



# International Antitrust Committee: The Newsletter

JANUARY 2011

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**MESSAGE FROM THE COMMITTEE CO-CHAIRS**

*Mark Katz & David A. Schwartz*

**MESSAGE FROM THE EDITORS**

*Ethan E. Litwin, Mark McCowan & Marta Palacios*

**FOCUS ON ... PRIVATE ENFORCEMENT**

Brazil .....*Bruno L. Peixoto*

France .....*Aurélien Condomines*

Korea .....*Dae Sik Hong, Sung Moo Jung & Suejung Alexa Oh*

Mexico .....*Francisco Fuentes Ostos*

Netherlands ... *Robert J. Gaudet, Jr. & Karin Asmus*

**RECENT DEVELOPMENTS**

Argentina Antitrust Update.....*Marcelo den Toom*

**COMMITTEE NEWS**

## Message from the Committee Co-Chairs

Mark Katz & David A. Schwartz

Welcome to the first issue of the International Antitrust Law Committee's *Newsletter*. Thanks to the editors - Ethan Litwin, Mark McCowan and Marta Palacios - and to all the authors for their contributions.

Our goal with the *Newsletter* is to provide brief articles (3-5 pages) on topics of interest to international antitrust lawyers and to keep readers informed of Committee activities. You can find out more about our Committee and what we do at <http://www.abanet.org/dch/committee.cfm?com=IC722000>.

We hope to publish the *Newsletter* three times per year - in January and in connection with the annual Spring and Fall Meetings. If you would like to write an article for the *Newsletter*, please contact Ethan ([litwin@hugheshubbard.com](mailto:litwin@hugheshubbard.com)), Mark ([Mark.McCowan@corrs.com.au](mailto:Mark.McCowan@corrs.com.au)) and Marta ([MPalacios@perkinscoie.com](mailto:MPalacios@perkinscoie.com)) for further information.

The *Newsletter* complements our Committee's more frequent publication of *International Antitrust Hot Topics*, our 2-3 page periodical discussing recent developments and their expected ramifications. If you would like to contribute a future *Hot Topic*, please contact the editors - Marcelo den Toom ([marcelo.dentoom@bomchil.com](mailto:marcelo.dentoom@bomchil.com)) and Samuel Sadden ([Samuel.Sadden@vvgb-law.com](mailto:Samuel.Sadden@vvgb-law.com)).

Finally, as Co-Chairs of the International Antitrust Law Committee, we welcome your comments and suggestions. Please let us know how we can make our Committee's activities (including the *Newsletter* and *Hot Topics*) more useful to your practice. In particular, we welcome your input on selecting a catchier name for this newsletter than ....the *Newsletter*.

We wish you all the best in this New Year!

Sincerely,

Mark Katz ([mkatz@dwpv.com](mailto:mkatz@dwpv.com))

David Schwartz ([DASchwartz@WLRK.com](mailto:DASchwartz@WLRK.com))

## Message from the Editors

Ethan E. Litwin, Mark McCowan & Marta Palacios

Our inaugural issue of the *Newsletter* focuses on the private enforcement activities of antitrust law, with contributions from authors in Brazil, France, Korea, Mexico and The Netherlands. As the authors of these articles make plain, regulators around the globe recognize the importance of supplementing regulatory jurisdiction with incentives for companies and individuals to enforce local antitrust and competition laws privately. This is not to say that regulators seek to recreate a U.S.-style class action/treble damages model within their own jurisdiction; rather, as the authors note, these regulators seek a middle road between exclusive regulatory enforcement and the perceived excesses of the U.S. model. Yet the U.S. model itself is not static. Although some of its features -- right to jury trial (1789), treble damages (1914), right to recover attorneys' fees (1914), and the class action device (1937) -- are well-established in U.S. law, other long-standing rules of procedure and substance have been called into question and fundamentally altered by a very active federal judiciary. Indeed, with the retiring of the *Conley v. Gibson* notice pleading standard (1957) in *Bell Atlantic v. Twombly* and the retrenchment of some *per se* rules (e.g., resale price maintenance), the Supreme Court appears intent on fundamentally reshaping private enforcement in the U.S. even as the lower courts seek to conduct robust and substantive reviews of all attempts to certify class actions. These efforts notwithstanding, however, there is a general consensus in the U.S. that private enforcement is vital to the protection of competition in the U.S. economy. The adoption of private enforcement procedures around the world can only help ensure the protection of competition on a global scale.

Also included in this newsletter is an insightful review of recent developments in Argentina. The fast pace of economic development across Latin America requires robust regulatory oversight, and it comes as no surprise to learn that Argentina's antitrust regulator has been working at full capacity in recent years on both merger control investigations and on matters concerning anticompetitive conduct.

Future *Newsletters* will include a discussion of Mexican antitrust law and several articles concerning the economics of antitrust. Please contact us if you are interested in contributing articles on these topics or if you have ideas for other topics or recent developments that would be of interest to our audience of international antitrust lawyers.

## FOCUS ON...PRIVATE ENFORCEMENT

### Private Antitrust Actions in Brazil

Bruno L. Peixoto \*

Brazil has been in the spotlight in recent years due to enhanced public enforcement of antitrust laws and especially the surge in anti-cartel enforcement. Authorities have boasted about the numbers of dawn raids conducted this year (30), criminal actions already filed (100+), and cartel investigations in progress (200+). Much less has been said about the substantial recent developments in private enforcement, such as the first court decisions and major antitrust collective actions. In fact, another boost in antitrust enforcement is taking place, although now before state and federal courts. At least ten private actions have been successfully filed in the country, resulting in settlements or significant (though not final yet) decisions.

Article 29 of Law No. 8,884 of 1994 (the Brazilian Antitrust Act) explicitly grants standing for injured parties to seek - either by themselves or through adequate representatives - damages, including lost profits, as well as injunctive relief against anticompetitive practices. It provides for follow-on and stand-alone antitrust actions.

