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MESSAGE FROM THE CHAIR

As summer quickly approaches with members' interest turning to Northern vacations, BBQs and water activities, it is a good time to reflect on events of the past year and to remember all the privileges our Section has to offer.

Most recently, the Section hosted two memorable events in May. First, members gathered at the University of Michigan Art Museum for appetizers and cocktails followed by an inspiring private tour of several exhibitions on display. Second, the Section presented its Spring Seminar Finding the Right Balance: Antitrust and Regulation for Today's Public Utilities at the MSU University Club in East Lansing.

It is my belief that the Section will continue to inspire growth and support through myriad educational opportunities and social encounters for the foreseeable future. I look forward to serving the Section until my term ends at the annual meeting in September and call on those interested to seek participation as council members.

Best regards,
Blair Renfro

Chair SBM Antitrust, Franchising and Trade Regulation Section

SECTION NEWS**Joint Event - A Comparison Between Ontario & U.S. Multiple District Antitrust Cases**

On June 7, 2010 at the Ontario Bar Association Building in Toronto, our Section will be co-sponsoring a panel discussion with the Antitrust Section of the Ontario Bar Association. Registration is at 5:00 p.m., and the event will begin with dinner and drinks at 5:15 pm, with the panel discussion from 6:15 pm to 7:15 pm. The panel will include Paul Novak (Partner, *Milberg LLP*); Todd Holleman (Partner, *Miller Canfield Paddock & Stone PLLC*); Harvey Strosberg (Partner, *Sutts, Strosberg LLP*); Katherine Kade (*Stikeman Elliot LLP*); and Sylvie M.T. Rodrigue, the moderator and a (Partner, *Ogilvy Renault*). Topics will include both legal and practical considerations impacting multidistrict litigation, pleading standards, and the different standards for class certification with a focus on two multidistrict antitrust class actions being litigated in Ontario and Michigan relating to packaged ice and refrigerant compressors. For more information contact [Paul F. Novak](#).

Antitrust Enforcement and Regulation for Public Utilities Seminar A Success

On May 19, 2010, the Section hosted an antitrust enforcement and regulation seminar at The University Club in East Lansing, Michigan. Speakers included Bill Schur, AT & T's Senior Deputy General Counsel and Paul Novak of the Milberg Law Firm in New York. Mr. Schur spoke on merger approval requirements and their contradictions and inconsistencies, while Mr. Novak spoke on Regulatory Defenses to Antitrust Enforcement. For more information about this and other events contact [Blair Renfro](#).

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 Le-

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DEAL LOG:

**Agilent Technologies, Inc.
&**

Varian, Inc.

May 15, 2010

Agilent Technologies, Inc., and Varian, Inc., two leading global suppliers of high-performance scientific measurement instruments, have agreed to sell three of their product lines in order to proceed with their merger. This settlement with the FTC resolves the anti-competitive concerns created by the proposed merger and allows Agilent to proceed with its acquisition of Varian. [FTC Docket](#)

**Cameron International Corp.
&**

NATCO Group Inc.

May 11, 2010

Final judgment has been entered with respect to Cameron International Corp., who has consented 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., The DOJ said that the deal as originally proposed would substantially lessen competition in the manufacture of refinery desalters in the United States. The final judgment eliminates these competitive concerns. [DOJ Docket](#); [Final Judgment](#);

derman at (248) 642-3600, lederman@normanyatooma.com or by mail at 219 Elm Street, Birmingham, Michigan 48009.

Spring Antitrust Event Draws a Crowd

The spring Antitrust, Franchising and Trade Regulation Section event was held on May 13 at the University of Michigan Art Museum. Attendees enjoyed complimentary food and cocktails as well as run of the museum, which featured *Wrapped in Silk and Gold*, a newly acquired collection of Japanese Kimonos on display for the first time at the museum this spring. Watch your email boxes for Section announcements of future events.

[UMMA](#); [Current Exhibitions](#).

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 Newsletter, please submit your work to the Section's Publications Editor, [Justin Hakala](#).

Missed the Last E-Newsletter?

