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MESSAGE FROM THE CHAIR

We are commencing a new term with vigor and zeal to fulfill our pledge to educate and entertain you about the most recent competition, franchising, and trade regulation issues being addressed in Michigan courts and beyond. The Michigan state and federal courts have encountered an increase number of antitrust and trade regulation filings, including some multinational multi-district litigation class actions. There have also been a few "dawn-raids" within our jurisdiction. This level of excitement has resulted in an increased interest in our Section from practitioners in related Sections as well as other Bar Associations.

There are many events being planned by the Section and we encourage you to track our notices. Our events will include presentations by academics, economists and e-discovery vendors, our members, and lawyers from the state and federal government agencies. We are also going to take our efforts to the grass-roots level by making an effort to conduct a presentation at each of the law schools here in Michigan. Lastly, it is our hope to have one cross-border social event with our friends practicing antitrust, franchising, and trade regulation in Ontario.

We thank you for your interest and encourage you to participate with us.

Cheers,

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SECTION NEWS**Econ One Presentation A Success!**

On September 23, 2010 another fantastic Antitrust, Franchising and Trade Regulation event was held at ROAST restaurant in the Westin Cadillac Book Hotel in Detroit. Econ One Research presented on the use of economics to prosecute and defend antitrust claims.

e-Newsletter Goes Digital

Beginning with this edition, the e-Newsletter will be going to a digital delivery system only. You will still receive the PDF format with clickable links to primary source materials and hope that you will continue to enjoy the e-Newsletter in its electronic format.

To All Franchise Law Practitioners:

Are we serving your franchise law and practice needs? Please take a few minutes to communicate your comments and suggestions as to how we are doing. Feel free to call, email or write our Section secretary and franchise committee co-chairperson, Howard Lederman at (248) 642-3600, lederman@normanyatooma.com or by mail at 219 Elm Street, Birmingham, Michigan 48009.

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Now Accepting Submissions

If you have an antitrust, franchising, or trade regulation article 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](#).

Missed the Last E-Newsletter?

If you missed the last e Newsletter, be sure to check out the archives at the State Bar of Michigan's website, accessible [here](#).

MICHIGAN NEWS**DOJ Files Suit Against Blue Cross Blue Shield of Michigan**

October 18, 2010

The US Department of Justice and the State of Michigan filed a civil antitrust lawsuit against Blue Cross Blue Shield of Michigan (BCBSM) alleging that provisions of its agreements with hospitals raise hospital prices, prevent other insurers from entering the marketplace and discourage discounts. The DOJ has taken issue specifically with most favored nation (MFN) clauses employed by BCBSM. According to the DOJ, "[i]n the healthcare context, MFN provisions generally refer to contractual clauses between health insurance plans (buyers) and healthcare providers (sellers) that essentially guarantee that no other plan can obtain a better rate than the plan wielding the MFN. Some of the MFNs in this case guarantee the plan an even better rate than given to any other plan or purchaser. . . [which] have caused hospitals to increase their prices to BCBSM's competitors and insulated BCBSM from competition." [DOJ Press Release](#).

Credit Card Companies Antitrust Litigation and Settlement

October 4, 2010

The Michigan Attorney General and the US Department of Justice have been investigating the three largest credit-card companies, Visa, MasterCard, and American Express for anti-competitive behavior. A settlement has been reached with Visa and MasterCard with the aim of lowering costs to consumers by allowing their merchants to promote, express a preference for, or offer consumers an immediate discount for using a low-cost card network or other form of payment. The settlement will allow them to communicate the costs incurred by the merchant when consumers use a particular type of card. However, the smallest of the three, American Express, has refused to settle. As a result, merchants that accept American Express will not be able to immediately take advantage of the settlement with Visa and MasterCard. [Michigan AG Press Release](#). [DOJ Press Release](#).

NATIONAL NEWS**DOJ and FTC Issue Revised Horizontal Merger Guidelines**

August 19, 2010

The DOJ and FTC issued the Revised Horizontal Merger Guidelines for 2010, saying that these new guidelines more accurately represent the way agencies review proposed mergers. This is the first time in 18 years the guidelines have been revised, detailing the new techniques and main types of evidence the agencies typically use to predict whether hori-

DEAL LOG:

Simon Property Group, Inc.
&
Prime Outlets Acquisition
Company, LLC

November 10, 2010

On December 8, 2009, Simon and Prime signed an agreement under which Simon would acquire all of Prime's 22 outlet centers for approximately \$2.3 billion. The FTC is requiring Simon to divest property and modify tenant leases as part of a settlement designed to preserve outlet center competition in parts of southwest Ohio, Chicago, Illinois, and Orlando, Florida. [Press Release](#).

Coca-Cola Company
&

Dr Pepper Snapple Group

November 10, 2010

An agreement has been reached between Coca Cola and the FTC, requiring Coca-Cola to limit access to the confidential competitive business information of rival Dr Pepper Snapple Group, but allowing the \$12.3 billion acquisition of its largest North American bottler. [FTC Docket](#); [Press Release](#).

zontal mergers will substantially lessen competition. In addition, these guidelines provide an expanded discussion of the hypothetical monopolist test and illustrate how the agencies evaluate unilateral competitive effects, mergers between competing buyers and partial acquisitions. [Horizontal Merger Guidelines](#).

ENFORCEMENT ACTIONS***In re Intel Corp.***

November 10, 2010

A previous settlement between the FTC and Intel has been modified. The previous agreement applies to central processing units, graphics processing units and chipsets and prohibits Intel from using threats, bundled prices, or other offers to exclude or hamper competition or otherwise unreasonably inhibit the sale of competitive CPUs or GPUs. The settlement also prohibits Intel from deceiving computer manufacturers about the performance of non-Intel CPUs or GPUs. The new agreement allows Intel to manufacture and sell a chip that it had in development before the proposed settlement that would have violated the order because it does not contain a required interface. Future generations of the chip must still meet the agreements requirements. [FTC Docket](#); [Press Release](#).

Color Display Tube Conspiracy

November 8, 2010

An ongoing investigation by the Department of Justice into the Color Display Tube (CDT) market has led to even more indictments. Including the indictment of three additional individuals on November 8, a total of six individuals have been indicted since February. The individuals are charged with sharing vital sales, production and pricing information and agreed to charge certain prices for CDTs, to reduce output of CDTs by shutting down CDT production lines for certain periods of time and to allocate target market shares of CDTs. Because CDTs are used for the production of computer monitors, it is alleged that these practices had the effect of raising the prices for computer monitors in the United States, harming consumers. [Press Release](#).

Food Service Equipment Customer Allocation Conspiracy

November 2, 2010

Indictments continue in the food service equipment hardware market. Former president and CEO of Component Hardware Group, Inc., Thomas E. Carr, has been charged with participating in a conspiracy to allocate customers for the sale of food service equipment hardware from 2004 through 2008. Food service equipment hardware includes cafeteria hardware, equipment legs and casters, fabrication supplies and walk-in refrigeration components and various other types of equipment. Carr and other conspirators are alleged to have agreed not to compete for protected customers and to rig bids for other customers. In May, Kason Industries Inc. and its former president, Peter A. Katz, pled guilty to the same customer allocation conspiracy charge. [Press Release](#).

Global Airline Price-Fixing Conspiracy

November 1, 2010

Indictments continue in the global conspiracy to fix prices for air transportation services.

**The Dow Chemical Company
&**

Rohm & Haas Company

October 29, 2010

The FTC approved a request to modify an agreement regarding Dow Chemical's acquisition of Rohm & Haas. The original licensing agreement in required Dow's divestiture of the latex polymers and other businesses to Arkema. The approved modification licenses additional programs for Arkema to use in the latex polymers business and adds software inadvertently omitted from the original license. [FTC Docket; Press Release.](#)

**Air Products and Chemicals Inc.
&**

Airgas, Inc.

October 22, 2010

The FTC approved a final order allowing Chemicals Inc.'s potential acquisition of rival firm Airgas, Inc. The order requires Air Products, if it acquires Airgas, to sell 15 air separation units and related bulk liquid oxygen and bulk liquid nitrogen assets currently owned and operated by Airgas. According to the FTC this will prevent the anticompetitive effects of the acquisition in five regional markets for bulk liquid oxygen and bulk liquid nitrogen, which are used in a range of applications from hospital patient care to the manufacture of frozen foods. [FTC Docket; Press Release.](#)

Most recently, four executives of South American companies and two executives from Cargolux Airlines International S.A. were all indicted by a grand jury in Miami. In addition, All Nippon Airways Co. Ltd. (ANA) agreed to plead guilty and to pay a \$73 million criminal fine for its part in the conspiracies.

According to the indictments, the executives agreed to fix and coordinate certain surcharges imposed on cargo shipments to and from the United States and agreed not to pay commissions on those surcharges, which resulted in higher costs to customers of these air transportation services.

A total of 19 airlines and 14 executives have been charged in the DOJ's ongoing investigation and more than \$1.6 billion in criminal fines have been obtained. Other airlines that have pled guilty include Northwest Airlines, Asiana Airlines, Inc., British Airways Plc, Korean Air Lines Co. Ltd., Qantas Airways Limited, Japan Airlines International Co. Ltd., Martinair Holland N.V., Cathay Pacific Airways Limited, SAS Cargo Group A/S, Société Air France, Koninklijke Luchtvaart Maatschappij N.V. (KLM Royal Dutch Airlines), EL AL Israel Airlines Ltd., LAN Cargo S.A., Aerolinhas Brasileiras S.A., and Nippon Cargo Airlines Co. Ltd. [Latest Press Release.](#)

Global LCD Price-Fixing Conspiracy

October 27, 2010

Indictments also continue in the LCD price-fixing conspiracy. To date, twenty-one executives and eight companies have been charged with conspiracy to fix prices price in the LCD industry. Executives in HannStar Display Corporation, AU Optronics Corporation America, and in Chi Mei Optoelectronics Corporation have already pled guilty and will be serving jail time for the price fixing. These companies engage in the manufacture of TFT-LCD panels, which are used in computer monitors, notebooks, televisions, mobile phones and other devices. [Latest DOJ Press Release.](#)

Freight Forwarding Price-Fixing

September 30, 2010

Six freight forwarding companies have pled guilty to criminal price fixing charges. Freight forwarders manage the cargo delivery and shipment process for customers. The companies participated in various conspiracies to fix prices from 2002-2007 and include EGL Inc. (based in Houston, Texas), Kühne & Nagel International AG (Schindellegi, Switzerland), Geologistics International Management Limited (Hamilton, Bermuda), Panalpina World Transport Ltd. (Basel, Switzerland), Schenker AG (Essen, Germany) and BAX Global Inc., (Toledo, Ohio). [Press Release.](#)

Refrigerant Compressors Price-Fixing

September 30, 2010

Panasonic Corporation and a Whirlpool Corporation subsidiary, Embraco North America Inc., have agreed to plead guilty for a conspiracy to fix the prices of refrigerant compressors. The companies have agreed to pay criminal fines in excess of \$140 million. [Press Release.](#)

**El Paso Energy Corporation
&****Coastal Corporation****October 8, 2010**

The FTC approved a modification of an order requiring El Paso Energy to sell certain assets and enter other arrangements to settle the Commission's challenge to its acquisition of Coastal Corporation in the natural gas market. Due to El Paso's sale of the ANR pipeline, the acquisition of which gave rise to the divestiture requirement it is no longer required to maintain a required \$40 million fund. [FTC Docket](#); [Press 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.

High-Tech Employee No-Solicitation Agreements**September 24, 2010**

Adobe Systems Inc., Apple Inc., Google Inc., Intel Corp., Intuit Inc. and Pixar have entered into an agreement with the Department of Justice preventing them from entering into no-solicitation agreements. The agreements in place between the companies prevented one company from soliciting another's employees. Apple had agreements with Google, Adobe and Pixar; in addition, Google also had agreements with Intel and Intuit. None of the agreements were limited by geography, job function, product group or time period. Therefore, according to the DOJ, they were broader than reasonably necessary to permit collaboration between the companies. [Press Release](#).

Home Foreclosure Bid-Rigging Conspiracy**September 10, 2010**

An ongoing investigation has led to the first guilty plea by Christopher J. Deans for participating in a conspiracy to rig bids during the real estate foreclosure auction process in eastern North Carolina from 2003 through 2005. The conspiracy involved Deans and his co-conspirators paying one another not to bid on foreclosed properties, which suppressed competitive bidding on those properties. [Press Release](#).

Municipal Bonds Bid-Rigging Conspiracy**September 9, 2010**

Douglas Lee Campbell, pled guilty to bid-rigging in relation to municipal bonds. The seventh guilty plea so far in the investigation, Campbell and his co-conspirators designated in advance which provider would be the winning bidder for certain investment agreements and other municipal finance contracts. These contracts were brokered by an investment firm, Rubin/Chambers, Dunhill Insurance Services Inc., also known as CDR Financial Products. According to the DOJ "part of the bid-rigging conspiracy [included] kickbacks in the form of inflated or unearned fees [that] were paid by Campbell's employer to CDR in exchange for assistance in controlling the bidding process and ensuring that certain co-conspirator providers won the bids they were allocated." [Press Release](#).