#### FOLLOW-ON ACTIONS

Although the antitrust law was enacted in 1994, the first private actions were filed more than a decade later, following one of the major cartel rulings by the Administrative Council for Economic Defense (CADE). In 2005 CADE fined steel producers ArcelorMittar, Barra Mansa, and Gerdau for customer allocation, resale price maintenance, and collusion for fixing prices of steel rebars used in the civil construction industry for concrete reinforcement. In 2006 steel distributors filed the first private actions claiming that they were allocated amongst the producers and injured by (i) a price squeeze resulting from the combination of cartel prices in upstream markets and resale price maintenance in downstream markets, and (ii) boycotts and price discrimination after defendants established their own distribution systems. In a landmark decision, a state judge granted preliminary injunctive relief, ordering defendants to sell steel rebars either for the pre-cartel prices, adjusted for inflation (*status quo ante*), or the prices the firm sold to its controlled distributors. On appeal, the Court of Justice of Minas Gerais considered the opinions of CADE and the Secretariat of Economic Law (SDE) to be "unequivocal evidence" that the vertical restraints were aimed at sustaining the collusive scheme and, therefore, unanimously upheld the preliminary injunction. Several similar actions by steel distributors followed.

In addition, associations of construction companies have filed a collective action against the steel producers seeking damages and lost profits as well as injunctive relief against allegedly ongoing market division and overcharge practices.

A second major collective action for cartel damages and injunctive relief was brought recently by associations of hospitals against suppliers of medical gases, following a CADE ruling imposing record fines of more than USD 1.3 billion for price-fixing and market division. In a very recent decision, a state judge issued a preliminary injunction to prevent the further imposition of cartel overcharges, ordering defendants to sell medical gases, including oxygen, carbon dioxide, and nitrogen to plaintiff hospitals for competitive prices

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\* Lanna Peixoto Advogados

as established before the court by means of expert opinions and specific data.

### **STAND-ALONE ACTIONS**

In 2008 CSN, a leading steel company sued Vale, the world's largest iron ore mining company, for refusal to deal. CSN claimed that Vale - allegedly a quasi-monopolist firm in the national iron ore pellets market - had unilaterally terminated a long-term commercial relationship, halting the supply of iron ore pellets, an essential input for producing pig iron, impairing CSN's ability to effectively compete in that market. The state judge of first instance granted injunctive relief, ordering Vale to sell the quantities of pellets demanded by CSN. In an appeal filed by Vale, the Court of Justice of Rio de Janeiro issued a preliminary decision limiting the compulsory sale of iron ore pellets to 56,229 tons per month based on past dealings. The parties subsequently reached a settlement.

It is relevant to ask why a company would prefer to file a stand-alone antitrust action before a general court rather than a claim before the SDE. There are at least three compelling reasons. The first is the possibility of reaching a private settlement - a strategic consideration when suing suppliers or customers and a clear advantage over claimants' lack of control over public enforcement.

The second and less obvious reason is that, when dealing with agencies with scarce resources and a shortage of personnel, which is the case in Brazil, it might not be easy to predict how high your case will be placed on the agency's list of priorities, considering all the requests for leniency, cases jointly pursued with other authorities, and the common political choices to prioritize specific markets. Conversely, when filing a private action, plaintiffs are not only sure that their request for preliminary injunction will be examined in due time, but also, if their request is denied in the first instance, that they will be able to appeal to the Court of Appeals and to the Superior Court of Justice if necessary.

Third, while the point could be made that a private action might take up to a decade to be resolved if it goes all the way up to the Supreme Court, the same may be true for a high-profile claim filed before the SDE. A complex case often takes more than five years to be concluded and sent to CADE for adjudication, especially in highly litigated proceedings in which investigated parties challenge SDE's decisions before the federal courts. In addition, further review by CADE's Commissioners might take one or even two additional years. On top of that, almost every recent CADE ruling has been challenged, thus, ending up in the courts anyway. As a matter of law, agencies' decisions are always subject to comprehensive judicial review. Courts may review the administration's findings of fact and law pursuant to Article 5 (XXXV) of the Brazilian Constitution. Consequently, there is a clear case for initiating and conducting an antitrust action before the judiciary at once, where plaintiffs may rely on expert opinions and request that CADE intervene on their behalf.

### **COLLECTIVE ACTIONS REGIME**

Two types of collective actions may be filed to halt or remedy anticompetitive practices: (i) public civil actions; and (ii) collective actions for the defence of "homogeneous individual rights".

The former aims at halting and/or remedying illegal conduct that affects "diffuse interests" and is often brought by the Public Prosecutor's Office (PPO) or consumer associations.

The latter aims at obtaining monetary damages and/or injunctive relief for a class of plaintiffs and are often brought by trade associations, but may be also filed by consumer or other associations, the PPO, the Union, the States, Municipalities, the Federal District, and administrative agencies. Following the filing, courts publish a notice in the official

gazette to allow interested parties to intervene and join the plaintiffs. In such actions for damages, courts first issue a general and broad ruling establishing that defendants must pay monetary damages (e.g. for the overcharges imposed) to injured parties according to the extent of the injury individually suffered which will be subsequently calculated and recovered through the specific procedure of liquidation.

### **DAMAGES**

Damages reflect the actual extent of the injury caused by defendant's antitrust violations (i.e. single damages) and are calculated by means of expert opinions. Plaintiffs may claim damages for (i) past and present actual losses (e.g. overcharges), (ii) reasonable lost profits according to a "pre-post" approach, including projected sales and estimated growth, and (iii) injury to the firm's reputation, goodwill and image. In addition, successful plaintiffs are awarded court costs, statutory attorneys' fees, interest on actual damages and post-judgment interest.

### **PASSING-ON DEFENSE AND INDIRECT PURCHASER LITIGATION**

There is no statutory provision or judicial decision barring defendants from asserting passing-on defenses, despite the arguably positive effects that such a restriction would have on deterrence and consumer welfare, when combined with a ban on indirect purchasers' actions. Pursuant to the rule established by the Code of Civil Procedure, defendants bear the burden of proving facts that "impede, alter, or extinguish" a plaintiff's claimed right and therefore, in order to successfully assert a passing-on defence, must prove that plaintiffs effectively passed on the claimed overcharges.

As there is no provision barring indirect purchasers from filing recovery actions either, defendants might face simultaneous actions from direct and indirect purchasers. In such cases, the actions will be consolidated and analyzed by the same judge, who must apportion damages between classes to avoid undue multiple compensation.

### **INJUNCTIVE RELIEF**

Plaintiffs suing for injunctive relief must demonstrate a violation or threat of a violation of the law (tutela inibitória). In order to grant a preliminary injunction, judges must weigh the alleged facts and presented evidence, and find a probable violation or threat of a continuous or recurrent violation of the law (antecipação da tutela inibitória). In at least two major cases, preliminary injunctions have been issued by judges and upheld by Courts of Justice, ordering defendants to deal with plaintiffs on a non-discriminatory basis.

