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MESSAGE FROM THE CHAIR

Welcome back to the Antitrust, Franchising and Trade Regulation Section's regular e-Newsletter. We welcome our new student assistant, John T. Schroder (2L, MSU), who has assumed primary responsibility for the newsletter's publication. At the request of section members, we are renewing our efforts to focus upon Michigan news, and to truly bring value to the membership. In that regard, we would also like to thank Andrew J. Morganti, for his contributions to this newsletter's Michigan News section.

I'd also like to thank the individuals who were able to attend our Section Dinner at Roast earlier this month. The event was a terrific opportunity for Section members to meet and get to know one another. Please watch your email box for Section announcements of future events. Our e-Newsletter, webinars, seminars and other events are our way of returning value to the Section membership and we hope to see many new faces, as well as familiar ones, at our events over the next year.

Finally, I would like to extend the Council's best wishes for you and your loved ones during the holiday season.

Best regards,
Blair Renfro
Chair SBM Antitrust, Franchising and Trade Regulation Section

SECTION NEWS**Section Dinner Held at Roast**

This year the annual Section dinner moved from Ann Arbor to Detroit, where it was held at Michael Symon's Roast, in the Westin Book Cadillac Hotel. The dinner was a warm and merry gathering of Section members that truly captured our collegial spirit.

Franchising Seminar a Success

The Section held a Franchising Seminar on October 30, 2009. The event took place at the Hotel Baronette in Novi, was well attended, and covered a variety of franchising law topics. Look for future franchising events to round out the Section's offerings.

Now Accepting Submissions

If you have an article that involves antitrust, franchising, or trade regulation that you would like to submit to be considered for publication in an upcoming e-Newsletter, please submit your work to the Section's Publications Editor, [Justin Hakala](#). We will publish submitted works insofar as possible.

Missed the Last E-Newsletter?

If you missed the October e-Newsletter, be sure to check out the archives at the State Bar of Michigan Website, accessible [here](#).

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MICHIGAN NEWS*In re Packaged Ice Antitrust Litigation*

1 The Eastern District of Michigan's Packaged Ice multi-district class action antitrust litigation heats up for the holiday season. On November 13, 2009, Plaintiffs for the direct-purchasers of packaged ice announced a preliminary settlement with Home City Ice Company ("Home City") in the amount of \$13.5 million, plus additional compensation for expenses. This settlement comes on the tail of plaintiffs' service of their amended class action complaint in September.

3 Plaintiffs allege that Arctic Glacier Income Fund (Winnipeg, Canada), Reddy Ice Holdings, Inc. ("Reddy Ice") (Dallas, TX), and Home City (Cincinnati, OH), entered into an agreement to allocate the national market for packaged ice as well as agreed to refuse to deal with each others' customers. These allegations arise from a whistler-blower action lodged by Martin McNulty, whom alleged that he was advised by senior management of Arctic Glacier about the market allocation agreement that covered Canada and the United States. The Department of Justice as well as numerous Attorneys General have opened investigations relating to the packaged ice industry.

Arctic Glacier, Home City Ice, and Reddy Ice, continue to report that the governments' investigations are ongoing despite the outstanding previously announced guilty pleas of Arctic Glacier and Home City.

Kohn, Swift & Graf, P.C. (Philadelphia, PA) represent the direct-purchaser Plaintiffs. Matthew Wild of Levitt & Kaizer (New York, NY) represents the indirect-purchaser Plaintiffs. Sutts, Strosberg LLP (Toronto, Ontario) represent the Canadian Plaintiffs in a parallel class action being litigated in Ontario.

Brooks Wilkins Sharkey & Turco PLLC and Dykema Gossett represent Arctic Glacier. Honigman, Miller, Schwartz and Cohn LLP represent Reddy Ice.

In re Packaged Ice Antitrust Litigation, Case No. 08-MD-01952 (Borman. J) and Productions Ltd., et al. v. Arctic Glacier, Inc., Case No. 621124 (Ontario Superior Court of Justice).