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

MICHIGAN NEWS

Breaking Developments in the Auto Components Investigation

June 1, 2010

During late February, 2010, the United Kingdom's Office of Fair Trade ("OFT") announced that it opened a criminal investigation into suspected cartel activities in the automotive sector. The file was assigned the number CE/92290-09. On June 1, 2010, it was reported that the OFT arrested a British based employee of Yakazi after receiving a tip-off from Sumitomo Electric Wiring Systems. The news follows DOJ raids of Denso Corp., Yakazi North America and Tokai Rika in late February. [Supply Management Article](#)

DOJ blocks BCBSM and Physicians Health Plan of Mid-Michigan Merger Plans

March 8, 2010

Blue Cross Blue Shield of Michigan's (BCM) subsidiary, Blue Care Networks of Michigan, abandoned its attempt to purchase Physicians Health Plan of Mid-Michigan (PHP) after the Department of Justice informed the companies that it would file an antitrust lawsuit to block the acquisition. The department said that, had the acquisition gone forward, it would have given BCM control of nearly 90 percent of the commercial health insurance market in the Lansing area, which would have resulted in higher prices, fewer choices, and a reduction in the quality of commercial health insurance plans purchased by Lansing area residents and their employers. According to the department, the acquisition would also have given BCM the ability to control physician reimbursement rates in a manner that could harm the quality of health care delivered to consumers. [DOJ Press Release](#)

Packaged-Ice Antitrust Litigation: Home City Ice Company

March 2, 2010

The Home City Ice Company (HCI) pled guilty for conspiring to suppress and eliminate competition by allocating packaged-ice customers and territories in the Detroit metropoli-

Dun & Bradstreet Corporation
&
Quality Education Data
May 7, 2010

The FTC filed suit against The Dun & Bradstreet Corporation, challenging its February 2009 acquisition of Quality Education Data which gave it over 90% of the market for kindergarten through twelfth-grade educational marketing databases which hurt consumers by eliminating nearly all competition in the market. The data sold by these companies is used to sell books, education materials, and other products to teachers and educators nationwide. [FTC Docket](#)

Service Corporation International
&
Keystone North America, Inc.
May 4, 2010

The FTC approved a final settlement order with SCI. The FTC alleged that SCI's acquisition of Keystone would have reduced competition in funeral service and cemetery markets. SCI is seeking FTC approval to sell a total of 23 funeral homes, cemeteries, and combination properties to resolve the FTC's competition concerns. The FTC is seeking public comment on SCI's application. [FTC Press Release](#), [FTC Docket](#)

Baker Hughes
&
BJ Services
April 27, 2010

The settlement with the DOJ will require Baker Hughes, Inc. and BJ Services Company, who specialize in Stimulation services, to divest two specially equipped vessels and other assets in order to proceed with their proposed merger. Stimulation services prevent sand from interfering oil and gas flow from wells. The divestitures will prevent higher prices and a reduction in service quality.

tan area and southeastern Michigan. The conspiracy ran from as early as Jan. 1, 2001, to about July 17, 2007. HCI was sentenced to pay a \$9 million criminal fine for its participation in the conspiracy. [DOJ Press Release](#)

Packaged-Ice Antitrust Litigation: *Arctic Glacier Int'l, Inc.*
February 19, 2010

In September of 2009 Arctic Glacier Int'l, Inc., pled guilty for, and entered into a plea agreement with the government for conspiring to suppress and eliminate competition by allocating packaged-ice customers and territories in the Detroit metropolitan area and southeastern Michigan from 2001 through 2007. A number of third-party petitioners filed for a writ of mandamus, asking that the plea agreement be overturned because the government failed to consult with them before the agreement was reached. Arctic Glacier and the DOJ successfully opposed that action because the petitioners have received all of the rights to which they were entitled under the Crime Victims' Rights Act. In addition, Arctic Glacier successfully opposed a competitor's motion for injunctive relief relating to an alleged non-competition agreement between it and Arctic Glacier. (See, *Polar Bear Ice Services v. Arctic Glacier*, S-98007 (Vancouver)). [DOJ Docket](#)

In re Municipal Derivatives Antitrust Litigation
April 20, 2010

Plaintiff municipalities have been put back on the defensive by the DOJ Antitrust Division, which filed a motion to intervene for the purpose of seeking a limited stay of discovery. The Antitrust Division has already obtained numerous guilty pleas from individuals relating to the ongoing investigation into the municipal bonds industry. The plaintiffs alleged that sixteen investment banks and others illegally rigged bids to offers relating to interest rates, limited competition, and fixed prices in municipal derivative markets in violation of antitrust laws. The plaintiffs' complaint includes copies of internal bank emails detailing interest rate swaps with the cities of Brighton and Muskegon. In January 2007, Bank of America entered into the antitrust corporate leniency program administered by the Antitrust Division and is thought to be assisting plaintiffs' counsel.