### **CONCLUSION**

Brazilian courts have started to develop case law and enhance both legal certainty and parties' confidence in their ability to assess expert opinions and properly enforce antitrust laws. As the number of actions increases and firms internalize their costs, private enforcement will substantially enhance deterrence. It seems to be the dawn of a second revolution in antitrust enforcement in Brazil.

## Private Enforcement of Antitrust Laws in France

Aurélien Condomines\*

While public authorities in Europe have proven very active in enforcing antitrust laws, both at the European and national levels, private enforcement of antitrust claims is still at an early stage in Europe. For various reasons and, in particular, the fear of excessive litigation, legislators and courts in Europe are generally reluctant to encourage private enforcement, although the European Commission has set up a program to promote it and may propose European legislation on this issue in the years to come. This is also partly true for France, where certain legal obstacles - mainly due to the availability of the passing on defence - make it necessary to approach private antitrust litigation with care.

In France, as in all European countries, it is possible to sue cartel participants or monopolists in order to claim compensation for the consequences of the infringement of antitrust laws. In cases of infringements of European competition law, the European Court of Justice has ruled that "full effectiveness of art. 101 [of the EU Treaty] would be put at risk if it were not open to any individual to claim damages for loss caused by a contract or a conduct liable to restrict or distort competition"<sup>1</sup>. French courts also allow compensation claims based on infringements of articles L.420-1 and L.420-2 of the French commercial code, the equivalent of sections 1 and 2 of the Sherman Act under French law.

Whether these claims are based on contractual liability principles or tort law, it is clear that the remedies granted by French courts will have a strictly compensatory nature. There are no punitive damages in France and, on the contrary, courts are reluctant to consider compensation claims as a way of deterring companies from future infringements or promoting the general public interest. These objectives are left with the public authorities. Nevertheless, France is one of the few European countries where there have been a significant number of cases in recent years. Another major feature of French law is that there is no class action system. Hence, cases are brought to court by companies and, more rarely, by non-governmental organizations in charge of consumer protection. Indirect buyers, such as final consumers, would have standing to sue in France, but are generally discouraged by the burden of litigation.

Because the first condition for successfully claiming damages is the demonstration of an antitrust infringement, it is not advisable to litigate in France in the absence of an infringement decision by the European Commission or a national antitrust authority. Discovery systems do not exist in France and it is therefore difficult to prove an infringement as a private party. The Commission and national authorities, on the other hand, have wide powers of investigation. Their decisions are likely to be considered as binding on the courts in damage recovery actions, if they have found the defendant(s) guilty.

French courts have awarded significant sums - under French standards - to corporate buyers claiming to be victims of cartels and abusive conducts since the end of the nineties. In a 1998 case, which was one of the first private enforcement cases in France, the Paris Court of Appeals granted approximately EUR 5 million to a company who was

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1 ECJ, July 13, 2006, Manfredi, C- 295-298/04

excluded from a market by a dominant company<sup>2</sup>. In another abuse of dominance case decided in 2001, the same court granted damages up to approximately EUR 1.5 million<sup>3</sup>. Other private enforcement cases concerned boycotts and agreements in restraints of trade.

A landmark case was decided in 2006 concerning the so-called “vitamins cartel”, which had been uncovered and sanctioned by the European Commission<sup>4</sup>. The claimant, a corporate buyer of vitamins, presented expert evidence calculating damages based on the “but for” principle, which compares the existing market situation with the hypothetical situation of the market in the absence of the cartel. But the court considered that the claimant insufficiently demonstrated its case, in particular because it did not show that it had not passed on the overprice resulting from the cartel to its own customers. It thus applied the passing on defence very strictly.

The issue of the passing on defence is key for plaintiffs with an interest in bringing private actions in Europe. The defence has already been accepted in several European countries (such as Denmark, Italy and Germany), in different ways and with different results. In France, the question was brought up again very recently in a case concerning the so-called “lysine cartel”, another cartel uncovered by the European Commission. A French corporate buyer of lysine sued its supplier, who had been found to have participated in the cartel, and asked for a compensation for the overprice generated by the cartel. The Paris Court of Appeals granted such request, stating that it was indifferent, in terms of liability, whether the overprice had been passed on or not. The Supreme Court annulled that judgment in July 2010, on the ground that the Court of Appeal should have answered the defendant’s assertion that the overprice had been passed on to the plaintiff’s customers. The Supreme Court specified that the Court of Appeals should have verified whether such passing on had occurred “partially or totally”. This implies that the passing on defence should be considered, in France, as a modality for the calculation of damages, not as a defence barring direct buyers from claiming damages from cartel participants.

The question of whether the burden of proof of the passing on defence rests on the defendant or the plaintiff remains somewhat unclear. In the lysine case, the Supreme Court stated that the Court of Appeals should have taken into account the argument of the defendant concerning the passed on overprice. But this does not necessarily mean that the defendant can allege the passing on without proving it. The above mentioned older judgment in the vitamins matter seemed to put the burden of proof on the claimant, but it was issued by a lower court and should not be considered as binding for other cases. Under French law, the burden of proof for damages rests in principle on the claimant, but the proof of a specific defence should rest on the party using the defence. This would also be in line with the recommendations of the European Commission in its 2008 White Paper on antitrust damages actions.

As a result of the French Supreme Court’s decision on the lysine case, it is now clear that antitrust damages recovery actions in France will require reliable and well-argued expert evidence on the calculation of the damages. It may be argued that such an expertise will be required in most jurisdictions anyway. But particularly in France, it would seem advisable for the expert to take into account the proportion of the overprice that has been passed on to customers.

Apart from the passing on issue, there are no major obstacles to antitrust damages recovery claims in France. The statute of limitations - five years from the date the

<sup>2</sup> Paris Court of Appeals, Judgment of September 30, 1998, Mors/Labinal, Jurisdata n°1998-022264

<sup>3</sup> Paris Court of Appeals, Judgment of October 22, 2001, UGAP / Camif, Jurisdata n° 2001-157128

<sup>4</sup> Commercial court of Nanterre, Judgment of May 11, 2006, Paris Court of Appeals, Arkopharma/Roche, unpublished

damage is known - leaves sufficient time for preparing and implementing an action. The cost of litigation is not very high and one of the main cost items will probably be the work of an economist on the calculation of the damages, which can usually be used for several jurisdictions. The length of proceedings can be pointed out as a possible downside: it usually takes approximately two years to obtain a first instance decision and two additional years before an appeals court. Nevertheless, it is likely that recovery actions will further grow in importance in France, as in other European countries, in the years to come.