FTC Finds Michigan Realtors Group Violated Antitrust Laws

11/2/09

The Commission unanimously overturned the decision of the Administrative Law Judge that found Realcomp II had not violated FTC Act Section 5. The FTC's opinion held that the ALJ improperly used a "full" rule of reason analysis, which required proof of actual competitive harm. The opinion went on to hold that Realcomp's conduct violated Section Five under an abbreviated rule of reason approach that the Commission incorporated from Section 1 case law.

[Opinion](#); [Press Release](#); [FTC Docket](#).

Giza v. United States

August 19, 2009

Plaintiff, Mark Giza, sues the United States Government under the Sherman and Clayton

DEAL LOG:

CLS
&

Talecris Biotherapeutics

The FTC authorized its staff to seek a preliminary injunction to stop CLS's acquisition of Talecris Biotherapeutics. The Commission alleged that the acquisition would reduce competition in the plasma-derivative protein therapy market.

[FTC Press Release](#); [FTC Docket](#).

Watson Pharmaceuticals, Inc.
&

**Robin Hood Holdings Limited/
Arrow Pharmaceuticals**

The FTC has entered into a consent agreement resolving competitive issues with Watson Pharma's acquisition of Robin Hood Holdings, owner of Arrow Pharmaceuticals.

[FTC Press Release](#); [FTC Docket](#).

Panasonic
&
Sanyo

The FTC set a number of conditions on Panasonic's acquisition of Sanyo. The Commission required the sale of certain assets, including Sanyo's NiMH battery business.

[FTC Press Release](#); [FTC Docket](#).

Acts. Giza argued that, among other allegations, the U.S. government "[m]onopolizes the current economy"; "[o]verlooks and allows poisons to be sold as food"; "[u]tilizes Mind control"; "[e]xtort[s] money from the public"; "[a]llow[s] Freemasonry and its subcultures to serve as its driving force"; "willfully and knowingly harassing the public in the current transit systems"; "imposing its views and laws on virtually every aspect of life"; "[u]sing mind control on our children in the public school systems, etc. The District Court dismissed for failure to state a claim upon which relief could be granted.

[E.D. MI. No. 09-13266 \(Cleland, J.\)](#)

NATIONAL NEWS

Datel Brings Suit Against Microsoft

11/22/2009

Datel Holdings Ltd., and Datel Design & Development, Inc., the makers of an aftermarket memory card for Microsoft's Xbox gaming system, have filed a suit against Microsoft in the Federal District Court for Northern California. Datel alleges that Microsoft disabled compatibility with the Datal chips in order to protect its own aftermarket sales. Datal is represented by Howard Rice Nemerovski Canady Falk & Rabkin.

[Complaint from HowardRice.com](#) via [Antitrust Review](#).

Updating the Merger Guidelines

11/12/2009

The FTC and DOJ will be reviewing and possibly updating the Horizontal Merger Guidelines and will be hosting workshops to discuss the various issues presented in the guidelines. These workshops will be open to the public and will be webcast. The first workshop was held on December 3rd. The remaining workshops will be held on December 8th and 10th, and on January 14th and 26th.

[DOJ Speech \(Carl Shapiro, Nov. 12, 2009\)](#).

Intel and AMD Settle Antitrust Issues

11/12/2009

Intel has agreed to pay AMD \$1.25 billion to resolve all of the companies' outstanding issues. AMD has agreed to drop suits pending in Delaware and Japan. The settlement resolves antitrust issues between the companies that go back five years. The news follows a record fine levied against Intel by the European Commission; FTC enforcers are still investigating Intel's conduct.

[Antitrust Review Coverage](#); [Washington Post Article](#).

DOJ Encourages EC to Approve Oracle/Sun Merger

11/9/2009

The DOJ issued a press release opining that the Oracle Systems/Sun Microsystems merger is unlikely to be anticompetitive and encouraging the European Commission to quickly resolve its issues with the parties and permit the merger to go forward.

[DOJ Press Release](#).

ENFORCEMENT ACTIONS

DOJ Requires Divestitures in Stericycle Inc.'s Acquisition of MedServe Inc. 11/30/2009

The Department of Justice announced that it will require Stericycle Inc. to divest certain infectious waste collection and treatment services assets in order to proceed with its acquisition of MedServe Inc. The department said the transaction, as originally proposed, would substantially lessen competition in infectious waste collection and treatment services to hospitals and other critical healthcare facilities in Kansas, Missouri, Nebraska and Oklahoma, resulting in higher prices and reduced service. The department's Antitrust Division, along with the attorneys general of the states of Missouri and Nebraska, filed a civil antitrust lawsuit today in U.S. District Court in Washington, D.C., to block the proposed transaction. At the same time, the department and the two attorneys general filed a proposed settlement that, if approved by the court, would resolve the competitive concerns alleged in the lawsuit.

[DOJ Docket](#); [Proposed Final Judgment](#); [DOJ Press Release](#).

DOJ Requires Divestitures in Cameron International's Acquisition of NATCO Group 11/17/2009

The DOJ announced that it would require Cameron International Corp. to divest certain assets used in the production and sale of desalters for use in the oil refining industry in order to proceed with its acquisition of NATCO Group Inc. and said that the deal as originally proposed would substantially lessen competition in the manufacture of refinery desalters in the United States, resulting in higher prices and reduced quality, service and innovation, in part because the deal would "reduce from three to two the number of companies that bid on refinery desalter projects and would give Cameron virtual monopoly power in the U.S. refinery desalter market." The DOJ has proposed a settlement, which if approved by the court, would resolve the competitive concerns alleged in the lawsuit.

[DOJ Docket](#); [Proposed Final Order](#); [DOJ Press Release](#).

U.S. and State of Louisiana v. AT&T and Centennial 10/21/2009

The DOJ seeks to enjoin a transaction agreement between AT&T and Centennial whereby AT&T would acquire Centennial, and the two companies would combine their telecommunications services businesses. The DOJ opposes this transaction because it will substantially lessen competition in mobile wireless telecommunications services in the following eight geographic markets.

[DOJ Docket](#); [Proposed Final Judgment](#).

Main Justice Weighs in on the Google Books Settlement 09/18/2009

The DOJ submitted a statement of its views concerning the proposed class action settlement between the American Association of Publishers, et al. (Class Plaintiffs) and Google Inc. The DOJ stated that "[t]he Proposed Settlement has the potential to breathe life into millions of works that are now effectively off limits to the public" but at the same time was concerned that a "global disposition of the rights to millions of copyrighted works is typically the kind of policy change implemented through legislation, not through a private

judicial settlement” and that the settlement may violate both copyright and antitrust laws. The DOJ said the end result of any settlement “should be a marketplace in which consumers can be assured that they are paying competitive prices for the benefit they receive – in a marketplace in which they have multiple outlets from which to obtain access to works. The benefits of this settlement should not be achieved through unjustified restrictions on competition.” and has opened an investigation into the competitive impact of the proposed settlement.

[Statement of the United States.](#)

[DOJ Will Not Challenge Less-Than-Truckload Freight Transportation Joint Venture](#) 09/08/2009

The DOJ announced that it “will not challenge a proposal by seven regional less-than-truckload (LTL) freight transportation companies to bid jointly and engage in other collaborative activity as part of their nationwide LTL truck transportation services joint venture. Based on representations made by the applicants, the Department said that the proposed conduct is not likely to reduce competition in regional LTL truck transportation markets and could enhance competition in the long haul LTL market.”

[DOJ Press Release.](#)

[Department of Justice Will Not Challenge Hospitals' Joint Purchasing Agreement](#) 09/04/2009

The DOJ it will not challenge a proposal by Memorial Health Inc., and St. Joseph's/Candler Health System to enter an exclusive joint purchasing agreement of certain medical and surgical supplies. The DOJ said that “the proposed joint purchasing agreement may yield volume discounts and reduced transaction costs for the hospitals and ultimately could result in lower costs and increased hospital services for consumers.”

[DOJ Release.](#)

Have We Missed Something?

Do you know of a recent case that you don't see in the newsletter? Please [email](#) the editor with recently resolved or newly pending cases that we have missed.