS

The Competition Policy Review released its final report in March 2015 (Review), making recommendations about competition policies; institutions; amendments to Australia's merger review process; and laws regarding cartels, misuse of market power, exclusive dealing, and the introduction of a concept of "concerted practices."¹ The

* Nikiforos Iatrou & Bronwyn Roe, WeirFoulds LLP (CAN.); Paul Schoff, Katrina Groshinski & Eric White, Minter Ellison Lawyers (AU); Maria Cecilia Andrade & Rafaela P. de Cálcena, Mattos Muriel Kestener Advogados (BRA); Adam S. Goodman, Dentons Canada LLP (CAN); Peter Wang & Yizhe Zhang, Jones Day (PRC); Laurie-Anne Grelier & Peter Camesasca, Covington & Burling LLP (EU); Aurélien Condomines, Aramis Société d'Avocats (FRA); Susanne Zuehlke, Willkie Farr & Gallagher LLP (DE); Vinod Dhall & Sonam Mathur, Vinod Dhall and TT&A (IND); Tal Eyal-Boger & Ziv Schwartz, Fischer Behar Chen Well Orion & Co. (ISR); Gerardo Calderon-Villegas, Baker & McKenzie Abogados, S.C. (MEX); Vassily Rudomino, Ksenia Tarkhova, Roman Vedernikov & Alla Azmukhanova, ALRUD Law Firm (RUS); Heather Irvine & Lara Granville, Norton Rose Fulbright (S. AFR); Jonathan Tickner & Jasvinder Nakhwal, Peters & Peters (UK); William F. Cavanaugh, Jr., Robert P. LoBue, Deirdre A. McEvoy, Daniel A. Friedman & Jake Walter-Warner, Patterson Belknap Webb & Tyler LLP (USA). The editors thank Lia Boritz, student at WeirFoulds LLP, for her unflinching assistance.

1. AUSTRALIAN GOV'T COMPETITION POLICY REVIEW, *The Final Report* 18 (Mar. 31, 2015) (Austl.), http://competitionpolicyreview.gov.au/files/2015/03/Competition-policy-review-report_online.pdf.

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

46 THE YEAR IN REVIEW

Australian Government announced that it will implement most recommendations, but will consult further on proposed amendments to the dominance prohibition.

B. MERGERS

In October, the Australian Competition and Consumer Commission (ACCC) approved cross-acquisitions between a monopoly pay television company and a free-to-air network, on the basis of strong competition from free-to-air networks and new streaming services (e.g. Netflix).² It also approved two major telecommunications acquisitions. It publicly opposed only one merger clearance application: the proposed acquisition of the Northern Territory and far north Queensland marine freight business of Toll Marine Logistics Australia by Sea Swift.³ Sea Swift has applied for authorization on public interest grounds from the Australian Competition Tribunal.

C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

The ACCC commenced proceedings involving serious allegations of bid-rigging affecting a state government tender process. In July 2015, the Federal Court delivered judgment in two appeals relating to cartels between agents and principals: one by the ACCC against the decision in proceedings against Australia and New Zealand Banking Group,⁴ and one by Flight Centre Travel Group.⁵ The decisions concern the application of Australia's cartel laws to firms that sell goods and services both directly and through agents. The ACCC lost both appeals and, in August, sought special leave to appeal.⁶

In September, the Federal Court ordered Visa to pay penalties of AUD eighteen million, in addition to costs of AUD two million for unlawful exclusive arrangements for dynamic currency conversion services on point of sale transactions.⁷

D. DOMINANCE

In February, the Federal Court dismissed proceedings against Pfizer for alleged misuse of market power and exclusive dealing in the supply of generic cholesterol-lowering pharmaceuticals; the ACCC appealed.⁸ The misuse of market power prohibition attracted

2. Media Release, Australian Competition and Consumer Comm'n (ACCC), ACCC To Not Oppose Foxtel and Ten Acquisitions (Oct. 22, 2015), <http://www.accc.gov.au/media-release/accc-to-not-oppose-foxtel-and-ten-acquisitions>.

3. Media Release, ACCC, ACCC Opposes Sea Swift Pty Ltd's Proposed Acquisition of Toll Marine Logistics (Jul. 9, 2015), <http://www.accc.gov.au/media-release/accc-opposes-sea-swift-pty-ltd-s-proposed-acquisition-of-toll-marine-logistics>.

4. *Australian Competition and Consumer Comm'n v Austl. & N.Z. Banking Grp. Ltd.* [2015] FCAFC 103 (Austl.).

5. *Flight Ctr. Ltd. v Australian Competition and Consumer Comm'n* [2015] FCAFC 104 (Austl.).

6. Media Release, ACCC, ACCC Applies For Special Leave to Appeal the High Court from the Full Federal Court Flight Centre Judgment (Aug. 25, 2015), <http://www.accc.gov.au/media-release/accc-applies-for-special-leave-to-appeal-to-the-high-court-from-the-full-federal-court-flight-centre-judgment>.

7. Media Release, ACCC, Visa Ordered to Pay \$18 Million Penalty for Anti-Competitive Conduct Following ACCC Action (Sept. 4, 2015), <https://www.accc.gov.au/media-release/visa-ordered-to-pay-18-million-penalty-for-anti-competitive-conduct-following-accc-action>.

8. Media Release, ACCC, ACCC Appeals Pfizer Decision (Mar. 15, 2015), <http://www.accc.gov.au/media-release/accc-appeals-pfizer-decision>.

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

ANTITRUST 47

extensive debate in the Australian business community and media in the wake of the Government's announcement for further consultation, following the release of a discussion paper. A final position on reform is expected for March 2016.

II. Brazil

A. LEGISLATIVE DEVELOPMENTS

In 2015, the Administrative Council for Economic Defense (CADE) launched its electronic information system (SEI), making case records available online.⁹ It published guidelines on “gun-jumping” and permitted consultations on guidelines for compliance programs and leniency.

CADE approved a resolution allowing interested parties to request a consultation on the application and interpretation of antitrust law in specific cases.¹⁰ It also approved a resolution to allow parties to file petitions online¹¹ (currently, only mergers can be filed online).

B. MERGERS

In January, CADE approved the global acquisition of Veyance Technologies by Continental AG.¹² The parties agreed to structural remedies in Mexico and Brazil. CADE also approved the acquisition of America Latina Logística by Rumo Logística Operadora Multimodal, subject to behavioral commitments.¹³ This transaction raised concerns due to the potential to stimulate market foreclosure and encourage discrimination.

C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

In March, CADE and the Federal Prosecutor's Office signed a Leniency Agreement with Setal Engenharia e Construções, SOG Óleo e Gás, and individuals from “Operação Lava Jato” (Operation Car Wash).¹⁴ Operation Car Wash involved public bidding for Petrobras' onshore industrial assembly construction and was Brazil's largest ever

9. Instituto Brasileiro de Estudos de Concorrência, Consumo e Comércio Internacional (IBRAC), *Overview of Competition Law in Brazil* 31 (Cristianne Zarzur, Krisztian Katona & Mariana Villela eds., 2015).

10. Resolução No. 12, de 11 de Março de 2015, DIÁRIO OFICIAL DA UNIÃO [D.O.U] de 17.3.2015 (Braz.), <http://www.cade.gov.br/upload/RESOLU%C3%87%C3%83O%20N%C2%BA%2012.pdf>.

11. Resolução No. 14, de 14 de Outubro de 2015, DIÁRIO OFICIAL DA UNIÃO [D.O.U] de 21.10.2015 (Braz.), [http://www.cade.gov.br/upload/CADE%20-%20Resolu%C3%A7%C3%A3o%2014-2015%20\(002\).pdf](http://www.cade.gov.br/upload/CADE%20-%20Resolu%C3%A7%C3%A3o%2014-2015%20(002).pdf).

12. Ato de Concentração No. 08700.004185/2014-50, de 29 de Janeiro de 2015, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 4.2.2015 (Braz.).

13. Ato de Concentração No. 08700.005719/2014-65, de 11 de Fevereiro, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 17.3.2015 (Braz.).

14. CONSELHO ADMINISTRATIVO DE DEFENSA ECONOMICA (CADE), Newsletter No. 26 (Mar. 2015), <http://www.cade.gov.br/Default.aspx?cd61b147de34c84adc6afd55e36c>.

SPRING 2016

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

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

48 THE YEAR IN REVIEW

corruption case. In July, following the execution of a Leniency Agreement, CADE began investigating an alleged cartel in the foreign exchange market.¹⁵

D. DOMINANCE

In July, CADE convicted Eli Lilly for the practice of sham litigation, imposing a fine of BRL 36.6 million.¹⁶ In CADE's view, Eli Lilly artificially obtained a monopoly over a medicine by filing numerous court actions in multiple jurisdictions while presenting misleading information and omitting important data from the judges.