# Private Enforcement of Antitrust Laws in Korea

Dae Sik Hong\*, Sung Moo Jung and Suejung Alexa Oh\*\*

## THE TREND

Competition laws in Korea are primarily enforced by the Korea Fair Trade Commission (the "Commission"). Private enforcement actions, however, have seen a dramatic increase in recent years, partially as a result of regulatory amendments that have facilitated the role of civil plaintiffs in curbing anticompetitive behavior.

One major regulatory development that contributed to the increase of private enforcement actions is the abolishment of the requirement for finalization of the Commission's disposition for private plaintiffs to initiate legal action for antitrust damages under the Monopoly Regulation and Fair Trade Act (the "MRFTA"). Prior to the 2004 amendment of the MRFTA, plaintiffs were required to wait until finalization of corrective measures by the Commission in order to bring a civil claim for competition laws violations. In the event of an appeal to the Commission, the appeal procedures also needed to be finalized and the corrective orders confirmed in order for the plaintiffs to bring suit. On the other hand, upon finding of a violation, defendants were barred from invoking any defense to negate intent or negligence during the civil damage court proceedings. However, the amended MRFTA has abolished this requirement and plaintiffs are free to bring a claim for damages under the MRFTA at any time, even during investigation of the case by the Commission.

## GENERAL PROCEDURES

Despite these regulatory developments, civil claims for competition law violations are rarely initiated without a finding of a violation by the Commission. Due to the absence of class action claims and extensive discovery procedures similar to those available in the U.S., the burden of litigation on a private individual would be quite extensive absent a finding of a competition law violation by the Commission.

Private enforcement action following a finding of a violation by the Commission circumvents such hurdles. With finalized Commission proceedings, the findings of the Commission may be presumed by the courts although the court is not bound to the facts as determined by the Commission. Because of the assumption of violation that follows Commission findings, plaintiffs have incentives to initiate damage claims despite ongoing administrative appeals. The Commission is also required to submit its records on the relevant case when ordered by a court. Thus, for cases previously investigated by the Commission, essentially the same evidence as utilized by the Commission would be used in claims against former respondents in private enforcement actions.

This aspect may be a cause for concern by leniency applicants - although documents submitted to the Commission are considered confidential, there would be no regulatory basis for the Commission to refuse providing the courts with the gathered evidence if ordered to do so for follow-on litigation. Despite discussions to introduce a mechanism to exempt leniency documents from this production requirement, a solution is not yet in place.

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## CALCULATION OF DAMAGES

The amended MRFTA provides the presiding courts with authority to “recognize a reasonable amount of damage based on the gist of entire arguments and the outcome of investigating evidences.” In cases where a number of plaintiffs have each incurred relatively small amounts of damage, the provision allows the court to recognize a certain amount as an aggregate loss and thereby alleviate the burden on each plaintiff to show the exact amount of its damage arising from the defendant's conduct. The court has utilized this provision in awarding damages to purchasers in a school uniform cartel case where the damage to each individual had been relatively small. In a claim for damages against petroleum companies in Korea for bid-rigging in supplying fuel to the Korean military, the court declined to accept “negation of damages by cartelists on the basis of inability to provide concrete proof of amount.”

The courts however, have been cautious not to over-extend this more lenient approach to the issue of causation. For example, in the abuse of market dominance case against Microsoft, the district court found that the plaintiffs failed to show a causal link between Microsoft's violations as found by the Commission and the loss claimed by the plaintiffs, which they attributed to the closing of their messenger-based businesses. This is most likely because the losses claimed were based on unrealized profits.

Whereas the courts' authority to estimate damages makes private actions more accessible for individual plaintiffs, the use of economic analysis in the assessment of damages has become a major issue in cases where the claimed damages are substantial, such as in the case of military fuel bid-rigging. The Korean courts have generally adopted a “but for” approach in calculating damages in civil litigation - the Supreme Court went so far as to establish that damages in private enforcement actions should be equivalent to “the difference between the economic status of the plaintiff absent the defendant's violation and the current status resulting from the defendant's violation.” Disputes exist, however, as to the appropriate economic approach to be utilized in assessing the difference. In the military fuel bid-rigging case, damage assessments based on the benchmark method and the econometric modeling method utilizing multiple regression models resulted in substantial differences between the amounts claimed as relevant damages. Recognizing the courts' limitations in accepting one expert opinion over another, the court of appeals took a case-specific approach and stated that the method to be applied should be chosen based on consideration of what would be most reasonable in resolving the matters of the particular case at hand, despite the validity of each form of analysis presented. This case is currently on appeal before the Supreme Court.

## OTHER ISSUES

Treble damages or other types of punitive awards are not recognized under Korean competition law, although legislation providing for punitive damages has been submitted for review by the National Assembly and is being heavily debated. Under the MRFTA, only enterprises or organizations of enterprises may be found liable for damages following competition law violations. Thus, even when the violation is by an individual employee of an enterprise, a private claim against an individual cannot be brought under the MRFTA. In contrast, anyone claiming to have incurred damages from competition law violations has adequate standing to bring a claim, regardless of whether they are direct purchasers.

Pass-on defenses are not clearly established for competition law violations in Korea. In a flour cartel case, the court rejected a pass-on defense on the basis that “the excess price resulting from the cartel was already determinative of losses incurred by the direct purchasers” and that “recoupment of losses through [an] increase in price should not affect the calculation of damages.” Despite having declined to recognize a pass-on defense, overcharges may be taken into consideration when assessing the amount of

damages. The court presiding over the flour cartel case had accepted arguments regarding the extent of overcharge passed on and the possibility of double punishment resulting from claims by indirect purchasers as bases for calculating the damages to be awarded.

#### **FUTURE OUTLOOK**

Private enforcement has become more prevalent as an enforcement mechanism for competition law violations in Korea. In addition to claims for damages, injunctive actions by private parties are also being discussed for the purpose of limiting damages when damages from violations are expected to arise or continue to do so. However, legislation to this effect has not been introduced. Major cases such as claims for damages in the flour cartel case and military fuel bid-rigging remain pending. Decisions of such major cases are likely to pave the direction in which private competition enforcement in Korea will lead.

## Private Enforcement of Mexican Competition Law

Francisco Fuentes Ostos\*

In Mexico, an economic agent injured by a violation of Mexican Competition Law (the "Law") may file a lawsuit in civil court to seek monetary damages.

Such action for breach of the Law is based on article 38 of the Law and the general rules for tortious liability of the Mexican Federal Civil Code ("CCF").

