



July 2017

## Compass Lexecon Annual Newsletter

We have had the great fortune to announce in nearly every newsletter that our past year was the best in our firm's history. Last year was no different: it was by far our best year ever. From mergers to antitrust litigation, financial market issues to securities litigation, and from intellectual property matters to regulatory proceedings, we continued to be retained on the biggest and most important matters involving complex economic issues and we continued to attract the best experts and staff.

Compass Lexecon remains the leading competition economics firm worldwide. We worked (or are working) on the most important mergers, such as the Deutsche Börse-London Stock Exchange merger; the Marriott-Starwood merger; the proposed AT&T-Time Warner merger; the proposed Agrium-PotashCorp merger, as well as dozens of other deals. In antitrust litigation, we worked (or are working) on a wide variety of major price-fixing and class action matters. In addition, in early 2017, Compass Lexecon was named the Competition Economics Firm of the Year by *Who's Who Legal*, an award Compass Lexecon has won every year it has been presented. *Who's Who Legal* identified 38 Compass Lexecon experts from five different countries in its *Who's Who of Competition Economists*, including naming Janusz Ordover as Competition Economist of the Year. The same publication identified future leaders of the competition economics space, naming 11 Compass Lexecon experts from four countries. Two of our experts – Miguel de la Mano and Jonathan Orszag – were named among the most highly regarded future leaders. Finally, the *Global Competition Review* identified three of Compass Lexecon's economists among the top ten leading women in antitrust.

Our finance, general litigation, and regulatory practices enjoyed similar successes. To name just a few examples, we worked for Amazon, which prevailed in a billion dollar transfer pricing dispute with the IRS; for various bank trustees in defending the \$4.5 billion JP Morgan RMBS settlement; for Bechtel and Jacobs Engineering in successfully defeating an \$8 billion damage claim; and for Fidelity National Financial in a Delaware stockholder appraisal action involving a \$4 billion acquisition. We have also been heavily involved in regulatory proceedings and litigation in the Volkswagen automobile emission and General Motors faulty ignition controversies. In addition, we have continued to expand our presence and involvement in intellectual property litigation and continued our leading role as experts in the largest securities fraud, insider trading and manipulation/spoofing cases as well as in appraisal, valuation and corporate governance matters in Delaware and elsewhere.

In the international arbitration arena, our clients won significant victories in a range of cases including investments in an airport arbitration dispute in Bolivia; in an arbitration regarding the early termination of a natural gas supply contract in Argentina; and in an expropriation case against Venezuela. In a survey of general counsel and private practice lawyers

globally, 20 experts from Compass Lexecon – from three continents – were listed among the top expert witnesses in the world. In addition, Compass Lexecon’s Manuel Abdala and Pablo Spiller were named as two of the most highly regarded international arbitration experts.

We also continued to add to our roster of world-renowned experts. We added Dr. Adel Turki, formerly head of Cornerstone Research’s domestic and international finance practice and one of the most respected economic consultants in the world; Matthias Pflanz, one of the leading competition economists in Europe; Chris Garmon, a former staff economist at the Federal Trade Commission; and John Davies, the former head of the competition division at the OECD and former chief economist at the UK Competition Commission.

## **GENERAL LITIGATION MATTERS**

### **Starr v. U.S. Appeal**

One of AIG’s largest shareholders, Starr International Company, Inc. (Starr) sued the United States, alleging that the Government’s acquisition of AIG equity in connection with its bailout of the firm and subsequent actions relating to a reverse stock split were unlawful. The U.S. Court of Federal Claims (Claims Court) held a trial on Starr’s direct claims, for which Starr sought over \$40 billion in relief on behalf of itself and other shareholders. The Claims Court ultimately held that the Government’s acquisition of AIG equity constituted an illegal exaction in violation of Section 13(3) of the Federal Reserve Act, 12 U.S.C. Section 343, but declined to grant relief for either that illegal exaction or for Starr’s reverse stock split claims holding that Starr suffered no damages. Starr appealed the denial of direct relief for its claims. The Government cross-appealed, arguing that Starr lacked standing to pursue its equity acquisition claims directly or, alternatively, that the Government’s acquisition of equity did not constitute an illegal exaction.

In May 2017, a Federal Circuit panel concluded that Starr and the shareholders represented by Starr lacked standing to pursue the equity acquisition claims directly, as those claims belonged exclusively to AIG. The panel therefore vacated the Claims Court’s judgment that the Government committed an illegal exaction and remanded with instructions to dismiss the equity acquisition claims that sought direct relief. The panel also concluded that the Claims Court did not err in denying relief for Starr’s reverse stock split claims, and affirmed the Claims Court’s judgment as to the denial of direct relief for the reverse stock split claims.

In reaching its conclusion that Starr lacked standing to pursue the equity acquisition claim directly, the Federal Circuit panel found, among other things, that the Government did not have effective control of AIG before it acquired AIG’s equity. This portion of the panel’s finding tracks the testimony of Compass Lexecon Affiliate Professor Robert Daines, who rebutted claims made by Starr’s expert concerning effective economic control.

In affirming the Claims Court’s decision denying relief for Starr’s reverse stock split claims, the Federal Circuit panel concluded that the trial court did not err in finding that the reverse stock split was not a vehicle designed by the Government to obtain AIG stock. This finding also tracks the testimony of Professor Daines, who testified that Starr’s expert’s analysis of the reverse stock split was fundamentally flawed because the primary purpose of the stock split was to increase AIG’s trading price, many other companies also conducted similar reverse stock splits, and common shareholders, including Plaintiff, voted for the reverse stock split.

Professor Daines was supported by a Compass Lexecon team led by Jessica Mandel and David Ross in Compass Lexecon's Chicago office. Another Compass Lexecon team led by Peter Clayburgh in our Pasadena office and Michael Kwak in our New York office provided support to another expert who testified successfully at trial that Starr suffered no damages. We worked closely during the original proceedings with attorneys at the United States Department of Justice including Kenneth Dintzer, Scott Austin, Brian Mizoguchi, John Roberson, Mariana Acevedo, Renee Gerber and Vincent Phillips; John Sturc of the U.S. Treasury Department; Kit Wheatley of the Federal Reserve Board of Governors; and outside counsel including John Kiernan and Nicholas Tompkins of Debevoise & Plimpton LLP and Lynn Earl Busath, Jonathan Martin, Matthew Kelly and Alan Tabak of Davis Polk & Wardwell LLP.

### **Amazon - IRS Transfer Pricing Dispute**

Compass Lexecon experts Professor Bradford Cornell and Professor Robert Willig testified in United States Tax Court on behalf of Amazon in a highly-publicized billion dollar transfer pricing suit. In an opinion filed in March 2017, the United States Tax Court ruled in favor of Amazon, stating that the IRS' determination as to a buy-in payment "is arbitrary, capricious, and unreasonable." Had the IRS prevailed, Amazon would have owed additional federal tax for 2005 and 2006 of approximately \$1.5 billion plus interest, according to its annual report.

This dispute centered around a complex 2005 restructuring transaction between Amazon.com Inc. and one of its European subsidiaries in which the parties entered a cost-sharing agreement and Amazon provided use of its technology, trademarks, customer information and other valuable intangible assets to that subsidiary in exchange for a "buy-in" payment. The IRS and its experts argued that these valuable intangible assets had a perpetual useful life and should be valued using a discounted cash flow (DCF) model resulting in a buy-in payment of approximately \$3.5 billion.

Compass Lexecon valuation expert, Professor Cornell, rebutted the testimony of the IRS' primary transfer pricing expert, arguing that his DCF model and perpetual useful life assumption improperly valued the entire enterprise value of Amazon's European business, not just the transferred intellectual property. Professor Cornell also testified that the IRS' expert's methodology overstated the value attributable to the transferred intangibles by failing to account for the depreciation and economic life of those assets and by incorrectly including value attributable to assets other than those provided under the buy-in payment, such as the value of "growth options."

Compass Lexecon microeconomics expert, Professor Willig, rebutted the testimony of the IRS' expert by explaining how the IRS' approach to valuing the transferred intangibles was inconsistent with accepted microeconomic principles because, among other things, the approach failed to account for the useful economic life and decay of the transferred intangible assets, how discounting must be modified accordingly, and how asset value is bounded by the costs of economic substitutes.

The Court concurred with Professors Cornell and Willig, stating that by assuming a perpetual useful life, the IRS' expert "failed to restrict his valuation to the pre-existing intangible property" by including "many items of value that are not 'intangibles,'" and therefore "his approach violated the cost sharing regulations and must be rejected for that reason."

Professors Cornell and Willig were supported by Rajiv Gokhale, Peter Clayburgh, Eric Madsen, Avisheh Mohsenin, Glenn Mitchell, Marc Huntley, Keming Liang, Margaret Hlebowitsh, Constance Kelly, Kimberly George, and others in Compass Lexecon's Chicago and

Pasadena offices. We worked closely with John Magee and Sanford Stark of Morgan, Lewis & Bockius LLP, Raj Madan and Royce Tidwell of Skadden, Arps, Slate, Meagher & Flom LLP, and Bryon Christensen of Amazon.com Inc.

### **Fidelity National Financial Delaware Stockholder Appraisal Action**

This case involved a stockholder appraisal action resulting from Fidelity National Financial's \$4.2 billion acquisition of Lender Processing Services (LPS) in 2014. LPS shareholders who voted in favor of the merger received \$37.14 per share, the final merger consideration. A large shareholder demanded appraisal, however, and claimed that the merger consideration was inadequate. A four day trial was held in May 2016 in the Delaware Court of Chancery before Vice Chancellor J. Travis Laster.

At trial, petitioners and their expert claimed that the merger price was unreliable and the fair value of LPS was actually \$50.46 per share. Compass Lexecon President Professor Daniel Fischel, by contrast, testified that the "maximum fair value" of LPS was the final merger consideration of \$37.14 per share. Professor Fischel's conclusion was based on the contemporaneous market evidence, including, among other things, the actions of, and preliminary indications of interest from, potential acquirors, the use of a competitive sales process with both a pre- and post-signing market check, and the premium to LPS' unaffected stock price implied by both the initial merger consideration and the final merger consideration. As a check and further support for his conclusion, Professor Fischel also performed and testified about a discounted cash flow valuation analysis.

In his December 2016 opinion, Vice Chancellor Laster agreed with Professor Fischel and respondent's conclusion that the maximum fair value of LPS was the final merger consideration and wrote, "Taken as a whole, the evidence at trial established that the Final Merger Consideration was a reliable indicator of fair value as of the closing of the Merger and that, because of synergies and a post-signing decline in the Company's performance, the fair value of the Company as of the closing date did not exceed the Final Merger Consideration." Vice Chancellor Laster also largely agreed with the conclusions in Professor Fischel's discounted cash flow analysis. As a result, Vice Chancellor Laster applied 100% weight to the transaction price, thereby adopting the \$37.14 per share final merger consideration as the fair value of LPS and rejected petitioners' claim for \$50.46 per share.

Professor Fischel was supported by a team at Compass Lexecon that included Rajiv Gokhale, Tim McAnally, Edward Crane and Cheryl Leong. We worked with John Neuwirth, Evert Christensen Jr., Matthew Connors and Elizabeth Kerwin-Miller of Weil, Gotshal & Manges LLP and Bradley Aronstam and S. Michael Sirkin of Ross Aronstam & Moritz LLP, who successfully represented Fidelity National Financial.

### **The Commonwealth of Puerto Rico Bond Litigation**

In November 2016, Judge Francisco A. Besosa of the U.S. District Court for the Commonwealth of Puerto Rico denied motions by multiple bondholders and a bond insurer seeking to lift automatic temporary stays.

Each of the Plaintiffs (Brigade Leveraged Capital Structures Fund Ltd., et al., National Public Finance Guarantee Corporation, Dionisio Trigo-Gonzalez, et al. and U.S. Bank National Association) filed suit against the Commonwealth in 2016 seeking multiple remedies. Collectively, the Plaintiffs are exposed to over \$5 billion in Puerto Rican debt either through direct ownership or through bond insurance.

Subsequently, Congress enacted PROMESA – the Puerto Rican Oversight, Management, and Economic Stability Act – which President Obama signed into law in June 2016. PROMESA implemented an automatic temporary stay on a broad swath of litigation against the Commonwealth. The Court then found that PROMESA applied to the instant complaints and stayed the cases but the Court also found that PROMESA permitted the automatic temporary stay to be lifted for cause and set a hearing.

At a September 2016 hearing, the Court received testimony on a variety of topics relating to economic loss and irreparable harm. Compass Lexecon Affiliate Dr. Jonathan Arnold testified extensively on the question of whether the harm from maintaining the stay was likely to be irreparable and whether and how market prices for the bonds at issue responded to implementation of the stay. Ultimately, the Court, quoting Dr. Arnold’s testimony, found that the Plaintiffs did not demonstrate sufficient cause to grant their motion for relief from the stay.

The Compass Lexecon team was led by David Ross from our Chicago office and Michael Kwak and Mihir Gokhale from our New York office, and included Michael Keable and Anne Marie Yale. Puerto Rico’s trial team was led by Michael Williams, Peter Farrell, and Ronald Anguas, Jr. of Kirkland & Ellis LLP in Washington, D.C. and co-counsel Salvador Antonetti-Zequeira and Jose Ramírez-Coll of Antonetti Montalvo & Ramírez-Coll in San Juan, Puerto Rico.

## **JP Morgan Bear Stearns Litigation**

In two important decisions analyzing relevant precedents and admissible expert testimony in securities fraud litigation, Judge Robert W. Sweet of the Southern District of New York excluded a Plaintiff’s expert under *Daubert*. (*Sherman v. Bear Stearns*, July 2016 & June 2017)

Plaintiff in the case purchased Bear Stearns’ common equity before Bear Stearns’ stock price fell during the financial crisis and alleged that Bear Stearns misrepresented its financial condition and that these misrepresentations caused him to suffer massive losses. Plaintiff’s expert initially purported to model how “leakage” of an alleged fraud (i.e. the dissemination of information over time not limited to corrective disclosures) drove Bear Stearns’ stock price down after Plaintiff’s purchase. Plaintiff’s expert also used his model to measure damages to the Plaintiff caused by the leakage of information about the alleged fraud.