E. COURT DECISIONS

In 2013, CADE fined SKF for setting minimum resale price restrictions for distributors in Brazil. SKF appealed. In May, after SKF's appeal, the Federal Court decided that CADE's decision had violated SKF's right to legal certainty, since CADE changed the way it reviewed RPM conduct and did not prove concrete damages. CADE has appealed this decision.¹⁷

III. Canada

A. LEGISLATIVE DEVELOPMENTS

In 2015, a controversial bill¹⁸ that would have authorized the Commissioner of Competition (Commissioner) to investigate United States-Canada price gaps did not pass.¹⁹

The Competition Bureau (Bureau) released new guidelines regarding electronic production,²⁰ corporate compliance programs,²¹ and its approach to outreach, enforcement and advocacy.²²

15. Processo Administrativo No. 08700.004633/2015-04, de 2 de Julho de 2015, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 14.8.2015 (Braz.).

16. Processo Administrativo No. 08012.011508/2007-91, de 24 de Junho de 2015 DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 30.6.2015 (Braz.).

17. Daniel O. Andreoli & Vivian Fraga, *Resale Price Maintenance in Brazil: CADE's Understanding After the SKF Case*, MONOPOLY MATTERS, (ABA Section of Antitrust Law/Unilateral Conduct Comm., Chicago, I.L.), Spring 2016, at 19, http://www.americanbar.org/content/dam/aba/publications/antitrust_law/at322100_news_letter_2016spring.authcheckdam.pdf.

18. Price Transparency Act, Bill C-49, 2nd Sess., 41st Parl. (2014) (Can.).

19. *Id.*

20. See COMPETITION BUREAU CANADA (CCB), *Enforcement Guidelines: Production of Electronically Stored Information* (Apr. 28, 2015), [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-ef-e-production-e.pdf/\\$FILE/cb-ef-e-production-e.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-ef-e-production-e.pdf/$FILE/cb-ef-e-production-e.pdf).

21. CCB, *Bulletin: Corporate Compliance Programs* (June 3, 2015), [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-bulletin-corp-compliance-e.pdf/\\$FILE/cb-bulletin-corp-compliance-e.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-bulletin-corp-compliance-e.pdf/$FILE/cb-bulletin-corp-compliance-e.pdf).

22. CCB, *Bulletin: Competition and Compliance Framework* (Nov. 10, 2015), [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/Competition-Compliance-Framework-Bulletin-e.pdf/\\$file/Competition-Compliance-Framework-Bulletin-e.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/Competition-Compliance-Framework-Bulletin-e.pdf/$file/Competition-Compliance-Framework-Bulletin-e.pdf).

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

ANTITRUST 49

B. MERGERS

The Bureau permitted magazine²³ and newspaper²⁴ transactions without remedies, citing “competitive pressures from digital alternatives,”²⁵ but treated French-language “brick and mortar” and online book sales separately.²⁶ In a merger involving a joint acquisition by two of Canada’s largest telecoms, the Bureau required a confidentiality protocol.²⁷ Concerning Holcim/Lafarge, the Bureau required the divestiture of Holcim’s Canadian operations.²⁸

The Competition Tribunal (Tribunal) prohibited the closing of a gas station transaction in six markets,²⁹ although the Bureau had requested interim relief in fourteen.³⁰

C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

Pétroles Global was fined CAD one million for retail gasoline price fixing in a contested proceeding;³¹ an individual was sentenced for bid rigging;³² and a jury acquitted all accused in another significant bid rigging matter.³³ In the (ultimately stayed) Chocolate proceedings, the Ontario Superior Court of Justice (SCJ) ruled that facts proffered to the Bureau by immunity and leniency applicants were not privileged.³⁴

D. DOMINANCE

The Tribunal permitted continuation of the abuse of dominance application against Direct Energy, which had exited the relevant water heaters market.³⁵

23. Press Release, CCB, Competition Bureau Clears TVA Group’s Acquisition of Transcontinental’s Magazines (Mar. 2, 2015), <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03876.html>.

24. Position Statement, CCB, Competition Bureau Statement Regarding the Proposed Acquisition by Postmedia Network Inc. of the English-Language Newspapers of Quebecor Media Inc. (Mar. 25, 2015), <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03899.html>.

25. *Id.*

26. Position Statement, CCB, Competition Bureau Statement Regarding the Acquisition by Renaud-Bray of Archambault Retail Stores (Sept. 29, 2015), <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03988.html>.

27. Position Statement, CCB, Competition Bureau Statement Regarding BCE and Rogers’ Acquisition of GLENTEL (May 14, 2015), <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03924.html>.

28. Position Statement, CCB, Competition Bureau Statement Regarding the Proposed Acquisition by Holcim of Lafarge (May 4, 2015), <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03920.html>.

29. Commissioner of Competition v. Parkland Industries Ltd., 2015 Comp. Trib. 4, para. 121 (Can.).

30. Press Release, CCB, Competition Bureau Challenges a Merger Between Gas Retailers Parkland and Pioneer (Apr. 30, 2015), <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03917.html>.

31. R. c. Les Pétroles Global Inc., 2015 QCCS 1618, para. 2 (Can. Que.).

32. Press Release, CCB, Ontario Individual Sentenced After Pleading Guilty to Bid-Rigging (May 21, 2015), <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03936.html>.

33. Press Release, CCB, Competition Bureau to Consider Not-Guilty Verdicts in Major Bid-Rigging Case (Apr. 27, 2015), <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03912.html>.

34. R. v. Nestlé Canada Inc., 2015 ONSC 810, para. 79 (Can. Ont. Sup. Ct. J.).

35. Commissioner of Competition v. Direct Energy Marketing Ltd., 2015 Comp. Trib. 2, para. 54, 56 (Can.).

SPRING 2016

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

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

50 THE YEAR IN REVIEW

E. COURT DECISIONS

The Supreme Court of Canada held that the Commissioner had not properly quantified anticompetitive merger effects under the efficiencies defense.³⁶

In class actions, air cargo was certified,³⁷ but the SCJ refused jurisdiction over absent foreign claimants;³⁸ in lithium ion batteries, the SCJ refused jurisdiction over two defendants,³⁹ but certified the action against those remaining;⁴⁰ in LCD panels, the SCJ dismissed a defense limitations motion,⁴¹ but refused to add another plaintiff on limitations grounds.⁴²

IV. China

A. LEGISLATIVE DEVELOPMENTS

In 2015, the State Administration for Industry and Commerce (SAIC) published the “Provisions on the Prohibition of Abuse of Intellectual Property Rights to Eliminate or Restrict Competition” (Regulation).⁴³ The Regulation is the first set of comprehensive rules dedicated to the intersection of antitrust and IP laws in China. The Regulation provides some safe harbors, a rule of reason analysis, and details on the application of the law to IP.

B. MERGERS

In *Nokia/Alcatel-Lucent*, the Ministry of Commerce of the People’s Republic of China (MOFCOM) required that Nokia observe its FRAND⁴⁴ commitments for both Nokia’s and Alcatel-Lucent’s standard-essential patents (SEPs) rather than seek injunction or exclusion orders.⁴⁵ MOFCOM also required that Nokia notify licensees in China of any of its future transfer of SEPs. MOFCOM changed conditions previously imposed in three cases—*Google/Motorola*, *Western Digital/Hitachi*, and *Seagate/Samsung*—after review of alleged changes in circumstances and/or market conditions.⁴⁶

36. *Tervita Corp. v. Commissioner of Competition*, 2015 SCC 3, [2015] 1 S.C.R. 161, 163 (Can.).

37. *Airia Brands Inc. v. Air Canada*, 2015 ONSC 5352, para. 144 (Can. Ont. Sup. Ct. J.).

38. *Id.* at para. 205.

39. *Shah v. LG Chem, Ltd.*, 2015 ONSC 2628, para. 1, 4, 6 (Can. Ont. Sup. Ct. J.).

40. *Shah v. LG Chem, Ltd.* 2015 ONSC 6148, para. 9-11 (Can. Ont. Sup. Ct. J.).

41. *Fanshawe College v. AU Optronics Corp.*, 2015 ONSC 2046, para. 99, 115 (Can. Ont. Sup. Ct. J.).

42. *Fanshawe College v. AU Optronics Corp.*, 2015 ONSC 3414, para. 34 (Can. Ont. Sup. Ct. J.).

43. *SAIC’s New IPR Regulation to Take Effect on 1 August 2015*, MAYER BROWN JSM (June 11, 2015) <https://www.mayerbrown.com/files/Publication/1dd13cef-3598-4127-ad90-3807a96e17a6/Presentation/PublicationAttachment/b7aeed69-50a1-45ef-8f77-3b8ee1b1fd00/150611-HKGPCC-AntitrustCompetition-IP-TMT.pdf>.

44. FRAND stands for “fair, reasonable, and non-discriminatory.” See, e.g., *What is “FRAND”?*, MOBILEBURN, <http://www.globalization101.org/what-is-globalization/> (last visited Apr. 10, 2016).

45. News Release, MOFCOM, MOFCOM Approves Nokia’s Acquisition of Equity of Alcatel-Lucent Conditionally (Oct. 21, 2015), <http://english.mofcom.gov.cn/article/newsrelease/significantnews/201510/20151001151049.shtml>.

46. See *Ministry of Commerce Announcement No. 2 of 2015*, MOFCOM (Jan. 9, 2015, 3:42 PM), <http://fdj.mofcom.gov.cn/article/ztxx/201501/20150100862331.shtml>; *Ministry of Commerce Announcement No. 41 of 2015*, MOFCOM (Oct. 10, 2015, 9:25 AM), <http://fdj.mofcom.gov.cn/article/ztxx/201510/20151001139040>.

VOL. 50

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

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

ANTITRUST 51

MOFCOM published four penalty decisions for improperly notified transactions. Fines were imposed but the transactions were not reversed. Two involved non-filing for joint ventures and two involved two-step acquisitions with an initial acquisition of thirty-five percent of the target's shares, which was considered to be "gun-jumping" even if the parties filed notifications for the overall transactions.⁴⁷

C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

NDRC and SAIC investigated and issued large fines in high-profile cases, including (1) an RMB six billion (USD 940 million) fine against Qualcomm for setting unfairly high royalties for wireless SEPs, tying sales of non-wireless SEPs, and imposing unfair conditions on sales of baseband chips;⁴⁸ and (2) a fine of RMB 350 million (USD fifty-five million) on Mercedes-Benz, as well as a fine of RMB 120 million (USD nineteen million) on Nissan and their respective dealers for minimum resale price maintenance.⁴⁹

Moreover, NDRC cracked down on several administrative monopolies including conduct by local governmental authorities requiring exclusive dealing with designated companies, discriminating against non-local companies, and restricting participation by non-local companies.

D. COURT DECISIONS

In February, the Intermediate People's Court of Guangdong Province found that the Department of Education of Guangdong Province abused its administrative power by designating a software developed by a company called Glodon as the software to be used in its National Vocational Students Skills Competition.⁵⁰

In June, the Beijing High People's Court affirmed the jurisdiction of the Beijing Intellectual Property Court over antitrust civil litigation between an individual and Carrefour and Abbott.⁵¹ This may be the first follow-on antitrust civil litigation after a finding of violation by the AML enforcement agencies. The case has yet to be tried.

shtml; *Ministry of Commerce Notice No. 43 of 2015*, MOFCOM (Oct. 19, 2015, 1:16 PM), <http://fldj.mofcom.gov.cn/article/ztxx/201510/20151001144105.shtml>.

47. See *Commercial Letter No. 669*, MOFCOM (Sept. 29, 2015, 2:39 PM), <http://fldj.mofcom.gov.cn/article/ztxx/201509/20150901124896.shtml>; *Commercial Letter No. 668*, MOFCOM (Sept. 29, 2015, 2:38 PM), <http://fldj.mofcom.gov.cn/article/ztxx/201509/20150901124887.shtml>.

48. *National Development and Reform Commission Administrative Penalty Decision No. 2015 [1]*, NAT'L DEV. & REFORM COMM'N http://jjs.ndrc.gov.cn/fjgld/201503/t20150302_666170.html (last visited Mar. 31, 2016).

49. *Mercedes Was Fined 350 Million Yuan due to Price Fixing Car Prices Antitrust Sledgehammer Down Again*, CHINA NEWS NETWORK, (Apr. 23, 2015, 9:49 AM), <http://www.chinanews.com/auto/2015/04-23/7228159.shtml>; *Nissan in Guangdong Province, The Implementation of Price Fixing to be Punished*, BUREAU OF PRICE MONITORING (Sept. 10, 2015), http://210.76.65.10:9000/pub/gdsfgw2014/zwgk/gzdt/gzyw/201509/t20150910_328993.html.

50. *China's First Since "People Suing Government Officials" Anti-Monopoly Litigation Administrative Proceedings*, CHINA YOUTH DAILY, (May 29, 2015, 7:00 AM), http://news.xinhuanet.com/politics/2015-05/29/c_127854577.htm.

51. *Beijing High Court Affirms IP Court's Jurisdiction over Antitrust Civil Cases*, HONG KONG LAWYER, (Feb. 2016), <http://www.hk-lawyer.org/content/beijing-high-court-affirms-ip-court%E2%80%99s-jurisdiction-over-antitrust-civil-cases>.

SPRING 2016

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

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

52 THE YEAR IN REVIEW

V. European Union

A. LEGISLATIVE DEVELOPMENTS

The European Commission's (EC) new Competition Commissioner, Margrethe Vestager, launched a public consultation on boosting European Union (EU) national competition authorities' powers,⁵² and is considering proposals to extend the merger notification system to minority shareholdings.⁵³

B. MERGERS

The EC opened investigations into Hutchinson's planned acquisition of Telefonica UK and Liberty Global's proposed takeover of BASE Belgium. The EC cleared Orange's acquisition of Spain-focused Jazztel upon securing remedies. Telenor and TeliaSonera abandoned their Danish merger plans after failed remedies discussions.

After in-depth examination and with remedies, the EC cleared General Electric's acquisition of Alstom's energy business, a deal that attracted significant political attention.⁵⁴

C. ANTICOMPETITIVE PRACTICES

The EC issued five cartel decisions in 2015, imposing fines totaling EUR 365 million (approximately USD 407 million), lower than the more than EUR one billion annual totals reached in the past three years.⁵⁵ In the digital space, the EC issued formal charges against Sky and six other film studios, alleging that they respectively prevented Sky from supplying pay-TV content to viewers located outside the UK and Ireland.⁵⁶ As part of the Digital Single Market strategy, the EC commenced a sector-wide inquiry into e-commerce, sending questionnaires to multiple companies to identify potential anticompetitive barriers to the online trade and supply of digital content across the EU.⁵⁷

52. Press Release, European Comm'n, Antitrust: Commission consults on boosting enforcement powers of national competition authorities (Nov. 4, 2015), http://europa.eu/rapid/press-release_IP-15-5998_en.htm.

53. Margrethe Vestager, Competition Comm'n, European Comm'n, Keynote Address at Studienvereinigung Kartellrecht: Thoughts on Merger Reform and Market Definition (Mar. 12, 2015).

54. Press Release, European Comm'n, Mergers: Commission Clears GE's Acquisition of Alstom's Power Generation and Transmission Assets, Subject to Conditions (Sept. 8, 2015), http://europa.eu/rapid/press-release_IP-15-5606_en.htm.

55. *Cartels Cases*, EUROPEAN COMM'N COMPETITION, <http://ec.europa.eu/competition/cartels/cases/cases.html> (last updated Apr. 3, 2016).

56. Press Release, European Comm'n, Antitrust: Commission Sends Statement of Objections on Cross-Border Provision of Pay-TV Services Available in UK and Ireland (July 23, 2015), http://europa.eu/rapid/press-release_IP-15-5432_en.htm.

57. Press Release European Comm'n, Antitrust: Commission Launches E-Commerce Sector Inquiry (May 6, 2015), http://europa.eu/rapid/press-release_IP-15-4921_en.htm.

VOL. 50

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

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

ANTITRUST 53

D. DOMINANCE

The EC adopted formal charges against Google for favoring its internet comparison shopping products.⁵⁸ The EC sent charges to Gazprom in another “political-heavy” investigation involving territorial restrictions in supply agreements.⁵⁹

E. COURT DECISIONS

In *Dole Food Company, Inc. v. European Commission*, the EU Court of Justice (CJEU) confirmed that the pure exchange of forward-looking strategic information among rivals equates to a cartel.⁶⁰ In *InnoLux Corp. v. European Commission*, the CJEU confirmed that the EC may impose fines based on foreign sales of cartelized components that were transformed into finished products, within the same corporate group, and sold in the EU.⁶¹

In *Huawei Technologies Co. Ltd. v. ZTE Corp.*, the CJEU provided guidance on a standard essential patent holder’s ability to seek an injunction against an infringer without violating EU antitrust law.⁶²

VI. France

A. LEGISLATIVE DEVELOPMENTS

The Macron Law came into force, introducing settlement procedures for companies engaged in anticompetitive practices. Companies who agree to refrain from challenging the Autorité de la Concurrence’s (FCA) objections will be informed of the potential range of fines when applying for settlement.⁶³ With respect to leniency, the FCA may now forgive a penalty without a prior written report.