Only the economic agent that is injured and can prove direct harm by the defendant will have standing to bring a damages action. Thus, class or collective actions are not available under the Law. However, a recent addition to the Mexican Federal Constitution has empowered Federal Congress to enact legislation to regulate class or collective actions, and such legislation is pending.

Under article 38 of the Law, the civil court may request the Antitrust Commission ("Cofeco") to make a declaratory judgment estimating the damages suffered by the plaintiff. The final determination will be made by the civil court.

In addition, an economic agent may file a lawsuit requesting the nullity of any arrangement considered as an absolute monopolistic practice (i.e. price fixing, information exchange, market allocation and bid rigging). Such action is based on article 9 of the Law and the general rules of nullity of contracts under the CCF.

There are no specialized courts to hear competition law cases. Litigation for the actions described above is heard by a civil local or federal court, which has to follow procedural rules applicable to any ordinary process. Interim remedies may be available, but only in very limited circumstances.

Damages are awarded if the plaintiff can prove (i) illegality of the conduct at issue, (ii) occurrence of damages, (iii) causal connection between the violation and the damages, and (iv) negligence or wilfulness of the defendant. The ruling by Cofeco will be the basis to prove the illegality of the conduct, and the negligence or wilfulness of the defendant.

Damages are compensatory and measured by reference to loss suffered. Loss suffered includes not only the actual loss due to illegal conduct (dammum emergens), but also encompasses the loss of profit (lucrum cessans).

No punitive or exemplary damages are available.

An injured party has two years to start a damage action from the day Cofeco's ruling is deemed to be final.

However, another possible interpretation, based on the general rules of the statute of limitation under the CCF, is that the two year period should start from the date when the illegal acts or practices occurred. Under this interpretation, the statute of limitation would not be interrupted or suspended when the action is filed with Cofeco. That will most likely require the injured party to file its damages action before a final resolution is issued by Cofeco. The effect of filing a damages action is to suspend the statute of limitation period. In addition, the damages trial will be suspended until a final ruling is issued by Cofeco.

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\* Mijares, Angoitia, Cortés y Fuentes

There are no legal precedents resolving which of these two different views is to be preferred.

For a nullification action, the limitation period is ten years from the day the absolute monopolistic practice started.

In terms of timing, once a final, indisputable resolution is issued by Cofeco, a claim for damages or nullity would take around three to five years until a final judgment is issued. The actual time that a specific claim would take will vary subject to, among other things, case complexity, work load, capacity of competent courts and the strategy of the parties (i.e. whether they appeal interim resolutions, file constitutional challenges, etc.).

Decisions of the court of first instance may be reviewed by a court of appeal. Upon resolution of the appeal, a constitutional trial (amparo) can be filed to challenge the unconstitutionality of a court of appeal's resolution. In this latter instance a federal Circuit Court acts as a cassation court, and its final resolution may revoke the court of appeal's decision, providing certain guidelines for the issuance of a new resolution. Most damages recovery claims in Mexico will involve this kind of constitutional challenge before a final judgment can be reached.

Finally, there have been very few private enforcement cases in Mexico. The first one was filed based on a predatory pricing ruling by Cofeco. The court dismissed the case, based on the fact that the ruling of Cofeco, in a separate procedure, was ruled unconstitutional.

## Private Enforcement of Antitrust Law in the Netherlands

Robert J. Gaudet, Jr.\* and Karin Asmus\*\*

There is a modicum of private enforcement of antitrust law in the Netherlands. Private lawsuits seeking monetary damages follow on the heels of - but never precede - public enforcement. Although it is possible to track anecdotal stories published in the Dutch press or circulated by self-interested firms or third party financiers, there is no centralized database of private enforcement cases for violations of Dutch or E.U. antitrust laws. In the absence of empirical data, this article simply (1) reviews the legal basis for private suits, (2) offers a summary description of several cases, (3) reports on Dutch prejudice against U.S. opt-out class actions, and (4) offers concluding remarks.

### LEGAL FRAMEWORK

**Substantive law.** The Dutch Competition Act (*Mededingingswet*), which took effect in 1998, prohibits cartels, abuses of dominant positions, and certain mergers and acquisitions, and it provides for the prosecution of violations by public authorities. The Dutch Competition Act falls under Dutch administrative law since the proceedings and fines are administered through the administrative process by a public authority. Unlike the U.S. system based on federal and state statutes providing a private right of action, the Dutch Competition Act does not expressly provide for a private right of action.

However, private litigants may file a lawsuit in a Dutch court on the basis of general principles in tort law. Litigants may argue, on the basis of these general principles, that a defendant has breached the legal norms encapsulated by the Dutch Competition Act and/or Article 101 or 102 of the Treaty for the European Union. The legal basis for the private lawsuit is the Dutch Civil Code which allows for tort actions for wrongful acts. Another potential cause of action is for unjust enrichment. Plaintiffs may seek single (but not treble) damages, injunctions, and declaratory judgments. The Dutch Civil Code, Book 6, Art. 162, provides for compensatory damages for wrongful acts. The burden of proof rests with the plaintiff. The statute of limitations is five years for tort claims, including antitrust violations. The statute of limitations starts to run when the plaintiff subjectively knows of the injury rather than, as in the United States, when the plaintiff reasonably should have known or discovered the misconduct; it is a subjective measure that can extend the statute of limitations far beyond what is possible the United States but there is a maximum limit of 20 years from the time of the injury.

The legislative history of the Dutch Competition Act indicates that its drafters thought it would lead to an increase in private enforcement. So, although the law itself does not expressly provide a private right of action, the drafters were nonetheless aware that it could serve as the basis for private lawsuits. In addition, it was thought that private enforcement would reduce the burden on the courts, public prosecutors, and the Dutch Competition Authority.

**Jurisdiction.** Under principles of European law, directly applicable in all Member States, defendants can be sued in the Netherlands if they kept a domicile in the Netherlands or were to perform contractual obligations (including delivery of goods) in the Netherlands (Reg. 44/2001, Art. 2(1), Art. 5(1)). If one defendant is domiciled in the Netherlands, the other co-conspirators can also be sued (Reg. 44/2001, Art. 6(1)). Consumers may file

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lawsuits against foreign companies with a branch in the Netherlands or in the place where the consumer is domiciled (Reg. 44/2001, Art. 15(2), Art. 16(1)). The Dutch Code of Civil Procedure, Art. 6(e), also provides jurisdiction over torts occurring in the Netherlands.