Defendant JP Morgan retained Compass Lexecon and its affiliate Professor Allen Ferrell to analyze and critique Plaintiff’s expert’s leakage model. Professor Ferrell explained that the expert’s model did not exclude the effects of non-fraud related information and showed that it mechanically attributed almost the entire decline in Bears Stearns’ stock price to the alleged fraud and ignored the effects of the financial crisis and company specific non-fraud related news. Judge Sweet agreed, and cited and quoted Professor Ferrell’s analysis and critique of the leakage model extensively in his opinion excluding Plaintiff’s expert under *Daubert*.

Plaintiff’s expert then submitted a revised report in which he attempted to remedy the flaws identified by Professor Ferrell relating to his leakage model. In his revised report, Plaintiff’s expert purported to establish damages using an event study of two alleged corrective disclosures. Plaintiffs’ expert assumed that the inflation in Bear Stearns’ stock price, over the eight months prior to the alleged corrective disclosures, was a constant dollar amount equal to the stock price declines he claimed were caused by the corrective disclosures.

Professor Ferrell explained that the opposing expert’s analysis incorrectly assumed that the disclosure of the alleged fraud, at any time before the corrective disclosures, would have had the same effect on Bear Stearns’ stock price as the purported corrective disclosures did. Judge

Sweet agreed, and cited Professor Ferrell's analysis in his opinion, and once again excluded the Plaintiff's expert under *Daubert*.

Bear Stearns' successor, JP Morgan is represented by Brad Karp, Jack Baughman, Jessica Carey, Jonathan Hurwitz, Geoffrey Chepiga and Rachale Miller of Paul, Weiss, Rifkind, Wharton & Garrison LLP. Professor Ferrell was supported by a team at Compass Lexecon led by Jerry Lumer that included Michael Keable, Laura Yergesheva, Eugenia Vinogradsky and Donald Hong.

### **Motiva Arbitration With Bechtel and Jacobs Engineering**

This case involved a claim by Motiva Enterprises LLC (Motiva) against the Bechtel-Jacobs CEP Port Arthur Joint Venture (BJJV), a joint venture between Bechtel Corporation (Bechtel) and Jacobs Engineering Group Inc. (Jacobs). Motiva alleged fraud and misrepresentations by BJJV in connection with construction of one of the largest oil refineries in the world, allegedly causing it to suffer damages in excess of \$8 billion. In support of its claims, Motiva submitted expert reports detailing various aspects of damages including damages calculated in multiple ways and over multiple periods. Compass Lexecon President Professor Daniel Fischel submitted multiple reports and testified for BJJV at deposition as well as at the hearing on loss causation and other economic issues. Among other things, Professor Fischel opined that Motiva had provided no economic evidence linking the alleged fraud and misrepresentations to damages; had failed to account for the risk allocation under the contract, the impact of external economic factors, and Motiva's own decision making on the performance of the project; and also that Motiva's experts' calculations were fraught with errors and wholly unreliable. Professor Fischel's criticisms led to Motiva's experts revising their opinions repeatedly. In December 2016, a three judge panel of arbitrators, after a lengthy hearing, unanimously rejected Motiva's claims in their entirety and assigned no liability to BJJV. Professor Fischel was supported by David Gross, Rahul Sekhar, Avisheh Mohsenin, Robin Stahl, Quinn Johnson, and Heather Freilich-Farby in Compass Lexecon's Chicago office. We worked closely with Robert Walters, Joshua Lipshutz, and others of Gibson, Dunn & Crutcher LLP, who successfully represented Bechtel.

### **In Re TFT-LCD (Flat Panel) Antitrust Litigation**

In May 2017, the State of Illinois reached a tentative settlement agreement with the final Defendant in the last remaining proceeding in the multidistrict TFT-LCD price-fixing antitrust litigation. This capped roughly ten years of Compass Lexecon involvement, from the class certification phase of the case through this final settlement. Professor Dennis Carlton testified in three trials, and a number of arbitration hearings and depositions. Professor Janusz Ordoover testified on behalf of the Joint Defense Group on class certification issues. In addition, Professor Bobby Willig testified on behalf of Sharp Corporation, and Professor Dan Rubinfeld testified on behalf of Samsung.

In the direct-purchasers class litigation, Professor Carlton testified for Defendant Toshiba at trial in 2012. While Plaintiffs and their economic experts argued for overcharges of nearly \$900 million – and thus damages of more than \$2.5 billion after trebling – the jury determined that overcharges were only \$87 million. Polling of jurors revealed that Carlton's testimony was "very influential in the deliberations."

In the Best Buy LCD price fixing litigation, Carlton testified for Defendants Toshiba and

Hannstar at trial in 2013. Plaintiff Best Buy's economic expert argued for damages of roughly \$900 million post-trebling, based on an overcharge percentage of approximately 20%. The jury found no liability for Toshiba, and, for HannStar, which admitted liability, the jury awarded only direct damages in precisely the amount based on Professor Carlton's analysis – \$7.47 million.

Throughout the many phases of the case, Compass Lexecon worked with teams from White & Case, LLP, Freitas Tseng & Kaufman (now Freitas Angell & Weinberg LLP), Covington & Burling LLP, Paul Hastings LLP, Cleary Gottlieb Steen & Hamilton LLP, Munger Tolles & Olson LLP, Nossaman LLP, Davis Polk & Wardell LLP, Simpson Thacher & Bartlett LLP, Morrison & Foerster LLP, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Wilmer Cutler Pickering Hale & Dorr LLP, and Pillsbury Winthrop Shaw Pittman LLP, among others.

Professor Carlton was supported by many people over the years in teams at Compass Lexecon's Washington D.C., Boston and Chicago offices, including Mark Israel, Ian MacSwain, Allan Shampine, Chris Cavanagh, Georgi Giozov, Guillermo Israilevich, Quinn Johnson, Joel Papke, Loren Poulsen, Chandni Raja, Theresa Sullivan, Ben Wagner, and many others. Professor Ordoover was supported by a team including Mark Israel, Loren Poulsen, Joel Papke, and Jeff Raileanu. Professor Willig was supported by a team including Jay Ezrielev and Cathy Barron. Professor Rubinfeld was supported by a team including Dan Ingberman, Mark Rodini, and Kelvin Huang.

### **FHFA and NCUA RMBS Litigation**

Compass Lexecon has been actively involved as consulting experts in litigation relating to alleged false representations in the offering documents of residential mortgage-backed securitizations (RMBS), including the origination and underwriting characteristics of the loans in the supporting loan groups of the RMBS on behalf of the Federal Housing Finance Agency (FHFA) and National Credit Union Administration (NCUA). Our firm has also provided support for testifying experts Professor G. William Schwert, Professor Anthony Saunders and Professor James Barth, who have been retained in various capacities as experts on issues of materiality and loss causation. We have also supported testifying expert Gordon Klein who has opined on issues of true sale accounting and impairments. Over the last several years, Compass Lexecon clients FHFA and NCUA have favorably settled multiple cases for over \$17 billion and over \$5 billion, respectively.

We continue to work with counsel for FHFA from Quinn Emanuel Urquhart & Sullivan, LLP (Philippe Selendy, Sascha Rand, Richard Werder, Jr., Jonathan Oblak, Jordan Goldstein and Toby Futter) and counsel for NCUA from Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC (David Frederick, Andrew Goldsmith, Andrew Shen, Andrew Hetherington, Daniel Dorris, Matthew Huppert and Peter Ratner) and Korein Tillery, LLC (John Craig, Randall Ewing, Jr. and Stephen Tillery). The Compass Lexecon team supporting the experts on materiality and loss causation is headed by David Ross, and includes Jerry Lumer, Kevin Hartt, Erika Morris, Yoad Shefi, Elizabeth Wall, Ron Laschever, Donnie Hong, Peter Marlantes, Ryan Dorow and Yili Wang. Elisabeth Browne and Eric Madsen of our Pasadena office headed a team supporting the accounting expert.

## **Frank J. Fosbre, Jr. v. Las Vegas Sands Corporation, Sheldon G. Adelson, and William Weidner**

In this securities class action, District Judge Andrew P. Gordon granted Defendants' motion for summary judgment in January 2017, ruling that, among other things, Plaintiffs and their expert did not establish loss causation. Plaintiffs claimed that Defendants had artificially inflated the price of Las Vegas Sands Corporation stock by issuing a number of allegedly false and misleading statements during the Class Period. In support of their claims, Plaintiffs filed reports by two experts, covering various subjects including loss causation and damages. Plaintiffs argued that they could demonstrate loss causation through their experts' opinions.

Compass Lexecon affiliates Professors Allen Ferrell and Ken Lehn filed reports responding to Plaintiffs' experts' conclusions. They concluded that Plaintiffs' experts' opinions, including their opinions on loss causation and damages, were fundamentally flawed and unreliable. The Court agreed, and granted summary judgment for Defendants, holding Plaintiffs failed to establish loss causation.

We worked closely with Las Vegas Sands' counsel Walter Carlson, Jim Ducayet, Courtney Hoffman, Larry Fogel and Zac Madonia of Sidley Austin LLP. Professors Ferrell and Lehn were supported by teams from Compass Lexecon led by Mike Keable and Rajiv Gokhale that included Anne Marie Yale, Avisheh Mohsenin, Jonathan Williams, Sam Hollander, Elizabeth Stone and Heather Freilich-Farby.

## **Discovery Communications Contract Dispute**

Compass Lexecon Senior Managing Director, Jonathan Orszag was retained by Discovery Communications, Inc. and their outside counsel, Theodore Tsekerides and David Yohai from Weil, Gotshal & Manges LLP, to file an expert report and testify regarding a contract dispute between Discovery Communications, Inc. and Sky Angel, a content distribution company. In 2010, Discovery terminated its agreement with Sky Angel after Discovery determined that Sky Angel's mode of distribution of Discovery's programming channels violated their contractual agreement. Sky Angel claimed that the contract termination was unjustified and that the loss of the Discovery programming significantly harmed its ability to attract and retain subscribers. Mr. Orszag testified at trial regarding the differences in programmers' economic considerations when entering into a contract with different distribution technologies and the proper approach to assessing the profitability of carrying a channel by a video distributor. He also showed that the evidence put forward by Sky Angel's economic expert did not establish that the loss of the Discovery programming significantly harmed Sky Angel's business. Judge Deborah K. Chasanow, Chief Judge of the United States District Court for the District of Maryland, ruled in favor of Compass Lexecon's client, Discovery Communications, on all counts. Mr. Orszag was supported by Nathan Hyatt from Compass Lexecon's Oakland office.

## **La Crosse County v. Trinity Industries, Inc.**

Trinity Industries, Inc., a manufacturer of highway guardrail safety products, was sued by a purchaser of their products in Wisconsin, who claimed that Trinity had failed to disclose certain design changes to the Federal Highway Administration, to State Departments of Transportation across the country, and to individual buyers. Plaintiffs alleged multiyear classes of all purchasers of the challenged products in Wisconsin and nationwide, which together accounted for more than \$240 million of purchases. Plaintiffs submitted expert reports from two

experts proposing class-wide methodologies to quantify the alleged damages.

Compass Lexecon was retained by counsel for Trinity to evaluate these methodologies and their appropriateness for class certification purposes. Compass Lexecon Senior Managing Director Mark Israel filed an expert report demonstrating that the methodologies proposed by Plaintiff's experts failed in a variety of ways, including their inability to ascertain the relevant class members/purchases and a failure to account for intergovernmental reimbursements received by the putative class members. Dr. Israel's report also showed that in many cases, members of the putative class suffered no injury at all, meaning that substantial individualized inquiry would be required and that class-wide methods were inappropriate.

In a complete win for Trinity, prior to a hearing on the class issues, Plaintiffs agreed to a full settlement of their claims in which Trinity paid nothing. Dr. Israel was supported by a team in Compass Lexecon's Chicago and Washington D.C. offices led by Todd Kendall and Ian MacSwain and also included Chandni Raja and Jonathon McClure. Trinity was successfully represented in the proceedings by Adam Hoeflich of Bartlit Beck Herman Palenchar & Scott LLP, as well as attorneys from Gibson, Dunn & Crutcher LLP, including Andrew Blumberg, Christine Demana, Bradley Hubbard, Andrew LeGrand, Brian Robison, and Benjamin Wilson, and attorneys from Akin Gump Strauss Hauer & Feld LLP, including Michelle Reed and Elizabeth Marie Dulong Scott.

### **U.S. et al. v. American Express Co. et al. Appeal**

In September 2016, the Second Circuit Court of Appeals ruled in favor of American Express in *U.S. et al. v. American Express Co. et al.* The Second Circuit reversed and remanded, with instructions to enter judgment in favor of American Express, a district court ruling.

In this matter, the United States and 17 states brought a lawsuit against American Express alleging that American Express' non-discrimination provisions (NDPs) in its agreements with merchants violated antitrust laws. Professors Janusz Ordover and Richard Gilbert submitted expert reports on behalf of American Express explaining why American Express' NDPs were pro-competitive, and Professor Gilbert testified at trial. The district court ruled, however, that the NDPs violated the antitrust laws. On appeal, the Second Circuit reversed and remanded, holding that the lower court erred in focusing entirely on the interests of merchants, while discounting the interests of cardholders. The Court further held that the district court failed to consider "the two-sided net price accounting for the effects of the NDPs on both merchants and cardholders," that "[t]he NDPs prevent a merchant from seeking high-end clientele by advertising acceptance of Amex cards but then, at the critical point of sale, offering that clientele a discounted price for not using the Amex card," and that "[t]he revenue earned from merchant fees funds cardholder benefits, and cardholder benefits in turn attract cardholders. A reduction in revenue that Amex earns from merchant fees may decrease the optimal level of cardholder benefits, which in turn may reduce the intensity of competition among payment card networks on the cardholder side of the market." Professor Robert Willig and other antitrust scholars filed an Amicus brief urging the Second Circuit to reverse the District Court's opinion, on these grounds, among others.

