MAYER·BROWN

Antitrust

YEAR IN REVIEW 2013

Antitrust

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INTRODUCTION

Robert E. Bloch

Dear Clients and Friends,

Over the past year, we have been pleased to represent our clients in important cases and transactions around the world. We are happy to share with you this summary of accomplishments for 2013, which were made possible by our clients' confidence and trust in us.

Antitrust enforcement authorities around the world continued to pursue vigorous enforcement agendas. The US Department of Justice obtained substantial criminal fines in 2013 totaling more than $1 billion. The European Commission also made news, imposing approximately $2.8 billion in fines across a wide range of industries.

The US Federal Trade Commission and numerous state attorneys general have been very active as well, challenging mergers, as has the Department of Justice, which challenged and stopped a major airline merger and, separately, a consummated merger after a lengthy trial. Indeed, both the FTC and the DOJ have stepped up their litigation capabilities and demonstrated both a willingness to challenge and an ability to, try and win important cases. Private litigation in the United States also increased noticeably in 2013.

International enforcement continues to be implemented in China, Hong Kong and India; increased enforcement and newly consolidated regimes are reinventing themselves in Brazil and England, and countries such as Canada, Australia, Korea and Japan are pursuing enforcement activities under existing programs; there are now well over 100 enforcement regimes around the world. New bilateral and multilateral relationships have been established between US enforcement agencies and China and India, and cooperation among enforcement agencies has never been greater. These developments require our practitioners to be well informed and capable of meeting any challenge anywhere in the world.

Mayer Brown's Global Antitrust lawyers regularly appear before antitrust agencies in the United States, Europe, Latin America and Asia to deal with complex issues in investigations, cases, transactions, multidistrict and multijurisdictional litigation. They bring an innovative approach to solving important problems and have addressed issues that have helped shape antitrust law and related areas of law that are often an integral part of many antitrust investigations and cases, including class actions, the use of experts, intellectual property and health care.

With more than 60 lawyers and other professionals around the world, our deep bench of highly experienced litigators and advisers includes many former government officials and covers every antitrust-related area. We are always adding depth to our team, and continued to do so in 2013. Eduardo Gaban, a partner, joined our São Paulo office, bringing his prior experience with CADE (the Brazilian Administrative Council for Economic Defense) and 12 years of experience to our Latin American team. Julian Ellison, a partner with 30 years of competition experience in Europe, joined our team in Brussels. And we are happy to welcome Matt Tabas, an associate in our Washington office, who joined us from the Federal Trade Commission. Matt was Counsel to the Director of the Bureau of Competition and was an attorney in a merger section where he worked on a wide range of investigations.

We continue publishing extensively on a broad range of antitrust topics—a listing of some of the key publications appears later in this report. Our group also participated in many national and international programs and were recognized as a leader in this practice area by *Chambers & Partners*, *Legal 500* and *Global Competition Review.*

As we move through 2014, we look forward to new opportunities to represent and help you solve the difficult challenges you face. We promise to bring our global strengths, energy and creative thinking to the task of helping you achieve your business goals.

Sincerely,

Bob Bloch

Robert E. Bloch
Global Practice Leader

Representative

MATTERS

REPRESENTATIVE MATTERS

Mayer Brown's Antitrust & Competition Group takes great pride in its involvement in high-profile antitrust and competition matters across the globe, ranging from complex multidistrict litigation to meeting regulatory challenges from global enforcement authorities, to assisting clients in transforming their businesses via mergers and acquisitions. A sampling of key matters from the past year is as follows:

"They are very prompt and knowledgeable advisers, giving practical, efficient and actionable advice."

~ Chambers USA 2013

Nestlé USA

In re Chocolate Confectionery Antitrust Litigation

Mayer Brown litigators helped to secure a significant summary judgment victory for Nestlé USA in one of the largest multi-district antitrust litigation matters currently pending. The litigation consists of over 90 federal lawsuits alleging a conspiracy with Mars, Hershey and Cadbury to fix the price of chocolate candy products sold in the United States. The primary basis for these allegations was an investigation into similar allegations by the Canadian Competition Bureau against each of the defendants' Canadian affiliates. These complaints were brought on behalf of direct and indirect putative class plaintiffs and large individual corporate plaintiffs (e.g., Safeway, Kroger, CVS) that are not seeking class status. The suits had been consolidated for pretrial proceedings in the US District Court for the Middle District of Pennsylvania (Harrisburg). Nestlé S.A. and Nestlé Canada were initially named as defendants but were dismissed from the litigation for lack of personal jurisdiction. The plaintiffs alleged potentially billions of dollars in damages. The case presented significant legal issues for summary judgment, including the inferences to be drawn based upon purely non-US conduct (in this case, Canada). In May 2013, the court granted Nestlé USA's Daubert motion, holding that an expert's computation of damages allegedly attributable to Nestlé USA was "unreliable" and "not built upon a solid factual basis." On February 26, 2014, the Court granted defendants' motions for summary judgment, explaining that the evidence did not indicate an agreement among competitors, but rather reflected lawful "unilateral pricing decisions and divergent strategies." The Court also rejected plaintiffs' theory that the alleged United States conspiracy was "actuated" by conduct in Canada. The Court said that "during the course of this litigation, plaintiff's cross border theory has evolved almost beyond recognition" and that the record is devoid of "evidence of a causal connection between the Canadian trade spend conspiracy and the lock-step price increases in the US." Because the evidence is "as consistent with permissible competition as with illegal conspiracy," the Court concluded that summary judgment was warranted.

The Mosaic Company/CF

We served as antitrust counsel for The Mosaic Company, a leading producer of crop nutrients, in its $1.4 billion purchase of CF Industries' phosphate fertilizer business. Mosaic agreed to acquire CF's Florida-based phosphate mining and manufacturing facilities, together with terminal and warehouse operations. Despite reports that claimed that the combined entity would have a significant market share in the United States, we convinced US regulators to clear the transaction without issuing a second request.

HSBC Bank Plc & HSBC Bank USA, N.A.

We represent the HSBC defendants in putative class actions alleging that financial institutions restrained competition in the trading of credit default swaps. Plaintiffs allege that the defendant banks' conduct prevented the emergence of an efficient and transparent trading market for credit default swaps. Plaintiffs further allege that the notional value of those credit default swaps exceeds $1 trillion. The Judicial Panel on Multidistrict Litigation recently transferred the various cases to the Southern District of New York. (J. Cote) for consolidated pre-trial proceedings.

BASF

Mayer Brown's litigation and antitrust teams advised BASF on the first competition law case heard before the UK Supreme Court that found claims by business customers who paid too much for vitamins in the 1990s were statute barred. The UK Supreme Court agreed that the customers had missed a two-year deadline for issuing proceedings. The ruling upheld the Court of Appeals' decision that the UK Competition Appeal Tribunal couldn't extend the relevant time limit and rejected the argument that, where a domestic statute of limitation gives rise to the need for judicial interpretation, it is not "sufficiently clear and precise" and offends against the EU law principles of effectiveness and legal certainty.