Smith v. eBay Corporation & PayPal Corporation
April 12, 2010

Michigan customers that have and will continue to pay fees to utilize online auction/sales services from eBay, Inc., filed an antitrust class action complaint alleging that eBay is engaging in tying practices with PayPal Corporation in violation of federal antitrust laws.

Safeway Transportation, Co. v. Detroit Public Schools
March 16, 2010

Safeway Transportation ("Safeway"), a school bus company which has provided student transportation services to the Detroit Public Schools since 1975, lodged antitrust and related claims against the Detroit Public School system, First Student Inc., and others. First Student, which competes with Safeway, was allegedly provided access to Safeway's business records in order to conduct an audit. Safeway alleges that First Student used this data, with Detroit Public Schools' authorization and consent, to obtain the contact to provide student transportation services to the Detroit Public Schools.

[DOJ Press Release](#)

Cisco Systems Inc.
&
Tandberg ASA
March 29, 2010

The DOJ will not challenge Cisco Systems Inc.'s acquisition of Tandberg ASA. Because of the evolving nature of the videoconferencing market and the commitments that Cisco has made to the European Commission to facilitate interoperability the deal is not likely to be anticompetitive.

[DOJ Press Release](#)

Danaher Corp.
&
MDS Analytical Technologies Inc.
March 23, 2010

The FTC approved a final settlement order in the matter of Danaher Corporation and MDS, Inc. The final order requires divestiture of certain assets and licenses in the North American market for laser microdissection devices, which are key tools used in scientific research. This settles charges that Danaher's acquisition of MDS would have been anticompetitive. [FTC Docket](#)

Polypore International Inc.
&
Microporous L.P.
March 19, 2010

Polypore International Inc.'s acquisition of rival battery separator manufacturer Microporous L.P. was found to be anticompetitive and in violation of federal law in four battery separator markets in North America. The Decision on February 22 from Judge Chappell ordered Polypore to divest Microporous to an FTC-approved buyer within six months after the divestiture provisions of the Order become final. [FTC Press Release](#), [FTC Docket](#)

Bhan v. Battle Creek Health System
February 26, 2010

Plaintiff has alleged, among other allegations, that the Battle Creek Health System and Borgess are horizontal competitors to Bhan and have conspired to intentionally remove Bhan as a competitor to their health system practices. Defendants have filed a motion to dismiss, which is still pending.

NATIONAL NEWS

DuPont v. Kolon (Nos. 10-1103, 10-1275; 4th Cir.)
May 4, 2010

The DOJ and FTC have submitted an amicus curiae brief arguing that part of the District Court's holding was erroneous and, as a matter of law, that a relevant geographic market in an antitrust case must be defined to include not only the locations of customers put at risk by alleged anticompetitive conduct but also the locations of production for all supplies of the relevant product available to those customers. They argue that neither governing law nor sound antitrust policy supports the broad-ranging principle of law that the district court adopted in this case, and that affirming that legal conclusion would potentially allow dominant suppliers to avoid liability under the antitrust laws and target vulnerable customers harming American companies and consumers. [DOJ Brief](#)

The ICN Adopts Recommended Practices to Improve Merger Analysis
April 29, 2010

The International Competition Network (ICN) adopted Recommended Practices for substantive merger analysis, approved a pilot project for a virtual university on competition law and practice, and presented a report on the analysis of refusal to deal and margin squeeze conduct under unilateral conduct laws. The ICN members adopted two detailed recommended practices for merger analysis including a market definition analysis using the hypothetical monopolist test and a *Failing Firm/Exiting Assets Analysis* whereby agencies should not prevent merging parties if the acquired firm and its assets would have exited the market without the merger. [DOJ Press Release](#)