Professors Ordover and Gilbert were retained by Peter Barbur, Evan Chesler, and Kevin Orsini of Cravath, Swaine & Moore LLP and Eric Brenner, Donald Flexner, and Philip Korologos of Boies, Schiller & Flexner LLP. Professor Ordover was supported by Bryan Keating, Guillermo Israilevich, Michael Sabor, Piyal Hyder, Benjamin Spulber, Sahdia Khan and others from our Washington, D.C. office. Professor Gilbert was supported by James Ratliff, Todd Bettisworth, Tully Lillis, Kelvin Huang, Nathan Hyatt and others from the Oakland office.

## **The Bank of New York Mellon, U.S. Bank, Wilmington Trust, Law Debenture Trust, Wells Fargo, HSBC and Deutsche Bank \$4.5 Billion RMBS Settlement**

In this matter, JP Morgan offered a \$4.5 billion settlement to Trustees for 330 RMBS Trusts to settle claims relating to representations, warranties, documentation and servicing on mortgages conveyed to the Trusts. The Trustee Group, The Bank of New York Mellon, U.S. Bank, Wilmington Trust, Law Debenture Trust, Wells Fargo, HSBC and Deutsche Bank, retained Compass Lexecon President Professor Daniel Fischel, to provide an independent opinion on the reasonableness of the settlement for each of the 816 Loan Groups within the Trusts in light of the reports of subject matter experts retained by the Trustees and other factors that Professor Fischel deemed relevant.

Professor Fischel, supported by a team at Compass Lexecon, developed a set of consistent criteria to evaluate the settlement and applied them to each Loan Group. This work involved comparing the proposed settlement to recent settlements involving similar issues, estimating the amount each Loan Group would receive if its Trustee accepted the settlement on its behalf, analyzing the support and opposition to the settlement on a Loan Group by Loan Group basis, analyzing measures of the potential recovery if the settlement were rejected by each Loan Group and considering the relevant aspects of reports by legal and industry experts retained by the Trustees. Professor Fischel provided a report and a supplemental report outlining his methodology and making recommendations for each Trust and Loan Group. The Trustees acted consistently with Professor Fischel's recommendations and accepted the settlement for Loan Groups in 319 of the 330 Trusts.

The Trustees then asked the New York State Supreme Court to approve the settlement for those Trusts. In January 2016, Professor Fischel testified for two days before Justice Marcy S. Friedman of the Supreme Court of the State of New York and explained his methodology and his recommendations. In her opinion, Justice Friedman repeatedly cited Professor Fischel's analyses and recommendations and ruled that the Trustees exercised their discretionary power reasonably and in good faith in approving the proposed settlement.

The Trustee Group was successfully represented by Jason Kravitt, Matthew Ingber (lead trial counsel) and Christopher Houpt of Mayer Brown LLP (representing The Bank of New York Mellon), Robert Micheletto, Matthew Martel and Joseph Sconyers of Jones Day (representing U.S. Bank), M. William Munno, Dale Christensen and Thomas Ross Hooper of Seward & Kissel LLP (representing Law Debenture Trust Company), Michael Kraut and Kurt Rademacher of Morgan, Lewis & Bockius LLP (representing Deutsche Bank), Michael Krauss, Robert Schnell, Jr. and Stephen Mertz of Faegre Baker Daniels LLP (representing Wells Fargo), Jean-Marie Atamian and James Ancone of Mayer Brown LLP (representing HSBC), and Michael Johnson and Jason Solomon of Alston & Bird LLP (representing Wilmington Trust).

Professor Fischel was supported by a team at Compass Lexecon led by Jerry Lumer that included Neal Lenhoff, Michael Keable, Rajiv Gokhale, Kevin Hartt, Elizabeth Wall, Hans-Jürgen Petersen, Erika Morris, Robin Stahl, Avisheh Mohsenin, Anne Marie Yale, Margaret Hlebowitsh, Donald Hong and Jonathan Williams, in Compass Lexecon's Chicago office.

## **Energy Labs Patent Infringement Suit**

In this patent infringement case, Energy Labs retained Compass Lexecon and its affiliate, Dr. Jonathan Arnold, to analyze the economic evidence and provide an expert report on lost profits and reasonable royalty damages and injunctive relief. The dispute between Nortek (the nation's largest player in the multi-billion dollar market for heating, ventilation and air-

conditioning systems in commercial and industrial buildings) and Energy Labs involved a large number of patents Nortek had acquired over the years. Compass Lexecon and Dr. Arnold identified design-around defenses and numerous causation problems embedded in the Plaintiffs' theory of damages. At trial, Dr. Arnold testified that the seven patents at issue, even if valid and infringed could not have resulted in any price erosion. The San Jose, California federal court jury found four of the seven patents invalid and no infringement. The jury also reported their finding regarding damages were zero. Dr. Arnold was supported by Dzmityr Asinski and Alice Kaminski of Compass Lexecon's Chicago office. Energy Labs was successfully represented by Adam Alper, Michael De Vries, Brandon Brown and Nimalka Wickramasekera of Kirkland & Ellis LLP.

### **Tenaris and Talta Expropriation Case Against Venezuela**

Compass Lexecon experts Dr. Manuel Abdala and Pablo Lopez Zadicoff were retained by Tenaris S.A. and Talta Trading e Marketing Sociedade Unipessoal LDA, to provide expert testimony on the economic impact of Venezuela's expropriation of Tavsa, a seamless steel tube manufacturer; and Comsigua, a major producer of hot briquetted iron (HBI).

The Tribunal sided with Dr. Abdala's and Mr. Zadicoff's chosen methodologies and date of valuation (April 2008) to determine the value of the expropriated assets, which included a DCF valuation exercise as well as comparable multiples from transactions and traded companies. The Tribunal awarded a total compensation of \$137 million on the Claimant's stakes on both companies plus pre-award interest at LIBOR + 4% per year, for a total amount of \$212.6 million as of the date of the award.

In the case of the valuation of Tavsa, the Tribunal endorsed Compass Lexecon's expert opinion on a number of critical valuation assumptions in the discounted cash flow exercise, including the reference sources and formula to forecast future prices for seamless steel tubes, the base year to project operating costs, the formula to forecast periodic capital expenditures based on annual amortization values, and the size of the country risk premium in the discount rate, among others. Likewise, the Tribunal found that the traded companies used as comparables for several valuation multiples recommended by Dr. Abdala and Mr. Zadicoff served the purpose to confirm the reasonability of the DCF results. As it relates to Comsigua, the Tribunal found that valuation methods based on past offers, transactions and comparable traded multiples, as proposed by Compass Lexecon's experts, were relevant to determine its fair market value.

Dr. Abdala and Mr. Zadicoff were assisted by a Compass Lexecon team led by Andrés Casserly in Compass Lexecon's Buenos Aires office. Compass Lexecon worked with a legal team led by Nigel Blackaby and Caroline Richard of Freshfields Bruckhaus Deringer LLP.

### **Paragon Offshore plc's Bankruptcy Litigation**

In October 2016, the United States Bankruptcy Court, District of Delaware ruled that the Modified Second Amended Joint Plan of Paragon Offshore plc and Affiliated Debtors (the "Bankruptcy Plan") was likely to be followed by further reorganization and was therefore not feasible.

In February 2016, Paragon, a provider of offshore oil rigs, commenced with the Bankruptcy court a voluntary case under Chapter 11 of the Bankruptcy Code. Paragon attributed its Bankruptcy filing to, among other reasons, a reduction in oil exploration activity due to collapsing oil prices, an oversupply of rigs competing for limited business, and contract terminations and renegotiations. The Bankruptcy Plan included projections for Paragon's post-

bankruptcy performance, which relied on improved estimates for Paragon's rig utilization, rig rental rates (called "dayrates"), revenue and profitability, among other things.

All classes of claims against Paragon supported the Bankruptcy Plan with the exception of Compass Lexecon's clients, the holders of Paragon's Secured Term Loans. The holders of the Secured Term Loans claimed that Paragon's business plan did not include a sufficient cushion to account for a prolonged downturn in the commodities markets, and that Paragon would be unable to achieve their projected utilization and dayrate projections and also would be unable to meet its obligations as they came due.

In support of the feasibility of the Bankruptcy Plan, Paragon submitted expert reports containing Discounted Cash Flows and Comparable Company analyses purporting to show that Paragon would be solvent upon emergence under the Bankruptcy Plan, would have sufficient cash to pay its debts as they came due, and would be able to refinance their debt upon maturity.

In response, Compass Lexecon President Professor Daniel Fischel opined that Defendants' valuation analyses were fundamentally flawed and that the projections contained in the Bankruptcy Plan overstated Paragon's value at emergence. Professor Fischel also opined that under more reasonable, alternative projections, Paragon would be insolvent upon emergence from Bankruptcy and therefore would be unable to refinance its debt upon maturity.

In his ruling, Judge Christopher S. Sontchi agreed with Professor Fischel that Paragon's Bankruptcy Plan was not feasible, stating that Paragon would be unable to achieve its projected utilization and dayrates, would likely run out of cash, and would be unable to refinance its debt at or prior to maturity.

Professor Fischel was supported by a team at Compass Lexecon led by Rajiv Gokhale that included Clifford Ang in our Oakland office, and Jonathan Polonsky and Cheryl Leong in our Chicago office. We worked with Madlyn Gleich Primoff, Jeffrey Fuisz, Steven Fruchter and Benjamin Mintz of Kaye Scholer LLP who successfully represented the holders of the Secured Term Loans in the case.

### **Summary Judgment in OSF Health Appellate Proceeding**

In June 2017, the Seventh Circuit Court of Appeals affirmed the grant of summary judgment to Compass Lexecon's client, OSF Health (d/b/a St. Francis Medical Center), on all claims of monopolization leveled against it by cross-town rival UnityPoint Methodist. The opinion authored by Judge Richard Posner affirmed a previous district court decision.

Compass Lexecon Senior Consultant Professor Robert Willig testified that OSF did not use market power to force commercial payers to accept inefficient narrow networks as the Plaintiff claimed. Professor Willig explained that OSF's negotiations with payers over combinations of prices and the designs of provider networks were part of a healthy competitive process. The Seventh Circuit agreed with Professor Willig's analysis. Professor Willig also provided a series of analyses demonstrating that Methodist was not foreclosed from competing in any relevant market. The Seventh Circuit agreed with this conclusion as well.

Professor Willig was supported by a Compass Lexecon team led by Loren Smith that included Jay Ezrielev, Jeff Raileanu, Genaro Marquez and Benjamin Spulber. In addition, Compass Lexecon Senior Consultant Meg Guerin-Calvert served as OSF's damages expert, providing an assessment of damages claims put forth by Plaintiffs' economic expert. Guerin-Calvert was supported by a team led by Susan Manning that included Jeremy Nighohossian, Jen Maki, and Scott Heyman. Compass Lexecon worked closely with the Pepper Hamilton LLP legal team led by Barbara Sicalides that included Barak Bassman, TJ Griffin and Benjamin Eichel.

## **Lyondell Fraudulent Conveyance Litigation**

This case stems from the 2007 acquisition of Lyondell Chemical Company by Basell AF S.C.A. and the subsequent bankruptcy of the merged firm, LyondellBasell AF S.C.A. (LBI), in January 2009. The LB Litigation Trust, on behalf of the creditors of the merged firm, alleged multiple claims including fraudulent transfer, avoidable preference and breach of contract. These claims centered on the Trustee's contention that LBI was insolvent on the date of the merger in December 2007 as well as subsequently in April and October of 2008. In support of these claims, the Trustee retained three experts who submitted 11 reports collectively concluding that LBI was balance sheet insolvent, unable to meet its debts as they came due and inadequately capitalized.

Compass Lexecon and its President Professor Daniel Fischel were retained by the law firm of Quinn Emanuel Urquhart & Sullivan, LLP, to analyze the economic evidence with respect to these claims. Professor Fischel and the Compass Lexecon team analyzed the contemporaneous market evidence including market prices, credit ratings, the opinions of equity analysts, and the contemporaneous actions and analyses by market participants such as banks financing the transaction. Professor Fischel also conducted his own valuations of LBI and its projected ability to meet its debts as they came due under various sets of contemporaneous projections. Professor Fischel concluded that LBI was solvent as of the close of the transaction and further opined that the Trustee's expert analyses were fundamentally flawed in part because they relied on cherry-picked projections for LBI and ignored the voluminous market evidence which indicated that LBI was solvent. Professor Fischel expressed these opinions in three expert reports and two depositions prior to trial.

At trial, the Trustee and its experts claimed that LBI was insolvent because its debt exceeded the value of its assets on both the December 2007 and October 2008 valuation dates and that the transaction left the firm unable to pay its debts as they came due and with unreasonably small capital. In support of these claims, the Trustee submitted valuations of the merged firm as of both dates as well as analyses of LBI's projected cash flows which purported to show insolvency. We worked closely with Quinn Emanuel Urquhart & Sullivan, LLP during the trial to assist counsel in exposing the flaws in these claims by the Trustee and their experts.

In his April 2017 ruling, Judge Martin Glenn of the United States Bankruptcy Court, Southern District of New York, ruled that during the trial, "serious flaws with the Trustee's experts were exposed...On the whole, the Court finds the expert testimony offered by the Trustee to be largely unreliable and the Trustee's case floundered without credible expert testimony on these critical issues." The Court emphasized in reference to market participants that "[t]he views of these sophisticated investors provided perhaps the clearest indication that the combined company was left with sufficient capital upon the merger closing, given that the financial projections prepared by both Lyondell management and the banks all reasonably showed LBI to be solvent on the closing of the merger," and with respect to the October 2008 claims that "the Trustee's insolvency case crumbled under the weight of [the expert's] errors." The Court ruled in favor of Defendants on all valuation-related claims.

We worked with Richard Werder, Jr., Susheel Kirpalani, Andrew Rossman, and Rex Lee of Quinn Emanuel Urquhart & Sullivan, LLP who successfully represented LBI. The Compass Lexecon team that worked with Professor Fischel included Rahul Sekhar, Rajiv Gokhale, Robin Stahl, Avisheh Mohsenin, Quinn Johnson, James Libby, Heather Freilich-Farby and Nabila Lotayef.