**Choice of law.** Article 6(1) of Regulation 864/2007 of the European Parliament and of the Council provides: “The law applicable to a non-contractual obligation arising out of an act of unfair competition shall be the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected.” In other words, Dutch courts must apply “the law of the country where the market is, or is likely to be, affected.” Reg. 864/2007, Art. 3(a), Art. 6(3)(b).

**Damages.** Defendants in the Netherlands are entitled to argue that damages were passed on to others. Damages are measured by an objective standard. Aware of the need to prove damages, econometric expert firms have established offices in Amsterdam. The Dutch Code of Civil Procedure, Book 6, Art. 166, provides for joint and several liability.

**Class actions.** Dutch law allows for two types of class actions: (1) class action litigation in pursuit of declaratory judgments but not damages and (2) settlement-only procedures for opt-out class settlements. These two procedures can be used for the private enforcement of antitrust law or any other law but, so far, they have hardly been used at all. First, the Dutch Civil Code, Art. 3:305a BW allows for a foundation, association, or legal entity established for the purpose of the litigation to file a lawsuit on behalf of a class of people with common interests. The foundation can seek an injunction or declaratory judgment - but not monetary damages - from a court stating that the defendant committed a tort, and is liable, to the entire class.

Indirect purchasers and direct purchasers cannot file a class action lawsuit (but they can file individual lawsuits) because only foundations are entitled to file class action lawsuits for declaratory judgments under Dutch Civil Code, Book 3, Article 305a BW. If the foundation wins a declaratory judgment, class members are free to seek damages on their own through independent counsel, effectively piggy-backing on any declaratory judgment but having to prove individual causation and damages on their own. Individual class members can assign their claims to a foundation, but the administrative cost of running such a scheme makes it unlikely for small claims. Dutch Civil Code Book 3, Article 305a-c CC, has been on the books for 16 years with meager results in private enforcement of antitrust law.

Second, a Dutch law, *Wet Collectieve Afwikkeling Massaschade*, allows for the settlement - but not filing or litigation - of opt-out class settlements for violations of any substantive law. In other words, parties can ask the Amsterdam Court of Appeals to approve an opt-out class settlement, but the same plaintiff cannot file an class action lawsuit for damages. The law allowing opt-out class settlements has existed for 5 years, since it came into force in 2005, but there are no examples of its use in competition law. In theory, a global class of indirect purchasers with claims of \$1 each could enter into an opt-out class settlement under this law.

#### **PARTICULAR CASES**

There are only a handful of examples of private enforcement. In every instance, private lawsuits seeking monetary damages have followed on the heels of actions taken by the Netherlands Competition Authority or the European Commission. There are no known examples in which a private party filed a private lawsuit for monetary damages prior to actions taken by public enforcement. There is anecdotal evidence of private litigation for injunctive and declaratory relief even in the absence of public enforcement. However, Dutch lawyers and victims have been astonishingly timid about filing private actions for monetary damages without the cover of public enforcement.

**Airline Cargo.** In September 2010, a trade association of shippers and other logistics companies filed a private lawsuit on the basis of Dutch Civil Code, Art. 3:305a BW for a declaratory judgment against airlines for price-fixing in airline cargo transportation. The suit was funded by a third-party financing company started by Australian plaintiff's lawyers. Previously, on August 1, 2007, the United States Department of Justice had issued a press release stating that two of the defendant airlines had pled guilty and agreed to pay fines of \$600 million. On December 21, 2007, the European Commission issued its own Statement of Objections and asked the defendants to respond. On November 9, 2010, the European Commission fined the defendants €799 million.

**Construction.** Following a public enforcement action by the Netherlands Competition Authority, private parties pursued a cartel of construction companies and achieved a settlement, on June 24, 2005, of €73,500,000. It does not appear that any lawsuit was ever filed. Private enforcement began after an insider broke the news and the Dutch Parliament issued a report in December 2002 confirming the existence of the cartel dividing markets and setting prices. The plaintiffs were municipalities, other victims, and a legal foundation called the *Stichting Regres en Verhaal Schade* that was established in 2003 to pursue the claims. This case has been widely touted as an example of private enforcement and, technically, it is. But the "private" parties were mostly government municipalities acting in a private capacity.

**Beer.** Subsequent to public enforcement, which culminated in fines by the European Commission against Dutch breweries Heineken, Grolsch, and Bavaria for €274 million, a Dutch trade association for the hotel and catering industry pursued damages against a cartel of beer manufacturers including Heineken, Grolsch and Bavaria. The trade association filed petitions to hear witnesses under oath, which is a common pre-trial procedure under Dutch law. As of 2007, the parties had discussed settlement. It is not certain whether they actually reached settlement. It appears no lawsuit was ever filed.

**Debit Card Transactions.** The Dutch retail sector (*Platform Detailhandel*) pursued damages against eight banks in a cartel to provide network services for debit card transactions, resulting in higher rates that retail merchants had to pay for PIN transactions. A settlement provided a discount of 1 cent per PIN transaction and a monetary fund to facilitate payments.

**City Electrical Factors.** In 2009, a British multinational company called City Electrical Factors ("CEF") settled a Dutch competition lawsuit after 18 years of efforts. On March 19, 1991, the CEF had filed a complaint with the European Commission asking for public enforcement. Three years later, the Commission conducted raids on companies controlling the Dutch market for wholesale electrical products through a trade association called FEG. FEG controlled 96 percent of the market through a cartel of its members; the top 5 members held 62 percent of the market and the top 10 held 80 percent.

CEF had opened a Dutch branch in 1989 to sell wholesale electrical products such as PVC pipes, cords, and cables. When CEF tried to register with FEG, FEG effectively refused membership. In February 1999, CEF filed a private lawsuit for damages. On October 26, 1999, the European Commission fined FEG €4.4 million and the largest FEG member, Technische Unie, €2.15 million. The Commission found that suppliers had been pressured through in-person visits by FEG not to deliver goods to CEF and that TU and others had identical pricelists, similar discounts, and simultaneously released new prices. FEG went into bankruptcy. CEF then filed a private lawsuit against the directors of FEG but the case did not succeed. In 2009, the parties reached a settlement.

## PREJUDICE AGAINST THE U.S. LEGAL SYSTEM

As recently as July 2010, the Netherlands Central Government proclaimed that the U.S. class action system leads to “*blackmail settlement*.”<sup>1</sup> The Netherlands Central Government believes the Dutch law providing for opt-out class *settlements* - but not for class action litigation - avoids such “blackmail.” Because the Netherlands Central Government and Ministry of Justice have given no empirical evidence of “blackmail” in the United States, even as they often repeat this allegation, these statements can only be the result of an astonishing prejudice in the European debate, driven by the European Commission, over possible measures to increase private enforcement.

On October 23, 2008, the Dutch Ministry of Justice wrote an official paper with the title (given here in translation) *Evaluation of the Dutch Class Action Settlement Law*.<sup>2</sup> The paper claimed that Dutch law allowing for opt-out class settlements - but not litigation - is superior to U.S. class actions because, in the Ministry’s words, American class actions lead to “blackmail settlements” and involve a “long, complex, and unpredictable procedure.” The Ministry sought a “more harmonious atmosphere” so “polarization” and “escalation of the conflict” between the parties would not occur. The Dutch Ministry of Justice described Fed. R. Civ. P. 23 class actions in United States in the following pejorative terms (given here in translation):

If the judge decides that such an action is allowed, then the parties expect a future of long, complex, and unpredictable procedure. It is so unattractive to actually proceed in this manner that defendants settle. In this procedure, the parties at an early stage are polarized and standing opposite of each other. Damage class actions make abuse easy in the form of blackmail settlements. This means that the person who is sued, even though they have done nothing wrong, will prefer to pay something to just get rid of this costly procedure and the associated potential liabilities.

Given the Ministry of Justice’s assessment, based on little or no empirical evidence, the prospect of strengthening private enforcement in the Netherlands through class actions appears somewhat dim.

## CONCLUSION

The undeniable trend is that Dutch private enforcement for monetary damages - what little there is - follows on the heels of public enforcement. This is in stark contrast to the United States, where roughly half of antitrust violations are first uncovered by private lawyers - not public authorities. Clearly, the Netherlands has a long way to go before private parties are willing to seek damages through hard-fought litigation without the cover of public enforcement. Major cases filed in the United States against global cartels also have effects in the Netherlands but they are almost never filed as private actions seeking damages in Europe with, perhaps, the single exception of the Airline Cargo case.

<sup>1</sup> Netherlands Central Government, *De Nederlandse Wet collectieve afwikkeling massaschade*, July 1, 2010, available at [www.rijksoverheid.nl](http://www.rijksoverheid.nl) (last viewed on Dec. 7, 2010) (emphasis in original).

<sup>2</sup> Letter from the Netherlands Ministry of Justice to the Netherlands Parliament, *Evaluatie van de Wet collectieve afwikkeling massaschade*, Oct. 23, 2008.

## RECENT DEVELOPMENTS

### Argentina: Antitrust Update

Marcelo den Toom\*

#### MERGERS

Merger control continues to demand most of the government's staffing resources. In spite of the fact that the number of merger filings has dropped from prior years, mostly due to a reduction in foreign investment - Argentina lagging behind countries like Brazil, Mexico, Chile and Peru - the investigative agency - Comisión Nacional de Defensa de la Competencia or CNDC - has worked at full capacity due to a couple of politically-sensitive mergers.

**Cablevisión / Multicanal.** The first of such mergers, the acquisition of the leading cable-TV company - Cablevisión - by a major local media group controlling its immediate competitor - Multicanal - was originally approved in December 2007, subject to behavioral undertakings, and conditions more akin to regulation than antitrust law. These conditions included obligations like not increasing the price of the basic cable service to a level higher than those in force in areas where the parties faced increased competition and complying with a plan to extend their digital network or providing a reduced programming offering at a lower rate or free cable services to hospitals, schools and police stations.

Shortly after receiving clearance, however, the companies' relationship with the Federal Government deteriorated and an investigation was opened to verify the compliance with the undertakings. The investigation ultimately concluded that the company did not fully comply with the undertakings, thus withdrawing the authorization granted in December 2007. The parties appealed this withdrawal and achieved the suspension of its effects along with a requirement that the head of the adjudicatory authority (*Secretaría de Comercio Interior* or SCI) who had signed it not participate in the case on remand. But in March 2010, the Ministry of Economy and Public Finance issued a decision confirming the withdrawal of the merger authorization. As of the date of this report the parties had appealed this decision, and the outcome remains uncertain.

**Telefónica de España / Telecom Argentina.** The case refers to the 2007 acquisition by Telefónica de España of an indirect stake in Telecom Italia, a company that jointly controls the major competitor of Telefónica in Argentina, Telecom Argentina. The parties had concluded that no filing was required, which prompted Telecom Argentina's minority shareholder to complain, which led to the opening of an investigation by the CNDC to determine whether a change of control had occurred. Underlying the shareholder claim was the imminent exercise of a call option on its shares by Telecom Italia, which price the plaintiff intended to renegotiate. The CNDC investigation included the appointment of auditors and the issuance of injunctions suspending the effects of several of the decisions of the Board of Directors and shareholders meetings of Telecom Argentina, and ultimately concluded in the SCI conditioning the transaction to the divestiture of the entire (indirect) holdings of Telecom Italia in Telecom Argentina. This decision was annulled by the courts in February 2010, mostly on due process considerations. The Court of Appeals ordered that a new administrative decision be issued remedying the

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deficiencies considered in the judgment, and - as in the Cablevisión case - that the same be signed by an official different from the Secretary of Domestic Trade, who was formally taken out of the case.

Given the genesis of the controversy, it is not surprising that, once Telecom Italia reached a commercial agreement with its minority shareholder, the same was blessed by the CNDC. The agreement left Telecom Italia with control over Telecom Argentina, but a detailed behavioral undertaking was assumed by all the parties involved in the filing, mainly aimed at preventing Telefónica from exercising any sort of influence over the businesses of Telecom Argentina and exchanging confidential information. What is remarkable from the approval of this agreement by the CNDC is that the agency had expressly rejected the application of behavioral undertakings in its original 2009 opinion because they would be easy to breach and difficult to enforce but has now accepted them.

**Danone / Royal Numico.** The acquisition of Royal Numico by Danone in 2007 was approved subject to undertakings almost three years after the filing of three different notification forms and in spite of the fact that the parties claimed that the transaction was of a conglomerate nature. The undertakings consisted only of a commitment by the parties to provide the SCI with certain pricing information on the baby milk market for a term of four years.

**InBev / Anheuser Busch.** InBev, the acquiring company, controlled before the merger the dominant local brewery, Quilmes, with a market share of over 70%. Anheuser-Busch, on the other hand, had licensed the manufacturing of its Budweiser brand to InBev's main local competitor, CCU, until 2025. The licensing agreement contained certain provisions which could be interpreted as granting Anheuser Busch (and thus InBev) joint control over the Budweiser business. In addition, as a result of the transaction, InBev would indirectly hold a minority participation right in CCU Argentina. The decision approving the transaction required the sale by Anheuser Busch of this minority participation stake within one year and the unilateral waiver of several of the rights granted to it under the licensing agreement, to ensure the exclusive control by CCU of the Budweiser brand in Argentina.

#### ANTICOMPETITIVE PRACTICES

**CNG stations.** The SCI fined 31 compressed natural gas (CNG) stations (three of them owned by Esso Petrolera Argentina, Exxon's local subsidiary) located in the city of Rosario and a trade association, for conspiring to fix prices of CNG from August to November 2002. The CNDC had issued an injunction in 2002 ordering the firms to undo the price increase until a final decision was issued in the proceedings, and the firms complied with the injunction, which they also failed to reverse on appeal. The price increase had ranged from around 25% to 47% - depending on the price in force before the alleged agreement entered into effect - and the stations represented over 90% of the total number of CNG stations of the city. Proof of the wrongdoing stemmed mainly from a search performed at the trade association's premises that identified certain compromising e-mails and notes, the testimony of a station owner that refused to agree to the price increase and an accounting audit performed by the CNDC on the defendants. CNG, which powers most taxicabs and public city buses in Argentina, was deemed a relevant product market due to its price difference from other fuels.

**Cablevisión / Multicanal.** The SCI fined the two cable companies for dividing the cable market of the city of Santa Fe.

The case dates back to the joint acquisition in 1997 by those companies of the only two cable companies which had operations in the city of Santa Fe, Videocable Comunicación S.A. (VCC) and C.V. Inversiones S.A. (known by the trade name Cablevideo). Cablevideo was the main operator, with 55,000 subscribers, while VCC, with 5,000 had recently entered the market.

The joint purchase was made prior to the implementation of merger review under Law 25,156, and thus did not require government approval.

Subsequent to the acquisition, Cablevisión and Multicanal spun-off the assets of VCC and Cablevideo at a national level. Claiming technical and economic reasons, they divided the assets in Santa Fe in two areas of similar sizes and characteristics. Such a situation, coupled with the fact that during some months the programming offer of the new operators was reduced, prompted a complaint by a consumers association and the opening of an investigation by the National Antitrust Commission or CNDC under former competition Law 22,262.

Due to the fact that none of the two companies had extended its network to the area of its competitor even several years after the spin-off had occurred, the investigation was mainly directed to determining if such conduct concealed a collusive agreement, as per the CNDC's accusation in 2004, which suggested that the companies had divided the Santa Fe market *after* the spin-off of VCC's assets.. For this reason, it is surprising that the final decision of the CNDC - which served as the basis for the sanction applied by the SCI - considered the spin-off as anticompetitive conduct in and of itself.

Furthermore, for the most part, the decision disputed the evidence on the supposed non-viability or inconvenience by the companies to deploy new networks in the area of its competitor.

The decision is curious in another respect. It seems clear that, faced with the absence of concrete evidence on the existence of the market division agreement, the CNDC decided to consider the spin-off as the evidence of such conduct. The emphasis in the decision on what circumstances could have justified the overlapping networks of Cablevisión and Multicanal seems to illustrate that the burden of proof was shifted, requiring the companies to justify why they did not compete instead of obligating the CNDC to prove that they did not compete due to anticompetitive reasons.

Given that the spin-off was related to the earlier joint acquisition of VCC and Cablevideo, in a way the decision can be regarded as a substitute remedy for an undesirable economic concentration which occurred at a time when there was no merger review. It is debatable, however, whether the competitive outcome where Cablevisión and Multicanal independently acquired VCC and Cablevideo in their then current status (Cablevideo being a highly dominant player), which the decision suggests as the desired choice, would have been better than the "spin-off of equals" that actually took place, assuming subsequent competition between the companies. If the latter is the preferred choice, it follows that the spin-off itself should not have been found in violation of competition laws and the CNDC should have needed to find additional proof of an anticompetitive agreement before concluding that the transaction was anticompetitive.

## COMMITTEE NEWS

### TELECONFERENCES

Our Committee recently organized two teleconference "brown bag" programs. The first program, held on November 30, 2010, was on the topic of "The Future of U.S. Antitrust Law: Do Landmark Changes Portend a Turbulent Future". The second program, held on December 7, 2010, gave participants the opportunity to hear from representatives of the Israel Antitrust Authority on various aspects of Israeli antitrust law.

The Committee will be holding its next teleconference on February 2, 2011 on the topic of "Institutional Safeguards in the Enforcement of European Competition Law: One Tier or Two?". Details will be available shortly.

For further information on the Committee's teleconference programs, check out our website at: <http://www.abanet.org/dch/comadd.cfm?com=IC722000&pg=2>.

### SECTION MEETINGS

The Committee sponsored a special "mini track" of antitrust-related programs at the Section of International Law's 2010 Fall Meeting in Paris, France (November 2-6, 2010). For a complete listing of these programs, see: <http://www.abanet.org/intlaw/fall10/BrochureMailer.Full.pdf>.

The Committee will be sponsoring an equally broad array of programs in its antitrust "mini-track" at the Section's upcoming Spring Meeting in Washington, DC (April 5-9, 2011). For further details, see: <http://www.abanet.org/intlaw/spring11/PreMeetingBrochureMailer.ScheduleAtAGlance.pdf>.

The Committee also has proposed programs for the Section's 2011 Fall Meeting in Dublin (October 11-15, 2011) and for the joint ABA/IBA meeting in Eilat, Israel (May 29 - June 2, 2011). Please contact either of the co-chairs for further details.

### COMMENTS

The Committee recently participated with the ABA Section of Antitrust Law in drafting comments on the UK Office of Free Trading's consultation on its investigation procedures and the Canadian Competition Bureau's consultation on possible changes to its Merger Enforcement Guidelines. For copies of these comments, see: <http://www.abanet.org/dch/comadd.cfm?com=IC722000&pg=1>.

### ESSENTIALS OF MERGER CONTROL

The Committee continues to update the Essentials of Merger Control portion of its website, which summarizes merger control requirements in over 60 jurisdictions. This valuable resource can be accessed at: [http://www.abanet.org/intlaw/committees/business\\_regulation/antitrust/reports\\_map.html](http://www.abanet.org/intlaw/committees/business_regulation/antitrust/reports_map.html).

And be on the lookout for the Committee's similar project on global cartel enforcement, which should be up and running in the next few months!

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The *Newsletter* is published by the American Bar Association Section of International Law, International Antitrust Law Committee.

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