FTC Seeks Views on Proposed Update of the Horizontal Merger Guidelines
April 20, 2010

The Federal Trade Commission today released for public comment a proposed revision of the Horizontal Merger Guidelines. The updated Guidelines, which outline how the federal antitrust agencies evaluate the likely competitive impact of mergers and whether those mergers comply with U.S. antitrust law, are being revised jointly by the FTC and the Department of Justice. The current Guidelines were last revised in 1997. Today's revisions are designed to more accurately reflect the way the FTC and DOJ currently conduct merger reviews. [FTC Review Project Website](#)

FTC Submits Comments on FERC's Method of Assessing Partial Acquisitions
April 6, 2010

The FTC commented on the method FERC uses to assess how partial acquisitions of electric power providers affect competition. In addition to the specific affirmations that FERC would require in this process, the FTC's comment recommends that FERC require two further certifications: 1) that the acquirer does not compete in the same electricity markets

Whole Foods Market, Inc.,
&
Wild Oats Markets, Inc.
March 12, 2010

Whole Foods Markets, Inc., via the divestiture trustee, will have to divest certain Wild Oats stores and the Wild Oats intellectual property in order to avoid prosecution by the FTC for a violation of antitrust laws. The FTC is seeking public comments on a number of organizations petitioning for divestiture to their companies, including Topco Associates LLC, Luberski, Inc.; Trader Joe's East, Inc.; Health Investments, LLC; and A-M Holdings, LLC. [FTC Docket](#)

Dean Foods
&
Foremost Farms
March 11, 2010

The DOJ filed a complaint challenging Dean's acquisition of the Consumer Products Division of Foremost Farms USA. This would be a merger between the first and fourth largest sellers of school milk and fluid milk in Wisconsin, Michigan's UP, and northeastern Illinois which could lessen competition. The defendant filed a motion to dismiss, which was denied. [DOJ Docket](#)

Election Systems & Software
&
Premier Election Solutions Inc.
March 8, 2010

The DOJ along with nine state attorneys generals filed a civil antitrust lawsuit in U.S. District Court in Washington, D.C., alleging that a purchase of Premier Election Solutions Inc.'s assets by Election Systems & Software (ES&S) was anticompetitive. The DOJ will require divestment of certain assets and licenses including the Assure 1.2 system. The department said that the settlement will restore competition in voting equip-

as the issuer of the acquired voting securities; and 2) that the acquirer does not own or control certain inputs to the production of electric energy in the same markets as the issuer. These certifications, the FTC states, would help ensure that a partial transaction does not create adverse incentives to harm competition, and they would reinforce other provisions FERC has already proposed. [FTC Press Release](#)

ENFORCEMENT ACTIONS

In re Kason Industries, Inc., & Peter A. Katz
May 6, 2010

The DOJ announced that Kason Industries, Inc., and its former president Peter A. Katz pled guilty to participating in a conspiracy to allocate customers for food service equipment hardware sold in the U.S. and elsewhere from December 2004 until at least December 2008. The DOJ said that the purpose of the charged conspiracy was to reduce and eliminate competition in the sale of the food service equipment hardware manufactured or sold by Kason Industries and unidentified co-conspirators.

Chi Mei Executives Agree to Plead Guilty for Global LCD Price-Fixing Conspiracy
April 30, 2010

Chi Mei and six other companies have pled guilty and have been sentenced to pay criminal fines totaling more than \$860 million. Additionally, 11 executives have been charged in the department's ongoing investigation. It is alleged that the company and its executives conspired with others to suppress and eliminate competition by fixing the prices of TFT-LCD panels, used in computer monitors and notebooks, televisions, mobile phones and other electronic devices. [DOJ Press Release](#)

SK Foods CEO, Frederick Scott Salyer, Indicted on Conspiracy Charges
April 29, 2010

The CEO, Frederick Salyer, of SK Foods L.P. SK Foods is a grower, processor and distributor of tomato products and other food products for sale to food product manufacturers and now faces allegations of conspiracy to fix prices or rig bids for the sale of processed tomato products to three of SK Foods' domestic customers, McCain Foods USA Inc., ConAgra Foods, Inc., and Kraft Foods, Inc. It also faces charges that it included certain terms in contracts for the sale of processed tomato products, also in violation of the Sherman Antitrust Act. Ten former executives and employees of SK Foods and its customer companies have pled guilty to federal felonies in connection with the schemes. [DOJ Press Release](#)

Arkansas Carpenters Health & Welfare Fund v. Bayer Corp.
April 28, 2010

The FTC urged the reversal of this case, where it was argued that Bayer violated Section 1 when they settled their dispute concerning the validity of Bayer's Cipro patent by agreeing to a reverse exclusionary payment settlement, but in an opinion from the Second Circuit, the court held that plaintiffs' legal arguments were precluded by *Tamoxifen*. Although the FTC argued that the *Tamoxifen* standard inappropriately permits patent holders to contract their way out of the statutorily imposed risk that patent litigation could lead to invalidation of the patent while claiming antitrust immunity for that private contract, the court held that so long as *Tamoxifen* was good law the plaintiffs' arguments had no merit and upheld the district court's judgment. However, the court also urged the plaintiffs to file

ment systems in the United States. [DOJ Press Release](#)

SCI Corporation International
&
Palm Mortuary, Inc.
February 26, 2010

The Federal Trade Commission has approved a divestiture by SCI of the Davis Memorial Park cemetery and a related funeral home in Las Vegas, Nevada, to Legacy Funeral Holdings of Nevada, LLC. This was to remedy issues with SCI's acquisition of Palm Mortuary, Inc., completed on December 3, 2009. [FTC Press Release](#)

for a rehearing en-banc, so as to properly revisit the *Tamoxifen* holding. [Opinion](#)

In re Transitions Optical, Inc.
April 27, 2010

The Federal Trade Commission has approved a final settlement order in the matter of Transitions Optical, Inc., which was charged with using anticompetitive practices to maintain its monopoly and increase prices of photochromic treatments. Transitions is the nation's leading manufacturer of photochromic treatments that darken corrective eyeglass lenses. These treated lenses darken when exposed to UV light and fade back to clear when the UV light diminishes which protects the eyes from harmful ultraviolet (UV) light. [FTC Press Release](#), [FTC Docket](#)

DOJ Will Not Challenge Hospital Cost Information Exchange Program
April 26, 2010

The DOJ will not challenge a proposal by the Hospital Value Initiative to establish an information exchange program. The program will provide data on the relative costs and resource efficiency of more than 300 hospitals in California, which could result in reduced health care costs by improving competition among hospitals and facilitating more informed purchasing decisions by group purchasers of health care services. In addition, the exchange program would not be anticompetitive because it involves data that is at least 10 months old and would not disclose any hospitals' actual service fees. [DOJ Press Release](#)

Iowa Ready-Mix Concrete Company Executive Pleads Guilty
April 26, 2010

The U.S. DOJ Antitrust Division secured another guilty plea relating to the ready-mix concrete industry. Steven VandeBrake pled guilty to a three-count felony charge for participating in separate conspiracies with three different companies involving agreements to fix prices and rig bids for ready-mix concrete sold to various companies in Iowa.

In re Roaring Fork Valley Physicians I.P.A., Inc.
April 9, 2010

The Federal Trade Commission has approved a final settlement order in the matter of Roaring Fork Valley Physicians I.P.A., Inc. The company was charged with violating the FTC Act by orchestrating agreements among its members to set higher prices for medical services and refusing to deal with insurers that did not meet its demands for higher rates. The settlement will require Roaring Fork to halt its use of these anticompetitive negotiating tactics. [FTC Press Release](#), [FTC Docket](#)

DOJ Supports a Proposed Digital News Registry
April 1, 2010

The DOJ supports a proposal by The Associated Press (AP) to develop and operate a voluntary news registry. This will facilitate the licensing and Internet distribution by enabling content users to determine quickly the licensing and use terms applicable to specific content owners or individual items. The department said that this is not likely to reduce competition among the owners of news content and could provide procompetitive benefits to both the participating content owners and content users. [DOJ 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.