## **Airport Arbitration Dispute in Bolivia**

Compass Lexecon's expert Marcelo Schoeters was retained by Abertis Infraestructuras S.A. to provide expert testimony on the economic impact of a number of regulatory measures undertaken by the Plurinational State of Bolivia, which ultimately led to the nationalization of Servicios de Aeropuertos Bolivianos S.A. (SABSA). SABSA held concession rights to operate Bolivia's three main airports in the cities of La Paz, Santa Cruz and Cochabamba.

The dispute involved claims that SABSA had been treated unfairly by Bolivian regulators since 2011, ultimately leading to its nationalization in 2013. Mr. Schoeters provided expert testimony in relation to the quantification of damages suffered by Claimant using two methodologies: a discounted cash flow (DCF) approach and a relative valuation approach. Mr. Schoeters also provided oral testimony before a Permanent Court of Arbitration Tribunal, which was held under UNCITRAL rules. A settlement for approximately \$23 million was announced in May 2017, before an award was rendered by the Tribunal.

Marcelo Schoeters and external consultant Andrés Ricover, acting as co-expert, were assisted by a team of professionals from Compass Lexecon's Buenos Aires and London offices, including Julian Delamer, Ariel Medvedeff and Federico Gonzalez Loray. Abertis was represented by Ignacio Suárez Anzorena of Clifford Chance.

## **DP World London Court of International Arbitration Proceeding Against the Republic of Djibouti**

In the mid-2000s, DP World and Djibouti signed a suite of contracts under which DP World designed, built, and manages a state-of-the-art container terminal in exchange for 33% ownership of the terminal and a management fee. The terminal is worth in the vicinity of \$2 billion and earns tens of millions in profit each year. In the arbitration, Djibouti sought either to rescind the main concession agreement and take full ownership of the terminal or to terminate the agreement and receive hundreds of millions of dollars in damages.

Djibouti's primary contention was that DP World had bribed Djiboutian businessman Abdourahman Boreh – the Djiboutian government chief negotiator – by entering into various consulting arrangements and other business dealings with Boreh around the time that the contracts were signed. Djibouti claimed that these transactions between DP World and Boreh entitled it to rescind or terminate the concession.

In response, Compass Lexecon Expert Professor Pablo Spiller, supported by a team led by Compass Lexecon Executive Vice President Santiago Dellepiane that included Lyle Boller and Rachel Marx from Compass Lexecon's New York office, testified that given the vast wealth created by the Concession to both Djibouti and its citizens there was no viable way by which rescission could be implemented in such a way that the parties be brought back to the status-quo ante. In February 2017, an arbitration panel issued its decision rejecting all of Djibouti's claims. As a result, DP World retains its partial ownership of the \$2 billion port and maintains its position as manager of the port. Compass Lexecon worked closely with A. William Urquhart, Anthony Sinclair and Jonathan Cooper of Quinn Emanuel Urquhart & Sullivan, LLP.

## **Mylan Pharmaceuticals, Inc. v. Warner Chilcott, PLC, et al. Appeal**

In September 2016, the Third Circuit affirmed a Pennsylvania Federal Court's April 2015 dismissal of Mylan Pharmaceutical's (Mylan) suit against Compass Lexecon client Warner

Chilcott, PLC (Warner Chilcott), finding that Mylan had defined the oral tetracycline market too narrowly and that Warner Chilcott's Doryx product had at most an 18 percent share of the oral tetracycline market. Compass Lexecon was retained by counsel for Warner Chilcott in the Doryx Antitrust Litigation, which involved monopolization and attempted monopolization claims brought by a direct purchasers class, an indirect purchasers class, individual retailers, and Mylan. Warner Chilcott distributes and promotes branded Doryx in the United States under a license agreement with Mayne Pharmaceuticals (Mayne). Mylan manufactures generic Doryx. Plaintiffs alleged that Warner Chilcott and Mayne sought to protect their monopoly through "product hopping", the practice of changing the drug in ways that provide no significant improvement, but prevent pharmacists from automatically substituting generic equivalents. Previously, Defendants entered into modest settlements with direct purchasers, indirect purchasers, and retailer Plaintiffs, leaving Mylan as the only Plaintiff. In April 2015, the Court granted Defendants' motion for summary judgment, ruling that there was no "economically plausible evidence to prove that defendants hold monopoly power in the relevant market," and that "Defendants did not exclude competition when they reformulated Doryx, introduced new versions of Doryx, and withdrew old versions." Compass Lexecon experts in this litigation were Janusz Ordover on class certification issues, Dennis Carlton on liability issues, and Fredrick Flyer on damages. The Compass Lexecon team included Jay Ezrielev, Deborah Healy, Lynette Neumann, Bradley Reiff and Heather Spang in our Chicago and Washington D.C. offices. Compass Lexecon worked with Mark Gidley and Jack Pace of White & Case LLP.

### **iHeartCommunications, Inc. Valuation Dispute**

The Defendants in this matter, owners of iHeart Priority Guarantee Notes, served Notices of Default in March 2016 after iHeart transferred 100 million non-traded Class B shares of iHeart subsidiary Clear Channel Outdoor Holdings, Inc. (CCOH) to Broader Media, Inc., another iHeart subsidiary. Defendants claimed that the share transfer violated indentures governing the Priority Guarantee Notes because it exceeded the amount iHeart was allowed to move from restricted subsidiaries into subsidiaries not governed by the indentures. iHeart then brought a declaratory judgment action seeking to rescind the Notices of Default.

At trial in the District Court of Bexar County, Texas, Defendants submitted Discounted Cash Flows (DCF) and Comparable Company Multiples analyses purporting to show that the value of the transferred Class B shares vastly exceeded the amount permitted under the indentures. In response, Compass Lexecon President Professor Daniel Fischel opined that Defendants' analyses were fundamentally flawed and irrelevant given the existence of a public market price for CCOH's Class A shares, which under the circumstances of the case provided the most reliable basis for valuing the transferred non-traded Class B shares. Given the existence of a publicly traded market price for the Class A shares, Professor Fischel opined that the use of alternative valuation methods such as DCF and Comparable Company Multiples were wholly unnecessary. Professor Fischel also explained how these alternative valuation methodologies, when analyzed correctly, produced results consistent with the publicly traded market prices of the Class A shares. Having determined that the best estimate of the value of the non-traded Class B shares was the market price of the publicly traded Class A shares, Professor Fischel concluded that the value of the transferred Class B shares did not violate the terms of the indentures.

In a series of post-trial rulings, Judge Cathleen Stryker rescinded the Notices of Default, agreeing with Professor Fischel that the fair market value of the iHeart Class B shares transferred to Broader Media was equal to the public market price of iHeart's Class A shares on the transfer date, and thus the transfer did not violate the terms of the indentures.

Professor Fischel was supported by a team at Compass Lexecon led by Jessica Mandel that included Clifford Ang and Andrew Roper in our Oakland office, and Rajiv Gokhale, Jonathan Polonsky, Margaret Hlebowitsh and Edward Crane in our Chicago Office. We worked with Kevin Huff, David Schwarz and Leslie Pope of Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC who successfully represented iHeart.

### **Commercial Arbitration Regarding Early Termination of Natural Gas Supply Contract**

Compass Lexecon's client Pan American Energy LLC (PAE), one of the largest hydrocarbons producers in Argentina prevailed in its ICC arbitration request to early terminate a long-term natural gas supply contract with Aluar Aluminio Argentino S.A.I.C., a major aluminum producer. The dispute centered around the issue of whether foreign exchange restrictions introduced by the Argentine government in late 2011 had produced a distortion in the natural gas price received by PAE, which in turn could trigger a clause allowing early termination of the supply contract. The contract involved daily natural gas deliveries of 2.13 million m<sup>3</sup>. The ICC Tribunal sided with the opinion of Compass Lexecon's experts Dr. Manuel Abdala and Mr. Marcelo Schoeters who showed that the type of formal and informal restrictions imposed on foreign currency transactions created dual exchange markets which ultimately ended up reducing the market value of natural gas sold by PAE, once measured in hard currency. The Tribunal also sided with Dr. Abdala and Mr. Schoeters' opinion that the foreign exchange market used in the contract could no longer be characterized as a 'single' and 'free' exchange market.

Compass Lexecon's experts were supported by a team of economists led by Ariel Medvedeff in the Buenos Aires office and included Andrés Casserly, Federico Gonzalez Loray and Ramiro Gamen. Compass Lexecon worked with a legal team led by Julio César Rivera and Julio César Rivera (h) of Rivera & Asociados, and with external counsel Ignacio Pérez Cortés.

### **Golden Boy Promotions LLC, et al. v Alan Haymon, et al.**

Compass Lexecon's clients Alan Haymon, Alan Haymon Development, Inc., Haymon Boxing LLC, Haymon Boxing Management, Haymon Holdings LLC, and Haymon Sports LLC (collectively "Haymon Sports") prevailed in this litigation involving some of the biggest names in professional boxing management and promotion. In a January 2017 decision, Judge John F. Walter of the U.S. District Court for the Central District of California granted summary judgment for Haymon Sports and rejected the claims of Golden Boy Promotions LLC, Golden Boy Promotions, Inc., and Bernard Hopkins (collectively "Golden Boy"). Golden Boy alleged that since January 1, 2015 Haymon Sports had used its alleged market power in a market for U.S.-based "management of Championship-Caliber Boxers" to force boxers into management contracts that served to "tie-out" Golden Boy and other boxing promoters from offering promotional services to the boxers. Golden Boy also alleged that Haymon Sports attempted to monopolize a market for U.S.-based "promotion of Championship-Caliber Boxers" through this "tie-out" arrangement, its blocking of other promoters from scheduling bouts at desired venues, and its licensing agreements with cable and broadcast television networks.

In granting summary judgment, the Court cited deposition and written testimony provided by Compass Lexecon expert Duncan Cameron. Dr. Cameron submitted a report and declaration in support of summary judgment demonstrating that Haymon Sports' efforts had enhanced competition, expanded the output of televised professional boxing, and increased total benefits for boxers, consumers and producers of professional boxing. Dr. Cameron also showed that the opposing expert's opinions regarding market definition and market power were

unreliable because they were not based on a reasonable analysis of the options available to boxers and failed to account for the demonstrably low barriers to entry.

Compass Lexecon worked with Michael Williams, Adam Wolfson, Corey Worcester and Jonathan Clarke of Quinn Emanuel Urquhart & Sullivan, LLP. Dr. Cameron was supported by a team in Compass Lexecon's Pasadena office led by Christopher Fasel that included Peter Marlantes, Matt Krietzberg, Kim George, Runbo Li and Evan Thompson.

### **Abbott/Alere Material Adverse Effect Litigation**

On January 30, 2016, Abbott Labs and Alere Inc. entered into a merger agreement whereby Abbott would acquire all of Alere's outstanding shares for \$56 per share in cash. On December 7, 2016, Abbott sued in Delaware Chancery Court for a declaratory judgment that (i) the events that occurred after Alere signed the merger agreement had or would reasonably be expected to have a Material Adverse Effect (MAE) as that term is defined in the Merger Agreement, and (ii) that as a result Abbott was entitled to terminate the merger. Shortly before trial, the parties reached an agreement to move forward with the deal at a lower price of \$51 per share. Compass Lexecon President Professor Daniel Fischel was retained by Kirkland & Ellis LLP, counsel for Abbott, to analyze the valuation effects of the alleged adverse events on Alere's standalone value. We also supported the work of Professor Roman Weil, who was retained to analyze the accounting and stock market implications associated with Alere's reported material weaknesses in internal controls. Professor Fischel was assisted by a team in our Chicago office led by David Ross, Rajiv Gokhale and Jessica Mandel. Professor Weil was supported by a Compass Lexecon team led by Jennifer Milliron. We worked with Andrew Kassof, James Hurst, Alec Solotorovsky, Nader Boulos, Ryan Moorman and others of Kirkland & Ellis and William Savitt, Jeffrey Wintner, Carrie Reilly and others of Wachtell Lipton Rosen & Katz.

### **E-Books Appellate Decisions**

In July 2017, an appellate panel in the Second Circuit upheld Judge Denise Cote's decisions, dismissing the antitrust claims of two e-book retailers that had sued Apple Inc., and five e-book publishers, Hachette Book Group, HarperCollins Publishers, MacMillan, The Penguin Group and Simon & Schuster. The matters involved claims that the Plaintiffs were harmed as a result of the allegedly conspiratorial introduction of an "agency model" for e-book distribution in which publishers set the retail price of e-books. The Plaintiffs claimed that the agency model prevented each of them from offering discounts on their sales of e-books and thus limited their ability to sell e-books. Judge Cote's decision relied heavily on the opinions and testimony of Compass Lexecon expert Dennis Carlton, who filed an expert report on behalf of the Defendants. Professor Carlton showed that there was no evidence to support any claims that the Plaintiffs' business models relied significantly on the discounting of e-books prior to the introduction of the agency model and that therefore the retailers' business difficulties were not significantly related to their inability to engage in retail price discounting after the agency model's introduction.

Professor Carlton was supported by a Compass Lexecon team that included Guillermo Israilevich, Quinn Johnson, Joel Papke and Gustavo Bamberger. The team worked closely with counsel for the six defendants including, Daniel Swanson of Gibson, Dunn & Crutcher LLP, representing Apple; Michael Lacovara of Freshfields Bruckhaus Deringer US, representing Hachette; C. Scott Lent of Arnold & Porter LLP, representing HarperCollins; Joel Mitnick of Sidley Austin LLP, representing MacMillan; Saul Morgenstern of Kaye Scholer LLP,

representing Penguin Group; and Yehudah Buchweitz of Weil, Gotshal & Manges LLP, representing Simon & Schuster.