The Macron Law also introduced a “stop the clock” mechanism in Phase One of merger control that allows the FCA to extend the review period up to sixty business days.⁶⁴ The FCA may extend the duration of Phase Two if commitments are proposed *in extremis* or if requested information is not provided in time.

58. Press Release, European Comm’n, Antitrust: Commission Sends Statement of Objections to Google on Comparison Shopping Service (Apr. 15, 2015), http://europa.eu/rapid/press-release_MEMO-15-4781_en.htm.

59. Press Release, European Comm’n, Antitrust: Commission Sends Statement of Objections to Gazprom for Alleged Abuse of Dominance on Central and Eastern European Gas Supply Markets (Apr. 22, 2015), http://europa.eu/rapid/press-release_IP-15-4828_en.htm.

60. Case C-286/13P, *Dole Food Co., Inc. v. Comm’n*, 2015 E.C.R. I-184.

61. Case C-231/14P, *InnoLux Corp. v. Comm’n*, 2015 E.C.R. I-451.

62. Case C-170/13, *Huawei Techs. Co. Ltd. v. ZTE Corp.*, 2015 E.C.R. I-477.

63. Dan Roskis, *The Macron Law: What It Changes in Competition Law*, EVERSHEDES (Oct. 10, 2015), <http://consumerhub.eversheds.com/retail/competition-retail/the-macron-law-what-it-changes-in-competition-law/>.

64. *Id.*

SPRING 2016

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

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

54 THE YEAR IN REVIEW

B. MERGERS

In May, the FCA applied the “fix it first” principle for the first time while clearing the acquisition of Totalgaz by UGI France, the parent company of Antargaz.⁶⁵ UGI must identify an acquirer for the divestiture assets prior to the adoption of the decision.

C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

In May, the FCA imposed moderate fines of EUR 15.2 million on poultry manufacturers for concerted practices that reduced uncertainty in their trade negotiations.⁶⁶ The collective commitment to establish an inter-branch organization is likely to be more effective than fines calculated according to the usual method.

D. DOMINANCE

The FCA, together with the EC, Italian, and Swedish authorities, investigated “price parity” clauses in agreements between Booking.com and hotels, which required hotels to offer the same or better prices on Booking.com’s platform as offered on other distribution platforms or directly to clients. The case was closed following a five-year commitment to refrain from the practice.⁶⁷

In September, the FCA rejected a request for interim measures relating to the suspension of the AdWords account of an editor of weather forecasting websites by Google, which is dominant in online search advertising.⁶⁸ The FCA process continued on the merits given Google’s unclear terms of use, whereby accounts can be terminated in a non-transparent way.

VII. Germany

A. LEGISLATIVE DEVELOPMENTS

There were no new legislative amendments in 2015. The transposition of the EU directive by December 2016 will require changes to rules applicable to private damages claims, including the statutes of limitation, joint and several liability, and passing on defense.⁶⁹

65. Press Release, Autorité de la Concurrence [Competition Authority], Acquisition of Totalgaz by UGI (Antargaz) (May 18, 2015), http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=607&id_article=2555.

66. Press Release, Autorité de la Concurrence [Competition Authority], Concerted Practices in the Sector for the Sale of Poultry Meat (Chicken, Turkey, Duck, Rabbit, Etc.) (May 6, 2015), http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=607&id_article=2626.

67. Press Release, Autorité de la Concurrence [Competition Authority], Online Hotel Booking Sector (Apr. 21, 2015), http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=607&id_article=2535.

68. Press Release, Autorité de la Concurrence [Competition Authority], Online Advertising (Sept. 9, 2015), http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=607&id_article=2637.

69. Directive 2014/104, of the European Parliament and of the Council of 26 November 2014 on Certain Rules Governing Actions for Damages Under National Law for Infringements of the Competition Law Provisions of the Member States and of the European Union, 2014 O.J. (L 349), 1.

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

ANTITRUST 55

B. MERGERS

The FCO continued its active review of transactions, although only seven Phase Two investigations were opened in 2015, fewer than in previous years. One was withdrawn (furniture retailing), one cleared subject to conditions (car parts), two remain pending, and the rest were unconditionally cleared. The sole prohibition decision in 2015 concerned the proposed supermarket merger between Edeka and Tengelmann.⁷⁰

C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

Besides classic cartel enforcement, the Bundeskartellamt (FCO) seems focused on vertical restraints and the use of most-favored nation (MFN) clauses on internet platforms. The FCO also imposed fines exceeding EUR 150 million on companies in various product categories in the food retail sector, including sweets, coffee, beer, personal car, and pet food for resale price maintenance.⁷¹ Other fines included certain car parts (EUR seventy-five million), as well as resale price maintenance by mattress suppliers and suppliers of portable navigation devices.

The FCO also concluded that a prohibition to resell ASICS products on price comparison tools or internet platforms was illegal.⁷² In *Booking.com*, the FCO confirmed its earlier HRS decision and found that MFN clauses requiring a hotel provider to offer its rooms at the best price on those platforms were illegal.⁷³

D. DOMINANCE

The FCO pursued a limited number of abuse of dominance cases. Most prominently, it found that Deutsche Post AG had exposed suppliers of wholesale mailing services to a margin squeeze and engaged in exclusive dealing.⁷⁴

E. JUDGMENTS

In February 2015, the Higher Regional Court in Düsseldorf confirmed the dismissal of an action by Cartel Damage Claims (CDC) for damages relating to the German cement cartel case, because the court considered the assignment of the claims by the purchasers of

70. See Press Release, Bundeskartellamt [Federal Cartel Office], Bundeskartellamt prohibits takeover of Kaiser's Tengelmann by EDEKA (Apr. 1, 2015), http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2015/01_04_2015_Edeka_Untersagung.html.

71. Press Release, Bundeskartellamt [Federal Cartel Office], Vertical Resale Price Maintenance in the Food Retail Sector - Majority of Fine Proceedings Concluded (June 18, 2015), http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2015/18_06_2015_Vertikalfall.html.

72. Press Release, Bundeskartellamt [Federal Cartel Office], Unlawful Restriction of Online Sales of ASICS Running Shoes (Aug. 27, 2015), http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2015/27_08_2015_ASICS.html.

73. Press Release, Bundeskartellamt [Federal Cartel Office], Bundeskartellamt Issues Statement of Objections Regarding Booking.com's 'Best Price' Clauses (Apr. 2, 2015), http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2015/02_04_2015_Booking.html.

74. Press Release, Bundeskartellamt [Federal Cartel Office], Deutsche Post AG Abuses Dominant Position in Tariffs for Bulk Mail Customers (July 7, 2015), http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2015/07_07_2015_Post.html.

SPRING 2016

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

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

56 THE YEAR IN REVIEW

the cement to CDC to be invalid.⁷⁵ The judgment is final and marks an unceremonious end to a trailblazing case that had been pending since 2002. The CDC has since announced that it has re-launched an action concerning at least some damages claims.⁷⁶

In a December 2014 judgment that was published in 2015, the Federal Supreme Court re-confirmed its prior findings that antitrust liability has to be assessed based on the acts of individuals and attributed to specific entities for which these individuals acted. Following, for example, a merger, the new entity is not necessarily liable for antitrust fines except in specific circumstances.⁷⁷ This has already led to legislative amendments in order to ensure that legal successors inherit such liabilities.

VIII. India

A. LEGISLATIVE DEVELOPMENTS

The Competition Commission of India (CCI) amended its merger regulations to simplify procedural requirements, ease the filing process, and extend the deadlines for decisions.⁷⁸ The amendments also provide guidance notes on requirements of the short filing form (Form-I).⁷⁹

B. CARTELS AND OTHER AGREEMENTS

Penalties were imposed on four government-owned general insurance companies for bid rigging in a tender floated by the State of Kerala.⁸⁰ The transport sector also came under scrutiny as price-fixing penalties were imposed on a cooperative union of truck operators in Punjab.⁸¹ The maximum penalty of 10 percent of the turnover was also imposed on the trade association for road transport service providers, All India Motor Transport Congress, for a coordinated hike in freight charges.⁸²

75. Press Release, Cartel Damage Claims, Higher Regional Court Dismisses Appeal in German Cement Cartel Case (Feb. 25, 2015), <http://www.carteldamageclaims.com/wordpress/wp-content/uploads/2014/02/Cement-press-Release-4.pdf>.

76. Press Release, Cartel Damage Claims, CDC Cartel Damage Claims Files New Action for Damages Against HeidelbergCement AG (Oct. 29, 2015), <http://www.carteldamageclaims.com/wordpress/wp-content/uploads/2014/02/Press-Release-Cement-II-151029.pdf>.

77. Bundesgerichtshof [BGH] [Federal Court of Justice] Dec. 16, 2014, KARTELLBUßGELDSACHE [KRB] 47, 2013 (Ger.).

78. Shreeja Sen, *CCI amends merger regulations to increase ease of doing business*, LIVEMINT (July 3, 2015, 11:27 PM), <http://www.livemint.com/Politics/fSQpGeOHP2iIHP9wmLTjsN/CCI-amends-merger-regulations-to-increase-ease-of-doing-busi.html>.

79. Karan Singh Chandhiok, *CCI Amends Combination Regulations*, THE FIRM (July 7, 2015, 9:13 AM), http://thefirm.moneycontrol.com/story_page.php?autono=1829801.

80. Competition Comm'n of India Suo Moto Case No. 02 of 2014, 2 (2014), available at <http://www.cci.gov.in/sites/default/files/022014S.pdf>.

81. Competition Comm'n of India Case No. 43 of 2013, 6 (2013), available at http://www.cci.gov.in/sites/default/files/432013_0.pdf.

82. Competition Comm'n of India Case No. 61 of 2012, 24 (2012), available at http://www.cci.gov.in/sites/default/files/61-2012_0.pdf.

VOL. 50

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

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

ANTITRUST 57

CCI has also shown an increasing inclination to penalize individuals responsible for violations.⁸³

C. MERGERS

CCI imposed structural remedies in two mergers: the acquisition of Ranbaxy Laboratories by Sun Pharmaceuticals subject to divestment of the overlapping brands in seven markets⁸⁴ and the merger of Holcim Limited and Lafarge SA, wherein Lafarge was required to sell two cement plants to prevent “unilateral” and “coordinated” effects.⁸⁵

D. DOMINANCE

CCI’s investigation arm (Director General) concluded that Google abused its dominant position in relation to its search and AdWord services.⁸⁶ Google will have an opportunity to challenge the Director General’s report before CCI passes its final order in the case.

E. COURT DECISIONS

The Delhi High Court held that CCI has the power to review and recall its order to the Director General to investigate a matter.⁸⁷ The Madras High Court clarified that the Director General cannot initiate investigations on its own, and must seek CCI’s permission before widening an investigation’s scope.⁸⁸ Further, it held that in such cases, CCI is not required to form an entirely new opinion before directing the Director General to investigate.⁸⁹

COMPAT set aside a penalty on Thomas Cook for “gun-jumping,” finding that the mere fact that several transactions were entered into around the same time and were approved by the board on the same date was insufficient to establish that they were interconnected.⁹⁰

COMPAT also set aside the penalty imposed by CCI on the Board of Control for Cricket in India stating that the information relied on lacked evidentiary value.⁹¹

83. See Competition Comm’n of India Case No. 45 of 2012, 28 (2012), *available at* http://www.cci.gov.in/sites/default/files/06201245_0.pdf; Competition Comm’n of India Case No. 26 of 2013, 31 (2013), *available at* http://www.cci.gov.in/sites/default/files/262013_0.pdf.

84. Competition Comm’n of India, Combination Registration No. C-2014/05/170 (Mar. 17, 2015), *available at* http://www.cci.gov.in/sites/default/files/C-2014-05-170A_0.pdf.

85. Competition Comm’n of India, Combination Registration No. C-2014/07/190 (Mar. 30, 2015), *available at* http://www.cci.gov.in/sites/default/files/C-2014-07-190_0.pdf.

86. Kian Ganz, *Why did CCI write Google a bad report card?*, LIVENMINT (Sept. 16, 2015, 7:53 AM), <http://www.livemint.com/Companies/5D4c8f9kKB41IyL99Rfm4H/Why-did-CCI-write-Google-a-bad-report-card.html>.

87. Google Inc. v. Competition Comm’n of India, (2015) H.C.J. Delhi 22 (India), *available at* <https://indiankanoon.org/doc/190415917/>.

88. Hyundai Motor India Ltd. v. Competition Comm’n of India, (2015) H.C.J. Madras 23 (India), *available at* http://judis.nic.in/judis_chennai/Judge_Result_Dispatch.asp?MyChk=210496.

89. *Id.* at 27.

90. Thomas Cook Ltd. v. Competition Comm’n of India, Appeal No. 48 of 2014, C.A.T. 41 (India), *available at* <http://compat.nic.in/upload/PDFs/judgement-orders-2015/26.08.2015.pdf>.

91. Bd. of Control for Cricket in India v. Competition Comm’n of India, Appeal No. 17 of 2013, C.A.T. 46 (India), *available at* <http://compat.nic.in/upload/PDFs/feb-judgement-orders-2015/BCCI%2019.2.pdf>.

SPRING 2016

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

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

58 THE YEAR IN REVIEW

IX. Israel**A. LEGISLATIVE DEVELOPMENTS**

In March, the Israeli Antitrust Authority (IAA) published proposed amendments to the Restrictive Trade Practices Law (the Law) with respect to the Merger Control Regime to amend: the definition of “Company” to include various types of foreign corporations and entities; the definition of “Merger of Companies” to include mergers with an individual; and filing thresholds to include, *inter alia*, foreign corporations that have no sales in Israel under certain circumstances.⁹² The Law also proposes to prohibit anticompetitive mergers below the filing thresholds and extend the timeline for reviewing mergers to 150 days.⁹³

In July, the IAA published proposed amendments to the Law concerning the Israeli Monopoly Regime to make it apply to entities that possess market power, rather than just to an “an entity that possesses a market share of more than half of the total supply or acquisition of an asset, or more than half of the total provision or acquisition of a service.”⁹⁴

The IAA also proposed amendments to impose limitations on official importers in Israel by, *inter alia*, prohibiting an official importer from abusing its position in the market, even if not considered to be a monopoly.⁹⁵

B. CARTELS AND OTHER ANTICOMPETTIVE PRACTICES

In August, the Israeli Supreme Court (ISC) ruled on the District Court’s verdict and sentence against Shufersal (the largest supermarket chain in Israel) and certain former executives.⁹⁶ The ISC found that the company’s officers attempted to stop suppliers from extending special offers to a competing supermarket chain.⁹⁷ When this attempt did not succeed, Shufersal attempted “to punish” a number of suppliers by removing some of their products from shelves.⁹⁸ The ISC held that this conduct was an attempt to establish a restrictive arrangement and violated merger conditions stipulated by the General Director when he consented to a merger between Shufersal and another chain.⁹⁹ The ruling set two important precedents: for the first time in Israel, jail sentences were ordered for violating merger conditions and for attempting to set a vertical restrictive arrangement;

92. Hagai Doron, *New legislative amendments proposed by the Israel Antitrust Authority: merger control reform and protection of competition from parallel imports*, LEXOLOGY (Apr. 28, 2015), <http://www.lexology.com/library/detail.aspx?g=7a91e10f-0272-4059-a8ed-f1f6a9d8329f>.

93. *Id.*

94. David Gilo, *Israel: Antitrust Authority*, GLOBAL COMPETITION REVIEW (2016), <http://globalcompetitionreview.com/reviews/72/sections/253/chapters/2928/israel-antitrust-authority/>.

95. *The Israeli Antitrust Authority Proposes a Reform of the Merger Control Regime*, FBC & Co. (May 2015), <http://www.fbclawyers.com/wp-content/uploads/2015/05/Israeli-Competition-Law---Potential-Merger-Reform.pdf>.

96. Talya Solomon & Iris Achmon, *Sigh of Relief: Israeli Supreme Court Finally Moves Toward Rule of Reason for Vertical Restraints*, LEXOLOGY (Aug. 13, 2015), <http://www.lexology.com/library/detail.aspx?g=83e48c92-8f2a-42b6-b96c-a5d9e32e2ce0>.

97. *Id.*

98. *Id.*

99. *Id.*

VOL. 50

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

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

ANTITRUST 59

and, as a rule, vertical arrangements will be examined primarily on the basis of their likelihood to harm competition.

C. DOMINANCE

In June, the Antitrust Tribunal rejected the appeal of a declaration that El Al held a monopoly in aviation security services.¹⁰⁰ The declaration was based on concerns that El Al would refuse to provide services to other airline competitors.¹⁰¹ The Tribunal rejected El Al's claims that the service was "public" (which it was forced to provide) and not "commercial" in character.¹⁰²

In *Unipharm v. Sanofi*, Unipharm accused Sanofi of defrauding the Israel Patents Registrar by providing inadequate disclosure in a second application for a patent.¹⁰³ Due to the monopoly position granted to Sanofi by Israeli patent laws, the Central District Court held, *inter alia*, that this was an abuse of Sanofi's dominant position and that misleading the Patents Registrar, intentionally or due to gross negligence, may be considered to be an abuse of monopoly power.¹⁰⁴

X. Mexico

A. LEGISLATIVE DEVELOPMENTS

In 2015, the Federal Economic Competition Commission (Cofece) released guidelines relating to relative monopolistic practices investigations and illegal concentrations, monopolistic practices investigations, leniency programs, and merger control.¹⁰⁵ In addition, draft guidelines were released on information exchange.¹⁰⁶

Cofece also issued Technical Criteria¹⁰⁷ for the Quantitative Index to Measure Market Concentration and released drafts of Technical Criteria that cover requests to dismiss a criminal action and requests and issuances of precautionary measures and the determination of pledges.¹⁰⁸

100. *El Al Israel Airline Inc. v. General Dir. of the IAA*, AT 52563-09-12, Judgment (June 17, 2015), available at <http://www.antitrust.gov.il/subject/140/item/33743>.

101. *Id.*

102. *Id.*

103. Talya Solomon & Karen Elburg, *Client update – antitrust and patent rights – “winter is coming” for patent owners*, LEXOLOGY (Oct. 22, 2015), <http://www.lexology.com/library/detail.aspx?g=B752b88c-a3f2-48c7-8dfb-1799c2370666>.

104. *Id.*

105. *COFECE Publishes New Monopolistic Practices Guidelines*, COFECE (July 3, 2015), <https://www.cofece.mx/cofeca/ingles/index.php/prensa/historico-de-noticias/cofeca-publishes-new-monopolistic-practices-guidelines>.

106. *COFECE consults on guidance on regulation of information exchange*, PRACTICAL LAW (Nov. 2, 2015), <http://us.practicalallaw.com/0-619-9283>.

107. Technical Criteria are binding for Cofece, Guidelines are not. INTERNATIONAL BAR ASSOCIATION ANTITRUST COMMITTEE, COMMENTS ON THE COMISION FEDERAL DE COMPETENCIA ECONOMICA DRAFT MERGER CONTROL GUIDELINES 3-4 (June 5, 2015), available at http://www.ibanet.org/LPD/Antitrust_Trade_Law_Section/Antitrust/Projects.aspx.

108. Galicia Abogados, *Mexico: Publication By The Mexican Federal Economic Competition Commission Of The Technical Criteria For The Estimation And Application Of A Quantitative Index To Measure Market Concentration*, MONDAQ (July 3, 2015), <http://www.mondaq.com/mexico/x/409474/Antitrust+Competition/Publication+>

SPRING 2016

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

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

60 THE YEAR IN REVIEW

B. MERGERS

Cofece authorized a transaction between Nissan and Daimler; the acquisition of Pilgrim's Pride by Tyson; and the acquisition of Alstom's Power & Grid business by GE.¹⁰⁹

C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

Cofece conducted investigations of cartel conduct in the CRT (which eventually closed) and in passenger ground transportation in Chiapas (which resulted in sanctions of approximately USD 1.8 million for price fixing).¹¹⁰ There are currently nine ongoing investigations in several different markets.

D. DOMINANCE

Cofece conducted eleven investigations for abuse of dominance, but imposed only one sanction against Telcel, a company that provides interconnection services for mobile phones.¹¹¹ There are three ongoing abuse of dominance investigations into the industrial gases market, access to federal zones and parking at the Mexico City Airport for the provision of public transportation services, and the credit information market.

XI. Russia

A. LEGISLATIVE DEVELOPMENTS

In October, Federal Law No. 135-FZ, "On Protection of Competition" was amended¹¹² to increase transparency around investigations in order to increase the validity of decisions made by FAS Russia.

B. MERGERS

If certain thresholds are met, companies must obtain preliminary consent for a merger from FAS Russia before the transaction can close.¹¹³ The amendments allow entities to

By+The+Mexican+Federal+Economic+Competition+Commission+Of+The+Technical+Criteria+For+The+Estimation+And+Application+Of+A+Quantitative+Index+To+Measure+Market+Concentration.

109. Resolución Expediente CNT-099-2014 [Decision CNT-099-2014] Diario Oficial de la Federación [DO], 19 de Febrero de 2015 (Mex.); Resolución Expediente CNT-088-2014 [Decision CNT-088-2014], Diario Oficial de la Federación [DO], 20 de Mayo de 2015 (Mex.); Resolución Expediente CNT-081-2015 [Decision CNT-081-2015], Diario Oficial de la Federación [DO], 10 de Septiembre de 2015 (Mex.).

110. Expediente Número IO-001-2009 [Case Number IO-001-2009] Diario Oficial de la Federación [DO], 9 de Octubre de 2015 (Mex.); Resolución Expediente IO-004-2012 [Decision IO-004-2012] Diario Oficial de la Federación [DO], 25 de Junio de 2015 (Mex.).

111. Expediente Número DE-037-2006 [Case Number DE-037-2006] Diario Oficial de la Federación [DO], 29 de Noviembre de 2006 (Mex.).

112. Laura Brank et al., *Fourth Antimonopoly Package: Impact on M&A and Joint Ventures in Russia*, JDSUPRA (Mar. 17, 2016), <http://www.jdsupra.com/legalnews/fourth-antimonopoly-package-impact-on-m-64106/>.

113. *Id.*

VOL. 50

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

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

ANTITRUST 61

electronically file information on proposed transactions before the official submission of the relevant application or notifications.¹¹⁴

C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

Cartel enforcement has been declared to be a top enforcement priority of FAS Russia.¹¹⁵ Given the widespread practice of conducting tenders in various sectors of the Russian economy, cartel enforcement is focused around a large number of bid-rigging cases.

In a change to its investigation procedures, FAS Russia requested information from external experts and obtained market analyses while investigating the Russian agents of one of the largest ocean-going container carriers for potential cartel conduct.¹¹⁶

D. DOMINANCE

The amendments to Federal Law No. 135-FZ now provide that for a company to be dominant, its market share must exceed thirty-five percent, subject to certain exceptions.¹¹⁷ The amendments abolished the requirement for subsequent notification of transactions if one of the companies involved in the transaction is listed in the official Register of Companies with a market share exceeding thirty-five percent of the relevant product market. The amendments also give the Russian Government the right to determine non-discrimination rules in highly concentrated markets.¹¹⁸

In 2015, FAS Russia found that Google had abused its dominant position by requiring vendors of mobile phones to pre-install Google applications on mobile phones.¹¹⁹ It ordered Google to adjust its contracts to remove the anticompetitive clauses.¹²⁰

114. *Id.*

115. Evgeny Khokhlov, *Russia: cartel investigations*, GLOBAL INVESTIGATIONS REVIEW (July 23, 2015), <http://globalinvestigationsreview.com/insight/the-european-middle-eastern-and-african-investigations-review-2015/1024330/russia-cartel-investigations>.

116. Svilen Petrov, *Federal Antimonopoly Service of Russia sentenced five container carriers*, MARITIME NEWS (Jan. 12, 2016), <http://www.newsmaritime.com/2016/federal-antimonopoly-service-of-russia-sentenced-five-container-carriers/>

117. Brank, *supra* note 112.

118. *Id.*

119. Press Release, Fed. Antimonopoly Serv. of the Russ. Fed'n, FAS issued a determination to Google (Oct. 5, 2015), <http://en.fas.gov.ru/press-center/news/detail.html?id=44152>.

120. *Id.*

SPRING 2016

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

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

62 THE YEAR IN REVIEW

XII. South Africa

A. LEGISLATIVE DEVELOPMENTS

There were no legislative changes in 2015, but the Commission developed guidelines on administrative penalties,¹²¹ issued draft guidelines on public interest issues in mergers,¹²² and is developing guidelines on information exchange.¹²³

B. MERGERS

The Commission recommended the prohibition of a RAN-sharing arrangement between MTN and Telkom Mobile.¹²⁴

The Commission recommended the approval of Vodacom's acquisition of Neotel on the condition that Vodacom does not make use of Neotel's spectrum for a two-year period,¹²⁵ but this deal is facing significant opposition, as some argue Vodacom's access to Neotel's spectrum will enhance its dominance.¹²⁶

To mitigate negative public interest impacts from mergers, the authorities imposed conditions on mergers including moratoria on retrenchments,¹²⁷ requirements to invest and operate in South Africa,¹²⁸ and requirements to source from local suppliers.¹²⁹

121. *Guidelines for the Determination of Administrative Penalties for Prohibited Practices*, COMPETITION COMM'N S. AFR. (May 1, 2015), available at <http://www.compcom.co.za/wp-content/uploads/2015/01/Final-Guidelines-for-Determination-of-Admin-Penalties-MAY-2015.pdf>.

122. *Guidelines on the assessment of public interest provisions in merger regulation under the Competition Act No. 89 of 1998 (as amended)*, COMPETITION COMM'N S. AFR. (Jan. 23, 2015), available at <http://www.compcom.co.za/wp-content/uploads/2015/01/Final-Public-Interest-Guidelines-public-version-210115.pdf>.