Lear Corporation

We represent Lear Corporation in direct and indirect purchaser putative class actions in which plaintiffs allege that the major manufacturers of automotive wire harnesses (and several manufacturers of the parts used in those harnesses) engaged in price-fixing and bid rigging in violation of the Sherman Act and numerous state antitrust, consumer protection and unfair competition laws. This is a high-profile price-fixing case that follows in the wake of several defendants' recent agreements to plead guilty and pay substantial fines to the United States government. Automotive wire harnesses are used in every car on the road today. The complaints have been consolidated, along with a number of other auto parts cases, as *In re Automotive Parts Antitrust Litigation*, MDL 2311. As to the automotive wire harness cases (the only consolidated cases in which Lear currently is involved), the parties are engaged in the discovery phase of the case.

Energetický a Průmyslový Holding a.s. (EPH)

We advised and represented the Czech energy company EPH on several EU merger filings for the acquisition of sole control of the Slovak energy company Slovenský Plynárenský Priemysel a.s. (SPP) by way of a share purchase from GDF Suez and E.ON AG and then for the acquisition of sole control of the Slovak energy company Stredoslovenská Energetika a.s. (SSE) by way of a share purchase from EDF. Upon notification of these transactions, the European Commission granted unconditional clearance by way of formal decisions. We also advised EPH on German merger filings for a number of smaller transactions.

Euromoney LMG's Asia Women in Business Law Awards 2013: Mayer Brown JSM partner **Hannah Ha** receives "Best in Competition and Antitrust"

Blue Shield of California

Mayer Brown is representing Blue Shield of California in a suit by four diagnostic laboratories claiming that Blue Shield, the Blue Cross Blue Shield Association, Aetna and Quest (one of the leading US diagnostic laboratories) have conspired to exclude the plaintiff laboratories from multiple markets for diagnostic services, including through exclusive contracts. The suit, which was filed in the US District Court for Northern California, alleged eight claims against Blue Shield and the other defendants for violation of federal and state antitrust laws, and related unfair competition and tort claims, and seeks both damages and injunctive relief. This suit is a frontal assault on the principles of managed care (i.e., the ability of an insurer such as Blue Shield to contract selectively with less than all available providers in order to obtain lower rates for its insureds). On February 6, 2014, Mayer Brown achieved a significant victory when the court dismissed the plaintiff's second amended complaint against Blue Shield, in it's entirety with prejudice.

Temple-Inland Inc., a business of International Paper

We represent Temple-Inland Inc. in connection with allegations that manufacturers of linerboard, corrugating medium, containerboard and corrugated products conspired to fix the prices of these products and restrict capacity. The case—which includes a number of individual class actions—is pending in the Northern District of Illinois. The parties are engaged in the discovery phase of the case.

Starwood Hotels & Resorts Worldwide, Inc.

We represent Starwood Hotels & Resorts Worldwide, Inc., in a consolidated multi-district antitrust class action litigation involving online hotel reservations. Beginning in August 2012, over 30 virtually identical class actions were filed in federal courts around the

country by plaintiffs claiming to have used the online travel agents (OTAs) Expedia, Orbitz, Priceline and Travelocity (and their respective affiliates) to book rooms at hotels affiliated with one of the twelve defendant hotel companies (Hilton, Marriott, InterContinental, Starwood, Kimpton, Wyndham, Hyatt, Trump, Wyndham, Carlson, Choice, Best Western). The plaintiffs contended that, pursuant to an "industry-wide conspiracy," the defendant OTAs agreed to force each defendant hotel company into agreements with them setting minimum prices for its rooms and preventing competing OTAs from offering its hotel rooms at lower rates. Plaintiffs claimed that these alleged agreements violate the Sherman Act and various state antitrust statutes, and made other state consumer-protection law claims. The cases were consolidated in the Northern District of Texas and on February 18, 2014, the court granted the defendants' motion to dismiss the entire Consolidated Amended Complaint.

"Excellent all round' and 'very sensitive to business needs and realities,' the team handles M&A-related matters and antitrust litigation, as well as offering niche expertise in healthcare issues and appellate representation."

~ The Legal 500 US 2013

BASF SE and BASF Corporation

In re Urethanes Antitrust Litigation

We defended BASF SE and BASF Corporation in connection with allegations that manufacturers conspired to fix the price and allocate customers and nationwide markets for certain urethane products. This was a high-profile price-fixing case that was brought despite the Department of Justice's closure, without charges being filed against anyone, of a related grand jury investigation. Urethanes have applications in a wide range of consumer products. The case included individual class actions filed around the country. We aggressively defended and favorably resolved the key cases before a federal jury returned a substantial verdict against one of our co-defendants in the class case.

Nestlé S.A.

We are the global lead competition counsel representing Nestlé S.A. in its $11.9 billion acquisition of Pfizer's infant nutrition business, as well as the related divestitures and associated clearances. In 2013, we oversaw the implementation of required remedies in Australia, South Africa, Mexico, Chile and Colombia, which involved the sale of assets and a transitional license to certain brands to Aspen Pharmacare Holdings Limited. This included a significant review of the divestiture in South Africa, where the Competition Tribunal suggested that this would be a merger from three competitors to two. We obtained unconditional clearances of the divestitures in all applicable jurisdictions.

REPRESENTATIVE MATTERS (CONTINUED)

Packaging Corporation of America

We represented Packaging Corporation of America, one of the leading US paper mill operators and manufacturers of corrugated paper containers, in its acquisition of Boise Inc., a significant competitor in these areas. Mayer Brown and the client worked proactively to meet with the Department of Justice early in the process and explain why the transaction did not raise any substantive concerns. Based on the information provided, the Department approved the transaction without requiring any modifications.

American Specialty Health Group (ASH)

We represented American Specialty Health Group (ASH) in a recently resolved action against Healthways, Inc., alleging violations of the antitrust laws arising from Healthways' selective enforcement of multiyear exclusivity and post-termination non-compete provisions included in contracts with fitness clubs throughout the United States. ASH and Healthways are the two principal competitors in the business of supplying senior fitness program products to Medicare Advantage plans that offer a fitness benefit to enrolled seniors. In order to supply a fitness product to the Medicare Advantage health plans, Healthways and ASH each created a nationwide network of contracted fitness clubs. Healthways insisted that its fitness clubs sign an exclusivity provision, which it typically enforces when a club attempts to sign up to work with ASH or another Healthways competitor. Healthways dominates the Medicare Advantage market for senior fitness benefits, serving more than 50 percent of eligible seniors. ASH, the next largest competitor, serves slightly more than 10 percent of eligible seniors. We believe this was one of the first cases that applied antitrust scrutiny to aggressive use of exclusivity clauses to dominate a critical aspect of the market for Medicare Advantage products and services. The case was settled with the defendant agreeing to waive the challenged contract provisions in certain fitness facility agreements. With this waiver, fair competition has returned to these markets.

National Law Journal's "40 Under 40 Chicago Rising Stars" list: Mayer Brown partner **Britt Miller**

Top Right

We advised Top Right Group on the antitrust aspects of its acquisition of the US-based fashion trend forecasting web site operator Stylesight Inc. for around US$60 million.

"The litigation powerhouse is advising on a significant proportion of cases from the growing list of multidistrict antitrust class actions stationed in the northern district... The firm has significant merger control capabilities too. Over the years, it has handled some of the largest and most contentious transactions in the US."

~ Global Competition Review

United Airlines, Inc.

DPWN Holdings (USA), Inc. v. United Airlines, Inc.

We represent United in an interlocutory appeal from a denial of a motion to dismiss in an antitrust case brought by DHL. In the underlying proceedings, United moved to dismiss, arguing that DHL's claim had been discharged by the confirmation of United's Chapter 11 reorganization plan. In denying the motion, the district court held that, although United had duly notified DHL of the pendency of the prior bankruptcy proceedings (as required by bankruptcy rules), United had violated DHL's due process rights by failing to identify the specific nature of DHL's potential antitrust claim, which DHL asserted United had fraudulently concealed. The district court accordingly held that DHL's antitrust claim was not discharged in United's bankruptcy. We obtained permission to bring an interlocutory appeal and challenged the due process holding before the Second Circuit. This case has tremendously important legal ramifications; adoption of the district court's due process holding would impose massive new investigative burdens and notice requirements on Chapter 11 debtors and would substantially reduce the scope of bankruptcy discharges.

Publishers' Licensing Society

We advised the Publishers' Licensing Society on the impact of EU competition law on collective licensing issues on its business and agreements.

HealthNow New York, Inc.

We are defending HealthNow New York, Inc., a large health insurer in western New York, against claims brought by an operator of urgent care centers that claims HealthNow conspired with a hospital system not to contract with the operator. *Insource Development Services of Batavia, LLC v. HealthNow New York, Inc.*, Civil Action No. 13-CV-0668-S (W.D.N.Y. filed June 25, 2013). This matter represents one of the issues that is key to US health care reform: the ability of health insurers to selectively contract and therefore reduce costs by discouraging oversaturation of health care. The plaintiff suggests that a large health insurer effectively must contract with any willing provider. Several cases alleging similar theories have been brought around the country and could constitute a trend if successful.

REPRESENTATIVE MATTERS (CONTINUED)

Market sources applaud this group for its "commercial, pragmatic approach" to issues surrounding merger control, cartel investigations and abuse of dominance cases."

~ Chambers UK 2013

Capita PLC

Defending Capita against attempts by the UK competition regulator to assert jurisdiction in relation to Capita's acquisition of STL Limited and require hold-separate undertakings suspending integration of STL into the Capita Group. The regulator conceded that it had no jurisdiction and the deal was able to proceed unimpeded.

Energetický a Průmyslový Holding a.s. (EPH)

We advised and represented the Czech energy company EPH in an EU antitrust investigation into possible restrictions of competition on the Czech electricity generation and wholesale market following a third-party complaint. EPH had initially been one of the targets of this investigation, but was released. Instead, the European Commission accepted structural commitments from the other company involved in the investigation (the incumbent operator CEZ), which had to divest certain power plants in the Czech Republic to an independent acquirer. However, the European Commission imposed a fine on EPH for an alleged procedural infringement during the initial dawn raid. On behalf of EPH, we filed an appeal to the General Court of the EU, seeking the annulment of this decision or at least a reduction of the fine. The court case is likely to conclude in 2014.

Lithuanian Railways (LG)

Out of Brussels, we are advising and representing the incumbent railway operator in Lithuania (LG) in an ongoing investigation by the European Commission regarding alleged abusive conduct in the Baltic market for railway freight transport services. The European Commission is concerned that LG may have prevented competition through market entry from Latvia by closing down and dismantling a cross-border track. The investigation started with dawn raids in the premises of LG and is still ongoing.

Mayer Brown's 'dedicated' and 'very experienced' team has a reputable merger control and cartel investigations practice, with particular strengths in German antitrust law. The team is appreciated for its 'hands-on approach' and 'tough negotiation' skills, and provides clients with 'a great overall experience.'

~ Legal 500 EMEA
Belgium – Competition

Albemarle

A team of attorneys from Brussels and the US advised Albemarle on several joint venture projects for chemical products. We helped Albemarle with the due diligence from an EU and US antitrust perspective and with the required merger analyses globally. We also helped to set up clean teams, attended numerous meetings and site visits, and provided seamless advice throughout the process.

Caterpillar

We represented Caterpillar Motoren GmbH & Co. KG, a subsidiary of US construction equipment manufacturer Caterpillar Inc., on its acquisition of the assets of the foundry Gießerei Kiel GmbH. Founded in 1898, the foundry, which is located in Kiel-Friedrichsort, predominantly manufactures engine blocks and cylinder heads for large engines. The foundry belonged to the Swabian foundry group CT with around 800 employees. Our team handled the EU merger control filings.

Thought

LEADERSHIP

SPEAKING ENGAGMENTS

JANUARY

"The FTAIA After 30 Years: What Does the Recent Potash Decision Mean for the Future?"
Sponsored by: The New York State Bar Association, 2013 Annual Meeting – Antitrust Law Section
Speaker: Britt M. Miller

FEBRUARY

"Antitrust Enforcement in the Energy Sector Through Arbitration and Damage Claims"
Sponsored by: EU Energy Law & Policy Conference
Speaker: Robert Klotz

MARCH

"The French Competition Authority launches a wide-ranging sector inquiry in the pharmaceutical distribution sector"
Sponsored by: Mayer Brown (Teleconference)
Speakers: Nathalie Jalabert Doury, Kiran S. Desai

"Hong Kong's First Cross-Sector Competition Law Ordinance"
Sponsored by: Hong Kong Institute of Surveyors
Speakers: John M. Hickin, Philip F. Monaghan

"Consumer Protection and Antitrust Enforcement Developments & Compliance in Social Media"
Sponsored by: Mayer Brown (The Social Media (R)Evolution)
Speakers: John Roberti, Carmine Zarlenga

"Standards and FRAND – Cross Border Patent Disputes and Smartphone Wars"
Sponsored by: German American Lawyers Association Conference, Antitrust Section
Speaker: Dr. Jens Peter Schmidt

APRIL

"Privacy Developments, Requirements and Practical Applications for Corporate Legal Counsel"
Sponsored by: WESFACCA, the Westchester, New York/Southern Connecticut Association of Corporate Counsel Chapter
Speaker: John Roberti

"RPM Counseling In a Leegin/Non-Leegin World"
Sponsored by: American Bar Association Section of Antitrust Law (61st Annual Spring Meeting, Washington, DC)
Speaker: Richard M. Steuer

SPEAKING ENGAGEMENTS (CONTINUED)

JUNE	"Fourth Annual Chicago Forum on International Antitrust Issues" Sponsored by: Mayer Brown and Northwestern Law's Chicago Forum on International Antitrust Issues Speakers: Nathalie Jalabert Doury, Mark McLaughlin, Britt M. Miller, Charles F. Regan
	"Competition Law in M&A Transactions—Developments in China & Brazil" Sponsored by: Mayer Brown (Cross-Border M&A Teleconference Series) Speakers: Hannah C.L. Ha, Philip F. Monaghan, Guilherme Vieira da Silva
AUGUST	"Understanding the FTC and Antitrust: A Teach-In on the Merger Approval Process" Hosted by: Keybanc Capital Markets Speakers: Meytal McCoy, John Roberti
SEPTEMBER	"Breakfast Briefing Competition" Sponsored by: Mayer Brown (Seminar) Speakers: Robert Klotz, Dr. Jens Peter Schmidt, Jan Kraayvanger
	"New Challenges in Merger Control in Europe" Sponsored by: Polish Competition Authority UOKIK Speaker: Dr. Jens Peter Schmidt
	"How Does the EU Promote Fossile Fuel Power Plant Projects?" Organized by: Active Communications International Speaker: Robert Klotz
OCTOBER	"What Happens When the Lights Go Out: Antitrust and Consumer Protection and the Government Shutdown" Sponsored by: American Bar Association Section of Antitrust Law Speaker: John Roberti
	"Preparing for Antitrust Investigations" Sponsored by: Mayer Brown, *Concurrences* law journal, the French In-house Lawyers Association, and the Paris School Bar Speaker: Nathalie Jalabert Doury

NOVEMBER

"Scope and Limits of Protectionism towards National Champions"
Sponsored by: European Networks Law and Regulation Conference, Brussels
Panel Chairman: Robert Klotz

"October Consumer Protection Update"
Sponsored by: American Bar Association Section of Antitrust Law (Teleconference)
Panelists: Dale Giali, Andrea Weiss, Carmine Zarlenga

"Gun Jumping and the Oil and Gas Grant"
Sponsored by: Mayer Brown (Seminar)
Speakers: Alexandre R. Chequer, Eduardo Molan Gaban

DECEMBER

"Antitrust Developments in the US and EU Energy Industries: What You Need to Know"
Sponsored by: Mayer Brown (Webinar)
Speakers: Robert Klotz, Scott P. Perlman

"The Third Annual Comprehensive Conference on Litigating Class Actions Practice Tips for Keeping Up With a Rapidly Changing Landscape"
Sponsored by: Law Seminars International
Speakers: Andrew S. Marovitz, Archis A. Parasharami

"Competition Summit 2013"
Organized by: Premier Circle
Panel Moderators: Nathalie Jalabert Doury; Gillian Sproul

PUBLICATIONS

ABA Antitrust Health Care Chronicle	Scott P. Perlman. *"A Policy Divided Against Itself? Health Care Reform and FTC Enforcement Policy,"* March 2013.
Business Compliance	Nathalie Jalabert Doury, Joseph Murphy. *"Cartel prevention and compliance regimes: it is time for a smarter approach,"* March 2013.
CPI Antitrust Chronicle	Philip Monaghan. *"Cartel Enforcement Comes of Age in China – The National Development and Reform Commission's LCD Panels Decision,"* February 2013. Article discusses the National Development and Reform Commission's LCD Panels decision in China
Competition Law Insight	Gillian Sproul. *"Changing of the Guard,"* November 12, 2013. Article examines the new UK Competition and Markets Authority and what the change means for their powers and processes.
Concurrences Competition Law Journal	Jens Peter Schmidt. *"Germany: Merger Control Analysis of Minority Shareholdings – A Model for the EU?"* 2013. Article discusses how the European Commission is considering revising the current treatment of noncontrolling minority shareholdings that could grant the Commission the competence to examine concentrations that do not confer control over another company.
	Nathalie Jalabert Doury. *"Cartels,"* *Concurrences*, July-September 2013. Article discusses several recent decisions related to anticompetitive practices from European Union and French state jurisdictions.
EuZW	Jens Peter Schmidt and Isabel Simon. *"First Come, First Served,"* March 25, 2013. Article discusses the different assessment of parallel mergers in the EU and the US.
European Competition Law Review	Jens Peter Schmidt. *"Antitrust Developments in the Food Sector in the EU,"* 2013. Article examines antitrust regulation in the food sector in the European Union.
European Networks Law and Regulation Quarterly (ENLR)	Robert Klotz. *"Regulation and Antitrust in the Railway Sector: The Right Track Towards More Competition?"* 2013. This article provides an overview of the current EU regulatory framework for railway passenger and freight transport services, which came into force in late 2012 and has to be implemented at the national level by mid-2015. It also examines additional proposals for further review of this framework which were tabled by the Commission in early 2013 and are currently caught in the legislative process. Robert Klotz is the Executive Managing Editor of the *European Networks Law and Regulation Quarterly.*
InsideCounsel	Archis Parasharami. *"Supreme Court Seems Likely to Support Individual Arbitration in AmEx Antitrust Class Action,"* March 29, 2013. Article discusses the Supreme Court's upcoming ruling in *American Express Co. v. Italian Colors Restaurant*.
Intellectual Property Magazine	Sarah Byrt, Gillian Sproul and Chris Kelly. *"Evolution, Not Revolution? Reform of EU Technology Transfer Rules,"* April 1, 2013. Article examines the implications for businesses in the UK as regulations on technology transfer agreements are revised.

International Business Law Journal

Nathalie Jalabert Doury, Joséphine Fourquet and Jean-Maxime Blutel. *"Competition Policies,"* Issue 1, 2013. Article discusses antitrust policies, mergers and state aid in the European Union. (French and English language) (February 14, 2013 Issue of ATF).

Law360

Nathalie Jalabert Doury, Kiran Desai, Robert Klotz, Jens Peter Schmidt and Gillian Sproul. *"Keep Watch of French Authority's Pharma Sector Inquiry,"* March 20, 2013. Article discusses the French Competition Authority's launch of an inquiry in the pharmaceutical sector.

Scott Perlman, John Roberti and Meytal McCoy. *"A Month of Important Guidance on HSR Filings,"* July 12, 2013. Article discusses decisions and guidelines issued in the past month by US antitrust agencies that are important for companies completing transactions that require US merger control filings pursuant to the Hart-Scott-Rodino Act.

Les inspections de concurrence

Nathalie Jalabert Doury. *"Les inspections de concurrence,"* July 2013. Competition authorities hold very broad inspection powers within companies enabling them to exercise such powers to a maximum level of efficiency to quickly detect and punish the most serious violations of competition rules. Nathalie Jalabert Doury, head of Antitrust & Competition in Paris, has published a book to assist companies with practical guidance in view of such inspections. With this second edition, Nathalie gives us an update on all the changes that have occurred since her book was first published.

Le Moniteur des Travaux Publics

Nathalie Jalabert Doury. *"Antitrust Essentials for the Construction Industry – 1st 2013 Semester,"* September 20, 2013. Article reviews the latest regulatory and legal news related to competition and antitrust practices in the building and construction industry.

L.J.A la Lettre des juristes d'affaires

Nathalie Jalabert Doury. *"When the Devil Hides, as Always, in the Details of the Hamon Bill,"* November 25, 2013. Article discusses the proposed extension of investigation powers of the French antitrust authorities.

Mayer Brown

Scott P. Perlman, John Roberti. *"Federal Trade Commission Announces Higher Hart-Scott-Rodino Thresholds for 2013,"* January 2013. On January 10, 2013, the US Federal Trade Commission announced new thresholds relating to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a. The thresholds govern which mergers or acquisitions must be reported to the FTC and the Department of Justice. Since 2005, the thresholds have been adjusted annually according to the change in US gross domestic product.

Kiran S. Desai, Nathalie Jalabert Doury, Robert Klotz, Dr. Jens Peter Schmidt, Gillian Sproul. *"Minority shareholdings might become subject to mandatory competition review."* February 2013. In a speech late last year the EU's Commissioner for Competition identified that the European Commission is considering a revision to the EU Merger Regulation that would mean acquisition of minority shareholdings require prior authorization by the Commission.

Mayer Brown (cont'd)

Sarah Byrt. *"Major changes in the pipeline for EU rules on technology licensing,"* February 21, 2013. The European Commission has moved a step closer to adopting tougher antitrust rules on technology licensing and has launched a public consultation on these. Industry has just under three months from now to make its views heard.

Kiran S. Desai, Nathalie Jalabert Doury, Hannah C.L. Ha, John M. Hickin, Robert Klotz, Scott P. Perlman, John Roberti, Gillian Sproul, Adrian L. Steel Jr. *"Multijurisdictional Merger Filings: News and Recent Developments,"* February 2013. Cross-border mergers frequently trigger pre-closing antitrust reviews. Such reviews are complex and can be fraught with risk. With more than 90 countries now having obligatory premerger filing requirements, different substantive and procedural regimes can make a multijurisdictional transaction an expensive and time-consuming process.

Nathalie Jalabert Doury, Kiran S. Desai, Robert Klotz, Gillian Sproul. *"The French Competition Authority launches a wide-ranging sector inquiry in the pharmaceutical distribution sector,"* February 2013. On 25 February 2013, the French Competition Authority announced the launch of a sector inquiry in the pharmaceutical sector. The Authority plans to issue its preliminary findings on or about July 2013 in order to deliver its final report and recommendations before the end of 2013.

Philip F. Monaghan. *"Record Fines Imposed in Chinese Maotai Liquor RPM Cases,"* March 2013. On 22 February 2013, the National Development and Reform Commission (NDRC) imposed record penalties under *China's Anti-Monopoly Law* (AML) of RMB 449 million on two liquor companies for resale price maintenance (RPM) practices.

Guilherme Vieira da Silva, Gustavo Flausino Coelho, Ricardo Mafra. *"CADE sets forth new policy in connection with the Cease and Desist Agreement in cartel cases,"* March 2013. On March 11, 2013, the Administrative Council of Economic Defense ("CADE") published in the Brazilian Official Gazette the Resolution no. 5/2013 ("Resolution"), which changes the rules regarding the Cease and Desist Agreement ("TCC"). Most of the new provisions aim to create incentives for defendants in cartel cases to negotiate a TCC in the early stages of an investigation.

John Robert, Meytal McCoy, John Nadolenco, Michael L. Resch. *"Disclosures in 140 characters or Less: New FTC Guidance on Online Advertising Disclosures Target Social Media and Internet Advertisers,"* March 19, 2013. The US Federal Trade Commission recently updated its guidance on online disclosures—Dot Com Disclosures: How to Make Effective Disclosures in Digital Advertising (the 2013 Dot Com Disclosures).

Mayer Brown (cont'd)

Hannah C.L. Ha, John M. Hickin, Philip F. Monaghan. *"MOFCOM invites comments on draft regulations on simple merger cases – What procedural benefits will simple merger cases have?"* April 2013. The draft *Interim Regulations on Standards for Simple Cases of Concentrations of Business Operators* (Draft Simple Cases Regulations) was published for comment on the website of the Ministry of Commerce (MOFCOM) on 3 April 2013. The deadline for submitting comments on the Draft Simple Cases Regulations is 2 May 2013.

Alexandre R. Chequer, Leonardo P. Costa, Gustavo Flausino Coelho, Ricardo Mafra. *"Cooperation Agreement between CADE and ANP,"* April 2013. The Administrative Council for Economic Defense (CADE) and the National Agency of Petroleum, Natural Gas and Biofuels (ANP) have recently executed a cooperation agreement1 ("Cooperation Agreement"), with the purpose of coordinating the activities of both agencies.

Hannah C.L. Ha, John M. Hickin, Philip F. Monaghan. *"MOFCOM Orders Extraterritorial Divestiture of Key Mining Asset in Glencore/Xstrata Merger: Lessons for Future Notifications,"* May 2013. Following a lengthy review lasting the best part of a year, on 16 April 2013 the Ministry of Commerce of the People's Republic of China (MOFCOM) gave a conditional green light to the acquisition by Glencore International plc. (Glencore) of all of the remaining shares of Xstrata plc. (Xstrata), in which Glencore already held a minority equity interest.

John M. Hickin. *"Hong Kong's New Competition Law – Competition Commission Gets Chairperson and Commissioners,"* April 2013. The Hong Kong Government has appointed Members of the Competition Commission on 26 April 2013, to take effect on 1 May 2013 for a period of three years.

Hannah C.L. Ha, John M. Hickin, Philip F. Monaghan. *"MOFCOM Conditionally Approves Marubeni/Gavilon: Competition Law and Industrial Policy in the Agricultural Sector,"* May 2013. On 22 April 2013, China's Ministry of Commerce (MOFCOM) published its conditional approval of Marubeni's acquisition of Gavilon Holdings—hot on the heels of the regulator's conditional clearance of the Glencore/Xstrata merger which also concerned strategically sensitive global markets where China is heavily dependent on imports.

Kiran S. Desai, Nathalie Jalabert Doury, Robert Klotz, Gillian Sproul. *"Changes to the UK competition regime – how will they affect my deal?"* May 2013. The Enterprise and Regulatory Reform Act 2013 ("the Act"), enacted on 25 April 2013, will make changes to the process of assessing mergers, acquisitions and corporate joint ventures ("mergers") when it comes into force in April 2014. It will not alter the turnover and share of supply thresholds that establish whether a deal qualifies for review; nor will it affect the test used to decide whether to block or clear a deal—this will continue to depend on whether the deal concerned will result in a substantial lessening of competition in any market.

Mayer Brown (cont'd)

Hannah C.L. Ha, John M. Hickin, Philip F. Monaghan. *"A New Phase of AML Enforcement by SAIC - Liaoning AIC Publishes Guidelines on Evidence Handling for Antitrust Violations."* Announced on the State Administration of Industry and Commerce (SAIC) website on 3 May 2013, the *Guideline on the Handling of Evidence for Anti-monopoly Cases* (Liaoning Guideline) issued by Liaoning Administration of Industry and Commerce (AIC) represents the next phase of Anti-Monopoly Law (AML) enforcement activity by the SAIC.

Kiran S. Desai, Nathalie Jalabert Doury, Robert Klotz, Dr. Jens Peter Schmidt, Gillian Sproul. *"Merger Control in the EU: More Red Tape for Companies Ahead?"* July 2013. The European Commission has published a staff working document "Towards more effective EU merger control". Interested parties have the opportunity to comment on the Proposal until 12 September 2013. We have significant experience of the EU merger control regime and offer support if needed in making your views known to the Commission.

Kiran S. Desai, Nathalie Jalabert Doury, Robert Klotz, Dr. Jens Peter Schmidt, Gillian Sproul. *"European Commission Opens Consultation on New State Aid Rules for Airports and Airlines,"* July 2013. Public financing of airports and airlines by national and regional governments is currently assessed under the 1994 and 2005 Community Guidelines on State Aid in the aviation sector. The new state aid rules are intended to take into account the changes in the aviation industry in the last ten years and provide guidance on how Member States can support airports and airlines.

Kiran S. Desai, Nathalie Jalabert Doury, Robert Klotz, Dr. Jens Peter Schmidt, Gillian Sproul. *"State Aid – New Rules for Financial Institutions during the Crisis,"* August 2013. On 1 August 2013, a new Communication from the European Commission on the application of state aid rules to support banks, and where appropriate, insurance companies in the context of the financial crisis comes into effect ("2013 Banking Communication"). It replaces the previous 2008 Banking Communication and supplements the existing rules.

Archis A. Parasharami. *"Sixth Circuit Rejects Class Settlement Over Excessive Payments to Class Counsel and Named Plaintiffs,"* August 2013. The federal courts of appeals continue to scrutinize class-action settlements closely when the direct benefits to class members are overshadowed by the attorneys' fees that flow to plaintiffs' counsel.

Archis A. Parasharami. *"D.C. Circuit Overturns Certification of Antitrust Class Action and Requires Reconsideration in Light of Comcast Corp. v. Behrend,"* August 2013.

Kiran S. Desai, Nathalie Jalabert Doury, Robert Klotz, Dr. Jens Peter Schmidt, Gillian Sproul. *"Response to the European Commission's Consultation 'Towards more effective EU merger control'"* September 2013. Mayer Brown welcomes the opportunity to comment on the European Commission's consultation documents "*Towards more effective EU merger control*" ("*Consultation Paper*"). This document reflects solely the view of Mayer Brown. It does not represent the views of any clients of Mayer Brown.

Mayer Brown (cont'd)

Scott P. Perlman, John Roberti, Meytal McCoy. *"Antitrust Confidentiality Waiver Updated by US Federal Trade Commission and Department of Justice."* On September 25, 2013, the US Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ) jointly released an updated model waiver of confidentiality for use in civil matters involving non-US competition authorities.

Hannah C.L. Ha, John M. Hickin, Philip F. Monaghan, Wendy Y.S. Thian. *"MOFCOM Conditionally Clears Baxter/Gambro and MediaTek/Mstar,"* October 2013. In August 2013, the Ministry of Commerce of China (MOFCOM) issued two new conditional approvals, bringing to 20 the total number of transactions cleared with conditions since China's Anti-Monopoly Law was enacted five years ago. The regulator sought "hold separate" obligations from the parties in relation to MediaTek's acquisition of MStar Semiconductor Inc (MStar), while imposing a structural divestiture remedy in *Baxter/Gambro*.

Kiran S. Desai, Nathalie Jalabert Doury, Robert Klotz, Dr. Jens Peter Schmidt, Gillian Sproul. *"EU General Court confirms wide inspection powers of the European Commission,"* October 2013. With its judgment of 6 September 2013, the General Court of the European Union ("General Court") confirmed the legality of the far-reaching investigation powers of the European Commission ("Commission") in competition cases and provided instructive guidance on a number of practical issues likely to arise in the course of inspections (dawn raids).

New York Law Journal

Barbara Goodstein. "Analyzing Antitrust Issues in Lending," June 6, 2013. Article discusses antitrust issues facing lenders.

Oil & Gas Financial Journal

Scott Perlman. *"Energy M&A under the Hart-Scott-Rodino Act,"* November 11, 2013. Article provides a brief overview of how provisions in the Hart-Scott-Rodino Act apply to energy-related transactions.

The Asia-Pacific Antitrust Review 2013

Philip Monaghan. *"China: Anti-Monopoly Law,"* February 27, 2013. Article discusses anti-monopoly law in China.

The Price Point

Meytal McCoy and Steve Medlock. *"How Low Can They Go?: Practical Resolutions to Differing State Approaches to Minimum Resale Price Maintenance,"* The Price Point, Summer 2013. Article provides resolutions to differing state approaches to minimum resale price maintenance.

GLOBAL COMPETITION OUTLOOK: 2014

Mayer Brown's competition team presents its "2014 Outlook," where we identify the key issues and describe our expectations for the year ahead.

Generally, in 2014, we expect significant increases in competition law enforcement. In the United States, the second term of the Obama administration has begun with even greater antitrust enforcement, while European competition enforcement continues unabated. Additionally, China and Brazil have emerged as two of the most important regimes.

United States

In 2013, the US Federal Trade Commission (FTC) and Department of Justice's Antitrust Division (DOJ) grabbed headlines with high-profile litigation such as challenges to business conduct with respect to e-book sales and to the merger between US Airways and American Airlines. We expect continued aggressive enforcement across all industries and sectors, with particular focus on the following:

- **Merger Investigations.** The government has demonstrated that it is prepared and equipped to challenge mergers in court. While it will be possible to get most mergers cleared, some transactions that may have gone through unchallenged five years ago—or even three years ago—will meet with more resistance, and remedies will be scrutinized.
- **Vertical Issues.** After years of disinterest during the first part of the millennium, there have been expressions of renewed focus on vertical enforcement. The FTC and DOJ will focus on exclusive contracting provisions, "Most Favored Nation" clauses, and/or contractual terms that have the effect of limiting competition. Mergers that raise vertical issues also will be scrutinized.
- **Information Exchange.** The FTC will issue an opinion in 2014 in a pending administrative case (McWane) that may provide some guidance on information exchange. But regardless of that decision, information exchange is an issue that will continue to generate interest among enforcers. There are long-published guidelines that are unlikely to be modified and that, if followed, generally provide a safety zone in which to operate. Information exchanges outside of the safety zone should be undertaken with care and counsel.
- **Intersection of Intellectual Property and Antitrust.** The current FTC chairwoman began her career as an intellectual property lawyer. The agencies will review the role of "patent assertion entities" (also called patent trolls), will continue to investigate standard setting conduct, and will sustain their efforts to curb purported abuses of intellectual property. There also could be a legislative fix for patent troll issues in 2014.
- **Cartel Enforcement.** Although there is a new Deputy Assistant Attorney General in charge of criminal antitrust for the first time in more than eight years, the DOJ likely will maintain its carrot-and-stick approach to detecting, deterring, and prosecuting domestic and international cartels. Attacking international cartels and expanding cooperation with foreign

enforcement authorities will remain two of the DOJ's top priorities. In the courts, the DOJ faces two serious challenges to its expansive view of the Sherman Act's application to foreign conduct in cases pending before the Second and Ninth Circuits.

- **State Enforcement of Antitrust.** State attorneys general will continue to file lawsuits pursuing antitrust claims and will continue to challenge mergers that they think could impact citizens of their respective states. We expect state attorneys general particularly to be active in the health care industry.

With respect to private actions, we expect that several high-profile rulings last year by the Supreme Court and US Courts of Appeals will remain in focus in 2014, as litigants test the application of these cases in the district courts. In addition, businesses should continue to expect that US and foreign government antitrust enforcement efforts will result in follow-on private litigation, as described further below:

- **Class Certification Standard.** Class Certification will continue to be a hot issue, and we expect class action plaintiffs to continue to press their case for lowering the class certification bar. The law is evolving in this area, particularly as to the level of proof required. The federal appellate courts already have reached conflicting decisions as to the meaning of the Supreme Court's 2013 ruling in *Comcast Corp. v. Behrend*, which held that critical class certification questions had to be supported by admissible evidence; this makes it more likely that the Supreme Court may take on another class action case. The plaintiffs bar will be looking for ways to make class certifications easier.
- **Extraterritorial Reach of US Antitrust Laws.** Federal courts continue to disagree on the scope of the Foreign Trade Antitrust Improvements Act (FTAIA). While recent decisions by the Third and Seventh Circuits potentially expand the type of foreign conduct that could violate US antitrust laws, the Second and Ninth Circuits have taken a more restrictive stance. Until the circuit split is resolved, we expect plaintiffs to argue for an expansive view regarding when a defendant's foreign behavior can be subject to US antitrust jurisdiction. US plaintiffs' lawyers also will try to bring actions for recovery against cartels that were based outside the United States, even if the impact on the United States is very limited.

The European Union

In this last year of EU Competition Commissioner Almunia's current term, we expect ongoing merger control enforcement, a significant number of cartel decisions, increased enforcement in key industries such as financial services and network industries, and an intense debate regarding certain subsidy schemes.

- **Merger Control.** The Commission will continue to try to expand its jurisdiction, particularly to minority shareholdings, and will conclude a number of in-depth investigations in 2014. The telecommunications sector will be subject to significant review as the European Commission will examine thoroughly consolidation in mobile networks. While the new simplification of the merger control process for noncontroversial mergers could result in more efficient reviews, we are somewhat skeptical that it will meet expectations.
- **National Agencies Will Play Key Roles.** National competition agencies in Europe will play an important role in 2014. In the highly politicized food and retail industries, the Commission largely has deferred to national regulators the investigation of potential anti-competitive conduct. National antitrust authorities, such as those in France, Germany, and the UK (which will have a new competition authority, the Competition and Markets Authority, beginning on April 1, 2014), are front-runners in investigations in the online trading space. However, the Commission will continue to exert its influence and will conduct raids and investigations in cases it deems important.

- **Intellectual Property.** Intellectual property issues will be prominent in 2014. The existing framework for the analysis of technology transfer agreements (patent licensing, software copyright licensing, etc.) will expire at the end of April 2014, requiring the Commission to update the current rules regarding the licensing of intellectual property rights. Other areas in the 2014 spotlight will be investigations around standard essential patents, in particular in the IT and telecommunication sectors and in the energy industry.
- **Private Damages.** It is likely that the Commission's proposal for a directive to Member States to implement rules governing actions for damages for infringements of the EU antitrust rules will be adopted before the elections for the European Parliament in summer 2014. This will conclude a process that was begun by the Commission in 2005. This directive aims at removing the main obstacles to effective compensation for citizens and businesses harmed by EU antitrust law violations. Once the directive has been adopted, it must be implemented locally by the EU Member States within a defined period. In the meantime, the Commission's proposal has not deterred individual Member States from developing their own laws and procedures to facilitate competition damages actions, with the United Kingdom, Germany, and the Netherlands seeing the greatest number of claims. We expect to see the volume of new damages claims increase in 2014, and we expect to see a number of disputes regarding jurisdiction.
- **State Aid.** The Commission will complete the modernization of the state aid rules in such key areas as airports and airlines, energy, environment, research and development, and rescue and restructuring aid. In particular, we expect that the proposed guidelines for assessing public support in the field of energy and the environment will trigger an intense public debate, as national support for a number of important industries across Europe is at stake.

China

China pursued aggressive enforcement of its Anti-Monopoly Law's behavioral rules in 2013. This enforcement trend is set to continue with fines for the first time going into the hundreds of millions of US dollars. Private enforcement now also is vibrant, and the Supreme People's Court recently heard its first abuse of dominance case—*Qihoo 360 v. Tencent QQ*. Merger control will continue to grab the headlines as MOFCOM, China's Ministry of Commerce, shows that it will not shy away from controversial remedies.

- **Alleged Anti-Competitive Agreements.** Cartels and vertical agreements (in particular, resale price maintenance—RPM) will continue to attract the attention of the National Development and Reform Commission (NDRC) and State Administration for Industry and Commerce (SAIC)—the two agencies in China responsible for enforcing non-merger competition law. Given NDRC's preference for a per se approach to a supplier's requirement that a retailer set a fixed or minimum resale price, as demonstrated in Infant Formula, sectors where such practices continue will likely become a focus of unwanted attention. LCD Panels highlights the risk of Chinese enforcers initiating "copy cat" investigations in the wake of investigations in the European Union and the United States. We expect this trend to continue.
- **Abuse of Dominance.** While Chinese authorities have not had any high-profile abuse case, this is set to change in 2014. A number of multinationals are now under investigation for alleged abuse of dominance in markets such as packaging machinery. The decisions in these investigations can be expected to set the tone for some time to come.
- **Intersection of Intellectual Property and Antitrust.** The interplay between intellectual property law and competition law, and the extent to which industrial policy plays a part in resolving the tension between these two areas, will be something to watch. Notwithstanding official pronouncements that industrial policy should begin to take a back seat in competition cases generally,

we expect that industrial policy will continue to feature in high-profile IP-related cases. The authorities also will issue long-awaited rules on the application of competition law to abuses of intellectual property rights, including standard essential patent licensing.

- **Merger Control.** MOFCOM's growing caseload, combined with its lack of resources, will result in the extended review periods to which we are unfortunately accustomed. While MOFCOM will publish new rules for simple cases in 2014, industrial policy will continue to feature in the more difficult cases and any transaction that involves key inputs for Chinese manufacturers will be scrutinized closely. With MOFCOM now having opened 10 investigations into alleged breaches of the notification obligation, 2014 may be the year that MOFCOM orders parties to "unscramble the eggs" and undo a consummated merger.
- **Civil Litigation and Judicial Review of Administrative Enforcement.** In 2014, we can expect the first antitrust judgment from the China Supreme People's Court, as well as continued activity in the lower courts. In many ways, antitrust in the courts demonstrates a genuinely rigorous engagement with the issues—a true economics-based approach—that one does not always see in public enforcement. Continued aggressive public enforcement will see pressures building for increased procedural protection in 2014, and some parties may turn to the courts in that context.
- **Hong Kong.** The Hong Kong Competition Commission will announce key appointments to the secretariat of the Competition Commission in the first quarter. The first set of competition law guidelines should be published in the second quarter for consultation and adopted later in the year. We expect that the date for implementation of the prohibitions in the Competition Ordinance will be made known in the second half of the year. The prohibitions will likely come into effect at the very end of 2014 or beginning of 2015.

Brazil[1]

The Brazilian Antitrust Authority (CADE) 2013-2016 Strategic Plan, which was issued in June 2013, states an intention to focus on sectors that "have a big social and economic impact." We expect that 2014 will bring enhanced enforcement, including the following:

- **Merger Control.** Oil and gas, civil construction, and banking and financial are some of the sectors included in the priority list of the Brazilian Antitrust Authority. As CADE focuses on those sectors with substantial "social and economic impact," we expect detailed merger reviews will continue. We also expect additional focus on non-substantive elements of merger filing, such as challenging parties that provide misleading information or engage in pre-clearance gun-jumping activities. CADE also will give attention to providing guidance on the meaning of an "associative agreement," which is described in the new Brazilian Antitrust Law as a "concentration act" but currently remains largely undefined.
- **Cartels.** CADE has focused on international cooperation recently, signing 10 collaboration agreements in the last two years. In 2014, CADE will apply a special effort in fighting unlawful collusion in public bids. The Soccer World Cup is to be held in Brazil, and CADE and other authorities likely will focus on rooting out corruption in the public or semipublic sectors. High-profile cases like the cement and concrete cartel investigations should be ruled on this year.
- **Brazilian Leniency Policy.** CADE will continue to emphasize its leniency program, which creates great incentives for companies to identify wrongful conduct. As of October 2013, there were more than 50 formalized Leniency Applications pending, and we expect CADE to launch a great deal of new cartel investigations.

1 Observations about Brazilian law are by Tauil & Chequer Advogados.

- **Abuse of Dominance.** We expect more abuse-of-dominance cases in 2014. While CADE has struggled to bring these cases in the past, recent high-profile cases in 2012 and 2013 suggest that there will be more to come.
- **Competition Litigation.** Judicial review will help to clarify key legal doctrine in Brazil. Parties have been challenging CADE's decisions, and court decisions will provide further guidance on the elements and level of proof for a violation. Key issues, such as the intersection between competition and intellectual propriety in Brazil, likely will be developed in the courts.

Key Industry Sectors

We believe that the following industry sectors could be particular targets for competition inquiries or actions.

- **Banking and Financial.** Regulators in the United States and the European Union will focus on this industry, with the DOJ's investigations in the financial services industry, such as those involving municipal bonds, LIBOR, and foreign exchange rates, likely to intensify. The banking and financial industry not only has received increased scrutiny from antitrust enforcement agencies, but also has been the subject of increased private civil litigation. We expect this trend to continue, as antitrust enforcers will review more and more benchmarking and other practices, while plaintiffs will look to expand into other areas of the financial services business.
- **Pharmaceuticals.** The US Supreme Court's ruling in *FTC v. Actavis*, that plaintiffs may establish antitrust liability in "reverse payment" patent settlement under a rule of reason analysis, may have created more questions than answers. The US plaintiffs' bar will continue to bring lawsuits challenging pharmaceutical practices and trying to stretch the antitrust laws to reach new conduct. The US antitrust agencies also will continue to focus on pharmaceutical antitrust, including "reverse payment" patent litigation settlements, and other practices that purportedly delay or hinder generic drug companies or otherwise result in higher prices, such as "product hopping" and the use of restricted distribution systems. We also expect the European Union to maintain its focus on the pharmaceutical industry and to continue to pursue abuse-of-dominance cases against pharmaceutical companies that make agreements relating to pharmaceutical entry or that might result in higher prices.
- **Auto Parts.** The ongoing criminal investigation into the auto parts industry will continue to generate corporate and individual pleas, although the biggest corporate fines may be behind us. There likely will continue to be private litigation against alleged participants in the United States.
- **Health Care Providers.** The US antitrust agencies will continue to closely examine consolidation among health care providers in 2014. Recent enforcement efforts have centered on the merger of hospitals. In the coming year, however, we expect a higher level of scrutiny on hospitals' efforts to acquire physician practices and mergers between physician practices.

Mayer Brown's Global Antitrust & Competition group is uniquely positioned to offer up-to-the-minute guidance on a host of competition-related issues including mergers, cartel investigations and related litigation, distribution and licensing issues, and alleged abusive conduct by dominant firms and state aid. With offices in the Americas, Europe and Asia, as well as correspondent and other relationships with antitrust counsel throughout the world, our global team, which includes former enforcement agency officials, has a wealth of experience in managing multijurisdictional merger filings, advising on the applicability of national merger control regulations and securing merger control clearances throughout the world. The group also has extensive experience and success in representing clients in high-stakes civil and criminal litigation, including litigation before the US Supreme Court and the European Courts of Justice. Further, our antitrust lawyers in Hong Kong and China and in South America are skilled at navigating the range of competition laws in their regions and offer clients the benefit of extensive antitrust filing experience and strong relationships with key competition agencies.

About Mayer Brown

Mayer Brown is a global legal services organization advising clients across the Americas, Asia and Europe. Our presence in the world's leading markets enables us to offer clients access to local market knowledge combined with global reach.

We are noted for our commitment to client service and our ability to assist clients with their most complex and demanding legal and business challenges worldwide. We serve many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest banks. We provide legal services in areas such as banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; US Supreme Court and appellate matters; employment and benefits; environmental; financial services regulatory & enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

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