### **Carfax Litigation**

In September 2016, District Judge Alison J. Nathan granted a motion for partial summary judgment brought by Compass Lexecon's client Carfax, the leading provider of vehicle history reports (VHRs) in the U.S. The Plaintiffs alleged that Carfax had exclusive dealing arrangements with car manufacturers and used car listing websites that foreclosed rival VHR suppliers. In granting Carfax's motion for summary judgment, Judge Nathan relied on expert reports and deposition testimony from Dr. Robert Willig, finding that even if the alleged conduct occurred, Carfax did not foreclose a sufficient portion of the market to support a legal claim.

Plaintiffs in this matter were 469 dealers of used cars that challenged Carfax's agreements with certified pre-owned (CPO) vehicle programs and certain websites advertising used vehicles for sale (e.g., Autotrader or Cars.com). Specifically, Plaintiffs alleged that: 1) agreements with CPO programs to use Carfax VHRs in promoting their CPO vehicles adversely affected competition in the market for VHRs and 2) Carfax's agreements with Cars.com and Autotrader to be the exclusive VHR provider for these sites also adversely affected competition in the market for VHRs. Judge Nathan relied on evidence put forth by Dr. Willig that "CPO Agreements were sufficiently short-term and/or terminable that they could not have foreclosed competition" and that "Website Agreements did not foreclose competition because Autocheck [Carfax's principal competitor] could reach consumers through other means." Further, Judge Nathan relied on evidence presented by Dr. Willig in his Reply Report that the foreclosure estimates used by Plaintiffs' expert were unreliable, finding that "[Plaintiffs' expert's] foreclosure estimate was based on an artificially small figure for Carfax's VHR sales, and therefore an artificially small estimate of the overall size of the market."

Dr. Willig was supported by a team out of our D.C. office that was led by Mary Coleman and Maria Stoyadinova that included Bo Bourke, Georgi Giozov and Sahdia Khan. James Cooper from Arnold & Porter LLP successfully represented Carfax in this matter.

### **OneLink Communications Sham Litigation Case**

In 2011, Puerto Rico Telephone Company, Inc. (PRTC) claimed that OneLink Communications violated antitrust laws by conducting "sham" litigation over a period of four years, which delayed PRTC's entry and launch of Internet Protocol Television (IPTV) service in Puerto Rico. PRTC claimed that OneLink embarked on multiple objectively baseless lawsuits in both state and federal court to thwart or delay PRTC's entry into OneLink's franchise territory. OneLink argued that it had genuine concerns that PRTC was engaged in illegal activities, that it did not engage in any "sham" litigation and that antitrust liability would not follow because any delays in approving PRTC's franchise application were the result of governmental acts.

Compass Lexecon Senior Managing Director Jonathan Orszag was retained by Thomas Demitrack, Michael Shumaker, Tracy Stratford and Brian Grube from Jones Day to provide expert testimony regarding market definition, monopoly power, and damages. Mr. Orszag's testimony showed that the relevant market included at least all multichannel video programming distributors (MVPDs) in OneLink's service territory; that Plaintiff's expert did not show that OneLink had monopoly power in the relevant markets; and that the Plaintiff's expert damages calculations vastly overstated PRTC's alleged lost profits. In two decisions, the District Court of Puerto Rico relied on the Noerr-Pennington Doctrine to grant OneLink's motions for summary

judgment. The Court concluded that OneLink did not engage in a series of sham petitions and its litigation filings were immune from Sherman Act violations. The Compass Lexecon team working on this matter included Guillermo Israilevich, Jay Ezrielev, Rahul Sekhar, Carolina Czastkiewicz, Hassan Faghani Dermi, Quinn Johnson, Piyal Hyder and others from our Washington, D.C. and Chicago offices.

### **MF Global and PricewaterhouseCoopers Settle \$2 billion Professional Malpractice Case**

In March 2017, MF Global and Compass Lexecon's client PricewaterhouseCoopers (PwC) announced that they had settled a \$2 billion malpractice case in New York federal court to the "mutual satisfaction of the parties." MF Global alleged that PwC's auditing failures on its financial statements allowed it to carry \$6.3 billion in European sovereign repurchase-to-maturity bonds off its balance sheet, and that these holdings caused the firm's bankruptcy. Terms of the deal, which came after several weeks of trial testimony (including the testimony of MF Global's causation expert) were not disclosed.

Compass Lexecon Senior Consultant Kenneth Lehn was retained in the case to review and evaluate the opinions concerning causation and damages expressed by MF Global's experts. PwC's counsel also retained our Senior Affiliate Dr. Christopher Culp to describe the trading, clearing and settlement mechanisms for European sovereign debt and related repurchase agreements and to review and evaluate portions of the expert reports concerning these mechanisms and the foreseeable risks associated with MF Global's accumulation of European sovereign debt. Culp and Lehn were supported by members of our Chicago office including David Ross, Tim McAnally, Andria van der Merwe, Bettina Stärkle and our Affiliate Andrea Neves, who also provided assistance to PwC's counsel as consulting experts. PwC was represented by James Cusick, James Capra, David Fine, Meredith Moss, Emmett Murphy and Paul Mezzina of King & Spalding LLP.

### **Prudential Insurance Company ERISA Litigation**

Compass Lexecon client Prudential Insurance Company of America (Prudential) successfully defeated class certification in a matter brought by Plaintiffs representing a putative class of employer-sponsored life insurance beneficiaries. Plaintiffs contended that the method of payment of the life insurance benefits did not follow plan policies which stated that payment would normally be made in "one sum." They claimed that Prudential breached its fiduciary duties under the Employee Retirement Income Security Act of 1974 (ERISA) and state law by investing the benefits (held in interest-bearing checking or "retained asset" accounts) for its own benefit before beneficiaries withdrew the funds. Compass Lexecon Senior Consultant Professor Robert Willig was retained to address class certification issues.

Judge Joseph F. Leeson, Jr. of the U.S. District Court for the Eastern District of Pennsylvania rejected Plaintiffs' request to certify a class noting, among other things, that consistent with evidence presented in Professor Willig's report, many of the beneficiaries used their retained asset accounts like checking accounts, with some withdrawing all of the funds right away, and one class representative writing 35 checks. Prudential was successfully represented by Alison Douglass, Dave Rosenberg, James Fleckner, Jordan Weiss and Michael Isenman of Goodwin Procter LLP. Professor Willig was supported by a Compass Lexecon team led by Colleen Loughlin that included Laura Yergesheva and Andrew Lin.

## **JP Morgan Investment Management Litigation**

Compass Lexecon was retained on behalf of JP Morgan Investment Management (JPMIM) in two cases brought by AMBAC and Assured Guaranty alleging gross negligence and breaches of contract related to investment decisions for assets in two triple X securitizations providing reserves for life insurance. Plaintiffs insured the payments on notes issued by the securitizations, and the assets were invested largely in mortgage-backed securities, which subsequently declined in value during the financial crisis. Compass Lexecon expert Professor Allen Ferrell opined on the lack of foreseeability of the declines in value of the assets, and Compass Lexecon expert Professor Kenneth Lehn opined on the flaws in the Plaintiffs' expert's models. We worked with counsel for JPMIM from Paul, Weiss, Rifkind, Wharton & Garrison LLP including Daniel Levi, Jeff Recher, Evan Kubota and Emily Weissler. The team supporting Professor Ferrell was headed by Elisabeth Browne and included Peter Clayburgh and James Tam. The team supporting Professor Lehn was headed by David Gross and included Neal Lenhoff, Hans-Jürgen Petersen and Laura Yergesheva. The cases settled during trial for a fraction of Plaintiffs' damages estimates.

## **FCC BDS Project**

Over the course of the past two years, a Compass Lexecon team led by Mark Israel, Dan Rubinfeld and Glenn Woroch filed several white papers and declarations in an FCC proceeding that explored whether and how to deregulate "Business Data Services" (BDS, a/k/a special access). On behalf of their clients AT&T, CenturyLink, Fairpoint, Frontier, Hawaiian Telcom, Alaska Communications and Verizon, the team analyzed an enormous dataset with detailed information on the location of BDS facilities and BDS sales, arguably the largest data collection in the Commission's history.

The Compass Lexecon team found compelling evidence of widespread presence of facilities-based competitors in locations where there was BDS demand. Using these findings, together with their criticisms of studies alleging to find market power in BDS, the Compass Lexecon team concluded that the BDS market is competitive, at least in the vast majority of locations.

Consistent with these findings, in April 2017, the Commission passed an order granting regulatory relief from price-cap rate regulation, which had been in effect since 1999. To identify areas eligible for relief, the Commission devised a competitive market test that was based on the presence of facilities-based competitors to buildings with BDS demand, quite similar to tests that the Compass Lexecon team had proposed. As part of this proceeding, the Commission rejected proposals from other interested parties calling for much more stringent standards for regulatory relief. Further, the Commission agreed with the Compass Lexecon team that competition had grown since 2013 (the time covered by the FCC's data), and in particular, that cable operators have emerged as a powerful competitor in the market for BDS services.

The data analysis was managed by a Compass Lexecon team led by Bobby Calzaretta that included Aren Megerdichian, Rob Oandasan, Jackie Chen and Alex Asanchev.

## **Settlement of Martin Act Case Against Former AIG CEO Maurice R. Greenberg and Former AIG CFO Howard I. Smith**

In February 2017, our client, the Office of Attorney General Eric T. Schneiderman announced that it had reached a settlement of the Office's securities fraud suit under the Martin

Act against Maurice R. (Hank) Greenberg, the former CEO of American International Group, Inc. (AIG), and Howard I. Smith, AIG's former Chief Financial Officer. The lawsuit, *People v. Maurice R. Greenberg and Howard I. Smith*, was brought by Attorney General Eliot Spitzer in 2005, following the admission by AIG that the company had engaged in certain improper reinsurance transactions while Mr. Greenberg was the company's CEO and Mr. Smith the CFO, including two sham deals – known as the GenRe and Capco transactions – that materially misrepresented AIG's loss reserves and misstated its underwriting results, respectively, during the period 2000 to 2004. As part of the settlement, Mr. Greenberg and Mr. Smith agreed to give up over \$9.9 million that they received as performance bonuses from 2001 through 2004, the period when these sham transactions were reflected on AIG's books. In addition, both Greenberg and Smith acknowledged that the deals were done in order to increase AIG's loss reserves and convert underwriting losses into investment losses, and that they "participated in and approved these two transactions," both of which Greenberg said he initiated. The settlement occurred during a recess in the trial, which began in September 2016.

Our affiliate, Christopher Culp, was retained by the Office of the Attorney General as a rebuttal expert on certain aspects of the GenRe transaction, including whether its implementation was consistent with a genuine finite reinsurance agreement or was more consistent with an agreement that was not intended to transfer any significant risk. The Office of the Attorney General also retained David Ross (an Executive Vice President in our Chicago office) as a rebuttal expert to evaluate the analyses and conclusions expressed by two of Defendants' experts concerning the materiality of the GenRe and Capco transactions. We worked with Senior Trial Counsel David Ellenhorn, Senior Enforcement Counsel David Nachman and Assistant Attorney General Armen Morian.

### **Game Show Network, LLC v. Cablevision Systems Corp.**

Compass Lexecon Senior Managing Director Jonathan Orszag testified on behalf of Cablevision in a television carriage dispute between Cablevision and Game Show Network (GSN) before Federal Communications Commission Administrative Law Judge Richard Sippel. In July 2017, the Federal Communications Commission completed its review of Judge Sippel's decision and ruled in favor of Cablevision. The Commission agreed with Orszag's testimony on the key issues in the case and cited to Orszag's testimony numerous times. In particular, the Commission found that GSN failed to demonstrate that Cablevision engaged in discrimination on the basis of affiliation in carrying GSN on its Sports and Entertainment tier. The Commission also found that GSN did not demonstrate that it is similarly situated to Cablevision's television networks. Finally, the Commission found that Cablevision's asserted business reasons for carrying GSN on the Sports and Entertainment tier were legitimate and non-discriminatory. Orszag was supported by a Compass Lexecon team led by Jay Ezrielev. Orszag and Compass Lexecon worked closely with lawyers from Paul, Weiss, Rifkind, Wharton & Garrison LLP, including Jay Cohen, Gary Carney and George Kroup.

### **SFPP Right-of-Way Claims**

An FTI/Compass Lexecon team led by Scott Jones, Eric Henson and Andrew Lemon provided analysis of class certification issues related to alleged trespassing and other inappropriate land-use claims in U.S. District Court in both Arizona and the Central District of California against our client, Union Pacific. In February and May of 2017, our client successfully

defeated class certification in both Courts. The allegations in the cases were derived from land grants and easements dating back to the 1800s, which were given to railroad companies in order to advance the United States' interest in connecting the population centers in the eastern portion of the country with the western seaboard. Our analysis showed that determining the ownership of each parcel of land along the railroad corridor is a prerequisite for finding economic harm for proposed class members and that such ownership could not be determined without individual inquiry. Our team supported the legal work of Tammy Webb, John Sherk and Joe Rebein of Shook, Hardy & Bacon LLP.

### **Verbund AG v. EconGas**

Compass Lexecon economists Thilo Klein and Agata Lewicka advised EconGas in antitrust litigation against Verbund AG before the Austrian Cartel Court. EconGas is a gas wholesaler belonging to the OMV Group, while Verbund AG is an Austrian electricity provider. The case concerned a long-term gas supply contract for a large gas-fired power plant in Mellach (Austria), owned by Verbund AG. Verbund AG claimed that the long-term gas supply contract foreclosed other gas suppliers and that EconGas abused its market power by charging excessive prices. Compass Lexecon submitted several reports assessing the dominance, foreclosure and excessive pricing claims. The case settled in August 2016. Compass Lexecon worked alongside Dieter Thalhammer and Andreas Zellhofer of Eisenberger & Herzog and Martin Stempkowski of Haslinger/Nagele.

### **Arbitration in Robert and Michael Touisse v. Coastal Development and Michael Fields**

Compass Lexecon expert Michael Kwak was retained by counsel for Claimants in a New York State Arbitration to assess economic damages from past and future principal and interest payments related to a stream of payments due under a note issued by the Seminole Tribe of Florida. The payments were collateralized by casino gaming revenue and guaranteed by the Seminole Tribe of Florida. In estimating damages, Mr. Kwak provided opinions regarding the level of collateralization securing the note payments and the appropriate risk-adjusted discount rate applicable to the cash flows. The arbitrator, Justice Milonas, explicitly credited Mr. Kwak's testimony in awarding Claimants the maximum damages presented by Mr. Kwak in his testimony. The New York Supreme Court recently confirmed the award. We worked with David Forkner and Jonathan Pahl of Williams & Connolly LLP.

### **Dealer Discrimination Litigation**

Compass Lexecon Senior Consultant Dr. Glenn Woroch was retained by FCA US LLC (formerly known as Chrysler Group LLC) and their outside counsel, Colin Kass and Scott Abeles from Proskauer Rose LLP, to file an expert report and testify regarding a claim by one of Chrysler's dealers that the auto maker had violated the Robinson Patman Act in setting its dealer incentives. The case was heard in U.S. District Court for Northern California by Judge Beth Labson Freeman.

At trial Dr. Woroch successfully argued that the Plaintiff's incentives were "economically attainable" if the Plaintiff had continued to price rationally. Further, Dr. Woroch established that the pass-through of the dealer incentives to purchasers would not be large enough to impair the Plaintiff's ability to compete even if the incentives were functionally unavailable.

After less than a day of deliberation, the jury ruled that the incentives were functionally available to the Plaintiff, delivering a complete victory for Chrysler. Dr. Woroch was supported by Todd Bettisworth from Compass Lexecon's Oakland office.

### **Aerotec-Honeywell**

In September 2016, the U.S. Court of Appeals for the Ninth Circuit affirmed a March 2014 U.S. District Court decision, granting summary judgment to Defendant Honeywell International, Inc. (Honeywell) on antitrust claims brought by Aerotec International, Inc. (Aerotec). Aerotec is an independent provider of maintenance, repair and overhaul (MRO) services for auxiliary power units (APUs) for aircraft; Honeywell is a leading manufacturer of APUs that also provides MRO services. Aerotec purchased APU parts from Honeywell with which to perform MRO services in competition with Honeywell and other MRO service providers. Aerotec made a variety of antitrust claims against Honeywell, including claims of exclusive dealing, tying, refusal to deal, price bundling and price squeezing. The District Court rejected each of Aerotec's claims in granting summary judgment to Honeywell.

Compass Lexecon expert Professor Dennis Carlton filed an expert report in this case on behalf of Honeywell, showing that Aerotec's claims were without merit and that Honeywell's practices did not harm competition. Honeywell was represented by William Maledon, Brett Dunkelman, Joseph Roth and Eric Fraser of Osborn Maledon, P.A. and Richard Parker of O'Melveny & Myers LLP. The Compass Lexecon team supporting Professor Carlton included Elisabeth Landes, Gustavo Bamberger and Alice Kaminski.

### **Deutsche Bank National Trust RMBS Settlement**

Compass Lexecon was retained by counsel for Deutsche Bank National Trust Company as Trustee to evaluate a proposed \$695 million settlement between 99 Trusts, JP Morgan and the FDIC. The Trusts had purchased mortgage loans from Washington Mutual. After Washington Mutual was shut down, the FDIC was appointed receiver and sold certain assets of Washington Mutual to JP Morgan. The Trustee subsequently filed a complaint against the FDIC and JP Morgan as successors to Washington Mutual. The complaint alleged breaches of representations and warranties related to the mortgage loans that were sold to the Trusts by Washington Mutual. In 2016, the parties reached a settlement under which the 99 Trusts would receive a \$3 billion claim against the receivership estate for Washington Mutual; the estimated value of the claim is approximately \$695 million. The Superior Court of California was then asked to approve the settlement and a method to allocate the \$695 million between the 99 Trusts, that was developed by the Trustee.

Compass Lexecon President Professor Daniel Fischel was retained by Robin Henry of Boies, Schiller & Flexner LLP and John Rosenthal of Morgan, Lewis & Bockius LLP to form an independent opinion of whether the settlement was a reasonable resolution of the Trustee's action and whether basing the allocation methodology on losses, suffered by the trusts, was reasonable. Professor Fischel filed an expert report explaining his conclusion that the settlement was reasonable and that it was reasonable to base the allocation methodology on losses.

Judge William Claster approved the settlement and the allocation method and ruled that the Trustee acted reasonably and in good faith within the bounds of its discretion. He barred all Certificateholders from asserting claims against the Trustee with respect to its prosecution of the litigation against the FDIC and JP Morgan and its negotiation of, and entry into, the settlement. Professor Fischel was supported by a team in Compass Lexecon's Chicago office that included

Jerry Lumer, Kevin Hartt, Donnie Hong, and many others.

## **United States v. Block**

The U.S. Attorney for the Southern District of New York criminally charged the Defendant – the chief financial officer of a publicly-traded company – with intentionally misleading investors by inflating a key financial metric used to evaluate the financial performance of the firm. The financial metric at issue, adjusted funds from operation, is a non-GAAP metric designed to reflect the firm’s cash flows before, among other items, depreciation and amortization expenses and was reported in the firm’s SEC filings. Compass Lexecon Senior Consultant Professor Allen Ferrell was retained by the government and provided expert testimony at the criminal trial on financial reporting and metrics. The Defendant was convicted of securities fraud, two counts of filing false SEC reports, two counts of filing false certifications, and one count of related conspiracy. Professor Ferrell worked on this matter with Assistant U.S. Attorneys Edward Imperatore and Jason Cowley.

## **MERGERS**

### **Deutsche Börse/London Stock Exchange**

Compass Lexecon advised Deutsche Börse during the European Commission’s investigation of its proposed merger with the London Stock Exchange Group (LSEG). The proposed merger would have combined the activities of two of the largest financial infrastructure groups in Europe, which included the trading and clearing of derivatives, repos, equities, bonds and commodities, as well as market data, indices, settlement and custody, technology and regulatory reporting.

Having identified over 20 theories of harm, the Commission initiated an in-depth Phase II investigation. During the review, many of the issues initially identified were removed from the Commission’s statement of objections, including equities trading and clearing, exchange traded funds and the licensing of indices. The investigation subsequently focused on unilateral and foreclosure effects in the clearing of derivative products. The Compass Lexecon team made a number of important economic submissions and assisted with the parties’ proposed remedy – the divestment of LCH.Clearnet SA, LSEG’s France-based clearing house.

The Commission’s market testing of the proposed remedy revealed concerns in the area of fixed-income clearing. To address its concerns, the Commission required the divestment of MTS, LSEG’s fixed income trading platform, a small asset compared to the parties’ combined revenues and market value. However, the parties were not prepared to divest MTS, leading the Commission to block the proposed transaction.

Deutsche Börse was advised by Linklaters LLP and led by Christian Ahlborn in London and Carsten Grave in Düsseldorf. The Compass Lexecon team was led by Jorge Padilla, Lorenzo Coppi and Miguel de la Mano, and supported by Urs Haegler, Soledad Pereiras, Sergey Khodjamirian, Orjan Sandewall, Agata Lewicka, Martina Caldana, Georg Clemens, Aleksandra Khimich, Alyssa Lam, Su-Ann Lim, Aiden Lo and Ming Yu Wong.

## **Marriott Acquisition of Starwood**

Over the course of a 10-month engagement, Compass Lexecon assisted counsel from Gibson, Dunn & Crutcher LLP in securing required regulatory approvals in multiple countries for Marriott International Inc.'s merger with Starwood Hotels and Resorts Worldwide, Inc. This process culminated with the final required approval, by the Chinese Ministry of Commerce (MOFCOM), allowing the merger to close in September 2016.

As Marriott and Starwood are global hotel companies with interests around the world, the merger review involved scrutiny from competition authorities on six continents. Compass Lexecon worked with teams of Gibson, Dunn & Crutcher LLP lawyers in Washington, D.C., Brussels and Hong Kong to provide economic analysis in response to questions from competition authorities in the United States, Canada, Mexico, the EU, South America, Asia, Africa and Australia. Compass Lexecon's analysis showed that hotel and lodging competition would be robust in all geographies after the merger. In addition, Compass Lexecon showed that Marriott and Starwood hotels were often not close competitors with one another, and in the geographies where Marriott and Starwood hotels did compete with one another, remaining competition would be sufficient to constrain prices.

Compass Lexecon expert Mark Israel was supported by a team led by Ian MacSwain in our Washington, D.C. office that included Loren Smith, Georgi Giozov, Wei Tan, Benjamin Wagner, Bich Ly, Gloriana Alvarez, Benjamin Spulber, Chandni Raja, Jonathon McClure, Jackie Chen and Rohini Sadarangani. In addition, Compass Lexecon expert Lorenzo Coppi, in our London office, was supported by a team led by Laura Phaff that included Michael Scheidgen. Compass Lexecon worked closely with Joshua Soven and Joshua Lipton of Gibson, Dunn & Crutcher LLP.

## **Sherwin Williams Merger**

Compass Lexecon was retained by counsel for Sherwin Williams Co. to evaluate the competitive effects associated with Sherwin Williams' acquisition of The Valspar Corp., and to develop economic support for expediting regulatory approval in the U.S. Both Sherwin Williams and Valspar are leading suppliers of architectural and industrial coatings sold in the U.S. through a variety of retail and wholesale channels. The Compass Lexecon team headed by Dennis Carlton, Rick Flyer, Erica Benton and Daniel Stone assisted Sherwin Williams' outside counsel, led by Steve Newborn, Laura Wilkinson, Megan Granger, and Robert Meyer of Weil, Gotshal & Manges LLP, in gaining regulatory approval in the U.S. The Compass Lexecon team developed supporting econometric evidence throughout the HSR review process, and presented these analyses to the U.S. Federal Trade Commission in helping Sherwin Williams' counsel gain regulatory approval in the U.S. in May of 2017.

## **HP/Samsung Electronics Ltd.**

Compass Lexecon was retained by counsel for HP Inc. to evaluate the competitive effects associated with HP's acquisition of the worldwide printer business from Samsung Electronics, Ltd., and to develop economic support for expediting regulatory approval in the United States. Both HP and Samsung are leading suppliers of printers sold in the U.S. and worldwide, and compete across a wide array of different types of printers and price points. The Compass Lexecon team headed by Mark Israel, Rick Flyer and Kirupa Ramaiah assisted HP's outside counsel, led by Steve Sunshine and Maria Raptis of Skadden, Arps, Slate, Meagher & Flom LLP.

Most notably, despite the scale, technological capabilities and brand recognition of the two merging printer businesses, the U.S. Federal Trade Commission allowed the transaction to proceed during the initial HSR review period, without issuing a Second Request. Although regulatory approval has been granted in the U.S., the transaction is currently awaiting approval in other jurisdictions.

### **Vink Acquisition of Polymershapes**

Compass Lexecon experts Mary Coleman and David Weiskopf were retained by Tony Kim and Alex Okuliar of Orrick, Herrington & Sutcliff LLP on behalf of their client, Blackfriars, to perform an economic analysis of Vink's acquisition of the Polymershapes business from SABIC. The Federal Trade Commission closed its investigation of the transaction, granting early termination based, in part, on the economic analysis performed by Compass Lexecon. Coleman and Weiskopf were assisted by a Compass Lexecon team led by Maria Stoyadinova.

### **Joint Venture Between Hutchison 3G Italy and WIND**

In September 2016, the European Commission conditionally cleared the joint venture between the Italian mobile telecoms operators Hutchison 3G Italy and Wind (a subsidiary of Vimpelcom). The transaction combined the fourth and third largest Italian mobile network operators and created the largest mobile network operator in Italy. To address the European Commission's remaining concerns, the parties committed to divest sufficient assets to allow a fourth mobile network operator to enter the Italian market. Compass Lexecon advised both operators during the European Commission's in-depth (Phase II) investigation.

Compass Lexecon experts submitted several reports assessing, among other things, the financial rationale of the transaction from each party's perspective, the relevance of network sharing agreements for counterfactual analysis, and the likely effects of the merger on consumer welfare. The latter assessment was supported by a merger simulation model based on a discrete choice customer survey, capable of taking into account not only the potential price effects resulting from the elimination of competition between the parties but also the welfare-enhancing network quality effects (increased 4G coverage and download speeds) brought about by the transaction.

Compass Lexecon worked with the parties' legal advisers from Freshfields Bruckhaus Deringer LLP (partners Thomas Wessely and Winfred Knibbeler) and Allen & Overy LLP (partners Antonio Bavasso and Kees Schillemans). The Compass Lexecon team included Jorge Padilla, Thilo Klein, Miguel de la Mano, Alejandro Requejo, Jérémiah Juts, Patricia Lorenzo, Valérie Meunier, Gianmarco Calanchi, Abbas Mohsin, Bernardo Sarmento and Thomas Bowman.

### **Siemens Acquisition of Gamesa**

In March 2017, the European Commission unconditionally approved the acquisition by Siemens of wind turbine manufacturer Gamesa after a Phase I investigation. Both firms were active in the manufacturing of onshore and offshore wind turbines, and the acquisition created a world market leader in this industry. Among other things, Compass Lexecon prepared analyses of bidding data that showed that the parties were not close competitors in the relatively highly concentrated offshore segment. A Compass Lexecon team led by Jorge Padilla, Thilo Klein and

Enrique Andreu supported Siemens during the merger control investigation. Compass Lexecon worked with Simon Pritchard and Nicholas Scola of Linklaters LLP.

### **HP/Printer Business of Samsung Electronics**

In April 2017, The European Commission unconditionally cleared in Phase I the acquisition of the printer business of Samsung Electronics Co. Ltd (Samsung) by HP Inc. (HP). The \$1.05 billion transaction was also under scrutiny in other jurisdictions around the world, including Brazil, China, South Korea and the United States.

Among other things, Compass Lexecon conducted an in-depth analysis of the key competitive drivers in the industry, assessed market definition, and investigated the overlap and closeness of competition between the product offerings of the merging parties. The Compass Lexecon team in Europe was led by Enrique Andreu and Jorge Padilla, assisted by Catalina Campillo, Anir Eddarifi and Hyung-Joong Kim, Nicolas Listl and Roberto Venturini who supported HP during the merger control investigation conducted by the European Commission and by several national competition authorities in South-America. HP was advised in Europe by Skadden, Arps, Slate, Meagher & Flom LLP in Brussels, led by Giorgio Motta, assisted by Gian Diego Pini and Andreas Kafetzopoulos.

A Compass Lexecon team in the U.S. led by Mark Israel, Frederick Flyer and Elizabeth Wang supported HP during the regulatory process in the U.S. and several Asian jurisdictions including China.

### **NKT/ABB**

In February 2017, the European Commission unconditionally approved the €36 million acquisition by NKT of ABB's high-voltage cable and power cable accessories business after a Phase I investigation. The European Commission focused their attention on the competitive effects of removing one competitor, and whether the transaction would make it more likely that the remaining players could coordinate their competitive behavior. In particular, the European Commission was concerned that the transaction would reduce competition in bids for AC submarine power cable tenders. Compass Lexecon submitted analyses of bidding data, showing, among other things that the Parties catered to different segments of the market and therefore did not often bid directly against each other. A Compass Lexecon team including Enrique Andreu, Miguel de la Mano, Manuel Mertel Morillo, Catalina Campillo and Scott Holbrook supported NKT during the merger control process. Compass Lexecon worked with Jonas Koponen and Sibel Yilmaz of Linklaters LLP and Ingrid Vandenborre and Stanislas de Villoutreys of Skadden, Arps, Slate, Meagher & Flom LLP.

### **Merger of Dow and DuPont**

Over a six-month period, Compass Lexecon assisted counsel from Cleary Gottlieb Steen & Hamilton LLP in securing regulatory approval for Dow Chemical Co.'s (Dow's) merger with E.I. du Pont de Nemours and Co. (DuPont). This process culminated with the European Commission clearing the merger in March 2017 and the U.S. Department of Justice doing so in June 2017.

Dow and DuPont are global chemical and agricultural companies with interests in many areas. The merger plan calls for the combined entity to divide into three new companies focused on agriculture, industrial materials and specialty products. Compass Lexecon worked with teams

of Cleary Gottlieb Steen & Hamilton LLP lawyers in Washington, D.C., Cologne and Brussels to provide economic analysis in response to questions from competition authorities in Europe and the United States, particularly with respect to innovation.

Compass Lexecon expert Richard Gilbert was supported by a Compass Lexecon team led by Allan Shampine in the Chicago office that included Dzmitry Asinski, Ka Hei Tse and Katelyn Rowley in the Washington, D.C. and Chicago offices. Compass Lexecon worked closely with George Cary, Elaine Ewing and Tilman Kuhn of Cleary Gottlieb Steen & Hamilton LLP.

### **Trelleborg/CGS Holding**

Compass Lexecon assisted the Swedish manufacturer and supplier of rubber products and agricultural tires Trelleborg AB in securing approval of its acquisition of the Czech tire producer ČGS. The European Commission cleared the merger unconditionally in Phase I. Compass Lexecon's merger analysis focused on the market for agricultural tires, where Trelleborg and ČGS both had significant market shares. Compass Lexecon conducted an economic analysis of the main competitive drivers in the supply of agricultural tires and assessed the closeness of competition between the merging parties. Despite the significant overlap, the analysis conducted by Compass Lexecon showed that Trelleborg and ČGS were not direct competitors as Trelleborg was operating in a high-quality tier-1 segment while ČGS targeted the mid-quality, tier-2 segment. In particular, a quantitative analysis of the product overlaps in the market for agricultural tires showed that Trelleborg and ČGS tackled different consumers and quality segments. The European Commission found that "Trelleborg and ČGS's agricultural [tires] focus on different price and quality tiers and were therefore not close competitors."

Trelleborg AB was advised by Linklaters LLP, led by Jonas Koponen assisted by Sibel Yilmaz and Patrice Galatis. The Compass Lexecon team was led by Enrique Andreu and Miguel de la Mano assisted by Hyung-Joong Kim and Georg Clemens.

### **Decaux/Metrobus**

Compass Lexecon was hired by a third party to assess the competitive effects of the attempted acquisition of Metrobus, a supplier of outdoor advertising in subways and train stations, by JC Decaux, a worldwide leader in outdoor advertising that is particularly strong in Paris and the main French cities, in street advertising and buses. We developed economic analyses of the potential for unilateral and conglomerate effects that were submitted to the French competition authority. Compass Lexecon also opined on the possible delineation of the relevant product market within which to consider outdoor advertising for the purpose of analysing the horizontal effects of this transaction. JC Decaux dropped its plans to acquire Metrobus at the end of the Phase II investigation/after the hearing because of the extent of the remedy package it would have had to offer to allay the French competition authority's concerns, which were aligned with the conclusions of our analyses. The Compass Lexecon team included David Sevy, Valérie Meunier and Anastasia Tseomashko.

### **Wabtec/Faiveley**

Compass Lexecon was hired by Wabtec and Faiveley, manufacturers of train equipment, to advise the merging parties in the review by the European Commission of their proposed merger. We analyzed the potential extent of unilateral effects in various product lines, on the basis of bidding data. We also studied potential vertical foreclosure effects of the transaction, in

relation to the supply of friction material to brake system suppliers. The merger was cleared after an in-depth Phase II investigation (without statement of objection), conditional on commitments offered by the parties. The Compass Lexecon team involved before the European Commission consisted of David Sevy, Jérémiah Juts and Thibaut de Bernard. We provided support to Alexandre Verheyden, Eric Barbier de la Serre, Geoffroy Van de Walle and Philippe Laconte from Jones Day representing Wabtec and Didier Theophile and Guillaume Aubron from Darrois Villey Maillot Brochier representing Faiveley.

### **Liberty Global/Base Belgium**

Compass Lexecon was hired by a third party to analyze the competitive effects of the proposed transaction between Liberty Global, a cable operator and MVNO in Belgium and BASE, a mobile operator. During Phase I we submitted a report to the European Commission presenting the possible horizontal and conglomerate effects of the transaction. The European Commission opened a Phase II investigation on the basis of concerns over possible horizontal and conglomerate effects, and cleared the transaction conditionally on divestitures by the merging Parties. The Compass Lexecon team was comprised of David Sevy and Antoine Victoria.

### **Alarm.com's Acquisition of Icontrol Networks**

In March 2017, Alarm.com completed its acquisition of two business units (Connect and Piper) from Icontrol Networks, with the remainder of Icontrol sold to Comcast. Prior to the acquisition, both Alarm.com and Icontrol were active in the sale of SHaaS (smart home as a service) software platforms that integrate professionally monitored home security systems with home automation systems. Compass Lexecon was retained by Jackie Grise of Cooley LLP on behalf of Alarm.com to assist with the FTC investigation of the transaction. The FTC cleared the transaction following a nine month in-depth investigation and after Honeywell, a competitor, sued to block the deal – leading Compass Lexecon Senior Managing Director Mark Israel to file a report in response – but then voluntarily dismissed its complaint pursuant to a settlement.

The FTC investigated several horizontal issues related to the merger, including an alleged increase in concentration in the dealer channel and the loss of potential competition from a new Icontrol product (Icontrol One). Working with Cooley, Compass Lexecon developed economic analysis to demonstrate that these issues raised no possibility of harm to competition. In particular, our analysis showed that Alarm.com faces intense and growing competition from several sources that will remain post-merger, including other firms operating in the dealer channel, cable and telco firms offering their own home security and automation solutions, and technology giants, such as Google, Apple, and Samsung, which are rapidly expanding into the home automation and security space. We also showed that Alarm.com's ordinary course data along with its pricing trends suggested that potential competition from Icontrol's new Icontrol One product was a non-issue.

The Compass Lexecon team was led by Mark Israel and Nauman Ilias, with support from Theresa Sullivan, Arti Bhargava and Wan Tei.

## **ABP/Fane Valley Acquisition of Joint Control of Slaney Foods JV**

In October 2016, the European Commission unconditionally approved the acquisition of joint control of Slaney Foods JV and Slaney Proteins (Ireland) by meat processor ABP Group (Ireland) and farmer-owned agri-food company Fane Valley (United Kingdom). A Compass Lexecon team consisting of Justin Coombs, Orjan Sandewall and Georg Clemens assisted the merging parties with the merger notification and with subsequent requests from the European Commission during the investigation, leading up to an unconditional clearance in Phase I.

The companies involved (ABP, Fane Valley and Slaney) are active in the purchase and slaughter of live cattle, sheep and lambs, as well as de-boning and processing of meat. Their activities also cover the marketing of fresh beef, lamb and mutton to meat retailers (including supermarkets) and industrial meat processors. The Commission's investigation focused on the impact of the proposed transaction on competition in these areas, as well as on the collection of animal by-products generated by the slaughtering activities. Compass Lexecon presented econometric evidence that farmers in Ireland tend to sell within a rather broad geographic radius and that they are able to switch slaughterhouses if they can get better prices for their animals. Compass Lexecon also presented analyses of capacity, showing that the parties' competitors would be able to absorb any increase in supply of cattle that might result from a hypothetical post-merger reduction in the prices offered to farmers by the parties. The European Commission concluded that farmers will continue to have sufficient alternative buyers for their animals after the merger to exclude competition concerns with respect to buyer power in the purchasing of live animals.

## **Advanced Semiconductor Engineering (ASE) Merger**

A Compass Lexecon team, led by expert Dr. Mark Israel, was retained by Davis Polk & Wardwell LLP, counsel for Advanced Semiconductor Engineering (ASE) to assist with obtaining regulatory approval of its proposed merger with Siliconware Precision Industries (SPIL). The two Taiwanese companies are among the largest providers of Outsourced Semiconductor Assembly and Test (OSAT) services in the world. Dr. Israel first submitted reports and oral testimony to the Taiwan Fair Trade Commission (TFTC), which approved the transaction in November 2016. Dr. Israel and Compass Lexecon then assisted ASE in obtaining approval from the U.S. Federal Trade Commission (FTC), which cleared the proposed transaction in May 2017.

Dr. Israel's and Compass Lexecon's analyses focused on market definition, providing economic evidence in support of a broad relevant market including all semiconductor packaging and testing services worldwide. In addition, Dr. Israel and the Compass Lexecon economists conducted a study of competitive effects, demonstrating that the transaction was unlikely to cause significant harm to competition.

Dr. Israel was supported by a team led by Georgi Giozov that included Jason Wu, Cathy Barron, Wei Tan, Prerana Nanda, Jacky Chen and Sharon Su. The Compass Lexecon team worked closely with Ronan Harty, Joel Cohen, Michael Sohn, Lincoln Meyer and Tina Wang of Davis Polk & Wardwell LLP.

## **Ritchie Bros. Auctioneers Inc. Acquisition of IronPlanet Holdings, Inc.**

In August 2016, Ritchie Bros., the world's largest industrial auctioneer of construction, transportation and other equipment and trucks, entered into an agreement to acquire IronPlanet, a leading online marketplace for used heavy equipment and other durable assets. In May 2017, the

Department of Justice (DOJ) unconditionally approved the merger after issuing a second request and investigating the transaction. A Compass Lexecon team led by Jonathan Orszag and Guillermo Israilevich worked closely with James Fishkin, Rani Habash, Konstantin Medvedovsky and Craig Falls of Dechert LLP, and Garret Rasmussen and Antony Kim of Orrick, Herrington & Sutcliffe LLP to analyze the competitive effects of the proposed acquisition. Using two different econometric analyses, Compass Lexecon showed that the parties did not charge lower commissions for online and onsite auctions of equipment in areas in which the other party had relatively more presence. After Compass Lexecon economists presented analyses demonstrating that the proposed merger would not likely harm competition as the parties are subject to competitive constraints from other auction companies and other selling methods for used equipment, the DOJ cleared the transaction without conditions. The Compass Lexecon team in our Washington, D.C. office also included Georgi Giozov, Joel Papke, Ben Wagner, Jackie Chen and Anh Dao.

### **Anheuser-Busch InBev Acquisitions of Craft Brewers**

A Compass Lexecon team including Dennis Carlton, Bradley Reiff, Yoad Shefi and Peter Marlantes assisted Steven Sunshine and Steven Albertson of Skadden, Arps, Slate, Meagher & Flom LLP, outside counsel for Anheuser-Busch InBev (A-B), in seeking U.S. Department of Justice (DOJ) approval of two separate acquisitions of craft beer brewers – Devils Backbone based in Virginia and Karbach based in Texas.

The DOJ scrutinized these acquisitions in light of a series of other A-B craft beer acquisitions and recent mergers with Modelo and SABMiller. The Compass Lexecon team, along with counsel, presented economic evidence to the DOJ showing that the transactions are unlikely to cause significant harm to competition. In both cases, the DOJ ultimately decided to close the investigations and allow the acquisitions.

### **UPS Acquisition of TNT**

Compass Lexecon has been advising UPS, the world’s largest package delivery company, during the European Commission (EC) investigation of its proposed acquisition of TNT. Compass Lexecon experts Enrique Andreu, Jorge Padilla and Nadine Watson developed and presented an econometric price-concentration analysis in response to the EC’s Statement of Objections. The Commission took account of this contribution in its final decision and reduced the scope of its competition concerns, from 29 to 15 countries. Nonetheless, in 2013 it prohibited the proposed transaction.

During the subsequent appeals process before the General Court of the European Union, Compass Lexecon continued to assist UPS by providing both written and oral testimony. In March 2017, the General Court annulled the EC’s 2013 decision to prohibit UPS’ proposed acquisition of TNT. The Court ruled that the EC’s prohibition of the proposed transaction was based in part on an econometric model significantly different from that which had been the subject of an exchange of views and arguments during the administrative procedure. The Court concluded that the EC was required to communicate the final econometric analysis model to UPS before adopting the contested Decision, since UPS “was already able, during the administrative procedure, to have a significant influence on the development of the econometric model proposed by the EC, since it raised technical problems to which it provided solutions, as the EC expressly acknowledges.” By failing to do so, the EC infringed UPS’ rights of defense.

## OTHER

### **Intense Competition Has Driven Increased Customer Choices, Historically Low Fares in the U.S Airline Industry: Webinar**

An economic analysis of U.S. airline industry competition, conducted by Dr. Darin Lee and Daniel Kasper of Compass Lexecon and commissioned by Airlines for America, found that there is robust competition and choice for the vast majority of domestic and international air travelers. Specifically, the assessment demonstrates that substantial capacity growth, primarily driven by the growth and geographic proliferation of low-cost and other non-incumbent carriers has spurred intense competition. The result is an increased number of competitive choices across city pairs, a multitude of price options, historically low fares and the ability to choose between a variety of carriers competing with different and innovative service offerings.

## HONORS, PUBLICATIONS AND PRESENTATIONS

- Manuel Abdala contributed “Assessing Investor Damages Involving Publicly Traded Companies – with Examples from the Yukos Cases” with Alan Rozenberg in the book *The Use of Economics in International Trade and Investment Disputes*, Marion Jansen, Joost Pauwelyn and Theresa Carpenter, eds, Cambridge University Press, April 2017 as well as “Damages in Energy and Natural Resources Arbitrations” in *Global Arbitration Review’s Guide to Damages in International Arbitration*, November 2016. Abdala was also a panelist at the 5<sup>th</sup> Annual Juris Conference on Damages in International Arbitration, Washington, D.C., September 2016.
- Amy Affelt published “Librarians and Data Scientists - Rivals, Replacements, or Reciprocal Relationship,” *Jinfo*, November 2016. She also writes “The Accidental Data Scientist” column for *EContent Magazine*. Affelt and David Pauwels published “Set Your Cites High: The Value of High Quality Citation Information,” *Online Searcher Magazine*, September 2016. In July 2016, Affelt gave the keynote presentation, “Big Data, Internet of Things, and the Legal Landscape,” to the Academic Law Libraries Section at the American Association of Law Libraries Annual Conference, Chicago, IL, July 2016. She also presented “Big Data,” at the Internet Librarian Conference, Monterey, CA, October 2016, and “Calling Out Fake News,” at the Computers In Libraries Conference, Washington D.C., March 2017.
- Clifford Ang contributed two articles to the National Association of Certified Valuators and Analysts’ weekly *QuickRead* newsletter in February 2017.
- Hendrik Bessembinder published “Liquidity, Resiliency and Market Quality around Predictable Trades: Theory and Evidence,” (with Allen Carrion, Laura Tuttle and Kumar Venkataraman), *Journal of Financial Economics*, July 2016. He also wrote “Fossil Fuel Divestment and Its Potential Impacts On Students, Faculty and Other University and Pension Stakeholders” with Todd Kendall and Christopher Fiore for the Independent Petroleum Association of America.
- Aleksandra Boutin published “Screening for Good Patent Pools through Price Caps on Individual Licenses” in the *American Economic Journal: Microeconomics*, August 2016. She also presented at a number of conferences throughout the past year, including W@Competition Conference on Contemporary Competition Developments in Brussels, February 2017; Bruegel’s “Standardisation and Patents: Problems and Policy Options” event,

Brussels, May 2017; and *Concurrences Review's* Private Enforcement of Competition Law in the EU private dinner, Warsaw, June 2017.

- In addition to serving as an expert in several major cases, Dennis Carlton continued to publish articles and lecture at numerous domestic and international conferences on a variety of antitrust topics. These topics included anticompetitive restrictions in the credit card industry, the improper use of antitrust to attack "product hopping" in pharmaceuticals, the effect of legacy airline mergers on competition, the proper use of fines and penalties in cartels, and the lack of foundation for the populist attack on lax antitrust policy. He served on the ABA Presidential Transition Task Force on Antitrust to advise the new administration of antitrust issues deserving of attention. He also was a member of the Chamber of Commerce International Competition Policy Expert Group that issued a report on international trade and competition. Finally, he gave a keynote lecture before the 126th meeting of the OECD Competition Committee on the proper antitrust treatment of price differences and tie in sales in competition policy.
- Joseph Cavicchi presented a course on "Critical Elements of Ancillary Services Market Design and Costing" at the EUCI Ancillary Services Markets Workshop, Austin, TX, February 2017. He was also a panelist at the PJM Market Summit, speaking on "RPM and CP BRA Auction Results—What Are the Implications for Adequacy and Future Generation Builds?", Philadelphia, PA, September 2016.
- Carla Chavich and Pablo Lopez Zadicoff published the chapter "Economics in Investor-State Arbitration beyond Quantum" in the book *The Use of Economics in International Trade and Investment Disputes*, April 2017. Chavich also presented "Valuing Natural Resource Projects in International Investment Arbitration", a presentation co-authored with Manuel Abdala, at the Special Institute on International Mining and Oil & Gas Law, Development, and Investment Conference in Quito, organized by the Rocky Mountain Mineral Law Foundation and the International Bar Association, April 2017.
- Bradford Cornell published "The Tesla Run-Up: A Follow-Up with Investment Implications," in *Journal of Portfolio Management*, Fall 2016; and "An 'Enhanced Multiple' Corporate Valuation Model: Theory and Empirical Tests" with Rajiv Gokhale in *Business Valuation Review*, Summer 2016.
- Christopher Culp, Andria van der Merwe and Bettina Stärkle presented their white paper "Single-Name Credit Default Swaps: A Review of the Empirical Academic Literature," to the ISDA and Johns Hopkins Institute for Applied Economics, September 2016. Culp was also a panelist for "Too Big to Fail – Central Counterparties" at the SEC Historical Society, Washington, D.C., November 2016.
- Gustavo De Marco spoke on the panel "Calculation of Damages: What Do Arbitrators Need? What Do The Parties Put Forward?" at VIII International Arbitration Congress of the International Chamber of Congress Costa Rica (ICC Costa Rica), February 2017.
- Santiago Dellepiane spoke on "Third Party Finance; Salient Issues in Damages Claims in Investment Arbitration" at the Eighth Investment Arbitration Forum: Investment Protection and the Mexican Energy Reform, Mexico City, November 2016.
- A team from Compass Lexecon's Oakland office, led by Bret Dickey, Jith Jayaratne and Maya Meidan received the Robert G. Sproul, Jr. Award from the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, which is presented annually "to an exemplary partner who has contributed to the provision of legal services to under-represented

communities and marshaled the resources of his firm to defend the rights of the disenfranchised.” The Compass team analyzed extensive data collected from school districts in the counties of San Mateo and Santa Clara to assist the Lawyers’ Committee evaluate the extent to which there were racial and/or socioeconomic disparities in the placement of students in math classes and in disciplinary decisions made by the school district. Bret, Jith, and Maya were assisted on this project by several other Oakland staff members, including Sarah Tang, Danny Henn, Aniruddha Gupta, Alison Ge and Kiana Ocean.

- Robert Engle published “Dynamic Conditional Beta” in *Journal of Financial Econometrics*, Fall 2016; and “SRISK: A Conditional Capital Shortfall Measure of Systemic Risk” (with Christian Brownlees) in *The Review of Financial Studies*, January 2017. Engle also gave his keynote address, “Prospects of Global Financial Stability” at a number of institutions and conferences, including the 13<sup>th</sup> International Conference of the Western Economic Association International, the SAP Central Bank Executive Summit, the RiskMathics Risk Management & Trading Conference, and the UBS Equity Derivatives Conference, among others.
- Allen Ferrell published “Socially Responsible Firms” (with Hao Liang and Luc Renneboog) in *Journal of Financial Economics*, December 2016.
- Frederick Flyer published “Does the FTC’s Theory of Product Hopping Promote Competition?” with Dennis Carlton and Yoad Shefi in the *Journal of Competition Law & Economics*, September 2016.
- Rajiv Gokhale spoke on the “Enhanced Multiple Corporate Valuation Model” at the American Society of Appraisers September 2016 Advanced Business Valuation Conference, Boca Raton, FL.
- Kenneth Grant wrote an article exploring the quandary of OPEC’s production cuts in an era of increasing shale production, which was published on Compass Lexecon’s website, June 2017. During the same month, Grant and Charles Augustine published an expert analysis on federal policy interventions into the US electricity markets on Law360.
- Eric Henson gave a statement to the US House of Representatives, Committee on Natural Resources, *Hearing HR 538, Tribal Prosperity and Self-Determination through Energy Development*, October 2016.
- Mark Israel published “Complementarity without Superadditivity” with Philip Haile, Michael Katz (and Steven Berry) in *Economics Letters*, February 2017. Israel was also a panelist at the J.P. Morgan Special Situations Investor Forum, “The Antitrust Merger Review Process,” March 2017.
- Thilo Klein presented on a number of topics throughout the year, including “Competition Effects of Restrictions on Online Distribution: Back to Basics” at a seminar organized by Münchner Kartellrechtsforum, Munich, November 2016; “Current Trends in Economic Analysis of Merger Control” at the 2nd Annual Antitrust & Competition Compliance in Central and Eastern Europe conference in Prague, November 2016; “Analysis of Bidding Competition in Merger Cases” at the Annual Conference of the Leibniz Science Campus of the Mannheim Centre for Competition and Innovation (MaCCI), Mannheim, March 2017; “The Role of Experts” at the ABA’s Global Private Litigation Conference in Amsterdam, May 2017; and “Merger Control in the Communications Sector” at the Global Competition Review Live 6<sup>th</sup> Annual Telecoms, Media & Technology Conference, June 2017.

- Andres Lerner was a panelist and steering committee member for the USC Gould School of Law Center for Transnational Law and Business's inaugural conference on Antitrust Enforcement in a Global Context: Extraterritoriality and Due Process, January 2017.
- Pablo Lopez Zadicoff participated in the panel "What Would You Do? - Ethical Dilemmas in Arbitration" at the 4TH ITA-IEL-ICC Joint Conference on International Energy Arbitration, Houston, TX, January 2017.
- Janusz Ordover was named Competition Economist of the Year for the third consecutive year at the Who's Who Legal Awards presented in London, May 2017. He co-authored "FRAND and the Smallest Saleable Unit" with Allan Shampine (and Joseph Kattan) in CPI's *Antitrust Chronicle*, September 2016.
- Eugene Orlov presented his working paper, co-authored with Dennis Carlton, Mark Israel and Ian MacSwain, "Are Legacy Airline Mergers Pro- or Anti-Competitive? Evidence from Recent U.S. Airline Mergers," at the International Industrial Organization Conference (IIOC), Boston, MA, April 2017.
- Jonathan Orszag published "Toward a More Complete Treatment of Efficiencies in Merger Analysis: Lessons from Recent Challenges," with Loren Smith in *The Antitrust Source*, October 2016.
- Daniel Rubinfeld received a 2017 Antitrust Writing Award from Concurrences in the Unilateral Conduct Category for his article "Access Barriers to Big Data" (with Michal Gal), *Arizona Law Review*, Summer 2017. Rubinfeld also published the ninth edition of *Microeconomics* (with Robert Pindyck).
- Pekka Sääskilahti published "Buying Decision Coordination and Monopoly Pricing of Network Goods," in the *Journal of Economics & Management Strategy*, June 2016. He also served as panel chairman for "Value of IP" at the IPR University Center's Advanced IP Licensing Academy, June 2016.
- Allan Shampine published "Applying the Non-Discrimination Requirement of FRAND When Rates Change," in *The Antitrust Source*, August 2016.
- Joshua Sherman published "On Fruitful and Futile Tests of the Relationship Between Search and Price Dispersion" (with Avi Weiss), *Economic Inquiry*, April 2017.
- Loren Smith presented his paper "Toward a More Complete Treatment of Efficiencies in Merger Analysis: Lessons from Recent Challenges," co-authored with Jonathan Orszag, at the International Industrial Organization Conference (IIOC), Boston, MA, April 2017.
- Pablo Spiller organized the third annual meeting of the Berkeley-Paris Organizational Economics Workshop, which took place at the University of California Berkeley, April 2017. During the same month, Spiller presented a talk at the 2017 Energy Arbitration Conference in Houston, organized by the Chartered Institute of Arbitrators.
- Wei Tan was a panelist at the ABA webinar Navigating Antitrust Investigations in China, October 2016; "Vertical Agreements: Restrictions on Internet Sales" at the international antitrust symposium, Globalized Competition and International Cooperation in Antitrust Enforcement, Beijing, September 2016; and China's Anti-Monopoly Law: Balancing IP & Antitrust Enforcement Issues Live Webcast, September 2016.
- Senior Vice President Dr. Andria van der Merwe was appointed as a Research Fellow at The Johns Hopkins University's Institute for Applied Economics, Global Health, and the Study of Business Enterprise. Compass Lexecon Senior Affiliate Dr. Christopher Culp is also a

Research Fellow at the Institute. Their responsibilities include teaching a course together with the Institute's Co-Director Professor Steve Hanke as well as conducting research and publishing on issues in applied finance.

- Elizabeth Xiao-Ru Wang published the book chapter “Patent Pledge Enforcement in China” in *Patent Pledges: Global Perspectives on Patent Law's Private Ordering Frontier*, Edward Elgar Publishing, 2017.
- David Weiskopf participated as a discussant in the International Industrial Organization Conference (IIOC), Boston, MA, April 2017. While there, Robert Bourke presented their working paper, co-authored with Mark Israel and Benjamin Wager, “Do Premiums Increase after Health Insurance Mergers? – A Reassessment of Guardado Et Al.’s Findings”.
- Robert Willig published “Two-Sided Market Definition and Competitive Effects for Credit Cards After *United States v. American Express*,” (with J. Gregory Sidak), in *The Criterion Journal on Innovation*, 2016; and “Economy-wide and Sectoral Impacts on Workers of Brazil’s Internet Rollout” (with Mark A. Dutz, Lucas Ferreira Mation, and Stephen D. O’Connell) in the special issue on Social Economics, Poverty, and Human Development of the *Forum for Social Economics*, 2017. Willig was also invited to lead two days of seminars on mergers and antitrust policy issues at the Portuguese Competition Authority in June 2017.

If you would like to find out more details about our work or our experts, please feel free to email or call either of us.

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