123. COMPETITION COMM'N S. AFR., 2014/15 ANNUAL REPORT, available at <http://www.compcom.co.za/wp-content/uploads/2014/09/COMPETITION-COMMISSION-ANNUAL-REPORT-2015.pdf>.

124. Press Release, Competition Comm'n S. Afr., Commission recommends prohibition of MTN and Telkom RAN sharing and bi-lateral roaming merger (Aug. 17, 2015), <http://www.compcom.co.za/wp-content/uploads/2015/01/Commission-recommends-prohibition-of-MTN-and-Telkom-RAN-sharing-and-bi-lateral-roaming-merger1.pdf>.

125. The matter is being heard by the Tribunal from 23 November 2015 to 11 December 2015. See COMPETITION COMM'N S. AFR., MERGERS AND ACQUISITIONS' REPORT 170 (June 30, 2015), available at <http://www.comptrib.co.za/publications/case-documents/large-merger-vodacom-proprietary-limited-neotel-proprietary-limited/>.

126. See Franny Rabkin, *Icasa Prompted by Law in Approving Vodacom-Neotel License Transfer*, BDLIVE (Nov. 13, 2015, 5:47 AM), <http://www.bdlive.co.za/business/technology/2015/11/13/icasa-prompted-by-law-in-approving-vodacom-neotel-licences-transfer>.

127. Reasons for Decision, *In the matter between Southern African Clothing and Textile Workers Union and The Competition Commission, Newco One, Bagsbaw Footwear (Pty) Ltd, Bolton Footwear (Pty) Ltd, Kap Manufacturing (Pty) Ltd, The Divisions, United Farm, Wayne Plastics, Mossop Western Leathers, Jordan Shoes*, Competition Tribunal S. Afr. (May 28, 2015), No. IM161Dec14/020321; Reasons for Decision, *In the matter between Clover SA (Pty) Ltd and Nkunzi Milkway (Pty) Ltd*, Competition Tribunal S. Afr. (May 27, 2015), No. IM175Dec14/020461; Reasons for Decision, *In the matter between Fidelity Cash Solutions (Pty) Ltd, Fidelity Security Services (Pty) Ltd, Protea Coin Group (Pty) Ltd and The Competition Commission*, Competition Tribunal S. Afr. (May 27, 2015), No. IM183Jan15/020545.

128. Press Release, Competition Comm'n S. Afr., Commission Approves Steel Merger with Conditions (June 11, 2015), <http://www.compcom.co.za/wp-content/uploads/2015/01/Commission-approves-steel-merger-with-conditions.pdf>.

129. *Id.*

VOL. 50

**PUBLISHED IN COOPERATION WITH
 SMU DEDMAN SCHOOL OF LAW**

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

ANTITRUST 63

C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

The Commission conducted more dawn raids in the last two years than in all prior years, including on the premises of the suppliers of liquid petroleum gas cylinders,¹³⁰ furniture removal companies,¹³¹ recruitment advertising agencies,¹³² and fire protection system providers.¹³³

The Commission has been active in conducting and initiating market enquiries. It extended the period for completion of the Healthcare Enquiry;¹³⁴ called for more submissions in the Liquefied Petroleum Gas (LPG) Enquiry;¹³⁵ and released final terms of reference for the Retail Grocery Market Enquiry.¹³⁶

D. DOMINANCE

The Commission experienced mixed outcomes in dominance matters. Its successful prosecution of Sasol Polymers was overturned by the Competition Appeal Court (CAC).¹³⁷ The Commission is asking the Constitutional Court for leave to appeal on the basis that excessive pricing has substantial public interest impacts that should be assessed by that Court.¹³⁸ The Commission also lost its long-running case against South African Breweries (SAB), with the CAC finding that SAB and its appointed distributors had not engaged in price discrimination.¹³⁹

130. Press Release, Competition Comm'n S. Afr., Competition Commission Raids Offices of Liquefied Petroleum Gas Suppliers (Oct. 13, 2015), <http://www.compcom.co.za/wp-content/uploads/2015/01/Competition-Commission-raids-offices-of-LPG-suppliers.pdf>.

131. Press Release, Competition Comm'n S. Afr., Competition Commission Raids Furniture Removal Companies for the Second Time (Sept. 30, 2015), <http://www.compcom.co.za/wp-content/uploads/2015/01/Competition-Commission-raids-furniture-removal-companies-for-the-second-time.pdf>.

132. Press Release, Competition Comm'n S. Afr., Competition Commission Raids Offices of Three Recruitment Advertising Agencies in Gauteng (Sept. 23, 2015), <http://www.compcom.co.za/wp-content/uploads/2015/01/Competition-Commission-raids-offices-of-three-recruitment-advertising-agencies.pdf>.

133. Press Release, Competition Comm'n S. Afr., Competition Commission Raids Offices of Six Suppliers of Fire Control and Protection Systems in Gauteng (Mar. 20, 2015), <http://www.compcom.co.za/wp-content/uploads/2015/01/Commission-raids-offices-of-five-suppliers-of-fire-protection-systems-in-Gauteng.pdf>.

134. Press Release, Competition Comm'n S. Afr., Competition Commission Amends Terms of Reference and Administrative Timetable for the Completion of the Healthcare Market Inquiry (Oct. 16, 2015), <http://www.compcom.co.za/wp-content/uploads/2015/01/Competition-Commission-amends-ToR-admin-time-table-for-the-Healthcare-Market-Inquiry.pdf>.

135. Press Release, Competition Comm'n S. Afr., LPG Market Inquiry's Call for Further Submissions (Aug. 27, 2015), <http://www.compcom.co.za/wp-content/uploads/2015/01/News-Alert-Call-for-Further-Submissions.pdf>.

136. Department of Economic Development Notice 1035 of 2015, Grocery Retail Sector Market Inquiry GG No. 39347 (Oct. 30 2015) (S. Afr.), *available at* http://www.gov.za/sites/www.gov.za/files/39347_gen1035.pdf.

137. *Sasol Chemical Industries Limited v. Competition Commission*, 2015 (5) SA 471 (CAC) at 92 para. 186 (S. Afr.).

138. Press Release, Competition Comm'n S. Afr., Commission Appeals Sasol Judgment (July 8, 2015), <http://www.compcom.co.za/wp-content/uploads/2015/01/Commission-Appeals-Sasol-Judgment.pdf>.

139. See Robert Legh, Claire Reidy & Chris Green, *Competition Appeal Court dismisses appeal against SAB after decade-long case*, LEXOLOGY (July 27, 2015), <http://www.lexology.com/library/detail.aspx?g=ea3ec189-c8b0-472e-9e0b-0fa8be027e55>.

SPRING 2016

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

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

64 THE YEAR IN REVIEW

The Commission succeeded at the Tribunal in proving that Media 24 had engaged in exclusionary conduct through low pricing in the local newspaper market.¹⁴⁰

E. COURT DECISIONS

The Supreme Court of Appeal found that civil actions could not be pursued against bread manufacturer Premier because the Commission had failed to cite Premier as a respondent in its referral of the cartel complaint (it had been granted leniency).¹⁴¹

The High Court dismissed an application by Allens Meshco to review the Commission's decision not to grant them leniency in relation to the wire products cartel.¹⁴²

XIII. United Kingdom

A. LEGISLATIVE DEVELOPMENTS

The enactment of the Consumer Rights Act 2015¹⁴³ has substantially changed the landscape for private enforcement of competition law violations.

The Competition Appeal Tribunal's (CAT) jurisdiction has been extended to cover stand-alone and hybrid claims, in addition to follow-on claims, and to award injunctive relief.¹⁴⁴ In addition, a new form of class action allows cases to be brought on behalf of a defined group for aggregate damages, with claimants automatically included unless they specifically opt out.¹⁴⁵ These actions may be brought in respect of infringements that have already been discovered and sanctioned by the UK and EU authorities.¹⁴⁶ Lastly, voluntary redress schemes offer up to a 20 percent fine reduction when an undertaking compensates the losses of those affected by its infringements.¹⁴⁷

B. MERGERS

In October, the Competition and Markets Authority (CMA) provisionally cleared a merger between major telecom companies BT and EE, having considered whether the merged company's incentives to continue to supply services to other telecom companies on a wholesale basis would be affected.¹⁴⁸

140. *Competition Commission v. Media 24 Limited* 2015 (1) SA 1 (CC) at 150 para. 621 (S. Afr.).

141. *Premier Foods (Pty) Ltd v. Manojim NO and Others* 2016 (1) SA 445 (SCA) at 27 para. 47 (S. Afr.).

142. *Allens Meshco Group v. Competition Commission* 2015 NGHC 31044/13 at 2, 23 para. 1, 51–54.

143. Consumer Rights Act, 2015, c. 15 (Eng.), available at <http://www.legislation.gov.uk/ukpga/2015/15/contents>.

144. Consumer Rights Act, 2015, c. 15, § 81, sch. 8 (Eng.), available at <http://www.legislation.gov.uk/ukpga/2015/15/contents>.

145. *Id.*

146. *Id.*

147. Competition and Markets Authority, Guidance on the Approval of Voluntary Redress Schemes for Infringements of Competition Law (Aug. 14, 2015) at 46 para. 3.30, available at <https://www.gov.uk/government/publications/approval-of-redress-schemes-for-competition-law-infringements>.

148. Press Release, Competition and Markets Authority, CMA Provisionally Clears BT/EE Merger (Oct. 28, 2015), <https://www.gov.uk/government/news/cma-provisionally-clears-btee-merger>.

VOL. 50

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

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

ANTITRUST 65

C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

To date, no prosecutions have been brought under the criminal cartel offense that was introduced in 2014, but in September, a former director was given a suspended custodial sentence of six months, having plead guilty to the old offense.¹⁴⁹ Civil penalties of GBP 382,500 and GBP 735,000 were imposed on Consultant Eye Surgeons Partnership (CESP)¹⁵⁰ and an association of estate and lettings agents,¹⁵¹ respectively.

D. COURT DECISIONS

In the *Air Cargo* litigation, the Court of Appeal struck down economic tort claims, finding that when a cartelists intends to cause harm to a particular class, a cause of action against them arises for every member of that class.¹⁵² But the possibility of the immediate victims passing on losses means that there cannot have been intention to harm them, and expanding the class to cover the whole supply chain would open up “an unknown and unknowable range of claimants”.¹⁵³

XIV. United States

A. LEGISLATIVE DEVELOPMENTS

The House Judiciary Committee approved a second 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.¹⁵⁴

B. MERGERS

In February, the United States Court of Appeals for the Ninth Circuit upheld the decision that St. Luke's Health System's acquisition of Saltzer Medical Group violated Section 7 of the Clayton Act, holding that the merger's alleged efficiencies were not sufficient to rebut the presumptively anticompetitive effects in the Nampa, Idaho market for adult primary care.¹⁵⁵

149. Press Release, Competition and Markets Authority, Director Sentenced to 6 Months for Criminal Cartel (Sept. 14, 2015), <https://www.gov.uk/government/news/director-sentenced-to-6-months-for-criminal-cartel>.

150. Press Release, Competition and Markets Authority, Private Ophthalmology: Investigation Into Anti-Competitive Information Exchange and Pricing Agreements (Aug. 20, 2015), <https://www.gov.uk/cma-cases/conduct-in-the-healthcare-sector>.

151. Press Release, Competition and Markets Authority, Property Sales and Lettings Investigation (Oct. 29, 2015), <https://www.gov.uk/cma-cases/investigation-into-property-sales-and-lettings-and-their-advertising>.

152. *Air Canada v. Emerald Supplies Ltd. & Ors*, [2015] EWCA (Civ) 1024, [168]–[169] (appeal taken from EWHC (Ch)) (Eng.).

153. *Id.*

154. Press Release, Judiciary Comm., House Judiciary Comm. Approves SMARTER Act to Deliver Predictability to the Merger Review Process (Sept. 30, 2015), <http://judiciary.house.gov/index.cfm/press-releases?ID=38C89060-8CC8-4F15-B906-5D391DAB825B>.

155. *Saint Alphonus Med. Ctr.–Nampa Inc. v. St. Luke's Health Sys., Ltd.*, 778 F.3d 775 (9th Cir. 2015).

SPRING 2016

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

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

66 THE YEAR IN REVIEW

The DOJ Antitrust Division filed a suit to block Electrolux's attempted USD 3.3 billion acquisition of General Electric's appliances division, fearing that the merger of two of the country's leading home appliance manufacturers would lead to less competition and higher prices.¹⁵⁶

C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

The DOJ Antitrust Division secured prison sentences and large criminal fines from its FX, auto parts, and ocean shipping investigations. Five major banks pleaded guilty and agreed to pay more than USD 2.7 billion to settle charges they fixed FX and LIBOR rates.¹⁵⁷ Three Rabobank traders were found guilty of manipulating LIBOR rates, and three other employees pleaded guilty.¹⁵⁸ Thirty-seven companies have pleaded guilty and agreed to pay over USD 2.6 billion in fines as a result of the ongoing auto parts investigation.¹⁵⁹ For their roles in a conspiracy to fix prices, allocate customers, and rig bids of international ocean shipping services, four executives have pleaded guilty and been sentenced to prison, and three corporations have pleaded guilty and paid more than USD 136 million in fines.¹⁶⁰

Barclays, in the LIBOR investigation,¹⁶¹ and Kayaba, in the auto parts investigation,¹⁶² were granted fine reductions for instituting effective, forward-looking antitrust compliance programs.

D. DOMINANCE

The DOJ won its case against American Express; the court ruled that the company's "anti-steering" rules prohibiting merchants from encouraging customers to use other credit cards violate antitrust law.¹⁶³

Cardinal Health agreed to pay USD 26.8 million to resolve FTC charges that it illegally monopolized markets for sale and distribution of low-energy radiopharmaceuticals, a

156. Press Release, U.S. Dep't of Justice, Justice Dep't Files Antitrust Lawsuit to Stop Electrolux from Buying GE's Appliance Bus. (July 1, 2015), <http://www.justice.gov/opa/pr/justice-department-files-antitrust-lawsuit-stop-electrolux-buying-general-electrics-appliance>.

157. Press Release, U.S. Dep't of Justice, Five Major Banks Agree to Parent-Level Guilty Pleas (May 20, 2015), <http://www.justice.gov/opa/pr/five-major-banks-agree-parent-level-guilty-pleas>.

158. Press Release, U.S. Dep't of Justice, Two Former Rabobank Traders Convicted for Manipulating U.S. Dollar, Yen LIBOR Interest Rates (Nov. 5, 2015), <http://www.justice.gov/opa/pr/two-former-rabobank-traders-convicted-manipulating-us-dollar-yen-libor-interest-rates>.

159. Press Release, U.S. Dep't of Justice, Three Japanese Auto Parts Executives Indicted for Bid-Rigging Conspiracy Involving Body Sealing Products Installed in U.S. Cars (Oct. 8, 2015), <http://www.justice.gov/opa/pr/three-japanese-auto-parts-executives-indicted-bid-rigging-conspiracy-involving-body-sealing>.

160. See Press Release, U.S. Dep't of Justice, Fourth Ocean Shipping Executive Pleads Guilty to Price Fixing on Ocean Shipping Services for Cars and Trucks (Mar. 26, 2015) at 2, <https://www.justice.gov/opa/pr/fourth-ocean-shipping-executive-pleads-guilty-price-fixing-ocean-shipping-services-cars-and>.

161. Plea Agreement, *United States v. Barclays PLC* (D. Conn. May 2015), at 9–10, <http://www.justice.gov/file/440481/download>.

162. U.S. Sentencing Memorandum & Motion for a Downward Departure at 8, 11–13, *United States v. Kayaba Indus. Co., Ltd.*, No. 1:15-CR-00098 (S.D. Ohio Oct. 5, 2015).

163. *United States v. Am. Express Co.*, 88 F. Supp. 3d 143 (E.D.N.Y. 2015).

VOL. 50

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

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

ANTITRUST 67

settlement that drew dissents from two commissioners who did not think disgorgement was appropriate.¹⁶⁴

E. COURT DECISIONS

In *North Carolina State Board of Dental Examiners v. FTC*, the United States Supreme Court held that the activity of a state-sanctioned professional board controlled by active market participants is not entitled to state action immunity unless the board is following a clearly articulated state policy to replace competition with regulation, and the board acts under active state supervision.¹⁶⁵

The United States Court of Appeals for the Second Circuit upheld a decision that found that Apple violated Section 1 of the Sherman Act by conspiring with book publishers to raise, fix, and stabilize the retail price of e-books.¹⁶⁶ The Second Circuit held that Apple was the “vertical player” in a “horizontal conspiracy” between the book publishers, and because the shift to an agency model enabled the publishers to coordinate and raise prices, Apple facilitated a horizontal price-fixing conspiracy.¹⁶⁷

164. Press Release, Fed. Trade Comm’n, Cardinal Health Agrees to Pay \$26.8 Million to Settle Charges It Monopolized 25 Markets for the Sale of Radiopharmaceuticals to Hospitals and Clinics (Apr. 20, 2015), <https://www.ftc.gov/news-events/press-releases/2015/04/cardinal-health-agrees-pay-268-million-settle-charges-it>.

165. *N.C. State Bd. of Dental Exam’rs v. F.T.C.*, 135 S. Ct. 1101 (2015).

166. *United States v. Apple*, 791 F.3d 290 (2d Cir. 2015).

167. *Id.*

SPRING 2016

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

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

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW