

The Year in Review

Volume 54 *International Legal Developments*
Year in Review: 2019

Article 5

February 2024

International Antitrust

Miguel del Pino

Elizabeth Avery

Dilys Teng

Bruno Drago

Daniel Andreoli

See next page for additional authors

Recommended Citation

Miguel del Pino et al., *International Antitrust*, 54 ABA/SIL YIR 43 (2024)

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

Miguel del Pino, Elizabeth Avery, Dilys Teng, Bruno Drago, Daniel Andreoli, Fabianna Morselli, Paola Pugliese, Milena Mundim, Adam S. Goodman, Simon Kupi, Peter J. Wang, Yizhe Zhang, Peter Camesasca, Laurie-Anne Grelier, Naval Satarawala Chopra, Aman Singh Sethi, Shigeyoshi Ezaki, Vassili Moussis, Kiyoko Yagami, Naoki Uemura, Youngjin Jung, Hemi Lee, Maria Hajiyerou, Lara Granville, and Lisl Dunlop

International Antitrust

MIGUEL DEL PINO, ELIZABETH AVERY, DILYS TENG, BRUNO DRAGO,
DANIEL ANDREOLI, FABIANNA MORSELLI, PAOLA PUGLIESE,
MILENA MUNDIM, ADAM S. GOODMAN, SIMON KUPI,
PETER J. WANG, YIZHE ZHANG, PETER CAMESASCA,
LAURIE-ANNE GRELIER, NAVAL SATARAWALA CHOPRA,
AMAN SINGH SETHI, SHIGEYOSHI EZAKI, VASSILI MOUSSIS,
KIYOKO YAGAMI, NAOKI UEMURA, YOUNGJIN JUNG, HEMI LEE,
MARIA HAJIYEROU, LARA GRANVILLE, AND LISL DUNLOP¹

This article reviews significant legal developments in the field of international antitrust in 2019.

I. Argentina

A. LEGISLATIVE DEVELOPMENTS

The year 2019 has tested the application of the new Antitrust Law No. 27,442² (Antitrust Law) enacted on May 24, 2018. The Argentine Congress is currently analyzing Supermarkets' Shelf Law (*Ley de Góndolas*).³ Even if it is not directly related to antitrust itself, the provisions set out under the Antitrust Law are deemed to be used for its interpretation.

B. NATIONAL COMPETITION AUTHORITY

The Antitrust Law created a new decentralized and autarchic Antitrust Authority within the Executive Branch.⁴ Even though this Authority has yet to be created by the time of this writing, there has been significant progress selecting members.⁵ In the meantime, the double tier system of the Antitrust Commission and the Secretary of Trade remains in force.⁶

1. This section was authored by Miguel del Pino of Marval, O'Farrell & Mairal. The author would like to thank Valentina Pozzoli for her help with this chapter. All resources are dated as of November 25, 2019.

2. See Law No. 27,442, May 15, 2018, [No. 33.870] B.O. 3 (Arg.).

3. See Gondolas for the Sale of Food Products, National Purchase and Promotion of SMEs in Large Commercial Food Surfaces, 7441-D-2018, (Nov. 28, 2018), <https://www.diputados.gov.ar/proyectos/proyecto.jsp?exp=7441-D-2018>.

4. *Argentine: Merger Control 2020*, ICLG.COM, (Dec. 17, 2019), <https://iclg.com/practice-areas/merger-control-laws-and-regulations/argentina>.

5. *Id.*

6. Miguel del Pino & Santiago del Rio, *Argentina*, 13 THE PRIV. COMPETITION ENFORCEMENT REV. (2020).

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

C. MERGERS

After a thorough analysis carried out by the Antitrust Commission,⁷ AT&T's acquisition of Time Warner⁸ was finally approved without any conditions on October 24, 2019.

The Antitrust Commission has published a draft of the Guidelines for the Notification of Economic Concentrations⁹ for public consultation, clarifying which operations are economic concentrations and which are subject to notification.¹⁰ These Guidelines are expected to be released soon.¹¹

D. CARTELS AND OTHER ANTICOMPETITIVE CONDUCTS

The Antitrust Commission initiated an investigation relating to the “notebook case,” a recent scandal unveiled in 2018 entailing an organized corruption scheme, involving alleged bribes to several people and locations, including politicians and many businessmen who benefited from large public contracts during the term of 2005–2015.¹² This proceeding originated as a criminal investigation, but this year the Antitrust Commission initiated an investigation against several construction companies on bid rigging allegations.¹³

In this context, the Antitrust Commission requested the Organization for Economic Cooperation and Development¹⁴ (OCDE for its acronym in Spanish) prepare a report including recommendations and guidelines to combat bid rigging in the procurement of public works and to promote competition in this industry.

The Antitrust Commission also published the Guidelines for the Analysis of Cases of Abuse of Exclusionary Dominance on May 8, 2019.¹⁵ These guidelines reference only unilateral exclusionary abuses of dominance—as they are the most frequent ones—with the aim clarifying what constitutes

7. For the purposes of this chapter, all references to the Antitrust Commission will encompass the Secretary of Trade, unless expressly stated.

8. See Comisión Nacional de Defensa de la Competencia Res. 2019/691 (Oct. 24, 2019) (Arg.).

9. See Draft *Guide for Merger Notification*, COMISIÓN NACIONAL DE DEFENSA DE LA COMPETENCIA (Feb. 2019), https://argentina.gob.ar/sites/default/files/traduccion_ingles_guiia_notificacion_1.pdf.

10. Argentine: Merger Control 2020, ICLG.com, (Dec. 17, 2019), <https://iclg.com/practice-areas/merger-control-laws-and-regulations/argentina>.

11. *Id.*

12. Del Pino & del Rio, *supra* note 6.

13. *Id.*

14. See *The OECD Prepared a Report with Recommendations and Guidelines to Combat Collusion in Public Works Contracts in Argentina*, GOV'T OF ARG. (Nov. 19, 2019), <https://www.argentina.gob.ar/noticias/la-ocde-elaboro-un-informe-con-recomendaciones-y-lineamientos-para-combatir-la-colusion-en>.

15. See *Guidelines for the Analysis of Cases of Exclusionary Abuse of Dominance*, COMISIÓN NACIONAL DE DEFENSA DE LA COMPETENCIA ((May 2019), https://www.argentina.gob.ar/sites/default/files/guias_abuso_posicion_dominante_ev.pdf.

infringement of the Antitrust Law and contributing to more predictable decisions.¹⁶

II. Australia¹⁷

A. LEGISLATIVE DEVELOPMENTS

There have been two key legislative developments this year:

- The exemption for conditions in the licensing or assignment of intellectual property rights was repealed.¹⁸
- Legislation came into effect establishing a consumer data right to provide consumers with a right to access specific data that businesses hold about them and share with other entities.¹⁹ The banking industry is the first sector subject to this regime.

B. MERGERS

As of November 20, 2019, the Australian Competition and Consumer Commission (ACCC) issued twenty-one informal merger clearance decisions: fourteen were approved, four were approved subject to undertakings, one was discontinued, and two were opposed.²⁰

As of September 30, 2019, 222 transactions were “pre-assessed”²¹ and one merger authorization application was made.²² The ACCC conditionally authorized AP Eagers’ proposed acquisition of Automotive Holdings Group following an undertaking from AP Eagers to sell two of its existing new car dealerships.²³

16. Del Pino & del Rio, *supra* note 6.

17. This section was authored by Elizabeth Avery and Dilys Teng of Gilbert + Tobin (Australia), with thanks Emma Frederiksen.

18. Brendan Coady & Ooma Khurana, *Repealed – IP Exemption to the Competition and Consumer Act 2010 Anti Competitive Conduct Regime is No More*, MADDOCKS (Feb. 27, 2019), <https://www.maddocks.com.au/insights/repealed-ip-exemption-to-the-competition-and-consumer-act-2010-anti-competitive-conduct-regime-is-no-more>.

19. See Treasury Laws Amendment (Consumer Data Right) Bill 2019 (Cth) (Austl.).

20. See *Public Competition Assessments*, AUSTRALIAN COMPETITION & CONSUMER COMM’N (May 24, 2020), <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/public-competition-assessments>.

21. See *generally ACCCount*, AUSTRALIAN COMPETITION & CONSUMER COMM’N, <https://www.accc.gov.au/publications/acccount>, (last visited May 30, 2020) (adding amounts of pre-assessed mergers from all “Issues” ranging from January 2019 through September 2019).

22. See *Merger Authorisations Register*, ACCC (May 24, 2020), <https://www.accc.gov.au/public-registers/mergers-registers/merger-authorisations-register>.

23. See *Car Deal Conditionally Authorized with Newcastle and Hunter Valley Divestitures*, AUSTRALIAN COMPETITION & CONSUMER COMM’N (July 25, 2019), <https://www.accc.gov.au/media-release/car-deal-conditionally-authorized-with-newcastle-and-hunter-valley-divestitures>.

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

46 THE YEAR IN REVIEW

[VOL. 54

C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

This year saw criminal charges laid against:

- Wallenius Wilhelmsen alleging cartel conduct relating to the international shipping of vehicles;²⁴
- Vina Money Transfer and five individuals alleging price fixing by foreign exchange remission agents;²⁵ and
- A former senior executive at BlueScope Steel involving allegations of inciting the obstruction of a Commonwealth official in the performance of his functions.²⁶

The largest fine for a criminal breach of the *Competition and Consumer Act 2010 (Cth)* was handed down against Kawasaki Kisen Kaisha Ltd, which was convicted of cartel conduct after pleading guilty.²⁷ It was ordered to pay AUD 34.5 million.²⁸

The ACCC commenced civil proceedings against:

- NSW Ports and its subsidiaries for making agreements with the State of New South Wales that allegedly have an anti-competitive purpose and effect;²⁹ and
- BlueScope and its former senior executive, alleging cartel conduct in the supply of flat steel products.³⁰

Cryosite was ordered to pay AUD 1.05 million for engaging in cartel conduct relating to its sale agreement with Cell Care Australia Pty Ltd.³¹ Before regulatory approval was obtained and the transaction completed,

24. See *Global Shipping Company Wallenius Wilhelmsen Charged with Criminal Cartel Conduct*, AUSTRALIAN COMPETITION & CONSUMER COMM'N (Aug. 23, 2019), <https://www.accc.gov.au/media-release/global-shipping-company-wallenius-wilhelmsen-charged-with-criminal-cartel-conduct>.

25. See *Charges Laid Against Alleged Forex Price Fixing Cartel*, AUSTRALIAN COMPETITION & CONSUMER COMM'N (April 11, 2019), <https://www.accc.gov.au/media-release/charges-laid-against-alleged-forex-price-fixing-cartel>.

26. See *Criminal Obstruction Charges Against Ex BlueScope Manager*, AUSTRALIAN COMPETITION & CONSUMER COMM'N (Oct. 8, 2019), <https://www.accc.gov.au/media-release/criminal-obstruction-charges-against-ex-bluescope-manager>.

27. See *K-Line Convicted of Criminal Cartel Conduct and Fined \$34.5 Million*, AUSTRALIAN COMPETITION & CONSUMER COMM'N (Aug. 2, 2019), <https://www.accc.gov.au/media-release/k-line-convicted-of-criminal-cartel-conduct-and-fined-345-million>.

28. See *id.*

29. See *ACCC Takes Action Against NSW Ports*, AUSTRALIAN COMPETITION & CONSUMER COMM'N (Dec. 10, 2018), <https://www.accc.gov.au/media-release/accc-takes-action-against-nsw-ports>.

30. See *Action Against BlueScope for Alleged Cartel Conduct*, AUSTRALIAN COMPETITION & CONSUMER COMM'N (Aug. 30, 2019), <https://www.accc.gov.au/media-release/action-against-bluescope-for-alleged-cartel-conduct>.

31. See *Cryosite to Pay \$1.05m for 'Gun Jumping' Cartel Conduct*, AUSTRALIAN COMPETITION & CONSUMER COMM'N (Feb. 13, 2019), <https://www.accc.gov.au/media-release/cryosite-to-pay-105m-for-e2%80%98gun-jumping-e2%80%99-cartel-conduct>.

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

2020]

ANTITRUST 47

Cryosite diverted all its customers to Cell Care.³² This was the first gun-jumping prosecution in Australia.³³

D. DOMINANCE

Reports indicate the ACCC will launch proceedings next year against Google for misuse of market power in relation to the demise of Unlockd, a mobile advertising company that went into receivership shortly before its initial public offering in 2018.³⁴

III. Brazil³⁵

A. LEGISLATIVE DEVELOPMENTS

On September 24, 2019, CADE's new Internal Rules³⁶ went into effect. They include implementing relevant amendments, such as ending the extended deadline for defendants with different attorneys in electronic proceedings and the suspensive effect of motions to clarify, to adhere to the new Civil Process Code.³⁷

The new Internal Rules introduced the requirement for revenues' conversion into Brazilian Reais, eliminated oral arguments in settlements requests, and established the possibility of automatic dismissal for failing to submit certain documents.³⁸

CADE also published Ordinance 869 of November 1, 2019,³⁹ regulating procedures for cartel victims to access restricted documents for damage claims. This new ruling is intended to signal CADE's commitment towards protecting leniency programs and settlement documents while also providing the judiciary branch increased legal certainty in interpreting the new Bill of Law.⁴⁰

32. *See id.*

33. *See id.*

34. *See* Paul Smith, *ACCC to sue Google Over Unlockd*, AUSTL. FIN. REV. (Nov. 5, 2019), <https://www.afr.com/technology/acc-c-to-sue-google-over-unlockd-20191030-p535u9>.

35. This section was authored by Bruno Drago, Daniel Andreoli, Fabianna Morselli, Paola Pugliese and Milena Mundim.

36. Ministerio da Justica, Conselho Administrativo de Defesa Economica [CADE], Resolucao No. 22, de 24 de setembro de 2019 (Braz.).

37. *See id.*

38. *See id.*

39. Ministerio da Justica, Conselho Administrativo de Defesa Economica [CADE], Ordenanca No. 869, de 1 de novembro de 2019 (Braz.).

40. *Id.*

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

B. MERGERS

In 2019 CADE approved all proposed transactions, either unconditionally or with remedies.⁴¹ The most relevant merger cases in 2019 included the Disney/Fox deal,⁴² conditionally approved by CADE, but which will be reassessed by the authority given the non-fulfillment of the divestment obligation. CADE also reviewed the global mergers Amcor/Bemis⁴³ and IBM/Red Hat,⁴⁴ among others.

CADE's Tribunal experienced a three-month lack of quorum, impacting approximately ninety-five merger reviews that had deadlines suspended and hindering companies from closing their deals earlier.⁴⁵

C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

The largest fines in 2019 imposed by CADE were in the subway-construction cartel.⁴⁶ Eleven companies and forty-two individuals were fined approximately 535 million BRL.

Fuel distributors BR Distribuidora and Ipiranga, along with twenty-seven fuel stations, were also fined a total of 156.9 million BRL.⁴⁷

CADE also ruled on the international LCD cartel, fining companies Hannstar Display Corp. and Chi Mei Optoelectronics about 27 million

41. Marcio Dias Soares et al., *Merger Remedies Guide- Second Edition*, GCR (Oct. 14, 2019), <https://globalcompetitionreview.com/insight/merger-remedies-guide-second-edition/1209563/brazil>.

42. See Merger No. 08700.004494/2018-53, CADE (2018), https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?0c62g277GvPsZDAxAO1tMiVcL9FcFMR5UuJ6rLqPEJuTUu08mg6wxLt0JzWxCOR9mNcMYP8UAjTVP9dxRfPBcSx6VT8s_7a39CZOxmQ-t2wypOQEzO5-IvOP8aS3cDfx.

43. See Merger No. 08700.005911/2018-85, CADE (2018), https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?0c62g277GvPsZDAxAO1tMiVcL9FcFMR5UuJ6rLqPEJuTUu08mg6wxLt0JzWxCOR9mNcMYP8UAjTVP9dxRfPBcUupA93dFp4SPumcxZ-OW-FRq5NIUXwFB6x9VWudO5E0.

44. See Merger No. 08700.001908/2019-73, CADE (2019), https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?0c62g277GvPsZDAxAO1tMiVcL9FcFMR5UuJ6rLqPEJuTUu08mg6wxLt0JzWxCOR9mNcMYP8UAjTVP9dxRfPBcWALb0jLTfvBKxKxU7jdES5KPTuS_Pes1IODl5grVQz.

45. *Lack of Quorum Will Affect CADE's Activities*, MACHADO MEYER, (July 11, 2019), <https://www.machadomeyer.com.br/en/recent-publications/publications/financing-and-infrastructure-projects/lack-of-quorum-will-affect-cade-s-activities>.

46. See Proceeding No. 08700.004617/2013-41, CADE (2013), https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?2pXoYgv29q86Rn-fAe4ZUaXIR3v7-gVxEWL1JeB-RtUgqOwvr6Zlwydl0IhRNSr2Q22lByVKByYDYwsa13_jxv_TD0gMz5Bnf9DkLxr-asuqhGSyxpB7jiO8aqaqx0vHf.

47. See Proceeding No. 08700.010769/2014-64, CADE (2014), https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?5LK2OPcLJR_jpmIIdOEcWJwPucpbcJDecPgMLICe73jB508ahT9wUzaXUnjAZUJ4XW1xtu1H5kGUyGvypRMajVqp-zMJnP7GcNYoVcMVeOvnhoSlrMq6YSPUX2fm365.

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

2020]

ANTITRUST 49

BRL.⁴⁸ Optical disk drive manufacturers were fined for a global cartel in the markets for CD and DVD drives (fines of 8.4 and 11.2 million BRL, respectively).⁴⁹

Other cartels convicted in 2019 included a bid-rigging cartel (total of 2.2 million BRL),⁵⁰ an automotive shock-absorber cartel (total of 10 million BRL),⁵¹ and an electric equipment cartel (total of 54.9 million BRL).⁵²

D. COURT DECISIONS

An appellate court decision in Mendes Junior's suit against cement companies found the company should have had three years from CADE's final decision to file its damages claim.⁵³ The decision is relevant for ongoing discussions regarding time limits for filing damages claims in cartel cases. There is currently a draft bill under discussion, which grants five years from the publication of CADE's decision for victims to file such claims.

IV. Canada⁵⁴

A. LEGISLATIVE DEVELOPMENTS

On April 3, 2019, new provisions of the Canada Transportation Act⁵⁵ came into force, providing a process for voluntary review of airline joint

48. See Proceeding No. 08012.011980/2008-12, CADE (2008), <http://en.cade.gov.br/press-releases/cade-signs-three-new-agreements-in-cartel-investigations>.

49. See Proceeding No. 08012.001395/2011-00, CADE (2011), https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?5LK2OPcLJR_jpmIIIdOEcWJwPucpbCJDecPgMLICe73jB508ahT9wUzaXUunjAZUJ4XW1xtu1H5kGUyGvypRMajYdt3kt sCz0xgbBpiExkxGdOF0zep6L3dy8DBTL0Yqve.

50. See Proceeding No. 08012.004280/2012-40, CADE (2012), https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?2pXoYgv29q86Rn-fAe4ZUaXIR3v7-gVxEWL1JeB-RtUgqOwvr6Zlwydl0IhRNSr2Q221ByVKByYDYwsa13_Jxv217pAX6NjhW4HnIP3mur3U9pprYZVjayQgxVPoLAjE.

51. See Proceeding No. 08700.004073/2016-61, CADE (2016), https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?0c62g277GvPsZDAxAO1tMiVcL9FcFMR5Uuj6rLqPEJuTUu08mg6wxLt0JzWxCor9mNcMYP8UAjTVP9dxRfPBcTiv3rT7-DOhd8s0NPv1T6VnfdBWakvtb1rtRIn4rhh.

52. See Proceeding No. 08012.001377/2006-52, CADE (2006), https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?2pXoYgv29q86Rn-fAe4ZUaXIR3v7-gVxEWL1JeB-RtUgqOwvr6Zlwydl0IhRNSr2Q221ByVKByYDYwsa13_Jxi-Hg5I-1V6wIwentTCxsnSQdbuChzod5GZrrr28EPRE; see Proceeding No. 08700.004532/2016-14, CADE (2016), <http://en.cade.gov.br/press-releases/cade-signs-six-cease-and-desist-agreements-in-the-midst-of-investigations-on-anticompetitive-practices>.

53. See T.J.S.P., Ap. Civ. No. 1076734-73.2017.8.26.0100, Relator: Des. Moreira Viegas, 25.9.2019, 5, DIÁRIO OFICIAL DOS ESTADOS [D.O.E.S.P.], 3.10.2019 (Braz.).

54. This section was authored by Adam S. Goodman and Simon Kupi – Dentons Canada LLP.

55. *Canada Transportation Act*, S.C. 1996, c 10, s 53.7 (Can.).

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

50 THE YEAR IN REVIEW

[VOL. 54]

ventures. These provisions exempt approved joint ventures from key provisions of the Competition Act.⁵⁶

B. MERGERS

On June 16, 2019, Canada’s federal cabinet approved a proposed merger between two airlines competing on routes in northern Canada, despite the Competition Bureau (Bureau) finding the merger would substantially lessen competition in passenger and cargo services.⁵⁷

In June, the Bureau issued a No Action Letter for a proposed defense industry merger in reliance on the U.S. DOJ’s requirement that one merging party divest its night vision business.⁵⁸

Private equity firm Thoma Bravo agreed with the Bureau in August to divest a business to address concerns that its acquisition of oil and gas reserves software maker Aucerna would amount to a “merger to monopoly.”⁵⁹ The Bureau sought and obtained this remedy post-closing.⁶⁰

C. ABUSE OF DOMINANCE

In February, the Bureau closed its abuse of dominance investigation into Janssen Inc., which considered whether Janssen shielded its drug from competition from biosimilar drugs, because of insufficient evidence of anti-competitive effects.⁶¹

In July, the Bureau closed an investigation following allegations that a vaccine manufacturer was trying to restrict off-label use of its product by public health authorities through a procurement contract provision.⁶²

56. *Competition Act*, R.S.C. 1985, c C-34 (Can.).

57. See Adam S. Goodman, *Government of Canada Approves Airline Merger Following Competition Bureau Objection*, DENTONS CAN. LLP (Jun. 26, 2019), <https://www.dentons.com/en/insights/alerts/2019/june/26/government-of-canada-approves-airline-merger-following-competition-bureau-objection>.

58. See *Competition Bureau Will Not Oppose Merger Between Defence Contractors Harris Corp. and L3 Technologies*, COMPETITION BUREAU CAN. (June 21, 2019), <https://www.canada.ca/en/competition-bureau/news/2019/06/competition-bureau-will-not-oppose-merger-between-defence-contractors-harris-corporation-and-l3-technologies.html>.

59. See *Competition Bureau Statement Regarding Thoma Bravo’s Acquisition of Aucerna*, COMPETITION BUREAU CAN. (Aug. 30, 2019), <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04493.html>.

60. See *id.*

61. See *Competition Bureau Completes Investigation into Alleged Abuse of Dominance by Janssen Inc.*, COMPETITION BUREAU OF CAN. (Feb. 20, 2019), <https://www.canada.ca/en/competition-bureau/news/2019/02/competition-bureau-completes-investigation-into-alleged-abuse-of-dominance-by-janssen-inc.html>.

62. See *Competition Bureau Concludes Investigation into Alleged Restrictions on Off-Label Use of Vaccines*, COMPETITION BUREAU CAN. (July 19, 2019), <https://www.canada.ca/en/competition-bureau/news/2019/07/competition-bureau-concludes-investigation-into-alleged-restrictions-on-off-label-use-of-vaccines.html>.

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

2020]

ANTITRUST 51

In September, the Bureau issued a call-out for information about potentially anti-competitive conduct in the digital economy.⁶³ The Bureau indicates it is looking for information regarding strategies by major online firms that hinder competition in digital markets.⁶⁴

In October, the Competition Tribunal held the Vancouver Airport Authority did not abuse its dominance by refusing to allow additional in-flight caterers to operate at its airport.⁶⁵ This was the Bureau's second recent case pursuing an intermediary alleged to have harmed competition in a market in which it, itself, did not compete in.⁶⁶

D. CARTELS

Two engineering firms were implicated in an alleged bid-rigging scheme between 2003 to 2011 targeting public infrastructure contracts in Quebec.⁶⁷ In March, these firms were permitted to pay a fine and be subject to a prohibition rather than plead guilty to a criminal offense.⁶⁸

E. COURT CASES

In May, the British Columbia Court of Appeal certified a proposed class action alleging a roll-on/roll-off shipping cartel,⁶⁹ overturning a lower court's refusal to certify because relevant data might be unavailable.

In September, the Supreme Court of Canada issued its ruling in *Pioneer Corp. v Godfrey*,⁷⁰ a price-fixing class action regarding optical disk drives, confirming "umbrella" purchasers have a cause of action. Other findings of the court confirm Canada's bar for certifying price-fixing class actions is lower than other jurisdictions.⁷¹

63. See Competition Bureau Call-Out to Market Participants for Information on Potentially Anti-Competitive Conduct in the Digital Economy, COMPETITION BUREAU CAN. (Sept. 4, 2019), <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04494.html>.

64. See *id.*

65. See Simon Kupa & Sandy Walker, *Food for Thought? What the Grounding of the Competition Bureau's Airline Catering Case Means for Competition Compliance in Canada*, DENTONS CAN. LLP, (Nov. 22, 2019), <https://www.dentons.com/en/insights/articles/2019/november/22/what-the-grounding-of-the-competition-bureaus-airline-catering-case-means>.

66. See *id.*

67. See *Engineering Firm to Pay \$4 Million in Quebec Bid-Rigging Settlement*, COMPETITION BUREAU CAN. (Mar. 13, 2019), <https://www.canada.ca/en/competition-bureau/news/2019/03/engineering-firm-to-pay-4-million-in-quebec-bid-rigging-settlement.html>.

68. See *id.*

69. *Ewert v. Nippon Yusen Kabushiki Kaisha*, (2019) BCCA 187 (Can.).

70. *Pioneer Corp. v. Godfrey*, (2019) SCC 42 (Can.).

71. Adam Goodman et al., *The Godfrey Decision: The Supreme Court of Canada Weighs in on Umbrellas, Discoverability, Complete Codes, and Certification Methodologies*, DENTONS CAN. LLP (Oct. 10, 2019), <https://www.dentons.com/en/insights/alerts/2019/october/10/the-godfrey-decision>.

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

52 THE YEAR IN REVIEW

[VOL. 54]

V. China⁷²

A. LEGISLATIVE DEVELOPMENTS

In July 2019, China's new anti-monopoly enforcement agency (AMEA)—the State Administration for Market Regulation (SAMR)—released three antitrust regulations: Interim Regulation on Prohibition of Monopoly Agreements,⁷³ Interim Regulation on Prohibition of Abuse of Dominance,⁷⁴ and Interim Regulation on Preventing Conducts Abusing Administrative Power to Eliminate or Restrict Competition.⁷⁵

B. MERGERS

As of November 14, 2019, SAMR approved four mergers with conditions⁷⁶ and 347 cases without conditions.⁷⁷ In KLA-Tencor/Orbotech, SAMR required the combined entity to supply semiconductor process control equipment and services under FRAND (fair, reasonable, and non-discriminatory) terms, and prohibited it from engaging in tying and bundling.⁷⁸ In Cargotec/TTS, SAMR required both parties to maintain separate businesses, and prohibited Cargotec from increasing certain prices for five years.⁷⁹ In II-VI/Finisar, SAMR required the parties to keep their wavelength selective switch businesses separate, establish firewalls, and supply the switch fairly and reasonably for three years.⁸⁰ In Zhejiang Garden Bio-Chemical High-Tech Co./DSM, SAMR required both parties to hold

72. This section was authored by Peter Wang and Yizhe Zhang of Jones Day.

73. See *The Interim Regulation on Prohibition of Monopoly Agreements*, ST. ADMIN. MKT. REG. (July 25, 2019), http://gkml.samr.gov.cn/nsjg/fldj/201907/t20190725_305165.html.

74. See *The Interim Provisions for Prohibiting Abuse of Dominant Market Position*, ST. ADMIN. MKT. REG. (July 25, 2019), http://gkml.samr.gov.cn/nsjg/fldj/201907/t20190725_305166.html.

75. See *Interim Provisions to Prevent Abuse of Administrative Power to Eliminate and Restrict Competition*, ST. ADMIN. MKT. REG. (July 25, 2019), http://gkml.samr.gov.cn/nsjg/fldj/201907/t20190725_305167.html.

76. See *Published Notices of Prohibited Concentration of Undertakings and Conditional Approvals*, ST. ADMIN. MKT. REG. <http://www.samr.gov.cn/fldj/tzgg/ftjtz/>.

77. See *Published Notices of Unconditional Approvals*, ST. ADMIN. MKT. REG. (2019), <http://www.samr.gov.cn/fldj/zwgk/>.

78. See *Announcement of the Gen. Admin. Of Mkt. Supervision on the Anti-Monopoly Rev. Decision on the Approval of Ketian Co.'s Acquisition of Equity in Aobao Tech. Co., Ltd. With Additional Restrictive Conditions*, ST. ADMIN. MKT. REG. (Feb. 20, 2019), http://gkml.samr.gov.cn/nsjg/xwxc/201902/t20190220_290940.html.

79. See *Announcement of the Gen. Admin. Of Mkt. Supervision on the Anti-Monopoly Rev. Decision Approving Cargotec Group's Acquisition of Part of the Business of the Dress Group with Restrictive Conditions*, ST. ADMIN. MKT. REG. (Jul. 12, 2019), http://www.samr.gov.cn/fldj/tzgg/ftjtz/201907/t20190712_303428.html.

80. See *Announcement of the Gen. Admin. Of Mkt. Supervision on the Anti-Monopoly Rev. Decision on the Approval of Gaoyi Co., Ltd.'s Acquisition of Finisar Co., Ltd. With Additional Restrictive Conditions*, ST. ADMIN. MKT. REG. (Sept. 20, 2019), http://www.samr.gov.cn/fldj/tzgg/ftjtz/201909/t20190920_306948.html.

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

2020]

ANTITRUST 53

separate their businesses, to operate the joint venture independently, and prohibited them from publishing prices for five years.⁸¹

C. ADMINISTRATIVE ENFORCEMENT

In 2019, SAMR concluded eight monopoly agreement cases and three abuse of dominance cases.⁸² In, SAMR Chlorpheniramine API found the collective dominance of two API manufacturers largely by relying on their over eighty percent total market share.⁸³ In *Eastman*, Shanghai SAMR concluded that exclusive supply agreements, together with take-or-pay clauses and MFN agreements, had anticompetitive effects.⁸⁴

D. JUDICIAL JUDGMENTS

In *Huili v. Shell*, the SPC ruled that the antitrust dispute was not subject to arbitration, as such violations can only be determined by AMEAs and courts.⁸⁵ In *Yutai*, the SPC held retail price maintenance created a rebuttable presumption of anticompetitive effect in government enforcement actions, while in civil litigation, rule of reason analysis applies.⁸⁶

VI. European Union⁸⁷

A. LEGISLATIVE DEVELOPMENTS

Margrethe Vestager received the “double-hat” of Competition Commissioner (for a second term) and Vice-President for Digital Policy.⁸⁸

81. See *Announcement of the Gen. Admin. Of Mkt. Supervision on the Anti-Monopoly Rev. Decision of the New Venture Between Zhejiang Garden Biotech Co., Ltd. And Royal DSM Co., Ltd. With Additional Restrictive Conditions*, ST. ADMIN. MKT. REG. (Oct. 18, 2019), http://www.samr.gov.cn/fldj/tzgg/ftjtz/201910/t20191018_307455.html.

82. See generally *Administrative Penalty Cases* ST. ADMIN. MKT. REG., <http://www.samr.gov.cn/fldj/tzgg/xzcf/> (summarizing a combination of listed cases).

83. See *General Admin. of Market Supervision Issued Decision on Admin. Penalty for Chlorpheniramine Monopoly Case*, ST. ADMIN. MKT. REG. (Feb. 16, 2019), http://gkml.samr.gov.cn/nsjg/bgt/201902/t20190216_288679.html.

84. See *General Admin. of Market Supervision Issues Decision on Admin. Penalty for Eastman's Abuse of Dominance*, ST. ADMIN. MKT. REG. (Apr. 29, 2019), http://www.samr.gov.cn/fldj/tzgg/xzcf/201904/t20190429_293241.html.

85. See *The Supreme Court ruled that the determination of whether it constitutes a monopoly is beyond the scope of arbitration*, ZHUANLAN ZHIHU, (Oct. 10, 2019) (China), <https://zhuanlan.zhihu.com/p/87352985>.

86. See *Supreme Court: The agreement to fix the resale price and restrict the price is generally a monopoly agreement in itself*, ZHUANLAN ZHIHU, (Dec. 18, 2018) (China), <https://zhuanlan.zhihu.com/p/78577010>.

87. The contribution for the European Union was written by Peter Camesasca and Laurie-Anne Grelier. All resources are dated as of November 25, 2019.

88. See *Margrethe Vestager's Vast New Powers*, POLITICO (Sept. 12, 2019), <https://www.politico.eu/article/european-commission-vice-president-digital-margrethe-vestager-competition/>.

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

54 THE YEAR IN REVIEW

[VOL. 54

The European Commission (EC) continued to focus on the implications of big data and big tech, topics anticipated to remain a priority going forward.⁸⁹ The EC also conducted reviews of the antitrust rules concerning the distribution of goods,⁹⁰ the antitrust exemption for liner shipping consortia,⁹¹ and those for R&D and production agreements.⁹² In addition, proposed legislation to facilitate group claims has progressed, which may have important ramifications for private enforcement efforts.⁹³

B. MERGERS

Notably, the EC blocked (1) Siemens's proposed acquisition of rival high-speed train maker Alstom,⁹⁴ (2) Tata Steel's and ThyssenKrupp's planned steel joint-venture,⁹⁵ and (3) Wieland's proposed acquisition of roller copper rival Aurubis and supplier Schwermetall.⁹⁶

C. ANTI-COMPETITIVE PRACTICES

The EC continued vigorously prosecuting cartels. Through November 2019, the EC imposed fines totaling about €1.5 billion (~\$1.7 billion) on companies found involved in cartels relating to car passenger safety systems, Forex, and canned vegetables.⁹⁷ It also started or continued investigations of suspected cartel activities in European government bonds, farmed salmon, a retailer purchasing alliance, and car clean emissions technology.⁹⁸

89. See Practical Law Competition, *Speech by Margrethe Vestager on privacy and competition in an age of data*, THOMSON REUTERS (Nov. 21, 2019), [https://uk.practicallaw.thomsonreuters.com/w-022-9342?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-022-9342?transitionType=Default&contextData=(sc.Default)&firstPage=true).

90. See *Review of Vertical Block Exemption Regulation*, EUR. COMM'N, https://ec.europa.eu/competition/consultations/2018_vber/index_en.html.

91. See *Consultation on the Proposed Prolongation of the Consortia Block Exemptions Regulation*, EUR. COMM'N, https://ec.europa.eu/competition/consultations/2019_cber_prolongation/index_en.html.

92. See *Review of the two Horizontal Block Exemption Regulations*, EUR. COMM'N, https://ec.europa.eu/competition/consultations/2019_hbers/index_en.html (last visited May 27, 2020).

93. See Representative actions for the protection of the collective interests of consumers, Legislative Observatory European Parliament, T8-0222/2019, <https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2018/0089>.

94. European Commission Press Release IP/19/881, Mergers: Commission prohibits Siemens' proposed acquisition of Alstom (Feb. 6, 2019), https://ec.europa.eu/commission/presscorner/detail/en/IP_19_881.

95. European Commission Press Release IP/19/2948, Mergers: Commission prohibits proposed merger between Tata Steel and ThyssenKrupp (June 11, 2019), https://ec.europa.eu/commission/presscorner/detail/en/IP_19_2948.

96. European Commission Press Release IP/19/883, Mergers: Commission prohibits Wieland's proposed acquisition of Aurubis Rolled Products and Schwermetall (Feb. 6, 2019), https://ec.europa.eu/commission/presscorner/detail/en/IP_19_883.

97. See *Cartel Statistics*, EUR. COMM'N (Sep. 25, 2019), <https://ec.europa.eu/competition/cartels/statistics/statistics.pdf>.

98. See *Commission: Cartel cases*, EUR. COMM'N, <https://ec.europa.eu/competition/cartels/cases/cases.html> (last updated Nov. 25, 2019).

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

2020]

ANTITRUST 55

The EC fined Sanrio €6.2 million (~\$6.8 million) for preventing its retailers from selling Hello Kitty-branded goods to other EU countries, concluding one of the EC's recent investigations into distribution practices believed to impede cross-border trade within the EU.⁹⁹

D. ABUSE OF A DOMINANT POSITION

The EU sanctioned multiple high-tech companies this year. In its third case against Google, the EC imposed a €1.7 billion (~\$1.9 billion) fine for imposing restrictive clauses to prevent rival brokers of online search advertisements from placing ads on third-party websites.¹⁰⁰ The EC fined Qualcomm €242 million (~\$267 million) for predatory pricing of 3G baseband chipsets.¹⁰¹ The EC also ordered Broadcom to stop applying certain exclusivities and incentives in supply contracts for TV set-top box and modem chipsets, using its powers to impose interim measures for the first time in almost twenty years.¹⁰²

E. COURT DECISIONS

The EU Court of Justice affirmed the annulment of the EC's UPS/TNT merger block, underscoring the importance of preserving companies' right of defense when applying economic analyses.¹⁰³

VII. India*

A. LEGISLATIVE AND INSTITUTIONAL DEVELOPMENTS

Following the "rightsizing" of the Competition Commission of India (CCI) in 2018, and the retirement of all then-members, the CCI today has three new members: Chairperson Ashok Kumar Gupta and members

99. European Commission Press Release IP/19/3950, Antitrust: Commission fines Sanrio €6.2 million for restricting cross-border sales of merchandising products featuring Hello Kitty characters (Jul. 9, 2019), https://ec.europa.eu/commission/presscorner/detail/en/IP_19_3950.

100. *See* European Commission Press Release IP/19/1770, Antitrust: Commission fines Google €1.49 billion for abusive practices in online advertising (Mar. 20, 2019), https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1770.

101. European Commission Press Release IP/19/4350, Antitrust: Commission fines US chipmaker Qualcomm €242 million for engaging in predatory pricing (Jul. 18, 2019), https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4350.

102. *See* European Commission Press Release IP/19/6109, Antitrust: Commission imposes interim measures on Broadcom in TV and modem chipset markets (Oct. 16, 2019), https://ec.europa.eu/commission/presscorner/detail/en/IP_19_6109.

103. *See* Case C-265/17, *United Parcel Service, Inc. v. European Commission*, ECLI:EU:C:2019:23.

* Naval Satarawala Chopra, Partner and Aman Singh Sethi, Principal Associate at Shardul Amarchand Mangaldas & Co. ("SAMCo.").

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

56 THE YEAR IN REVIEW

[VOL. 54

Sangeeta Verma and Bhagwant Bishnoi.¹⁰⁴ The appointment of the fourth and final member, Justice Sangita Seghal, has also been announced.¹⁰⁵

The Government has also undertaken a review of the (Indian) Competition Act (2002 Act), resulting in recommendations for institutional and procedural reform, introduction of a deal value threshold for merger filings, and a mechanism for enforcement-related settlements and commitments.¹⁰⁶ Amendments to the 2002 Act are expected as early as late-2019.

CCI also amended its merger regulations to provide streamlined approval of transactions with no horizontal overlap, actual or potential vertical relationship, nor any complementary products/ services.¹⁰⁷ In addition, enforcement complaints now must disclose pending disputes to avoid forum shopping by complainants.¹⁰⁸

B. CARTELS AND OTHER ANTI-COMPETITIVE AGREEMENTS

Leniency applications led to the discovery of cartels in the sale of dry-cell batteries and Electric Power Steering systems.¹⁰⁹ Separately, LPG cylinder manufacturers were found guilty of bid-rigging owing to commonality in behaviour while withdrawing from the tender.¹¹⁰ Enforcement in the pharmaceutical sector continues with the CCI finding associations of chemists and pharmaceutical companies engaged in market allocation.¹¹¹

104. See *Delhi HC judge Sangita Dhingra Sehgal appointed CCI member*, PRESS TR. OF INDIA (Nov. 11, 2019), http://www.ptinews.com/news/10982107_5-of-family-killed-on-Eastern-Peripheral-Expressway.html.

105. See Pritam Pal Singh, *Justice Sangita Sehgal resigns from Delhi HC to join as State Consumer Commission chief*, THE INDIAN EXPRESS (May 21, 2020), <https://indianexpress.com/article/cities/delhi/justice-sangita-dhingra-sehgal-resigns-consumer-dispute-redressal-commission-chief-6420775/>.

106. See INDIAN MINISTRY OF CORPORATE AFFAIRS, REPORT OF THE COMPETITION LAW REVIEW COMMITTEE 4-6 (Jul. 2019), http://www.mca.gov.in/Ministry/pdf/ReportCLRC_14082019.pdf.

107. See Press Release, CCI introduces Green Channel clearance for Merger & Acquisitions, Competition Commission of India (Aug. 19, 2019), https://www.cci.gov.in/sites/default/files/press_release/PR82019-20.pdf.

108. See *Competition watchdog needs to reveal identity of informants*, THE ECON. TIMES (Nov. 23, 2019), <https://economictimes.indiatimes.com/news/economy/policy/competition-watchdog-needs-to-reveal-identity-of-informants/articleshow/72192793.cms>.

109. See Competition Commission of India, *In re: anticompetitive conduct in Dry-Cell Batteries, Suo Motu*, Case No. 3/2017, (Jan. 15, 2019); Competition Commission of India, *Cartelization in the supply of EPS systems, Suo Motu*, Case No. 7(01)/2014, at 15 (Aug. 9, 2019).

110. See Competition Commission of India, *Alleged cartelization in supply of LPG cylinders, Suo Motu Case No. 1/2014*, (Aug. 9, 2019).

111. See *generally* Competition Commission in India, *In re Madhya Pradesh Chemists and Druggist Association (MPCDA)*, Case No. 64/2014 (June 3, 2019).

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

2020]

ANTITRUST 57

CCI closed a case against Kaff for imposing price parity between offline and online channels, as it did not result in an appreciable adverse effect on competition.¹¹²

C. MERGER CONTROL

CCI is increasingly demanding India-specific remedies; however, it is also open to behavioural remedies. In *Schneider/L&T*, the parties successfully argued for a package of solely behavioural remedies despite CCI's initial preference for divestments.¹¹³

D. ABUSE OF DOMINANCE

The CCI initiated investigations against: (i) Google for allegedly denying market access, limiting technological development, and leveraging its dominance with the Android platform;¹¹⁴ (ii) Intel for refusing to honor warranties for boxed microprocessors imported into India through unauthorized vendors;¹¹⁵ and (iii) MakeMyTrip and OYO for alleged abuse of dominance, cartelization, and restrictive vertical agreements.¹¹⁶

The Supreme Court reversed the CCI's decision to dismiss predatory pricing allegations against Uber and directed an investigation.¹¹⁷ Allegations of capital dumping and predation have also been raised against other technology-enabled platforms—e-tailers, travel, hotels and hospitality, restaurant delivery, etc. The CCI has initiated studies and public engagement series in these sectors to evaluate whether intervention is necessary.¹¹⁸

E. NOTABLE COURT DECISIONS

The High Court of Delhi continues to allow the Director General's Office to expand its investigations in each case beyond the subject matter of

112. See Competition Commission of India, *Jasper Infotech v. KAFF*, Case No. 61/2014, at 7 (Apr. 16, 2019).

113. See John Handoll, *Merger Remedies Guide: India*, GLOBAL COMPETITION REV, <https://globalcompetitionreview.com/insight/merger-remedies-guide-second-edition/1209566/india>.

114. See Competition Commission of India, *Umar Javed v. Google*, Case No. 39/2018, at 12–13 (Apr. 16, 2019).

115. See Competition Commission of India, *Matrix Info Systems v. Intel*, Case No. 5/2019, at 15 (Aug. 9, 2019).

116. See Competition Commission of India, *FHRAI v. MMT and Ors.*, Case No. 14/2019, at 11, 18 (Oct. 28, 2019).

117. See Basu Chandol, *Supreme Court of India Upholds Investigation against Uber*, KLUWER COMPETITION L. BLOG (Sep. 18, 2019), http://competitionlawblog.kluwercompetitionlaw.com/2019/09/18/supreme-court-of-india-upholds-investigation-against-uber/?doing_wp_cron=1590700238.1024808883666992187500.

118. See *CCI to conduct study on telecom sector amid changing market dynamics*, THE ECON. TIMES (Oct. 13, 2019), <https://economictimes.indiatimes.com/industry/telecom/telecom-news/cci-to-conduct-study-on-telecom-sector-amid-changing-market-dynamics/articleshow/71564689.cms>.

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

58 THE YEAR IN REVIEW

[VOL. 54

the original complaint to concurrently examine horizontal agreements and abuse of dominance by the parties.¹¹⁹

The Supreme Court decided against CCI exercising overlapping jurisdiction with the telecom regulator in Bharti Airtel.¹²⁰ Subsequently, the High Court of Bombay quashed CCI's proceedings against broadcasters, as key issues remained for the sectoral regulator.¹²¹

VIII. Japan¹²²

A. LEGISLATIVE DEVELOPMENTS

In 2019, the Japan Fair Trade Commission (JFTC) focused on digital platform operators. The JFTC requested public comments on draft guidelines for transactions between digital platform operators and consumers.¹²³ The purpose of the guidelines is to enhance transparency and predictability for digital platform operators by clarifying what conduct constitutes an abuse of a superior bargaining position when digital platform operators acquire or utilize consumers' personal information.¹²⁴

In addition, the JFTC published draft revisions to its merger review guidelines and policies to address the increased demand for information regarding combinations in the digital market.¹²⁵

119. See *Delhi HC Upholds The Expansion Of The DG's Investigation Beyond CCI's Prima Facie Finding*, MONDAQ (Oct. 30, 2019), <https://www.mondaq.com/india/antitrust-eu-competition-/858308/delhi-hc-upholds-the-expansion-of-the-dg39s-investigation-beyond-cci39s-prima-facie-finding>.

120. See *Supreme Court on Jurisdictional Conflicts between the CCI and TRAI*, INDIACORPLAW (Jan. 28, 2019), <https://indiacorplaw.in/2019/01/supreme-court-jurisdictional-conflicts-cci-trai.html>.

121. See *Bombay High Court Sets Aside CCI Order Directing Investigation Against Sony And Star; Reopens The Conflict Of Jurisdiction Issue Between The Competition And Sector Regulator*, MONDAQ (Nov. 19, 2019), <https://www.mondaq.com/india/antitrust-eu-competition-/864788/bombay-high-court-sets-aside-cci-order-directing-investigation-against-sony-and-star-reopens-the-conflict-of-jurisdiction-issue-between-the-competition-and-sector-regulator>.

122. The contribution for Japan was written by Shigeyoshi Ezaki, Vassili Moussis, Kiyoko Yagami and Naoki Uemura of Anderson Mori & Tomotsune. All resources are dated as of 25 November, 2019.

123. See Press Release, Japan Fair Trade Comm'n, Request for Public Comments on "Guidelines Concerning Abuse of a Superior Bargaining Position under the Antimonopoly Act on the Transactions between Digital Platformer Operators and Consumers that provide Personal Information, etc." (Aug. 23, 2019), <https://www.jftc.go.jp/en/pressreleases/yearly-2019/August/190829.html>.

124. See *id.*

125. See Press Release, Japan Fair Trade Comm'n, Request for Public Comments on the revised "Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination" (draft) and the revised "Policies Concerning Procedures of Review of Business Combination" (draft) (Oct. 4, 2019), <https://www.jftc.go.jp/en/pressreleases/yearly-2019/October/191004.html>.

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

2020]

ANTITRUST 59

B. MERGERS AND ACQUISITIONS

In January 2019, the JFTC cleared Nippon Steel & Sumitomo Metal Corporation's acquisition of shares in Sanyo Special Steel Co., Ltd. after a Phase II review that considered the parties' proposed remedies (including, inter alia, assignment of equity interest in production facilities to competitors).¹²⁶ In total, for the fiscal year ending March 31, 2019, the JFTC cleared 315 cases under the Phase I review and two cases under the Phase II review. Of these clearances, eight were contingent on implementing remedies.¹²⁷

C. CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

In July 2019, the JFTC addressed a price cartel in the asphalt mixture industry by issuing cease-and-desist orders to seven manufacturers and surcharge payment orders to eight others. The surcharges imposed totaled approximately 39.9 billion yen.¹²⁸

Under the Commitment Procedure,¹²⁹ which was newly adopted in December 2018, the JFTC approved the Commitment Plan submitted by Rakuten, Inc., a Japanese electronic commerce and online retailing company.¹³⁰

126. See Press Release, Japan Fair Trade Comm'n, The JFTC Reviewed the Proposed Acquisition of Shares of Sanyo Special Steel Co., Ltd. by Nippon Steel & Sumitomo Metal Corporation (Jan. 18, 2019), <https://www.jftc.go.jp/en/pressreleases/yearly-2019/January/190118.html>.

127. See Press Release, Japan Fair Trade Comm'n, The status of notifications regarding business combinations and the results of reviews of major business combinations in fiscal year 2018 (June 19, 2019), <https://www.jftc.go.jp/en/pressreleases/yearly-2019/June/190619.pdf>.

128. See Press Release, Japan Fair Trade Comm'n, The JFTC Issued Cease and Desist Orders and Surcharge Payment Orders to the Manufacturers of Asphalt Mixture (Jul. 30, 2019), <https://www.jftc.go.jp/en/pressreleases/yearly-2019/July/190730.html>.

129. Toshio Dokei, Hideo Nakajima & Takako Onoki, *Introduction of Commitment Procedure under the Japan Anti-Monopoly Act from December 31, 2018*, WHITE & CASE (Nov. 15, 2018), <https://www.whitecase.com/publications/alert/introduction-commitment-procedure-under-japan-anti-monopoly-act-december-30-2018> (explaining that the Commitment Procedure allows the JFTC and any company undergoing investigation to resolve an alleged violation of the AMA by mutual consent and that the Commitment Procedures are unavailable to hardcore cartels, but available in cases alleging unfair restraint of trade and monopolization).

130. See Press Release, Japan Fair Trade Comm'n, Approval of the Commitment Plan submitted by Rakuten, Inc. (Oct. 25, 2019), <https://www.jftc.go.jp/en/pressreleases/yearly-2019/October/191025.html>.

IX. Korea¹³¹

A. LEGISLATIVE DEVELOPMENTS

On February 27, 2019, the Korea Fair Trade Commission (KFTC) announced a new set of standards to review mergers in R&D-intensive industries and “big data” (Amended Guidelines).¹³² The Amended Merger Review Guidelines reflect the KFTC’s recognition that the competitive effects of mergers in R&D-driven industries can often extend beyond R&D pipelines and may lessen effective competition in the relevant product markets. The Amended Guidelines introduce the first standards for defining big data as well as methods for gauging the level of concentration in innovation-related and big data markets.¹³³

On August 13, the KFTC announced an amendment to its Guidelines on Operation of Compliance Programs and Provision of Incentives.¹³⁴ The amendments are aimed at improving companies’ internal antitrust compliance programs, and include (i) exempting companies with the highest compliance program ratings from having to publish records of their antitrust violations, (ii) lifting existing restrictions preventing companies with a past antitrust violation record from applying for a compliance program evaluation, and (iii) streamlining the process for adopting and evaluating compliance programs.¹³⁵

B. MERGERS

Earlier this year, the KFTC unconditionally approved IBM’s acquisition of Red Hat, a leading open-source platform software company.¹³⁶ The mega-merger case involved potential innovation-related issues.

The KFTC also conditionally cleared the proposed merger between two over-the-top (OTT) video streaming service providers: Oksusu, serviced by SK Broadband, and POOQ, serviced by a joint venture among Korea’s three

131. This section was authored by Youngjin Jung, Hemi Lee and Maria Hajjyerou, Kim & Chang.

132. See Press Release, Korea Fair Trade Comm’n, Amendment to Merger Review Guidelines (Feb. 27, 2019), http://www.ftc.go.kr/www/selectReportUserView.do?key=10&rpttype=1&report_data_no=8094.

133. See Brian Tae-Hyun Chung et al., KFTC Introduces Standards for Reviewing Innovation Market and Big Data Mergers, *KLUWER COMPETITION L. BLOG* (Mar. 1, 2019).

134. See Press Release, Korea Fair Trade Comm’n, Fair Trade Voluntary Compliance Program Operation Amendment (draft) Administrative Notice (Aug. 13, 2019), http://www.ftc.go.kr/www/selectReportUserView.do?key=10&rpttype=1&report_data_no=8264.

135. *KFTC Proposes Amendment to Guidelines on Antitrust Compliance Programs*, KIM & CHANG (Aug. 22, 2019), https://www.kimchang.com/en/insights/detail.kc?sch_section=4&idx=20066.

136. See Press Release, IBM Closes Landmark Acquisition of Red Hat for \$34 Billion; Defines Open, Hybrid Cloud Future (July 9, 2019), <https://www.redhat.com/en/about/press-releases/ibm-closes-landmark-acquisition-red-hat-34-billion-defines-open-hybrid-cloud-future>.

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

2020]

ANTITRUST 61

largest terrestrial broadcasters (KBS, MBC, and SBS).¹³⁷ The KFTC raised concerns based on the vertical relationships between the parties, imposing behavioral remedies on the three broadcasters.

C. CARTELS AND OTHER ANTI-COMPETITIVE PRACTICES

The KFTC imposed corrective orders and fines in a number of cartel cases, including a combined fine of KRW 9.205 billion against four Japanese auto parts makers¹³⁸ and a combined fine of KRW 36.1 billion against nine Japanese capacitor makers.¹³⁹ The KFTC referred each matter for criminal prosecution.

The KFTC also continues to actively investigate local bid rigging cases, including cases involving a concrete mixer truck association, publicly procured circuits, and transportation services for imported brown rice.¹⁴⁰

D. DOMINANCE

On January 31, 2019, the Supreme Court issued a judgment on Qualcomm's appeal of the KFTC's 2009 decision.¹⁴¹ The Supreme Court clarified that conditional rebates can constitute illegal exclusive dealing, and that a price-cost test or as-efficient competitor (AEC) test is not required to find conditional rebates illegal.¹⁴² The judgment also indicates that market foreclosure of up to twenty-five percent of the relevant market (with other factors) is insufficient to find illegal exclusive dealing.

137. Press Release, Korea Fair Trade Comm'n, Conditional Clearance of OTT Merger Between SK Telecom and Three Terrestrial Broadcasters (Aug. 21, 2019), http://www.ftc.go.kr/www/selectReportUserView.do?key=10&rpttype=1&report_data_no=8268.

138. See Press Release, Korea Fair Trade Comm'n, Sanctions Against International Auto Parts (Alternator, Ignition Coil) Cartel (Aug. 5, 2019), http://www.ftc.go.kr/www/selectReportUserView.do?key=10&rpttype=1&report_data_no=8254.

139. Press Release, Korea Fair Trade Comm'n, Sanctions Against International Electronics Parts (Condenser) Cartel (Sept. 17, 2018), http://www.ftc.go.kr/www/selectReportUserView.do?key=10&rpttype=1&report_data_no=7921.

140. Press Release, Korea Fair Trade Comm'n, Sanctions Against Ready-mix Concrete Associations for Bid-rigging to Supply Concrete to Daejeon, Sejong and Chungnam Regions (Feb. 8, 2019), http://www.ftc.go.kr/www/selectReportUserView.do?key=10&rpttype=1&report_data_no=8073; Press Release, Korea Fair Trade Comm'n, Sanctions Against Bid-rigging Cartel in Public Procurement Project for Leased/Dedicated Circuits (Apr. 26, 2019), http://www.ftc.go.kr/www/selectReportUserView.do?key=10&rpttype=1&report_data_no=8157; Press Release, Korea Fair Trade Comm'n, Sanctions Against Seven Companies for Bid-rigging to Transport Imported Brown Rice for Local Governments (Oct. 10, 2019), http://www.ftc.go.kr/www/selectReportUserView.do?key=10&rpttype=1&report_data_no=8318.

141. See Supreme Court [S. Ct.], 2013Du14726, Jan. 31, 2019 (S. Kor.); see also Press Release, Korea Fair Trade Comm'n, Follow-up Measures to the Court's Decision on Abuse of Dominance Case Involving Qualcomm (Mar. 21, 2019), http://www.ftc.go.kr/www/selectReportUserView.do?key=10&rpttype=1&report_data_no=8123.

142. See *Korean Supreme Court Hands Down a Seminal Judgment on Conditional Rebates*, JIPYONG (Jan. 2, 2019), http://www.jipyong.com/en/board/jipyongNews_post.php?seq=3189&page=1&value=Gee+Hong+KLM&type=&nownum=1.

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

62 THE YEAR IN REVIEW

[VOL. 54

On November 15, 2019, the KFTC launched a “Task Force Dedicated to the ICT Sector.”¹⁴³ The new task force was formed to address various types of abusive practices in three sectors: (i) online platforms, (ii) mobile, and (iii) IP, each with its own division. The task force is under the direction of the KFTC’s Anti-Monopoly Bureau and is supported by the KFTC’s Economic Analysis Division and International Cooperation Division.¹⁴⁴

X. South Africa¹⁴⁵

A. LEGISLATIVE DEVELOPMENTS

Amendments to the Competition Act¹⁴⁶ went into effect, except those requiring the promulgation of regulations by the Minister and the issue of guidelines by the Competition Commission (COMPCOM). The new amendments introduce an abuse of buyer power prohibition and revise the price discrimination provision—changes aimed at addressing barriers to entry and growth for small or medium enterprises and firms owned or controlled by historically disadvantaged persons.¹⁴⁷

New appointments were made to the Competition Tribunal (Tribunal)¹⁴⁸ and COMPCOM (a new Chief Economist¹⁴⁹ and head of M&A).¹⁵⁰

B. MERGERS

In 2019, COMPCOM prohibited or recommended the prohibition of five mergers.¹⁵¹ In the past two years, the Tribunal has upheld one of the

143. Press Release, Korea Fair Trade Comm’n, Launch of a Task Force Dedicated to Investigating the ICT Sector (Nov. 19, 2019), http://www.ftc.go.kr/www/selectReportUserView.do?key=10&rpttype=1&report_data_no=8361.

144. See Bryan Hopkins, *KFTC Creates Team to Probe Unfair Trade Practices in the ICT Industry*, SEOUL LEGAL RISK MANAGEMENT, <https://seoullegalriskmgmt.com/kftc-creates-team-to-probe-unfair-trade-practices-in-the-ict-industry/>.

145. This section was authored by Lara Granville, Director at Cliffe Dekker Hofmeyr. The author would like to thank Zama Madungandaba for her help with this chapter.

146. The Competition Act 89 of 1998 (S. Afr.).

147. See *id.*

148. *South Africa: Commission appoints new Competition Tribunal Chair*, COMPETITION POLICY INT’L (Aug. 5, 2019), <https://www.competitionpolicyinternational.com/south-africa-commission-appoints-new-competition-tribunal-chair/>.

149. *South Africa: Competition Commission appoints new Chief Economist*, COMPETITION POLICY INT’L (Jan. 31, 2019), <https://www.competitionpolicyinternational.com/south-africa-competition-commission-appoints-new-chief-economist/>.

150. Press Release, Competition Comm’n of South Africa, Commissioner Appoints New Head of Mergers and Acquisitions, (Nov. 7, 2019), <http://www.compcom.co.za/wp-content/uploads/2019/01/COMMISSIONER-APPOINTS-NEW-HEAD-OF-MERGERS-AND-ACQUISITIONS.pdf>.

151. See Competition Tribunal of South Africa (CTSA), *Mediclinic v. Matlosana*, Case No. LM124Oct16 at 113; see *South Africa: Regulator blocks AFF/Vuka Forestry deal*, COMPETITION POLICY INT’L (Jun. 12, 2019), <https://www.competitionpolicyinternational.com/south-africa-regulator-blocks-aff-vuka-forestry-deal/>; see *Competition Tribunal Confirms the Prohibition of*

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

2020]

ANTITRUST 63

Commission's prohibitions,¹⁵² and overturned two others, approving them subject to conditions.¹⁵³

C. CARTELS AND OTHER ANTI-COMPETITIVE PRACTICES

The Tribunal dismissed four referrals of cartel cases in 2019.¹⁵⁴

The Commission finalized market inquiries into private health care¹⁵⁵ and the grocery retail sector.¹⁵⁶ It also issued a provisional report in its Services Market Inquiry.¹⁵⁷

D. ABUSES OF DOMINANCE

The Tribunal's Media 24 decision on predatory pricing was overturned by the Competition Appeal Court (CAC), which found no abuse.¹⁵⁸

The Tribunal found abuses of dominance arising from exclusivity arrangements in two cases, one involving vehicle number plates,¹⁵⁹ and the other the provision of outsourced ticket distribution services. In the latter case, the CAC upheld the Tribunal decision on appeal¹⁶⁰ and an appellate decision is awaited in the former.

Naspers Purchase of Webuycars, COMPETITION COMM'N OF S. AFR. (Mar. 27, 2020), <http://www.compcom.co.za/wp-content/uploads/2020/03/COMPETITION-TRIBUNAL-CONFIRMS-THE-PROHIBITION-OF-NASPERS-PURCHASE-OF-WEBUYCARS.pdf>; see *ATON walks away from Murray & Roberts bid*, CNBCAFRICA (Sept. 30, 2019), <https://www.cnbcfrica.com/financial/2019/09/30/aton-walks-away-from-murray-roberts-bid/>; see *Competition SA: Latest decisions by the Competition Commission*, POLITY (Apr. 1, 2019), <https://www.polity.org.za/article/copetition-sa-latest-decisions-by-the-competition-commission-2019-04-01>.

152. See Competition Tribunal of South Africa, *Greif International Holding v. Rheem South Africa*, Case No. IM094Jul17 at 76 (S. Afr.).

153. See Competition Tribunal of South Africa, *Cape Karoo & Klein Karoo International*, Case No. IM238Jan19 at 1 (S. Afr.); see Competition Tribunal of South Africa, *British American Tobacco Holdings South Africa and TWISP*, Case No. LM262Jan18 at 1 (S. Afr.).

154. See generally Competition Tribunal of South Africa, *Competition Commission v. Thembekile Maritime Services*, Case No. CR067May17 (S. Afr.); see generally Competition Tribunal of South Africa, *Competition Commission v. Roadspan Surfaces*, Case No. CR163Nov16 (S. Afr.); see generally Competition Tribunal of South Africa, *Competition Commission v. Group Five*, Case No. CR162Oct15 (S. Afr.); see generally Competition Tribunal of South Africa, *Competition Commission v. Alvern*, Case No. CR205Mar14 (S. Afr.).

155. See *Healthcare Market Inquiry*, COMPETITION COMM'N OF S. AFR., <http://www.compcom.co.za/healthcare-inquiry/> (last visited May 27, 2020).

156. Angelo Tzarevski, *Competition Commission Releases Report on Grocery Retail Market Inquiry*, GLOBAL COMPLIANCE NEWS (Dec. 6, 2019), <https://globalcompliancencnews.com/competition-commission-releases-report-on-grocery-retail-market-inquiry-20191126/>.

157. See *Data Services Market Inquiry: Summary of Provisional Findings and Recommendations*, COMPETITION COMM'N OF S. AFR., 1 (2019), <http://www.compcom.co.za/wp-content/uploads/2019/12/Data-Services-Inquiry-Summary.pdf>.

158. See *Media 24 (Pty) Ltd v. Competition Comm'n 2019 (5) SA 598 (CC)* (S. Afr.).

159. Competition Tribunal of South Africa, *Competition Comm'n v. Uniplate Group (Pty) Ltd.*, Case No. CR188Nov15 (S. Afr.).

160. See generally Competition Tribunal of South Africa, *Computicket (Pty) Ltd. v. Competition Comm'n*, Case No. CR008Apr10 (S. Afr.).

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

64 THE YEAR IN REVIEW

[VOL. 54]

E. COURT DECISIONS

In *HCI*,¹⁶¹ the Constitutional Court confirmed that approval of a merger is a once-off affair if the acquisition of sole control is notified. This decision overturns previous precedent requiring notice solely when a firm crosses a “bright line,” for instance by acquiring a greater than fifty percent interest.

XI. United States¹⁶²

A. MERGERS

The Federal Trade Commission (FTC) and Department of Justice Antitrust Division (DOJ) received 2,111 premerger filings in the 2018 fiscal year, a small (~three percent) increase over 2017.¹⁶³ During FY2018, the FTC and DOJ took enforcement action in thirty-nine transactions, continuing the trend of active enforcement.¹⁶⁴

The most high-profile merger review of 2019 was the proposed acquisition of T-Mobile by Sprint, two of the four major U.S. wireless carriers.¹⁶⁵ DOJ approved the transaction in mid-2019, subject to the divestiture of Sprint’s Boost Mobile prepaid cell phone company and various spectrum assets.¹⁶⁶ A coalition of state attorney generals now seek to enjoin the merger, arguing that it will reduce competition among wireless carriers and result in higher cell phone bills. The trial will be held in December 2019.¹⁶⁷

The FTC entered into consent decrees requiring divestitures in several transactions in 2019 and agreed to behavioural remedies in one case. In *Staples/Essendant*,¹⁶⁸ the FTC required the parties to maintain a firewall to prevent transfer of confidential information about Essendant’s customers to Staples’ competing business-to-business operations.

161. *Competition Comm’n v. Hosken Consolidated Investment Ltd.*, 2019 (3) SA 1 (CC) at 3 (S. Afr.).

162. This section was authored by Lisl Dunlop, Partner, Axinn, Veltrop & Harkrider, LLP.

163. See Federal Trade Comm’n & U.S. Dep’t of Justice, Hart-Scott-Rodino Annual Report: Fiscal Year 2018, <https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-bureau-competition-department-justice-antitrust-division-hart-scott-rodino/fy18hsrreport.pdf>.

164. See *id.*

165. See Press Release, Dep’t of Justice, Justice Department Settles with T-Mobile and Sprint in Their Proposed Merger by Requiring a Package of Divestitures to Dish (July 26, 2019), <https://www.justice.gov/opa/pr/justice-department-settles-t-mobile-and-sprint-their-proposed-merger-requiring-package>.

166. See *id.*

167. See generally *New York v. Deutsche Telekom AG*, No. 19 Civ. 5434 (VM), 2020 WL 635499, at *1 (S.D.N.Y. Feb. 11, 2020).

168. See Press Release, Federal Trade Comm’n, FTC Imposes Conditions on Staples’ Acquisition of Office Supply Wholesaler Essendant Inc. (Jan. 28, 2019), <https://www.ftc.gov/news-events/press-releases/2019/01/ftc-imposes-conditions-staples-acquisition-office-supply>.

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

2020]

ANTITRUST 65

B. CARTELS

In several cartel cases, individual defendants facing substantial jail time opted to go to trial. So far, this strategy has not been very successful.

A former JP Morgan Chase foreign currency trader was found guilty in November 2019 on charges of a conspiracy with other bank traders to fix prices and rig bids for certain currencies.¹⁶⁹ In late 2019, the chief executive of Bumble Bee was found guilty of conspiring to fix prices in the tuna market.¹⁷⁰

C. OTHER ANTICOMPETITIVE PRACTICES

The FTC, DOJ, and state antitrust bureau have actively investigated potential anticompetitive activity in high-tech markets, in particular investigating Amazon, Facebook, Google, and Apple.¹⁷¹ These investigations come at the same time as intense political attention on large technology firms by Congress, the current president, and presidential hopefuls.

D. KEY COURT DECISIONS

In May 2019, the U.S. Supreme Court issued its decision in *Apple Inc. v. Pepper*,¹⁷² a class action filed by consumers seeking damages for Apple's monopolization of the iPhone app market by limiting access to apps through the App Store. Apple argued that the *Illinois Brick* doctrine, which prohibits damages claims by indirect purchasers, prevented consumers from suing Apple because Apple was not the seller of apps to consumers; rather the developers sold the apps through the App Store and set the prices of the apps.¹⁷³ The Supreme Court rejected Apple's argument, holding that if a retailer is violating antitrust laws and consumers are paying higher prices as a result, the consumers' ability to bring a lawsuit should not hinge on the form of the retailer's relationships with suppliers.¹⁷⁴

169. See Press Release, Dep't of Justice, Former Trader for Major Multinational Bank Convicted for Price Fixing and Bid Rigging in FX Market (Nov. 29, 2019), <https://www.justice.gov/opa/pr/former-trader-major-multinational-bank-convicted-price-fixing-and-bid-rigging-fx-market>.

170. See Press Release, Dep't of Justice, Former CEO Convicted of Fixing Prices for Canned Tuna (Dec. 3, 2019), <https://www.justice.gov/opa/pr/former-ceo-convicted-fixing-prices-canned-tuna>.

171. See Steven Overly & Margaret Harding McGill, 'A very bad day for Google' as 50 states, territories join antitrust probe, *POLITICO* (Sept. 9, 2019), <https://www.politico.com/story/2019/09/09/google-antitrust-probe-1713159>; Tyler Sonnemaker, *The FTC is looking into "hundreds" of potential anticompetitive acquisitions made by Apple, Facebook, Microsoft, and Google-parent Alphabet as it ramps up antitrust inquiries*, *BUS. INSIDER* (Feb. 11, 2020), <https://www.businessinsider.com/ftc-acquisitions-amazon-facebook-google-microsoft-apple-alphabet-antitrust-investigation-2020-2>.

172. 139 S. Ct. 1514 (2019).

173. See *id.* at 1515.

174. See *id.* at 1523.

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

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW