

2011

International Antitrust

Bruno Peixoto

Mark Katz

Jim Dinning

Lucia Ojeda Cárdenas

Claire Webb

See next page for additional authors

Recommended Citation

Bruno Peixoto et al., *International Antitrust*, 45 INT'L L. 39 (2011)
<https://scholar.smu.edu/til/vol45/iss1/5>

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

International Antitrust

Authors

Bruno Peixoto, Mark Katz, Jim Dinning, Lucia Ojeda Cárdenas, Claire Webb, Ausra O. Pumputis, Paul Schoff, Jing Chua, Peter Wang, Yizhe Zhang, Pallavi S. Shroff, Arshad Paku Khan, Harman Sandhu, Gunnar Wolf, Michael Clancy, Laurie-Anne Grelier, François Brunet, Eric Paroche, Susanne Zuehlke, Jan Philipp Komossa, Eytan Epstein, Tamar Dolev-Green, Vassily Rudomino, German Zakharov, Stephen Kon, Gordon Christian, Kamya Rajagopal, Gayle Smith, Heather Irvine, and Christopher Kok

International Antitrust

EDITED BY: SUSANA CABRERA ZARAGOZA, KONSTANTIN JÖRGENS, AND ÁLVARO GONZÁLEZ RODRIGUEZ*

AUTHORED BY: BRUNO PEIXOTO, MARK KATZ, JIM DINNING, LUCÍA OJEDA CÁRDENAS, CLAIRE WEBB, AUSRA O. PUMPUTIS, PAUL SCHOFF, JING CHUA, PETER WANG, YIZHE ZHANG, PALLAVI S. SHROFF, ARSHAD PAKU KHAN, HARMAN SANDHU, GUNNAR WOLF, MICHAEL CLANCY, LAURIE-ANNE GRELIER, FRANÇOIS BRUNET, ERIC PAROCHE, SUSANNE ZUEHLKE, JAN PHILIPP KOMOSSA, EYTAN EPSTEIN, TAMAR DOLEV-GREEN, VASSILY RUDOMINO, GERMAN ZAKHAROV, STEPHEN KON, GORDON CHRISTIAN, KAMYA RAJAGOPAL, GAYLE SMITH, HEATHER IRVINE, AND CHRISTOPHER KOK**

This article outlines the year's most important developments in key areas of antitrust enforcement in fourteen selected jurisdictions. Prepared by antitrust law practitioners and the International Antitrust Law Committee, this article summarizes a detailed publication to be released in spring 2011 covering antitrust developments in more than forty jurisdictions worldwide.¹

* Garrigues (Spain).

** Bruno Peixoto, Lanna Peixoto Advogados (Brazil); Mark Katz and Jim Dinning, Davies Ward Phillips & Vineberg LLP (Canada); Lucía Ojeda Cárdenas, SAI Abogados (Mexico); Claire Webb and Ausra O. Pumputis, Weil, Gotshal & Manges (United States); Paul Schoff and Jing Chua, Minter Ellison (Australia); Peter Wang and Yizhe Zhang, Jones Day (China); Pallavi S. Shroff, Arshad Paku Khan and Harman Sandhu, Amarchand & Mangaldas & Suresh A. Shroff & Co (India); Gunnar Wolf, Michael Clancy and Laurie-Anne Grelier, Covington & Burling (European Union); François Brunet and Eric Paroche, Cleary Gottlieb Steen & Hamilton LLP (France); Susanne Zuehlke and Jan Philipp Komossa, Latham & Watkins (Germany); Eytan Epstein and Tamar Dolev-Green, Epstein, Chomsky, Osnat & Co (Israel); Vassily Rudomino and German Zakharov, Alrud (Russia); Stephen Kon, Gordon Christian, Kamyra Rajagopal, and Gayle Smith, SJ Berwin (United Kingdom); Heather Irvine and Christopher Kok, Deneys Reitz (South Africa).

1. This report will be available online at <http://www.abanet.org/dch/committee.cfm?com=IC722000>.

Americas

I. Brazil

A. LEGISLATIVE DEVELOPMENTS

The Senate continues to debate a Bill² approved by the House of Representatives which might substantially change Brazilian antitrust enforcement by merging the antitrust regulatory powers of the Secretariat for Economic Law ("SDE") and the Secretariat for Economic Monitoring ("SEAE") into one single antitrust agency, the Administrative Council for Economic Defense ("CADE").

To improve the functioning of its leniency program, SDE issued a new leniency regulation aimed at increasing the procedure's transparency.³ Among other things, it clarifies the procedures for oral applications and introduces a marker system.

B. MERGERS

CADE blocked the acquisition of concrete producer CimentoTupi by PolimixConcreto, ordering the parties to unwind the transaction,⁴ after concluding that the acquisition would result in market shares of up to eighty percent in local markets and would increase the probability of both unilateral effects and coordination.

In both *Telefônica/Telco/Telecom Italia* and *Oi/Brasil Telecom*, CADE made the approval of the transactions subject to the adoption of behavioral remedies to safeguard competition.⁵

SEAE issued an economic opinion recommending that CADE require substantial divestitures in order to allow the merger of Brazil's leading food processors to proceed.⁶

C. ANTICOMPETITIVE PRACTICES

CADE fined five industrial and medical gas manufacturers 2.3 billion reais (approximately US\$1.35 billion) for collusion, price-fixing, market division, and bid-rigging,⁷ after finding that the cartel in question had been active since at least 1998. This fine is the highest one imposed in the history of antitrust enforcement in Brazil. Substantial fines were also imposed on the companies' executives.

2. See Senado Federal, Projeto de Lei da Câmara nº 6, de 2009 [Legislative Bill from the House of Representatives n. 6 of 2009] (Braz.), available at http://www.senado.gov.br/sf/atividade/Materia/Detail.asp?p_cod_mate=89289.

3. Portaria No. 456, de 15 de Março de 2010, Diário Oficial Da União [D.O.U.] 50: 28 de 16.3.2010 (Braz.).

4. See generally Conselho Administrativo De Defesa Economica [Admin. Council for Econ. Def.][CADE], Ato de Concentração No. 08012.002467/2008-22 (Oct. 6, 2010), <http://www.cade.gov.br/temp/t281201113202956.pdf>.

5. Conselho Administrativo De Defesa Economica [Admin. Council for Econ. Def.], Ato de Concentração No. 53500.012487/2007 (Apr. 28, 2010), <http://www.cade.gov.br/upload/TCD-AC-2007-53500-012487-Telefonica-RAGAZZO.pdf>.

6. See Secretaria de Acompanhamento Econômico [Secretariat of Econ. Monitoring], Ato de Concentração No. 08012.004423/2009-18, Parecer No.06510/2010/RJ (June 29, 2010), <http://www.seae.fazenda.gov.br/destaque/parecer-seae-ac-08012-004423-2009-18-perdigao-e-sadia>.

7. Conselho Administrativo De Defesa Economica, Processo Administrativo No. 08012.009888/2003-70 (Sept. 22, 2010), http://www.cade.gov.br/temp/D_D000000555711078.pdf.

D. ABUSES OF DOMINANCE

AmBev has challenged a CADE decision⁸ imposing a fine of approximately US\$200 million for adopting a loyalty program of non-linear pricing and discounts which allegedly induced exclusivity and/or the acquisition of target quantities in the downstream market. AmBev has argued that (i) SDE violated its constitutional and procedural rights during the inspections conducted in the company's headquarters, and (ii) CADE failed to demonstrate actual harm or negative effects on competition and consumer welfare. A decision is pending.

E. COURT DECISIONS

The Superior Court of Justice overturned a decision by the Federal Court of Appeals subjecting transactions in the banking and financial industry to antitrust scrutiny.⁹

A number of recovery actions were filed against steel producers for customer allocation, resale price maintenance and price fixing in the steel rebar market, following a ruling by CADE.¹⁰ Associations of construction companies pressed ahead with a collective antitrust action against the steel rebars producers,¹¹ seeking injunctive relief and damages.

A major collective action for injunctive relief and damages filed by associations of hospitals against an alleged cartel of suppliers of medical gases¹² was resumed in 2010 after a decision by CADE that the defendants engaged in collusion, market division, and bid rigging.

II. Canada

A. LEGISLATIVE DEVELOPMENTS

The most significant development in 2010 was the implementation in March of the new *per se* conspiracy offense under the Canadian Competition Act ("the Act").¹³ The new offense prohibits competitors from entering into agreements that: "(i) fix, maintain, increase or control the price for the supply of a product; (ii) allocate sales, territories, customers or markets for the production or supply of a product; or (iii) fix, maintain, control, prevent, lessen or eliminate the production or supply of a product."¹⁴ The new offense does not require the prosecution to prove that the agreement in question had an undue impact on competition or resulted in an unreasonable increase in prices.

8. TRF-1, Ap. No. 2009.34.00.028766-7, Relator: 09.02.2009, REVISTA DO TRIBUNAL REGIONAL FEDERAL [R.T.R.F.] (Braz.).

9. See S.T.F., No. 2008/0173677-1, Relatora: Eliana Calmon, 25.8.2010, R.T.J. (Braz.), available at <https://ww2.stj.jus.br/processo/jsp/livrao/mainPage.jsp?seqiteor=915164>.

10. See Conselho Administrativo De Defesa Economico, Processo Administrativo No. 08012.004086/2000-21 (Sept. 5, 2005) (Braz.), available at http://www.cade.gov.br/temp/D_D000000137611642.pdf.

11. TRF-1, No. 2009.34.00.035755-7, Relator: 21.10.2009, REVISTA DO TRIBUNAL REGIONAL FEDERAL [R.T.R.F.] (Braz.).

12. TRF-1, No. 002409709934-5, Relator: 19.01.2010, REVISTA DO TRIBUNAL REGIONAL FEDERAL [R.T.R.F.] (Braz.), available at http://www.tjmg.jus.br/juridico/sf/proc_resultado.jsp?listaProcessos=09709934&comrCodigo=24&numero=1.

13. Budget Implementation Act, 2009, S.C., c. 2, s. 45 (Can.).

14. *Id.*

Maximum penalties are now fourteen years of imprisonment and a CDN\$25 million (approximately US\$25 million) fine per count, up from the previous maximums of five years and CDN\$10 million (approximately US\$10 million) per count.¹⁵ Liability can be avoided under the new offense if it can be established that: (i) the impugned agreement is “ancillary to a broader or separate agreement that includes the same parties;” (ii) the impugned agreement is “directly related to, and reasonably necessary for giving effect to, the objective of that broader or separate agreement;” and (iii) the “broader or separate agreement, considered alone, does not contravene” the conspiracy offense.¹⁶

The Act also now contains a new civil provision that applies to agreements between competitors that have the effect of lessening or preventing competition substantially. Applications under this new provision are brought by the Commissioner of Competition to the Competition Tribunal. Relief is limited to an order requiring the parties to cease engaging in the impugned conduct or, on consent, to taking any other action.

B. MERGERS

The Competition Bureau (“the Bureau”) secured divestitures from a number of merging parties in 2010. For example, in June 2010, the Bureau announced that it reached an agreement with IESI-BFC Ltd. and Waste Services Inc. requiring divestitures of commercial waste collection assets of Waste Services Inc. in five Canadian cities as a condition for obtaining approval of the proposed merger.¹⁷ Divestitures were also secured by the Bureau in a number of international mergers, including: Ticketmaster/Live Nation,¹⁸ Nufarm/A.H. Marks,¹⁹ Teva/Ratiopharm,²⁰ Novartis/Alcon,²¹ and The Coca-Cola Company’s acquisition of the North American business of its primary bottler, Coca-Cola Enterprises Inc.²²

15. Budget Implementation Act, s. 45.

16. Budget Implementation Act, s. 90.1.

17. Press Release, Can. Competition Bureau, Competition Bureau Requires Significant Divestitures in Waste Services Merger (June 29, 2010), *available at* <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03256.html>.

18. Press Release, Can. Competition Bureau, Competition Bureau Requires Divestitures by Ticketmaster-Live Nation to Promote Competition (Jan. 25, 2010), *available at* <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03191.html>.

19. Press Release, Can. Competition Bureau, Competition Bureau Requires Divestitures in Herbicide Merge (July 28, 2010), *available at* <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03264.html>.

20. Press Release, Can. Competition Bureau, Competition Bureau Requires Divestitures in Teva/ratiopharm Merger (July 30, 2010), *available at* <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03271.html>.

21. Press Release, Can. Competition Bureau, Competition Bureau Secures Divestitures in Novartis’ Acquisition of Alcon (Aug. 9, 2010), *available at* <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03274.html>.

22. Press Release, Can. Competition Bureau, Competition Bureau Requires Remedy in Coca-Cola Acquisition (Sept. 27, 2010), *available at* <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03290.html>.

III. Mexico

A. LEGISLATIVE DEVELOPMENTS

A Bill implementing the amendments to the Constitution regarding class actions was published. If enacted, it will modify various provisions of the Federal Code on Civil Procedures and the Federal Law on Economic Competition.²³

Additionally, the Mexican President submitted a bill to Congress to, among other matters, increase the amount of fines imposed for antitrust infringements, introduce criminal liability for cartel activity, provide for the possibility of applying interim measures, facilitate the inspection procedure, and provide for a more detailed regulation on joint dominance. The Bill requires the approval of both the House of Representatives and the Senate.²⁴

B. MERGERS

The Federal Competition Commission ("the FCC") authorized the acquisition by the Mexican broadcasting company Televisa of thirty to forty percent of Nextel's shares, as well as the indirect acquisition by América Móvil of 71.5% of Teléfonos de México's voting shares, and up to 100% of Telmex Internacional's shares.²⁵ It also authorized the Cydsa/Mexichem merger in the PVC market, subject to conditions.²⁶

C. ANTICOMPETITIVE PRACTICES

Four investigations were initiated in relation to the following markets: tortilla, freight services, air tickets, and flexible transmission means of alternating power sources.²⁷

23. De La Comisión De Puntos Constitucionales, Con Proyecto De Decreto Por El Que Se Adiciona Un Párrafo Tercero Y Se Recorre El Orden De Los Párrafos Subsecuentes Del Artículo 17 De La Constitución Política De Los Estados Unidos Mexicanos *Gaceta Parlamentaria*, Cámara de Diputados No. 2976-IV, Mar. 25, 2010 (Mex.), available at <http://gaceta.diputados.gob.mx/Gaceta/61/2010/mar/20100325-IV.html>.

24. President Felipe Calderon, Decreto Por El Que Se Reforman, Adicionan Y Derogan Diversas Disposiciones de la Ley Federal de Competencia Económica [Decree Amending, Supplementing and Repealing various Provisions of the Federal Law Economic Competition], *Gaceta Parlamentaria*, Cámara de Diputados No. 2976-IV, Apr. 6, 2010 (Mex.), <http://www.cfc.gob.mx/images/stories/Noticias/iniciativa%20presidencial%20lfce.pdf>.

25. Press Release, Comisión Federal de Competencia [Fed. Competition Comm'n], Aprueba CFC Concentraciones Televisa-Nextel y Telmex-Telcel [Approval of CFC-Nextel Merger Televisa and Telmex-Telcel] (Feb. 11, 2010), available at <http://www.cfc.gob.mx/images/stories/Noticias/Comunicados/3.-concentracionestelevisa-nextelytelmex-telcel.pdf>.

26. Press Release, Comisión Federal de Competencia, Impone CFC Condiciones a la Concentración de Mexichem Con Subsidiarias de Cydsa (Aug. 24, 2010), available at <http://www.cfc.gob.mx/index.php/COMUNICADOS/comunicados-2010.html>.

27. See generally Extracto Del Acuerdo por el que la Comisión Federal de Competencia Inicia La Investigación por Denuncia Identificada Bajo el Número de Expediente DE-014-2010, por la Posible Comisión de Prácticas Monopólicas Absolutas en el Mercado de la Producción, Distribución y Comercialización de Masa y Tortillas de Maíz en el Municipio de Tuxtla Gutiérrez, Chiapas [Extract Agreement Federal Competition Commission Initiated the Investigation on Complaints Identified Under the File Number DE-014-2010, for the Commission of Absolute Monopolistic Practices in the Market Production, Distribution, and Marketing of Masa and Tortillas Corn in the Municipality of Tuxtla Gutierrez, Chiapas] *Diario Oficial de la Federación* [D.O.], 28 de Julio 2010 (Mex.); Presidencia y Secretaría Ejecutiva, Comisión Federal de Competencia,

The FCC confirmed the decision finding pharmaceutical companies liable for bid rigging regarding the sale of insulin to a public Mexican Healthcare Institution²⁸ and the imposition of fines on PCTV shareholders for refusing to provide acquired TV signals to its competitors and dividing up markets by allocating territories.²⁹

D. ABUSES OF DOMINANCE

Seven investigations were initiated in relation to: home improvement products, airport services, beer, home furniture, advertising spaces regarding the marketing of real estate, local and domestic long-distance dedicated access services to carriers, and exported guava markets.³⁰ The FCC reduced the fine imposed on Televisa in its decision of November

Deschamio por Expediente No. DE-020-2010 (Oct. 6., 2010); Extracto Del Acuerdo por el que la Comisión Federal de Competencia Inicia La Investigación por Denuncia Identificada Bajo el Número de Expediente DE-004-2010, por la Posible Comisión de Prácticas Monopólicas Absolutas en el Mercado de Prestación, Producción, Distribución y Comercialización de Insumos y Servicios para la Reserva y Venta de Boletos de Transporte Aéreo de Pasajeros en el Territorio Nacional [Extract of the Agreement by Which the Federal Competition Commission Initiated Complaint Investigation Identified Under the File Number DE-004-2010, for the Commission of Absolute Monopolistic Practices in the Market for the Provision, Production, Distribution, and Marketing of Inputs and Services for Booking and Ticketing of Air Travel in the Country], *Diario Oficial de la Federación* [D.O.], 13 de Mayo 2010 (Mex.); Extracto del Acuerdo por el que la Comisión Federal de Competencia inicia la investigación de oficio identificada bajo el número de expediente IO-002-2010, por la posible comisión de prácticas monopólicas absolutas en el mercado de la producción, procesamiento, distribución y comercialización de sistemas flexibles de transmisión de corriente alterna en el territorio nacional [Extract of the Agreement by Which the Federal Competition Commission Began an Official Investigation Identified Under the File Number IO-002-2010, for the Commission of Absolute Monopolistic Practices in the Market for the Production, Processing, Distribution, and Marketing Systems Flexible Alternating Current Transmission in the Country], *Diario Oficial de la Federación* [D.O.], 19 de Febrero 2010 (Mex.).

28. Press Release, Comisión Federal de Competencia, Confirma CFC Multa de 150 Millones de Pesos a Empresas Farmacéuticas Por Colusión Contra el IMSS [CFC Confirms Fine of 150 Million Dollars to Pharmaceutical Companies for Collusion Against the IMSS] (June 23, 2010), available at <http://www.cfc.gob.mx/index.php/COMUNICADOS/comunicados-2010.html>.

29. Comisión Federal de Competencia, Resumen Expediente [Summary Record] No. DE-001-2006-I (Mex.), available at <http://resoluciones.cfc.gob.mx/Docs/Asuntos%20Juridicos/V35/21/1331180.pdf>.

30. See generally Extracto Del Acuerdo por el que la Comisión Federal de Competencia Inicia La Investigación por Denuncia Identificada Bajo el Número de Expediente DE-013-2010, por Prácticas Monopólicas Relativas Previstas en las Fracciones VIII y XI del Artículo 10 de la Ley Federal de Competencia Económica, en el Mercado de la Venta o Comercialización de Productos para la Mejora del Hogar en Tiendas de Autoservicio [Extract of the Agreement by Which the Federal Competition Commission Initiated Complaint Investigation Identified Under the File Number DE-013-2010, for Monopolistic Practices Provided in Sections VIII and XI of Article 10 of the Federal Law of Economic Competition in the Market for the Sale or Marketing of Products for the Home Improvement Stores], *Diario Oficial de la Federación* [D.O.], 9 de Agosto 2010 (Mex.); Extracto del Acuerdo por el que la Comisión Federal de Competencia inicia la investigación por denuncia identificada bajo el número de expediente DE-011-2010, por Prácticas Monopólicas Relativas Previstas en las Fracciones V y X del Artículo 10 de la Ley Federal de Competencia Económica, en los Mercados de la Prestación de Servicios Aeroportuarios y Complementarios, así como el de la Asignación de horarios de Despegue y Aterrizaje, en el Aeropuerto Internacional de la Ciudad de México [Extract of the Agreement by Which the Federal Competition Commission Initiated Complaint Investigation Identified Under the File Number DE-011-2010, for Monopolistic Practices Provided in Sections V and X of Article 10 of the Federal Law of Economic Competition in the Markets for the Provision of Airport Services and Complementary, and the Allocation of Takeoff and Landing Times at the International Airport of Mexico City], *Diario Oficial de la Federación* [D.O.], 18 de Agosto 2010 (Mex.); Extracto del Acuerdo por el que la Comisión Federal de Competencia inicia la Investigación por Denuncia Identificada Bajo el número de expediente

2009 for the refusal to supply its open TV signals.³¹ In January, the FCC declared that TELCEL was an economic agent with significant market power in the national mobile telephone market.³²

DE-012-2010, por Prácticas Monopólicas Relativas Previstas en las Fracciones VIII y XI del Artículo 10 de la Ley Federal de Competencia Económica, en los Mercados de Servicios de Distribución, Comercialización y Venta de Bebidas Normalmente Conocidas como Cervezas [Extract of the Agreement by Which the Federal Competition Commission Initiated Complaint Investigation Identified Under the File Number DE-012-2010, for Monopolistic Practices Provided in Sections VIII and XI of Article 10 of the Federal Law of Economic Competition in the Markets for Distribution Services, Marketing and Sale of Beverages Commonly Known as Beer] *Diario Oficial de la Federación* [D.O.], 9 de Agosto 2010 (Mex.); Extracto del Acuerdo por el que la Comisión Federal de Competencia Inicia la Investigación por Denuncia Identificada Bajo el Número de Expediente DE-015-2010, por Prácticas Monopólicas Relativas Previstas en las Fracciones II, VIII y XI del artículo 10 de la Ley Federal de Competencia Económica, en el Mercado de la Proveeduría o Comercialización de Muebles para el Hogar en la Región del Estado de Jalisco [Extract of the Agreement by Which the Federal Competition Commission Initiated Complaint Investigation Identified Under the File Number DE-015-2010, for Monopolistic Practices Under Sections II, VIII and XI of Article 10 of the Federal Competition Law Economic, Market, or Marketing proveeduría Home Furnishings in the Region of the State of Jalisco], *Diario Oficial de la Federación* [D.O.], 18 de Agosto 2010 (Mex.); Extracto del Acuerdo por el que la Comisión Federal de Competencia inicia la investigación por denuncia Identificada Bajo el Número de Expediente DE-01-2010, por prácticas monopólicas Relativas Previstas en las Fracciones V y VI del artículo 10 de la Ley Federal de Competencia Económica, en los Mercados de la Venta de Espacios de Publicidad para la Comercialización de Bienes Inmuebles en Revistas y de los Sistemas de Listados Múltiples Electrónicos de Bienes Inmuebles Disponibles para su Comercialización [Extract of the Agreement by Which the Federal Competition Commission Initiated Complaint Investigation Identified Under the File Number DE-01-2010, for Monopolistic Practices Provided in Sections V and VI of Article 10 of the Federal Law of Economic Competition in the Markets for the Sale of Advertising Space for the marketing of Real Estate Magazines and Electronic Systems for Multiple Listings of Property Available for Sale], *Diario Oficial de la Federación* [D.O.], 26 de Marzo 2010 (Mex.); Extracto del Acuerdo por el que la Comisión Federal de Competencia Inicia la Investigación por Denuncia Identificada Bajo el Número de Expediente DE-008-2010, por Prácticas Monopólicas Relativas Previstas en las Fracciones V, X y XI del artículo 10 de la Ley Federal de Competencia Económica, en los Mercados de Servicios Mayoristas de Arrendamiento de enlaces Dedicados locales y de Larga Distancia Nacional. [Extract of the Agreement by Which the Federal Competition Commission Initiated Complaint Investigation Identified Under the File Number DE-008-2010, for Monopolistic Practices Provided in Sections V, X and XI of Article 10 of the Federal Competition Law Economic Markets Wholesale Leasing Services Dedicated Links Local and Domestic Long Distance], *Diario Oficial de la Federación* [D.O.], 29 de Abril de 2010 (Mex.); Extracto del Acuerdo por el que la Comisión Federal de Competencia Inicia la Investigación de Oficio Identificada Bajo el Número de Expediente IO-006-2009, por Prácticas Monopólicas Relativas Previstas en las Fracciones I, II, III, IV, V y X del Artículo 10 de la Ley Federal de Competencia Económica, en el Mercado de la Producción, Distribución y Comercialización de Guayabas de Exportación [Extract of the Agreement by Which the Federal Competition Commission Began an Official Investigation Identified Under the File Number IO-006-2009, Provided by Monopolistic Practices in Sections I, II, III, IV, V and X of Article 10 of the Federal Law on Economic Competition in the Market Production, Distribution, and Marketing of Export Guavas], *Diario Oficial de la Federación* [D.O.], 18 de Enero de 2010 (Mex.).

31. Comisión Federal de Competencia, *Recurso de Reconsideración Expediente No. RA-003-2010* [Reconsideration Appeal Record No. RA-003-2010], available at <http://www.cfc.gob.mx/index.php/RESOLUCIONES-Y-OPINIONES/busador-de-resoluciones-y-opiniones-de-la-cfc.html>.

32. Press Release, Comisión Federal de Competencia, *Confirma La CFC Dominancia de Telcel en el Mercado Final de Telefonía Móvil* [The CFC Confirms Telcel Dominance in Final Mobile Phone Market] (Feb. 2, 2010), available at <http://68.178.170.101/images/stories/Noticias/Comunicados/2.dominanciaientelefonia.movil.pdf>.

E. COURT DECISIONS

The Supreme Court granted constitutional relief to Coca Cola FEMSA against the FCC resolution finding it liable for exclusionary conduct.³³ The FCC was ordered to issue a new resolution taking into account evidence put forward by the defendant that was not properly admitted and assessed in the previous proceeding.³⁴

IV. United States

A. ADMINISTRATIVE DEVELOPMENTS

The Department of Justice ("DOJ"), Antitrust Division and the Federal Trade Commission ("FTC," together the "Agencies") jointly released Revised Merger Guidelines³⁵ to reflect actual practices.

The FTC also released a study³⁶ demonstrating the costs of "pay-for-delay" agreements between pharmaceutical companies and continues to urge Congress³⁷ to enact legislation to limit this practice that delays entry of generic versions of branded drugs, especially in the face of continuing setbacks in court.³⁸

B. MERGERS

This year, an increasing number of mergers played out in the bankruptcy context,³⁹ the Agencies continued to challenge several consummated mergers,⁴⁰ and international coor-

33. Suprema Corte de Justicia, *Prácticas Monopólicas: Casa Coca Cola FEMSA y Otras*, CRONICAS DEL PLENO Y DE LAS SALAS (2010), <http://www.scjn.gob.mx/Micrositios/unidadcronicas/Sinopsis%20de%20Asuntos%20destacados%20de%20las%20Salas/1S-090610-JRCD-2127.pdf>.

34. *Id.*

35. Press Release, Fed. Trade Comm'n, Federal Trade Commission and U.S. Department of Justice Issue Revised Horizontal Merger Guidelines (Aug. 19, 2010), *available at* <http://www.ftc.gov/opa/2010/08/hmg.shtm>.

36. *Pay for Delay: How Drug Company Pay-Offs Cost Consumers Billions*, FED. TRADE COMM'N, 1 (2010), <http://www.ftc.gov/os/2010/01/100112payfordelayrpt.pdf>.

37. Press Release, Fed. Trade Comm'n, FTC Testimony: Stopping "Pay-for-Delay" Drug Settlement Agreements is a Top Competition Priority (July 7, 2010), *available at* <http://www.ftc.gov/opa/2010/07/antitrust.shtm>.

38. *Arkansas Carpenters Health v. Bayer AG*, 604 F.3d 98, 108 (2d Cir. 2010), *reh'g denied*, 604 F.3d 98 (2d Cir. 2010) (holding Cipro reverse settlement did not violate antitrust laws; both DOJ and FTC submitted amicus briefs urging a rehearing *en banc*).

39. Press Release, Fed. Trade Comm'n, Fidelity National Financial Settles FTC Charges that its Acquisition of LandAmerica Subsidiaries Reduced Competition in Title Information Markets (July 16, 2010), *available at* <http://www.ftc.gov/opa/2010/07/fidelity.shtm>; Press Release, Fed. Trade Comm'n, FTC Order Requires Tops Markets to Sell Seven Penn Traffic Supermarkets (Aug. 4, 2010), *available at* <http://www.ftc.gov/opa/2010/08/tops.shtm>; Press Release, Fed. Trade Comm'n, FTC Requires Conditions for Pilot Corporation's Takeover of Flying J Inc.'s Travel Center Business (June 30, 2010), *available at* <http://www.ftc.gov/opa/2010/06/flying.shtm>.

40. *See, e.g., In re Polypore*, 2010 WL 866178 (F.T.C.), *aff'd* 2010 WL 5132519 (F.T.C.) (Administrative Law Judge ruled in favor of FTC's 2008 complaint that Polypore's acquisition of rival battery separator manufacturer violated antitrust law); Press Release, Fed. Trade Comm'n, FTC Order Restores Competition in U.S. Markets for Herbicide Products (July 28, 2010), *available at* <http://www.ftc.gov/opa/2010/07/nufarm.shtm>; Press Release, Fed. Trade Comm'n, Houghton International Agrees to Sell Aluminum Production Assets to Settle Charges That 2008 Acquisition of Stuart was Anticompetitive (July 14, 2010), *available at*

dination facilitated the efficient resolution of mergers affecting multiple jurisdictions.⁴¹ Two mergers⁴² also required behavioral remedies, despite the Agencies' preference for structural remedies. Google/AdMob was cleared without conditions.⁴³

The FTC continues to challenge⁴⁴ Ovation Pharmaceutical's January 2006 acquisition of the drug NeoProfen despite a district court decision that the merger was not anticompetitive because the drugs were not in the same product market.⁴⁵

C. ANTICOMPETITIVE PRACTICES

Although criminal enforcement was not as dramatic as last year, the DOJ succeeded for the first time in extraditing a foreign defendant on antitrust charges.⁴⁶

In civil enforcement, health care remains a priority.⁴⁷ The DOJ also revived its scrutiny of the payment cards industry, challenging merchant rules imposed by American Express, Visa, and MasterCard.⁴⁸

The FTC charged U-Haul with violating Section 5 of the FTC Act by inviting Budget to fix prices on truck rentals, even though no agreement had been reached.⁴⁹

D. ABUSES OF DOMINANCE

The FTC settled charges against Intel for allegedly engaging in "anticompetitive tactics to cut off rivals' access to the marketplace" in violation of Section 5 of the FTC Act.⁵⁰

<http://www.ftc.gov/opa/2010/07/houghton.shm>; Press Release, Fed. Trade Comm'n, FTC Challenges LabCorp's Acquisition of Rival Clinical Laboratory Testing Company (Dec. 1, 2010), *available at* <http://ftc.gov/opa/2010/12/labcorp.shm>.

41. Press Release, Dep't of Just., Justice Department Will Not Challenge Cisco's Acquisition of Tandberg (Mar. 29, 2010), *available at* http://www.justice.gov/atr/public/press_releases/2010/257173.htm; Press Release, Fed. Trade Comm'n, FTC Order Protects Consumers in U.S. Market for Eye Care Drug Used in Cataract Surgery (Aug. 16, 2010), *available at* <http://www.ftc.gov/opa/2010/08/novartis.shm>.

42. Press Release, Dep't of Just., Justice Department Requires Ticketmaster Entertainment Inc. to Make Significant Changes to its Merger With Live Nation Inc. (Jan. 25, 2010), *available at* http://www.justice.gov/atr/public/press_releases/2010/254540.pdf; Press Release, Fed. Trade Comm'n, FTC Puts Conditions on PepsiCo's \$7.8 Billion Acquisition of Two Largest Bottlers and Distributors (Feb. 26, 2010), *available at* <http://www.ftc.gov/opa/2010/02/pepsi.shm>.

43. Press Release, Fed. Trade Comm'n, FTC Closes its Investigation of Google AdMob Deal (May 21, 2010), *available at* <http://www.ftc.gov/opa/2010/05/ggladmob.shm>.

44. Notice of Appeal, *FTC v. Lundbeck, Inc.*, No. 08-6379 (D. Minn. Oct. 28, 2010), *available at* <http://www.ftc.gov/os/caselist/0810156/101028ovationpharmnotice.pdf>.

45. *FTC v. Lundbeck, Inc.*, 2010 WL 3810015 (D. Minn. Aug. 31, 2010).

46. Jane Croft, *Executive Finally Extradited to US*, *FIN. TIMES*, Mar. 24, 2010, <http://www.ft.com/cms/s/0/68dbc8ee-36e5-11df-bc0f-00144feabdc0.html>.

47. See Press Release, Dep't of Just., Justice Department Files Antitrust Lawsuit Against Blue Cross Blue Shield of Michigan (Oct. 18, 2010), *available at* http://www.justice.gov/atr/public/press_releases/2010/263227.pdf.

48. Press Release, Dep't of Just., Justice Department Sues American Express, MasterCard and Visa to Eliminate Rules Restricting Price Competition; Reaches Settlement with Visa and MasterCard (Oct. 4, 2010), *available at* http://www.justice.gov/atr/public/press_releases/2010/262867.pdf.

49. Press Release, Fed. Trade Comm'n, U-Haul and Its Parent Company Settle FTC Charges That They Invited Competitors to Fix Prices on Truck Rentals (June 9, 2010), *available at* <http://www.ftc.gov/opa/2010/06/uhhaul.shm>.

50. Press Release, Fed. Trade Comm'n, FTC Settles Charges of Anticompetitive Conduct Against Intel (Aug. 4, 2010), *available at* <http://www.ftc.gov/opa/2010/08/intel.shm>.

E. COURT DECISIONS

The Supreme Court decided two important antitrust cases. In *American Needle v. National Football League*, the Court refused to treat a joint venture as a single entity immune from violating Section 1 of Sherman Act.⁵¹ In *Stolt-Nielsen SA et al. v. Animalfeeds International*, the Court held that class arbitration proceedings against several shipping companies could not proceed when the arbitration agreements were silent as to class arbitration.⁵²

Asia/Pacific

V. Australia

A. MERGERS

In 2010, the Australian Competition and Consumer Commission (“ACCC”) indicated that its focus would be on mergers that directly affect “consumer’s hip pockets,” particularly in industries like petrol and telecommunications. Since December 2009, it has publicly opposed five mergers.⁵³

B. ANTICOMPETITIVE PRACTICES

The ACCC continues to take action against airlines in the air cargo industry, bringing proceedings against Korean Air Lines, Malaysian Airline System, Malaysia Airlines Cargo, Japan Airlines, and Air New Zealand. The ACCC has brought fifteen proceedings against airlines, six of which have settled.⁵⁴ Significant financial penalties for cartel conduct, ranging from \$1 million (approximately US\$990,000) to \$9.2 million (approximately US\$9.1 million), were imposed in four other proceedings.⁵⁵

C. ABUSES OF DOMINANCE

Two companies, Baxter Healthcare⁵⁶ and Cabcharge Australia Limited,⁵⁷ were required to pay penalties of \$8.5 million (approximately US \$8.3 million) and \$15 million (approximately US\$14.8 million), respectively, for their misuse of market power. The Cabcharge

51. *Am. Needle, Inc. v. Nat’l Football League*, 130 S. Ct. 2201, 2206-07 (2010).

52. *Stolt-Nielsen S.A. v. Animalfeeds Int’l Corp.*, 130 S. Ct. 1758, 1775 (2010).

53. The ACCC opposed Breville Group’s proposed acquisition of GUD Holdings, Caltex Australia’s proposed acquisition of Mobil Oil Australia’s retail assets, Cargill Australia’s proposed acquisition of Goodman Fielder’s edible fats and oils business, Link Market Services’ proposed acquisition of Newreg, and National Australia Bank’s proposed acquisition of AXA Asia Pacific Holdings.

54. Proceedings involving Société Air France, Koninklijke Luchtvaart Maatschappij, Martinair Holland, Qantas, and British Airways have settled. Proceedings against Singapore Airlines Cargo, Cathay Pacific Airways, Emirates, PT Garuda Indonesia, and Thai Airways International remain active.

55. APRIL Fine Paper Trading and a related company, DRS C3 Systems, four, foreign-based suppliers of marine hose, and penalties were imposed on seventeen companies and twenty-two individuals involved in an air conditioning cartel.

56. *ACCCOUNT: A Report of the Australian Competition and Consumer Commission’s Activities*, AUSTRALIAN COMPETITION & CONSUMER COMM’N, 1 (2010).

57. Press Release, Australian Competition & Consumer Comm’n, Cabcharge Penalized for Misuse of Market Power (Sept. 24, 2010), available at <http://www.accc.gov.au/content/index.php/ml/itemId/948779>.

penalty is the highest imposed in misuse of market power proceedings brought by the ACCC and was based, in part, on the first application of higher penalties which apply to conduct engaged in after January 1, 2007.

VI. China

A. LEGISLATIVE DEVELOPMENTS

Over the last year, several implementing regulations and guidelines have been issued to address: (i) procedural rules for non-merger investigations;⁵⁸ (ii) turnover calculation in the review of mergers between financial enterprises;⁵⁹ (iii) market definition;⁶⁰ and (iv) merger control rules regarding notification,⁶¹ review,⁶² and remedies.⁶³

B. MERGERS

The Ministry of Commerce ("MOFCOM"), which is responsible for merger control, handled more than 140 pre-merger notifications through June 2010,⁶⁴ with one third entering second phase review and five percent ultimately being either prohibited or given conditional clearance. Beyond the statutory review periods, MOFCOM often requires additional information before accepting the filing and starting the initial waiting period. Most cases take three months from initial filing to clearance, but more difficult ones have taken over nine months.

MOFCOM has blocked one transaction, Coca-Cola's proposed acquisition of Huiyuan,⁶⁵ and has conditionally approved six others: InBev-Anheuser-Busch, Mitsubishi-Lucite, GM-Delphi, Pfizer-Wyeth, Panasonic-Sanyo, and Novartis-Alcon. These seven published MOFCOM merger decisions demonstrate increasing transparency but reflect an emphasis on market shares and a somewhat skeptical view of vertical relationships.

58. *Industrial and Commercial Administrative Organs to Investigate Monopoly Agreements, Abuse of Dominant Position Cases, Procedures*, STATE ADMIN. FOR INDUS. & COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA, 2009, http://www.saic.gov.cn/zwgk/zyfb/qt/fld/200906/t20090605_61123.html.

59. Ministry of Commerce of the P.R.C People's Bank of China Banking Regulatory Commission, China Securities Regulatory Commission China Insurance Regulatory Commission Order No. 10 of 2009 (Ministry of Commerce of the P.R.C, July 21, 2009) (CHINA), available at <http://fldj.mofcom.gov.cn/aarticle/c/200907/20090706411691.html>.

60. State Anti-Monopoly Comm. on the Definition of Relevant Market Guide, ANTI-MONOPOLY COMM. (promulgated May 24, 2009), http://www.gov.cn/zwhd/2009-07/07/content_1355288.htm.

61. Measures Declaration of Business Concentration (promulgated by the MINISTRY OF COMMERCE OF THE P.R.C.: Anti-monopoly Bureau July 15, 2009, effective Jan. 1, 2010) (China), <http://fldj.mofcom.gov.cn/aarticle/c/200911/20091106639149.html>.

62. Examination of Concentration of Business Operators (promulgated by the MINISTRY OF COMMERCE OF THE P.R.C.: ANTI-MONOPOLY BUREAU, July 15, 2009, effective Jan. 1, 2010) (China) <http://fldj.mofcom.gov.cn/aarticle/c/200911/20091106639145.html>.

63. MINISTRY OF COMMERCE OF THE P.R.C.: ANTI-MONOPOLY BUREAU, *Ministry of Commerce Notice No. 41 of 2010 on the Implementation of the Concentration of Assets or Business Operations of the Interim Provisions Stripping* (2010), <http://fldj.mofcom.gov.cn/aarticle/c/201007/20100707012000.html>.

64. MINISTRY OF COMMERCE OF THE P.R.C., *Anti-Monopoly Ministry of Commerce held a press conference* (Aug. 8, 2010), <http://www.mofcom.gov.cn/aarticle/ae/ai/201008/20100807078063.html>.

65. Ministry of Commerce of the People's Republic of China, Ministry of Commerce to Review the Decision on the Prohibition of the Coca Cola's Acquisition of Huiyuan Firm, <http://fldj.mofcom.gov.cn/aarticle/zxxx/200903/20090306108494.html>.

C. ANTICOMPETITIVE PRACTICES

The National Development and Reform Commission (“NDRC”), which is responsible for price-related conduct, announced enforcement actions against several cartels during 2010, including: (i) rice noodle producers;⁶⁶ (ii) green bean distributors;⁶⁷ and (iii) a trade association for requiring local companies to offer refrigeration services to garlic distributors at a fixed price. These resulted in fines of between RMB20,000 (approximately US\$3,000) and RMB1 million (approximately US\$150,000).⁶⁸ Although the cases were brought under the earlier Price Law, they also shed light on likely cartel enforcement trends under the Anti-Monopoly Law (“AML”).

D. COURT DECISIONS

The courts have accepted over ten civil AML cases so far.⁶⁹ Nearly all cases involved allegations of abuse of a dominant market position. One-third were settled, while the others were unsuccessful, mainly due to insufficient evidence.

VII. India

A. LEGISLATIVE DEVELOPMENTS

The Competition (Amendment) Ordinance, 2009 and the Competition (Amendment) Act, 2009,⁷⁰ dissolved the Monopolies and Restrictive Trade Practices (“MRTP”) Commission, bringing an end to the delayed repeal of the MRTP Commission provided for in the Competition Act, 2002 (“Competition Act”). All cases pending before it are to be transferred either the Competition Appellate Tribunal (“COMPAT”) or the National Commission established under the Consumer (Protection) Act, 1986, depending on the subject matter.

B. MERGERS

The merger control provisions are not yet in force. However, certain unofficial reports indicate that they may become effective shortly. Further, the existing provisions may be modified to: (i) increase the existing turnover thresholds; (ii) add additional thresholds

66. Nat’l Dev. & Reform Comm’n, Interview with the Person in Charge of the National Development and Reform Commission, *available at* http://www.sdpc.gov.cn/xwfb/t20100330_338105.htm (discussing collusion on prices of rice in parts of Guangxi, Quan).

67. Nat’l Dev. & Reform Comm’n, Interview with the Person in Charge of Strengthening the Supervision of Agricultural Markets in Quan, *available at* http://www.sdpc.gov.cn/xwfb/t20100701_358444.htm.

68. Peter Wang et al., *Antitrust Alert: Chinese Pricing Enforcers Impose Higher Fines as New Rules Proposed*, JONES DAY, July 2010, <http://www.jonesday.com/antitrust-alert—chinese-pricing-enforcers-impose-higher-fines-as-new-rules-proposed-07-21-2010/>.

69. Wang Doudou, *Ten Civil Cases Initiated During the First Two Years*, LEGAL DAILY (Aug. 30, 2010) http://www.legaldaily.com.cn/index_article/content/2010-08/30/content_2264422.htm?node=5955.

70. The MRTP Act was repealed effective September 1, 2009 and MRTP Commission was dissolved effective October 14, 2010. Pallavi Shroff & Harman Sandhu, *Competition Commission of India’s Trysts with Law and Policy: Enforcement One Year On*, COMPETITION POL’Y INT’L, Dec. 16, 2010, <https://www.competitionpolicy-international.com/competition-commission-of-india-s-trysts-with-law-and-policy-enforcement-one-year-on/>.

regarding the size of the target; and (iii) reduce the time for reaching a clearance decision to a maximum of 180 days.

C. COURT DECISIONS

1. *Competition Commission v. Steel Authority*⁷¹

In its first decision on the Competition Act, the Supreme Court decided several important questions related to operation of the Competition Act. It held that (i) the COMPAT does not have jurisdiction to hear appeals from orders based on provisions not specifically contained in the Competition Act; (ii) parties have no affirmative right to be heard before the Competition Commission of India (“CCI”) orders a detailed investigation by its Director General (“DG”); (iii) the standard of proof that must be satisfied before interim relief may be granted in the event of a competition law infringement is much higher than that required to show a *prima facie* case in order for an investigation to be initiated by the DG; and (iv) the CCI must give reasons for its orders. The Supreme Court also issued directions with respect to confidentiality and the timetable for completing the investigation(s).

2. *Kingfisher Airlines v. Competition Commission*⁷²

Kingfisher Airlines and Jet Airways announced a cooperation agreement on, *inter alia*, code sharing, joint fuel management, and common ground handling in October 2008 that was challenged as being anticompetitive. The Bombay High Court decided that the CCI’s jurisdiction extended to cover all anticompetitive agreements in force in India after the relevant provisions of the Competition Act⁷³ became effective, regardless of when those agreements were first entered into. More recently, the CCI fined Kingfisher Airlines Rs.10,000,000 (approximately US\$220,000) for failing to provide information requested by the DG during the investigation.⁷⁴

3. *Other Decisions*

The CCI has published several decisions closing cases on the basis that no *prima facie* case existed without going into any in-depth substantive analysis under the Competition Act. The reasons for taking such action include: (i) failure to supply sufficient information;⁷⁵

71. *Competition Comm’n v. Steel Auth. of India, Ltd.*, (2010) _ S.C.R. _ (India), available at <http://cci.gov.in/menu/civilAppealNo.7779.pdf>.

72. *Kingfisher Airlines v. Competition Comm’n*, 2009 A.I.R. _ (Bom.) (India), available at <http://bombayhighcourt.nic.in/data/original/2010/WP180609310310.pdf>.

73. See Section 3 of The Competition Act, Act. No. 12 of 2003, INDIA CODE, available at http://www.cci.gov.in/images/media/competition_act/act2002.pdf?phpMyAdmin=QuqXb-8V2yTtoq617iR6-k2VA8d.

74. See, e.g., *CCI Imposes Rs 1 CR Fine on Kingfisher Airlines*, ECON. TIMES, Nov. 21, 2010, <http://economictimes.indiatimes.com/news/news-by-industry/transportation/airlines/-aviation/CCI-imposes-Rs-1-cr-fine-on-Kingfisher-Airlines/articleshow/6964501.cms>.

75. See *Goel v. Seagate Singapore Int’l Headquarter, Ltd.*, No. C- 35/2008/DGIR, ¶¶ 8-9 (Sept. 21, 2010) (India), available at <http://cci.gov.in/menu/SeagateCaseNoC35.pdf>; *All India Distillers’ Ass’n v. Haldyn Glass, Ltd.*, No. DGIR/2008/TP/11, ¶¶ 10-11 (June 18, 2010) (India), available at <http://cci.gov.in/menu/AllIndiaDistAsso170910.pdf>.

(ii) the other party is a government ministry and therefore not an enterprise;⁷⁶ (iii) the action arose before the relevant provisions of the Competition Act came into force;⁷⁷ (iv) the action complained of was a sovereign function of government;⁷⁸ and (v) the CCI was not the appropriate forum.⁷⁹

Europe

VIII. European Union

A. MERGERS

During a year of lower merger activity, of particular note are the ongoing reviews of the proposed intra-Greek combination of flag carrier Olympic Air and Aegean Airlines,⁸⁰ which is reminiscent of the blocked intra-Ireland Ryanair/Aer Lingus merger (upheld on appeal), and the European Commission's unconditional clearance of Oracle's acquisition of Sun Microsystems (following public pledges by Oracle to support Sun's open-source database software).⁸¹

B. ANTICOMPETITIVE PRACTICES

The Commission imposed high fines on companies found guilty of anti-competitive behavior. These included fines imposed on cartels in the bathroom equipment and prestressing steel sectors of €622 million and €458 million (approximately US\$870 million and US\$640 million) respectively.⁸² The Commission also improved the efficiency of its

76. *Travel Agents Ass'n of India v. Balmer Lawrie & Co.*, No. 39/2010, ¶ 9.6 (Sept. 15, 2010) (India), available at <http://cci.gov.in/menu/BalmerCaseNo39.pdf>.

77. *Kishan Cold Storage v. United Bank of India*, No. 27/2010, ¶ 8 (Aug. 31, 2010) (India), available at <http://cci.gov.in/menu/KishanCaseNo27.pdf>; *Maharashtra Textile v. Maharashtra Indus. Dev.*, No. 17/2009, ¶ 15 (Mar. 9, 2010) (India), available at <http://cci.gov.in/menu/CCA17.pdf>; *Ackruti City, Ltd. v. Reliance Infrastructure, Ltd.*, No. 09/2010, ¶ 9 (Mar. 30, 2010) (India), available at <http://cci.gov.in/menu/CCA09.pdf>; *Agarwal v. Punjab Nat'l Bank*, No. 08/2009, ¶ 8 (Mar. 18, 2010) (India), available at <http://cci.gov.in/menu/CCA08.pdf>.

78. *Internet Serv. Providers v. Dep't of Telecomms.*, No. 10/2009, ¶¶ 5-7 (June 29, 2010) (India), available at <http://cci.gov.in/menu/CaseNo10-2009.pdf>.

79. *Meena v. Mohan Gas Service*, No. C-22/2009/DGIR, ¶¶ 4-5 (Feb. 4, 2010) (India), available at <http://cci.gov.in/menu/MRTPC2.pdf>.

80. Press Release, Europa, Mergers: Commission Opens In-Depth Investigation Into Proposed Merger Between Olympic Air and Aegean Airlines (July 30, 2010), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1017>.

81. Press Release, Europa, Mergers: Commission Clears Oracle's Proposed Acquisition of Sun Microsystems (Jan. 21, 2010), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/40>; Commission merger decisions are available at <http://ec.europa.eu/competition/mergers/cases>.

82. Press Release, Europa, Antitrust: Commission Fines 17 Bathroom Equipment Manufacturers €622 Million in Price Fixing Cartel (June 23, 2010), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/790&format=HTML&aged=0&language=EN&guiLanguage=en>; Press Release, Europa, Antitrust: Commission Fines Prestressing Steel Producers _458 million for Two-Decades Long Price-Fixing and Market-Sharing Cartel (Oct. 6, 2010), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1297&format=HTML&aged=0&language=EN&guiLanguage=en>. European Commission anti-trust decisions are online. *Antitrust Cases*, EUROPEAN COMM'N: COMPETITION, <http://ec.europa.eu/competition/antitrust/cases/index.html> (last visited Feb. 4, 2011).

prosecution efforts by successfully using its new settlement procedure in two cases.⁸³ In the pharmaceutical sector, following the conclusion of the sectoral inquiry, the Commission initiated infringement proceedings against several companies and continued its practice of monitoring patent settlement agreements.

C. ABUSES OF DOMINANCE

In the realm of abuse of dominance, the Commission's focus continued to be on the behavior of companies in the high-tech industry, with two cases against IBM regarding mainframe computers,⁸⁴ as well as an investigation into Apple's iPhone policies, which closed after Apple changed its practices to remove the Commission's concerns.⁸⁵

D. COURT DECISIONS

The Commission secured a significant victory in the EU General Court, which upheld its 2005 decision against AstraZeneca for actions taken to hinder the entry of generic competitors.⁸⁶ In a disappointing judgment for the business community, the Court of Justice held that internal communications with in-house lawyers are not covered by legal professional privilege, and thus are discoverable in the course of a competition law investigation.⁸⁷

IX. France

A. MERGERS

The French Competition Authority ("the Authority"), which replaced the Minister of Economic Affairs as the authority in charge of merger control in March 2009, issued its first ever phase-two clearance decision in connection with the acquisition by TF1 (the main free-to-air TV channel in France) of NT1 and TMC (two free digital TV channels in France). The Authority held that despite the relatively small NT1 and TMC market shares (less than five percent in all affected markets), the transaction would strengthen TF1's dominant position in the market for television advertising and increase its bargain-

83. The Commission's settlement procedure is available online. *Legislation Settlements*, EUROPEAN COMM'N: COMPETITION, <http://ec.europa.eu/competition/cartels/legislation/settlements.html> (last visited Feb. 4, 2011).

84. Press Release, Europa, Commission Initiates Formal Investigations Against IBM in Two Cases of Suspected Abuse of Dominant Market Position (July 26, 2010), *available at* <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1006>.

85. Press Release, Europa, Statement on Apple's iPhone Policy Changes (Sept. 25, 2010), *available at* <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1175>.

86. Press Release, Europa, Judgment in Case T-321/05 AstraZeneca v. Comm'n (July 1, 2010), *available at* <http://curia.europa.eu/jcms/upload/docs/application/pdf/2010-07/cp100067en.pdf>. AstraZeneca has appealed the judgment.

87. Press Release, Europa, Judgment in Case C-550/07 P Akzo Nobel Chemicals, Ltd. v. Comm'n (Sept. 14, 2010), *available at* <http://curia.europa.eu/jcms/upload/docs/application/pdf/2010-09/cp100090en.pdf>.

ing power with respect to the purchase of broadcasting rights.⁸⁸ The clearance decision was made subject to strict behavioral commitments from TF1.

B. ANTICOMPETITIVE PRACTICES

The Authority fined eleven banks a total of €385 million (approximately US\$511 million) for colluding on interbank fees for checks.⁸⁹ The collusive arrangements were designed and agreed upon when a new digital system for processing and clearing checks was introduced, and had been in force for a number of years.

A small French company, NavX, which sells databases containing the locations of speed cameras, filed a complaint alleging abusive practices after Google refused its advertisements and suspended its AdWords account on the grounds that its products did not comply with Google's internal content policies. Google undertook to restore NavX's AdWords account and to clarify both the scope of its AdWords traffic devices policy in France and the procedure that may lead to suspension of AdWords accounts for violation of Google's traffic devices policy in France. Following a market test, the Authority concluded that these commitments were sufficient to remove the competition concerns raised during the procedure.⁹⁰

C. COURT DECISIONS

The Paris Court of Appeals drastically reduced the fines imposed by the Authority on several steel producers for horizontal anticompetitive practices from a total of €575 million (approximately US\$764 million) to €75 million (approximately US\$99 million), on the grounds that the fines were disproportionately high given the ongoing economic crisis, the infringement had only a moderate impact on the market, and the Authority did not sufficiently individualize the level of the fines imposed.⁹¹ Although this judgment was considered to be a "serious blow" to the Authority, it was not appealed by the Minister of Economic Affairs, who decided instead to set up an expert committee to review the meth-

88. *National Competition Report*, CLEARY GOTTlieb 7 (2010), <http://www.cgsh.com/files/Publication/ae1dd747-236c-4a27-a275-ff66a7025872/Presentation/PublicationAttachment/713de05d98964bfff9e8a0286738fe794/National%20Competition%20Report%20Q1%202010.pdf>.

89. Décision n° 10-D-28 du 20 septembre 2010 relative aux tarifs et aux conditions liées appliquées par les banques et les établissements financiers pour le traitement des chèques remis aux fins d'encaissement [Decision No. 10-D-28: Relating to Rates and Conditions Applied by Banks and Related Financial Institutions in Processing Checks for Collection], (L'Autorité de la Concurrence [The Competition Authority] Sept. 20, 2010) (Fr.), available at <http://www.autoritedelaconcurrence.fr/pdf/avis/10d28.pdf>; *Banks Fined €385m for Cheque Fees*, IRISH TIMES, Sept. 20, 2010, <http://www.irishtimes.com/newspaper/breaking/2010/0920/breaking35.html>.

90. Décision n° 10-D-30 du 28 octobre 2010 relative à des pratiques mises en oeuvre dans le secteur de la publicité sur Internet [Decision No. 10-D-30: Relating to Practices Implemented in the Area of Internet Advertising] (L'Autorité de la Concurrence [The Competition Authority] Oct. 28, 2010) (Fr.), available at <http://www.autoritedelaconcurrence.fr/pdf/avis/10d30.pdf>; Eric Pfanner, *Google, in Settlement, Changes Ad Rules in France*, N.Y. TIMES, Oct. 28, 2010, http://www.nytimes.com/2010/10/29/technology/29google.html?_r=1.

91. Cour d'appel [CA] [regional court of appeal] Paris, 1e ch., Jan. 19, 2010, JCP 2009, II, 00334 (Fr.), available at http://www.autoritedelaconcurrence.fr/doc/ca08d32_siderurgie.pdf, (Fr.); Kiran S. Desai & Manu Mohan, *Reduction of Fines—Economic Recession—Not at the Commission—Cartel Fines Cross 1.4 Billion at the End of June 2010*, MAYER BROWN (July 2010), <http://www.mayerbrown.com/london/article.asp?id=9288&nid=369>.

odology for calculating antitrust fines. In its report, this committee presented several recommendations to strengthen safeguards of due process rights in proceedings before the Authority and suggested adopting guidelines for the method of calculating antitrust sanctions.⁹² The Authority issued such guidelines at the end of 2010.

The Supreme Court reversed a ruling of the Paris Court of Appeals upholding the Authority's decision to suspend the exclusivity period granted to Orange over the sale of iPhones in France. The Supreme Court held that the Paris Court of Appeals had not only failed to assess whether Orange's competitors had alternatives to the iPhone and could therefore offer a competing solution to their customers, but also overestimated the revenues that Orange would receive as a result of the exclusivity period.⁹³ However, Orange had already undertaken to waive its exclusive rights to the iPhone in France when this judgment was issued.⁹⁴

X. Germany

A. LEGISLATIVE DEVELOPMENTS

In January 2010, Germany's Federal Ministry of Economics published controversial draft legislation proposing amendments to the Act against Restraints of Competition, which would confer on the Federal Cartel Office ("FCO") the ability to order dominant undertakings to divest certain parts of their businesses, even in the absence of an abuse of their market position or any other anticompetitive behavior.⁹⁵ The draft Bill raises significant policy and constitutional concerns. Discussion of this proposed legislation is expected to continue through 2011 or 2012.

B. MERGERS

In the merger field, the FCO prohibited the automotive component supplier Magna from acquiring Karmann's European convertible roof systems business on the grounds of

92. *Rapport sur l'appréciation de la sanction en matière de pratiques Anticoncurrentielles* [Report on the Assessment of Sanctions in the Field of Anticompetitive Practices], LE MINISTÈRE DE L'ÉCONOMIE, DES FINANCES ET DE L'INDUSTRIE [THE MINISTRY OF ECONOMY, FINANCE AND INDUSTRY], (Sept. 20, 2010), <http://www.economie.gouv.fr/services/rap10/100920rap-concurrence.pdf>; Eric Morgan de Rivery & Charles de Navacelle, *Antitrust Alert: French Competition Authority Launches Public Consultation on Setting Antitrust Fines*, JONES DAY, Jan. 21, 2011, <http://www.jonesday.com/antitrust-alert—french-competition-authority-launches-public-consultation-on-setting-antitrust-fines-01-21-2011/>.

93. Cour de cassation [Cass.] [supreme court for judicial matters], —, Feb. 16, 2010, D.P. I 2010, 226 FS-D (Fr.), available at http://www.autoritedelaconurrence.fr/doc/cass_08mc01_fev2010.pdf; *French Court Upholds Ban on iPhone-Orange Deal*, KIOSKEA.NET, Feb. 4, 2009, <http://en.kioskea.net/news/11957-french-court-upholds-ban-on-iphone-orange-deal>.

94. Décision n° 10-D-01 du 11 janvier 2010 relative à des pratiques mises en oeuvre dans la distribution des iPhones [Decision No. 10-D-01: Relating to Practices Implemented in the Distribution of iPhones], (L'Autorité de la Concurrence [The Competition Authority] Jan. 11, 2010) (Fr.), available at <http://www.autoritedelaconurrence.fr/pdf/avis/10d01.pdf>; Melissa Lipman, *Apple, Orange iPhone Proposals Prove Fruitful in France*, LAW360, Jan. 22, 2010, <http://www.law360.com/topnews/articles/145088/apple-orange-iphone-proposals-prove-fruitful-in-france>.

95. Press Release, Monopoly Comm'n (Ger.), Mergers and Abuse Control, ¶ 32 (July 14, 2010), available at http://www.monopolkommission.de/haupt_18/presse_h18.pdf.

collective dominance.⁹⁶ The FCO had found that there were only three competitors left in the European market for convertible roof systems and ruled that Magna and Karmann were likely to act in a coordinated manner given their similar size and the transparency of the market.

C. CARTELS AND ABUSES OF DOMINANCE

Fines were imposed for price fixing on coffee roasters (€30 million, approximately US\$40.76 million)⁹⁷ and manufacturers of ophthalmic lenses (€115 million, approximately US\$156.28 million),⁹⁸ while Alstom was fined for bid rigging in relation to the sale of utility steam generators (€91 million, approximately US\$123.66 million).

In January 2010, the FCO ordered Scandlines Deutschland GmbH, the owner of the Puttgarden ferry port, to provide other ferry companies with access to the port facilities in return for adequate remuneration, so they could establish an additional ferry service on the Puttgarden-Rødby route.⁹⁹

D. COURT DECISIONS

In October 2009, the Berlin *Kammergericht* held that direct and indirect purchasers could bring damages claims, and ruled the defendant in the case in question had not proved the existence of passing on.¹⁰⁰ However, in a June 2010 judgment, the Karlsruhe Higher Regional Court went significantly further, rejecting the passing-on defense on legal grounds.¹⁰¹ The court also ruled that indirect purchasers did not have legal standing to bring claims against cartel members, mainly because it would be impossible to resolve the ensuing claims between direct and indirect purchasers. Both cases have been appealed to the Federal Supreme Court.

96. *Recent Developments in Competition Law*, ARNOLD & PORTER LLP, (2011) http://www.arnoldporter.com/resources/documents/AdvisoryRecent_Developments_In_German_Competition_Law_1411.pdf.

97. See Press Release, Bundeskartellamt, Bundeskartellamt Imposes More Fines on Coffee Roasters (June 9, 2010), available at http://www.bundeskartellamt.de/wEnglisch/News/Archiv/ArchivNews2010/2010_06_09.php.

98. See Press Release, Bundeskartellamt, €115 Million Fine Imposed on Manufacturers of Ophthalmic Lenses (June 10, 2010), available at http://www.bundeskartellamt.de/wEnglisch/News/Archiv/ArchivNews2010/2010_06_10.php.

99. See Press Release, Bundeskartellamt, Bundeskartellamt Opens up the Puttgarden-Rødby Ferry Route to Competition (Jan. 28, 2010), available at http://cms.bundeskartellamt.de/wEnglisch/News/Archiv/ArchivNews2010/2010_01_28.php.

100. Kammergericht [KG] [Berlin Court of Appeals] 2 U 10/03 Kart (Oct. 1, 2009) (Ger.), available at <http://snipurl.com/1wdyom>; Kammergericht [KG] [Berlin Court of Appeals], 2 U 17/03 Kart (Oct. 1, 2009) (Ger.), available at <http://snipurl.com/1wdyyd>; *National Competition Report*, CLEARY GOTTlieb, (Dec. 2010), <http://www.cgsh.com/files/Publication/8c9b9f5e-b943-458b-9a43-9fa366cec907/Presentation/PublicationAttachment/27cd19bf-015f-4d8c-adaa-a47e78e47c20/National%20Competition%20Report%204Q%202009.pdf>; ARNOLD & PORTER LLP, RECENT DEVS. IN GERMAN COMPETITION LAW 4 (2011), http://www.arnoldporter.com/resources/documents/Advisory-Recent_Developments_In_German_Competition_Law_1411.pdf.

101. Higher Regional Court Karlsruhe, Case 6 U 118/05 Kart (June 11, 2010) (Ger.), available at <http://snipurl.com/1bcywd>; see *Recent Developments in Competition Law*, *supra* note 96, at 4.

XI. Russia

A. LEGISLATIVE DEVELOPMENTS

During the first half of 2010, a significant milestone in Russian antitrust legislation was reached with the adoption and implementation of the Second Antimonopoly Package. This package encompasses amendments to the Federal Law on the Protection of Competition ("the Competition Law"),¹⁰² the Code of Administrative Offenses,¹⁰³ and the Criminal Code of the Russian Federation.¹⁰⁴

The Second Antimonopoly Package introduced a new approach to the scope of the Competition Law. The changes affect the agreements and actions of both Russian firms and foreign businesses operating in Russia, or any activity which has an effect on the state of competition in Russia.

In the sphere of merger control, the thresholds for transactions subject to antimonopoly clearance or notification were almost doubled. According to the amended Competition Law, the Federal Antimonopoly Service of the Russian Federation ("FAS Russia") can consider a company with a market share of less than thirty-five percent to be dominant, provided that: (i) its market share exceeds that of any other company, and (ii) it can influence significantly the circulation of goods and services in the market. A new regulation was also issued for vertical and horizontal agreements.

The legislation still suffers from certain defects, in particular its unreasonable severity and, in some instances, excessive regulation. The Third Antimonopoly Package, aimed at eliminating these shortcomings, has already been submitted for consideration to the Government of the Russian Federation and is expected to be approved by the Russian Parliament in spring 2011.¹⁰⁵ The revised provisions on extraterritoriality, direct and indirect control, restrictive agreements and concerted practices, merger control, and liability are expected to increase the efficiency of antitrust regulation and hopefully improve the quality of antitrust enforcement in Russia.

XII. United Kingdom

A. ADMINISTRATIVE DEVELOPMENTS

On October 14, 2010, the Secretary of State for Business, Innovation and Skills issued proposals to merge the competition and market investigation functions of the Competition Commission ("CC") and the Office of Fair Trading ("OFT"). The merger is unlikely to be completed until 2012.¹⁰⁶

102. *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* [SZ RF] [Russian Federation Collection of Legislation] 2006, No. 135-FZ, translated at <http://www.fas.gov.ru/english/legislation/26940.shtml>.

103. *Kodeks RF ob Administrativnykh Pravonarusheniakh* [KOAP] [Code of Administrative Violations] art. 195 (Russ.), available at <http://www.russian-offences-code.com/>.

104. *Ugolovnyi Kodeks* [Criminal Code] art. 64 (Russ.), available at <http://www.russian-criminal-code.com/>.

105. Andrey Tsyganov, *The "Third Antimonopoly Package" Will be Liberalizing the Norms of Antimonopoly Law*, FED. ANTIMONOPOLY SERV. OF THE RUSSIAN FED'N, Dec. 16, 2010, http://en.fas.gov.ru/news/news_31087.html.

106. *OFT/CC Merger—a System With Mixed Motives*, LEGALWEEKLAW.COM, (Oct. 26, 2010), <http://www.legalweeklaw.com/abstract/oft-cc-merger-mixed-motives-5632#>.

B. MERGERS

Only two notified mergers were referred to the CC,¹⁰⁷ with one subsequently abandoned.¹⁰⁸ The Secretary of State for Business, Vince Cable, has issued a European Intervention Notice in relation to News Corp's proposed acquisition of the shares it does not already own in BSkyB. The intervention has been made in order to protect so-called legitimate interests, in this case sufficient plurality of persons with control of media enterprises. In parallel, the European Commission is investigating the impact of the proposed acquisition under the EU Merger Regulation.

On September 16, 2010, the OFT and the CC published new joint OFT/CC Substantive Merger Assessment Guidelines.¹⁰⁹

C. ANTICOMPETITIVE PRACTICES

April 2010 saw the imposition by the OFT of a record total fine of £225 million (approximately US\$360.5 million), on two tobacco manufacturers and ten retailers.¹¹⁰ Ian Norris, former head of Morgan Crucible engineering group, was extradited to the United States on March 23, 2010 to face obstruction of justice charges after his attempts to have his case heard by the European Court of Human Rights failed. In May 2010, the OFT dropped its criminal cartel prosecution of four current and former executives of British Airways.¹¹¹ In June 2010, the OFT released revised guidance on Competition Disqualification Orders in competition cases.¹¹²

D. ABUSES OF DOMINANCE

The OFT announced that Reckitt Benckiser has agreed to pay a fine of £10.2 million (approximately US\$16.3 million) for abuse of dominance in relation to the Gaviscon drug.¹¹³ In February 2010, the fine imposed on National Grid in 2008 in an abuse of

107. Press Release, Office of Fair Trading (U.K.), OFT Refers Car Club Merger to the Competition Commission (Aug. 10, 2010), *available at* <http://www.oft.gov.uk/news-and-updates/press/2010/89-10>.

108. Press Release, Competition Comm'n (U.K.), CC Cancels Getty/Rex Inquiry (July 21, 2010), *available at* http://www.competition-commission.org.uk/inquiries/ref2010/Getty_Rex/pdf/2310_getty_images_rex_cancellation_news_release_210710.pdf.

109. Merger Assessment Guidelines, COMPETITION COMM'N (U.K.) (Sept. 16, 2010), http://www.competition-commission.org.uk/about_us/our_organisation/workstreams/analysis/cc2_review.htm.

110. Press Release, Office of Fair Trading, OFT Imposes £225m Fine Against Certain Tobacco Manufacturers and Retailers Over Retail Pricing Practices (Apr. 16, 2010), *available at* <http://www.oft.gov.uk/news-and-updates/press/2010/39-10>.

111. Press Release, Office of Fair Trading, OFT Withdraws Criminal Proceedings Against Current and Former BA Executives (May 10, 2010), *available at* <http://www.oft.gov.uk/news-and-updates/press/2010/47-10>.

112. *See generally*, *Director Disqualification Orders in Competition Cases an OFT: An OFT Guidance Document*, OFFICE OF FAIR TRADING (2010), http://www.oft.gov.uk/shared_of/business_leaflets/enterprise_act/oft510.pdf.

113. Press Release, Office of Fair Trading, Reckitt Benckiser Agrees to Pay £10.2 Million Penalty for Abuse of Dominance (Oct. 15, 2010), *available at* <http://www.oft.gov.uk/news-and-updates/press/2010/106-10>.

dominance decision was further reduced by the Court of Appeal to £15 million (approximately US\$24 million).¹¹⁴

E. COURT DECISIONS

In *Cooper Tire v. Dow Deutschland*, the Court of Appeal confirmed the position that an English-domiciled person may anchor a private follow-on competition damages claim in England despite not being addressees of the European Commission's decision.¹¹⁵ In December 2009, the Competition Appeal Tribunal ("CAT") issued its first substantive judgment in a follow-on action under section 47A of the Competition Act 1998.¹¹⁶

Middle East And Africa

XIII. Israel

A. LEGISLATIVE DEVELOPMENTS

The Government recently introduced a draft bill proposing extensive regulation of oligopolistic markets.¹¹⁷ Another proposed bill would for the first time authorize the Director General of the Israeli Antitrust Authority ("IAA") to impose fines for violating the Restrictive Trade Practices Law 1988.¹¹⁸ The IAA also published draft guidelines regarding the analysis of horizontal mergers.¹¹⁹

B. MERGERS

The Director General blocked two horizontal mergers: (i) a merger that would have resulted in a perfect monopoly in the development and supply of real-time stock information systems,¹²⁰ ruling that such systems were a distinct relevant market for professional investors (distinct from private investors), into which prompt and effective entry by new competitors was unlikely; and (ii) a "4-to-3" merger in the interlocking paving stones

114. See *Nat'l Grid PLC v. Gas and Elec. Mkts. Auth.*, [2010] EWCA (Civ) 114 (Eng.), available at <http://www.bailii.org/ew/cases/EWCA/Civ/2010/114.html>.

115. See *Cooper Tire v. Dow Deutschland*, [2010] EWCA (Civ) 864 (Eng.), available at <http://www.bailii.org/ew/cases/EWCA/Civ/2010/864.html>.

116. See *Enron Coal Servs. Ltd. v. English Welsh & Scottish Ry. Ltd.*, [2009] CAT 4, available at http://www.catribunal.org.uk/files/1106_Enron_Ruling_09.02.10.pdf.

117. *Turning a Page on Oligopoly Markets - New Regulation Proposed*, INT'L L. OFFICE, Aug. 7, 2008, <http://www.internationallawoffice.com/newsletters/Detail.aspx?g=7774ba06-bad9-46e7-9977-68b6eaa87997>.

118. Memorandum of the Restrictive Trade Practices Law (Amendment No. 12), 2010, Sept. 19, 2010, publication No. 5001663, available at <http://62.219.23.243/ANTItem.aspx?ID=10567&FromSubject=100184&FromYear=2010&FromPage=0>.

119. Press Release, Israeli Antitrust Auth., Horizontal Mergers Guidelines (Dec. 22, 2009), available at <http://archive.antitrust.gov.il/ANTItem.aspx?ID=10148&FromSubject=100199&FromYear=2010&FromPage=0>.

120. See Antitrust Comm'r, *Objection to a Merger: A-Online Capital (AOC) Ltd., KavManche Information and Telecommunication Services and KavManche Let-Me-Know Technology Ltd.*, <http://archive.antitrust.gov.il/ANTItem.aspx?ID=10406&FromSubject=100040&FromYear=2010&FromPage=0>.

market,¹²¹ concluding that the merger might have aggravated perceived coordinated effects. In the latter case, the parties sought to invoke a failing firm defense, arguing that the target company had decided independently to exit the market. The argument was rejected in order not to encourage the engineering of transactions so as to circumvent the merger control rules.

C. ANTICOMPETITIVE PRACTICES

An indictment was filed against the leading food chain, Shufersal Ltd., and its managers for attempting to reach a restrictive arrangement with its distributors and for infringing the conditions imposed on Shufersal in connection with the *Shufersal/Clubmarket* merger.¹²² Allegedly, Shufersal decided to stop purchasing from suppliers who would not comply.

D. COURT DECISIONS

The District Court of Jerusalem convicted Mudgal (the monopolist producer of plumbing equipment in Israel), its distributors, and the latter's managers of minimum price fixing in the market for pipe fittings.¹²³ The court rejected the argument that Mudgal had only introduced recommended prices, ruling that price recommendations in the framework of a joint meeting with its distributors actually led to an agreement between the participants, albeit tacitly, to adopt the recommendation.

XIV. South Africa

A. LEGISLATIVE DEVELOPMENTS

In March 2010, the Competition Commission ("the Commission") published new service standards for merger reviews, to replace the previous 2001 standards.¹²⁴ The standards are intended to help the Commission become "a high performance regulatory agency with realistic, predictable and achievable service standards in finalizing merger cases."¹²⁵

The new standards establish three categories of mergers, depending on the complexity of investigation required: non-complex, complex, and very complex mergers. The Com-

121. Ronit Kan, *Director General's Opposition to Merger Among S.C. Akerstein RO S.R.L.*, ACKERSTEIN INDUS. & NETTIVEI NOY 1 (2009), <http://eng-archive.antitrust.gov.il/files/202/Ackerstein%20and%20Netivei%20Noy.pdf>.

122. Publication No. 5001572, ISRAELI ANTITRUST AUTH., (July 2010), <http://archive.antitrust.gov.il/files/10319/07-2010.pdf>; Eytan Epstein, Tamar Dolev-Green & Shiran Shabtai, *Israel*, 2011 GLOBAL COMPETITION REV. 210, 215-16 (2011), available at <http://ecglaw.com/uploaded/Merger%20Control%202011.pdf>.

123. See generally, C.D. (Jer) 1274/00 Israel v. Mudgal Ltd. et al., [2010] Publication No. 5001596, available at <http://62.219.23.243/ANTIItem.aspx?ID=10372&FromSubject=100069&FromYear=2010&FromPage=0>.

124. *Service Standards*, COMPETITION COMM'N (S. Afr.), <http://www.compcom.co.za/service-standards> (last visited Feb. 4, 2011).

125. Maarten van Hoven, *M&A Service Standards 2010*, COMPETITION NEWS 12 (June 2010), <http://www.compcom.co.za/assets/Uploads/AttachedFiles/MyDocuments/June-2010-newsletter-Final-Draft.pdf>.

mission also published guidelines on the information required for each category of filing.¹²⁶

B. MERGERS

The Commission reported a marked decrease in large and intermediate merger notifications in 2010. Of this type of mergers, most were found to raise few competition concerns, and were approved unconditionally or with minor conditions. The Commission noted that several mergers notified during this period involved firms in financial distress. Many of these transactions raised employment concerns¹²⁷ and the Commission accordingly focused on formulating conditions to ameliorate these effects.

C. ANTICOMPETITIVE PRACTICES

The Commission continued to focus on cartel investigations in 2010 and referred a significant number of complaints to the Competition Tribunal for prosecution. Over the past year, the Commission has investigated price fixing, customer and market allocation, and setting of trading conditions in the following industries: milling, bicycle, airline, scrap metal, and tire. The most important cartel case in 2010 was the Pioneer Foods bread cartel case in which the Tribunal imposed a fine of R195,718,614 (approximately US\$27,812,425), which constitutes ten percent of the turnover of Pioneer Foods' baking division in the 2006 financial year.¹²⁸ Pioneer Foods and the Commission appealed to the Competition Appeal Court. The appeals were withdrawn by both parties after Pioneer concluded a settlement agreement with the Commission, which also related to alleged anticompetitive conduct by Pioneer in the milling, poultry, and egg industries. Eighteen complaints were settled in 2010 through consent orders confirmed by the Tribunal.

D. COURT DECISIONS

There were two important decisions by the Supreme Court of Appeal on competition law issues in 2010: first, the *Telkom* case¹²⁹ involving the exercise of concurrent jurisdiction by the telecommunication authority, ICASA, and the competition authorities; and second, the procedural decision in the milk cartel case,¹³⁰ which examined the power of the Commission to initiate its own complaints into potentially anti-competitive conduct.

126. See generally, *Practitioner Update Issue 6: Complete Merger Filing Requirements*, COMPETITION COMM'N (S. Afr.), (Mar. 2010), <http://www.compcom.co.za/assets/Uploads/AttachedFiles/MyDocuments/Complete-filing-notice-Mch-2010>.

127. Maarten van Hoven, *Merger Review*, COMPETITION COMM'N (S. Afr.), 10 (June 2010), <http://www.compcom.co.za/assets/Uploads/AttachedFiles/MyDocuments/June-2010-newsletter-Final-Draft.pdf>.

128. *Tribunal Imposes Penalty of R195 Million on Pioneer*, COMPETITION COMM'N (S. Afr.), (2010), <http://www.compcom.co.za/assets/Uploads/AttachedFiles/MyDocuments/TRIBUNAL-IMPOSES-PENALTY-OF-R195-MILLION-ON-PIONEER.pdf> (last visited Feb. 4, 2011).

129. See generally, *Competition Comm'n v. Telkom 2009 (2) All SA 433 (SCA) (S. Afr.)*, available at <http://www.saflii.org/za/cases/ZASCA/2009/155.pdf>.

130. See generally, *Woodlands Dairy v. Competition Comm'n 2010 (6) SA 108 (SCA) (S. Afr.)*, available at <http://www.saflii.org/za/cases/ZASCA/2010/104.pdf>.

