



April 2013

Compass Lexecon's Client Newsletter for 2012

In recent years, we have begun this Newsletter by stating that the past year was our best year in our history. We are fortunate again to say that last year was no exception.

We continued to be hired in the highest percentage of the biggest, most complex cases and mergers around the globe. Reflecting the quality of our work on such matters, we swept every category in which we were nominated – six awards in total – at the 2012 *Global Competition Review (GCR)* awards, including Jorge Padilla, the head of Compass Lexecon Europe, being named the 2012 Economist of the Year. (In 2011, Janusz Ordover, a Senior Consultant and member of the Compass Lexecon Advisory Committee, won the same award.) Later in the year, in its review of the world's leading economic consulting firms, *GCR* noted that Compass Lexecon “towers over its rivals.” In its review of Compass Lexecon, *GCR* highlighted our work on deals, such as AT&T/T-Mobile, Microsoft/Skype, Express Scripts/Medco, Deutsche Börse/NYSE, Google/Motorola Mobility, and Verizon's acquisition of spectrum assets.

Our finance practice and general litigation practice enjoyed similar success. We have been immersed in major litigation including multiple matters arising out of the BP oil spill, various major RMBS and derivatives matters, disputes arising from the 9/11 terrorist attack on the World Trade Center, Madoff related litigation, criminal insider trading matters, multi-billion dollar fraudulent conveyance litigation, insurance/reinsurance disputes, and major intellectual property litigation, to name just a few examples. We also continue to be the firm of choice when testimonial experts are required in major litigation. Again this past year, our experts testified successfully at every stage of litigation in case after case as detailed below. And seven Compass Lexecon team members from three continents were recognized in a survey of general counsel and private practice lawyers globally as among the top international commercial arbitration experts in the world with quotes like “world class,” “untouchable on cross-examinations;” and having a “wealth of experience.”

We also continued to expand our pool of talented experts and staff, thereby strengthening our preeminent competition, finance, energy, intellectual property, international arbitration, and general litigation practices. We now have 14 offices in six countries and more than 375 professional staff, including more than 120 Ph.D. economists.

The highlights of our consulting practice in the past year since our last newsletter are described below.

LITIGATION

Dow Chemical Company International Arbitration

As widely reported in the U.S. and international press, a three judge panel of the International Court of Arbitration in June 2012 awarded the Dow Chemical Company \$2.16 billion in a dispute with Petrochemical Industries Company (Kuwait) (“PIC”). Subsequently, in March 2013, the panel awarded Dow an additional \$318 million, bringing the total award to \$2.48 billion. Dow was successfully represented in the arbitration by Henry Weisburg, Jonathan Greenblatt, Christopher Ryan, and others of Shearman & Sterling LLP. The award was reportedly one of the largest, if not the largest, arbitration award ever in a commercial dispute. Compass Lexecon’s President, Professor Daniel Fischel testified as an expert witness at the hearing as did others from our corporate parent FTI Consulting. The Dow arbitration proceeding arose from Kuwait’s failure to close a transaction in which Kuwait was to have contributed approximately \$9 billion to Dow for a 50 percent stake in a petrochemical joint venture to be named K-Dow. Kuwait withdrew from the joint venture on December 28, 2008, a few days ahead of the planned January 2, 2009 closing. Dow expected to use a portion of the proceeds to finance its acquisition of Rohm & Haas, and after Kuwait’s withdrawal from the K-Dow transaction, only managed to close the Rohm & Haas transaction on disadvantageous terms. Dow launched legal action against Kuwait in January 2009 challenging its right to withdraw from the K-Dow joint venture and claiming billions of dollars in damages. Rajiv Gokhale, Mike Keable, Kevin Hartt and others from Compass Lexecon’s Chicago office were also heavily involved in the case.

Occidental Petroleum Corporation v. Republic of Ecuador

In this case, Compass Lexecon expert, Professor Joseph Kalt served as the expert for claimant Occidental Petroleum Corporation, which in October 2012 obtained an arbitration award of US\$1.77 billion (plus back interest) against the Republic of Ecuador (Ecuador). The award was reported to be the largest single bilateral investment treaty award ever issued by the International Centre for the Settlement of Investment Disputes (ICSID). The underlying dispute involved Occidental’s claim that Ecuador’s 2006 unilateral termination of the company’s contracts to develop and produce oil resources located in a region of the country designated as Block 15 wrongfully deprived Occidental of the economic benefits that it would otherwise have earned under the contract. Based on a tribunal finding that Ecuador’s actions were “tantamount to expropriation,” a central issue in the dispute was the disparate economic valuations of Block 15 set forth by the two parties. In its decision that overwhelmingly supported Claimant’s positions on how best to assess the economic value of the Block 15 contract, the Tribunal repeatedly noted its agreement with Professor Kalt’s opinions relating to key valuation factors such as the use of discounted cash flow (DCF), estimates of potential reserves available to the company, risking of reserves and associated future cash flows, and assessment of actual market price expectations. Professor Kalt’s Compass Lexecon team was led by Stephen Makowka in our Boston office. Claimants were represented by David Rivkin of Debevoise & Plimpton LLP and Gaëtan Verhoosel of Covington & Burling LLP.

VOOM HD v. EchoStar

In 2008, VOOM HD, an affiliate of AMC Networks Inc. and a former unit of Cablevision Systems Corporation, sued Dish Network after Dish Network terminated a 15-year contract to carry VOOM HD's programming. At a trial in 2012, Compass Lexecon's Senior Managing Director Jon Orszag testified before a jury at the Supreme Court of the State of New York that VOOM HD suffered more than \$2.4 billion in damages as a result of Dish Network's alleged breach of contract. Soon after Orszag's testimony in October 2012, the parties reached a settlement of \$700 million in cash and a long-term agreement for the Dish Network to carry a number of AMC Networks' programming channels, which third-party analysts viewed as conveying to AMC significantly more value than the cash part of the settlement. The case attracted widespread national press and Wall Street analyst coverage. Compass Lexecon's economists and financial experts worked in several areas of this case. The group supporting Orszag on damages included Guillermo Israilevich, Maria Stoyadinova, Richard Mills, Kate Duan, and Hashim Chaudhry from our DC office. Rahul Sekhar, Rajiv Gokhale, Evan McKay, and Paul Eastwood supported the attorneys at trial, including providing assistance with plaintiffs' witnesses and with cross-examination of defendants' witnesses. Others on the Compass Lexecon team were Avisheh Mohsenin, Quinn Johnson, Andrew Lin, Saloni Shah, Margaret Hlebowitsh, and Hoang Lam in our Chicago office. In addition, Compass Lexecon affiliate David Ricchiute submitted two reports rebutting testimony from the defense accounting expert. He was supported by Kevin Dages, Jennifer Milliron, and Evan McKay. Finally, during the trial, Arti Bhargava and Rohini Sadarangani, from the Oakland office, conducted an expedited audit of Dish Network's entire subscriber data warehouse. We worked with Orin Snyder, Christopher Dusseault, Dace Martinez, Alma Asay, Paul Kremer, Thomas Dupree, Brian Ascher, Ilissa Samplin, Michelle Katz, and David Debold of Gibson, Dunn & Crutcher LLP and Josh Dubin of Dubin Research & Consulting, who successfully represented VOOM HD.

LCD Antitrust Trial

In June 2012 Compass Lexecon expert, Professor Dennis Carlton, testified as a damages expert in the direct-purchaser class portion of the TFT-LCD price fixing litigation, in which Toshiba was the sole remaining Defendant (all others had settled previously). The jury found Toshiba liable for participating in a price fixing conspiracy, making Carlton's damages testimony critical. 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. Critically, this value was low enough that, even after trebling, it was below the settlement payments already made by other Defendants, meaning that Toshiba would have owed nothing in damages. Toshiba and the plaintiffs subsequently settled the litigation and, as a result, the court vacated the verdict. Polling of jurors revealed that Carlton's testimony was "very influential in the deliberations." Professor Carlton was supported by a Compass Lexecon team led by Mark Israel, and including Ian MacSwain, Guillermo Israilevich, Chris Cavanagh, Theresa Sullivan, Joel Papke, and Georgi Giozov. Carlton and Compass Lexecon worked closely with lawyers from White & Case LLP, who successfully represented Toshiba, including Christopher Curran, J. Mark Gidley, Martin Toto, John Chung, and Kristen McAhren.

Fairfax Financial Holdings Limited, et al. v. S.A.C. Capital Management, LLC, et al.

This case, which was litigated in New Jersey state court, centered on plaintiffs' assertion that Compass Lexecon's clients and other "Enterprise members" (i.e. hedge funds and financial analysts) engaged in a "massive, illegal, and continuing scheme" designed to depress Fairfax's stock price, in order to generate a massive profit for the Enterprise via the practice of "short-selling." Plaintiffs brought a variety of common law claims including claims of tortious interference, trade libel, and conspiracy and sought more than \$6 billion of damages for, among other things: (1) increased costs of raising capital, (2) the purportedly forced sale of assets with damages calculated as the difference between the selling price and the later higher repurchase price, (3) lost profits from lost insurance underwriting, (4) increased cost for officers and directors insurance, and (5) continued reputational damages. In his written report and deposition, Compass Lexecon's President, Professor Daniel Fischel extensively criticized plaintiffs' experts, labeling their analyses "junk science." Prior to the trial, the Court granted motions to dismiss filed by a number of defendants, but Compass Lexecon's clients Morgan Keegan and Exis proceeded to trial. Subsequently, on the first day of trial, the Court ruled that plaintiffs had presented no admissible proof of damages because, among other reasons, their experts' analyses were "totally unreliable." As a result, in September 2012 the entire case was dismissed. We worked with Roger Kaplan of Greenberg Traurig, LLP and Diane Sumoski of Carrington, Coleman, Sloman & Blumenthal, L.L.P. who successfully represented Morgan Keegan. We also worked with Steven Reisberg and Tariq Mundiya of Willkie Farr & Gallagher LLP and Bill Carmody and Jacob Buchdahl of Susman Godfrey L.L.P. who represented, respectively, SAC Capital and Third Point LLC who were dismissed from the case prior to trial. Professor Fischel was assisted by David Ross, Anne Marie Yale, Jonathan Polonsky, Elizabeth Wall, and Jessica Mandel of Compass Lexecon's Chicago office.

Softwood Lumber Trade Arbitration

In a recent and significant claim brought under the 2006 U.S.-Canada Softwood Lumber Agreement, an international tribunal rejected the United States' request for \$500 million in additional export taxes against Compass Lexecon's client, British Columbia. Under the 2006 Softwood Lumber Agreement, Canada, as part of a temporary resolution to a nearly 30-year trade dispute, agreed to restrictions on provincial timber management and pricing policies. The U.S. claimed that British Columbia misgraded its timber, while B.C. contended that the observed outcomes were a result of the unprecedented, global-warming-induced mountain pine beetle infestation. Compass Lexecon expert, Professor Joseph Kalt, who was retained as Canada's lead economic expert, demonstrated the consistency of the observed market outcomes with the spread of the beetle attack and disproved the U.S. claims that actions of the B.C. Ministry of Forests were responsible for the observed changes. Professor Kalt was supported by a Compass Lexecon team led by David Reishus, which included Andrew Lemon, Chris Cavanagh, and Cathy Barron. Hughes Hubbard & Reed LLP, led by John Townsend and Joanne Osendarp, conducted the arbitration on behalf of the Canadian government, in consultation with numerous contributors within the Canadian and B.C. governments, the affected industries, and their outside counsels.

Comcast Corp. et al v. Behrend et al

In March 2013, the U.S. Supreme Court ruled in favor of Comcast Corp. in an antitrust class action suit regarding so-called "clustering" – the practice by cable operators of expanding

the geographically contiguous service area by acquiring adjacent cable systems and/or swapping cable systems with other operators. Plaintiffs alleged that Comcast's clustering in and around Philadelphia resulted in harm to a large class of Comcast customers. Plaintiffs' economic experts advanced four theories of harm from Comcast's clustering. However, the U.S. District Court for the Eastern District of Pennsylvania certified a class only with regard to one theory of harm put forth by plaintiffs – the alleged reduction in potential competition from cable “overbuilders,” ruling that the other theories of harm could not be assessed on a class-wide basis. The U.S. Supreme Court overturned the class certification of the lower court on the last remaining theory of harm, ruling that since the damage model offered by plaintiffs' expert did not isolate alleged damages attributable to each individual theory of harm, plaintiffs failed to show that the appropriate measure of damages pursuant to the one remaining theory could be determined on a class-wide basis. Comcast was assisted by a Compass Lexecon team in the Century City office which included Andres Lerner, Emmett Dacey, and Janin Wimer. The team supported an outside expert who submitted multiple reports and provided deposition and hearing testimony regarding both liability and class certification issues. We worked closely with counsel for Comcast, including Sheron Korpus of Kasowitz, Benson, Torres & Friedman LLP. In addition, Compass Lexecon experts Jon Orszag and Professor Bobby Willig submitted written testimony, and Orszag provided deposition testimony, regarding their prior econometric analyses of Comcast's pricing in the Philadelphia area.

Archstone Arbitration

In this arbitration, Compass Lexecon was retained by Jonathan Polkes, Caroline Zalka, and others at Weil, Gotshal & Manges LLP on behalf of their client Archstone to respond to allegations that Archstone breached agreements with Claimants in the course of implementing a leveraged buy-out. Prior to the buy-out, Claimants received common units of Archstone in exchange for property contributed to the real estate investment trust. In the leveraged buy-out, Archstone gave Claimants a choice between exchanging their common units for preferred units or cash. In this matter, Claimants and their experts argued that the preferred units were inferior to their common units and provided no guarantee of tax deferral, and as a result they were forced to take cash and realize significant capital gains. At the arbitration, Compass Lexecon's President, Professor Daniel Fischel, strongly criticized Claimants and their experts for ignoring attributes of the preferred units that were superior to the common units and testified that the transaction was highly profitable for Claimants and other unitholders. The arbitrator's ruling was a complete victory for Archstone. Professor Fischel was supported by a team in Compass Lexecon's Chicago office including Jerry Lumer, Jessica Mandel, and Elizabeth Wall.

Conoco Phillips ICC Case

A Compass Lexecon team led by Dr. Manuel Abdala as expert and managed by Santiago Dellepiane provided testimony before an ICC Tribunal which in September 2012 awarded Conoco Phillips a US\$66.9 million award against Petróleos de Venezuela, S.A (PDVSA). The conflict involved a shareholders' dispute over the parties' former Petrozuata joint venture, a heavy crude oil production and upgrade facility located in Venezuela's Orinoco belt. The breach occurred as a result of PDVSA's failure to compensate Conoco for production curtailments imposed by OPEC, affecting Petrozuata's output during late 2006 and early 2007. The Tribunal fully endorsed Dr. Abdala's valuation methodology, awarding damages as recommended, plus 10.55% compound interest until payment. Most notably, the Tribunal found that Dr. Abdala's

use of Petrozuata's 10.55% cost of equity computed under the CAPM as the appropriate interest rate to update damages was a sound exercise based on the logic that Claimant, as a provider of funds to Petrozuata, would have received a return commensurate to its opportunity cost of capital in the absence of the contractual breach, and that otherwise, the principle of full compensation would not be satisfied. The Compass Lexecon team included Pablo Lopez Zadicoff, Mark Sheiness and Andres Casserly. Claimants were represented by Freshfields Bruckhaus Deringer LLP and Norton Rose LLP, and the arbitration took place in New York under ICC rules.

Gerdau Macsteel Tax Litigation

In August 2012, United States Tax Court Judge L. Paige Marvel issued a tax court opinion in favor of Respondent (our client) in *Gerdau Macsteel, Inc. & Affiliated Subsidiaries, Petitioners v. Commissioner of Internal Revenue Service*. Petitioner sought to report a tax loss of approximately \$38 million to shelter its taxable gains from Federal income tax by entering into a series of interrelated transactions in late October 1997 that included the transfer of cash and the assumption of certain contingent liabilities in exchange for newly issued class C stock. The Court held that the Class C stock is non-qualified preferred stock because it "does not participate in corporate growth to any significant extent" and, accordingly, Petitioners are not entitled to deduct the claimed capital loss. The Court also held that the transactions underlying the claimed capital loss lacked economic substance. David Ross of Compass Lexecon provided expert testimony on these issues, and the Court "generally found Ross' conclusions to be more persuasive than those of the other two experts" who testified at trial. IRS Counsel in this case were Jill Frisch and Dennis Kelly.

NYAG Objection to AIG Class Action Settlement

In January 2013, U.S. District Judge Deborah Batts denied the New York Attorney General's ("NYAG") objection to a \$115 million settlement in an AIG securities litigation. Defendants included AIG, Hank Greenberg, and C.V. Starr & Co. The NYAG claimed the settlement was unfair and inadequate because plaintiffs' expert erred in his statistical analysis of some of the alleged corrective disclosures. The NYAG further claimed that correcting the mistake would produce a higher settlement amount in the case. Compass Lexecon's President, Professor Daniel Fischel was retained by Thomas Dubbs and Thomas Hoffman at Labaton Sucharow LLP and submitted a declaration concluding that the plaintiffs' expert's mistake was not material and did not affect the amount and reasonableness of the settlement. In reaching her decision, Judge Batts favorably cited Professor Fischel's declaration regarding the statistical significance of the error. The team supporting Professor Fischel was led by Vince Warther and included Mike Keable, Laurel Van Allen, and others in our Chicago office.

Fresh Del Monte Pineapple Litigation

In April 2012, Judge Donald W. Hafele of 15th Circuit Court in Florida issued a written order denying certification of a class of indirect purchasers of Fresh Del Monte Pineapples in Florida. Judge Hafele wrote, Compass Lexecon expert "Dr. [Bradley] Reiff concludes, and the Court agrees, that [plaintiffs' expert] does not provide either theoretical or empirical support for his assumption of a constant 100% pass-through rate." In March 2012, Judge P. J. McGuinness of the First Appellate District of California affirmed a similar denial of certification of a class of indirect purchasers of Fresh Del Monte Pineapples in California. These cases are the first two of

a number of state indirect purchaser class actions stemming from the Fresh Del Monte Pineapples Antitrust Litigation, in which plaintiffs allege that Del Monte created a monopoly for extra sweet whole pineapples by improperly using its claimed patent rights over a particular strain of pineapples. Compass Lexecon expert, Bradley Reiff was retained by Del Monte to testify on indirect purchaser class issues. In rejecting certification, the courts cited Dr. Reiff's analysis of pass-through of the alleged overcharge. The California appellate decision stated, "In rejecting the opinion of plaintiffs' expert, the trial court found in substance that the declaration of defendants' expert [Bradley Reiff] persuasively demonstrated that a presumption of a one hundred percent pass-through of overcharges from retailers to consumers was not supported by either economic theory or an empirical analysis of the available data between wholesale price changes and retail price changes across time and location." The Florida and California decisions followed a similar ruling in Federal court in 2008, which also relied on Dr. Reiff's testimony in rejecting the indirect purchasers class. The Compass Lexecon team included Heather Spang in our Chicago office. Compass Lexecon worked with David Barrett, Carl Goldfarb, Stuart Singer, and Carlos Sires of Boies, Schiller & Flexner LLP.

Capital One Financial Corp Non-Competition Clause Litigation

Capital One Financial Corp acquired North Fork Bank for \$13 billion in 2006. Pursuant to the acquisition, Capital One signed North Fork's founder and CEO, John Kanas, and Vice Chairman John Bohlsen to employment agreements as senior executives. These agreements prohibited Mr. Kanas and Mr. Bohlsen from competing with Capital One for five years following their departure from the firm. After two years, Mr. Kanas and Mr. Bohlsen negotiated exits from Capital One whereby vesting on \$40.9 million in restricted share grants was accelerated and the non-compete clauses revised with the terms set to expire in August 2012. Capital One sued Mr. Kanas and Mr. Bohlsen, alleging that prior to the expiration of the non-compete clauses, Defendants violated the agreements by acquiring BankUnited, Inc., making plans to expand BankUnited's presence in the New York/New Jersey/Connecticut area, and competing directly with Capital One for customers and business including direct solicitation of former North Fork employees and customers who had remained with Capital One. Compass Lexecon's President, Professor Daniel Fischel submitted two reports and testified at deposition in support of Capital One. Professor Fischel testified on the harm to Capital One from business lost to BankUnited as well as potential additional business that would be lost absent an injunction holding Defendants to the terms of their non-compete agreements. In June 2012, Crain's New York stated that "Capital One announced that Mr. Kanas and Mr. Bohlsen had waved the white flag," and agreed to a settlement agreement. Pursuant to the settlement, Defendants agreed to pay \$20 million in cash and agreed to abide by the terms of the non-competition agreements until January 31, 2013. Compass Lexecon was retained by Orin Snyder and Howard Hogan of Gibson, Dunn, and Crutcher LLP and Professor Fischel was supported by Rahul Sekhar and Robin Stahl in our Chicago office.

ICSID Arbitration Between Republic of Guatemala and RDC

A Compass Lexecon team led by Professor Pablo Spiller and managed by Miguel Nakhle, with support from Andres Casserly, Ariel Medvedeff and Marcelo Schoeters, assisted the Republic of Guatemala's outside counsel in significantly reducing a US\$104 million CAFTA claim raised by Railroad Development Corporation (RDC). RDC alleged unlawful expropriation of its railway and real estate businesses. Claimants' experts computed damages arguing that both

the value of past investments and the fair market value of the businesses prior to the alleged expropriation should be considered. Professor Spiller showed that most past investments had been used to cover operating losses, that the FMV valuation of the real estate business was unsubstantiated, and that adding both together implied double counting. In June 2012, an ICSID Tribunal found Guatemala to have breached CAFTA minimum standards and granted damages to Claimant. The Tribunal, however, following Professor Spiller's work, granted compensation for past improvements to the railroad assets only, with no consideration for lost profits on this business. It also sided with Professor Spiller and dismissed as speculative most of the forecasted real estate cash flows, limiting compensation to existing contracts. Damages were set at approximately US\$12 million, subject to Claimants returning their real estate and railroad operations to the State. Guatemala was represented by Arnold & Porter LLP, and the arbitration took place in Washington, DC.

Sun Capital and Polycom Merger Litigation

In May 2012, Sun Capital agreed to acquire Polycom's SpectraLink business for \$110 million. SpectraLink provided short-range wireless communication systems for large retailers, such as Home Depot and Lowe's, and hospitals. After the transaction, Sun Capital claimed that Polycom had violated the terms of the purchase agreement by, among other things, failing to disclose that some of SpectraLink's largest customers had notified Polycom they were going to discontinue their use of SpectraLink products. Compass Lexecon was retained by John Hartmann of Kirkland & Ellis LLP to work on behalf of Sun Capital in the matter, and Compass Lexecon's President, Professor Daniel Fischel submitted an expert report quantifying the effect of losing various customers on SpectraLink's value. Following the submission of Professor Fischel's report, Polycom agreed in October 2012 to dramatically reduce the purchase price to US\$53 million plus other potential compensation, based on SpectraLink's future EBITDA. Professor Fischel was supported by a team headed up by Vince Warther that included Tim McAnally and Laurel Van Allen of Compass Lexecon's Chicago office. Attorneys on the case, in addition to John Hartmann, included Daniel Moore, Sarah Herlihy, and Dana Hill of Kirkland & Ellis LLP; and William Lafferty of Morris, Nichols, Arsht & Tunnell LLP.

In re Pfizer Inc. Securities Litigation

In March 2012, Judge Laura Taylor Swain of the United States District Court (Southern District of New York) ruled in favor of Compass Lexecon's client, the plaintiffs in a securities class action against Pfizer Inc. and certain of its officers, and granted the plaintiffs' motion for class certification. In support of her decision, the judge cited the declaration of Compass Lexecon's President, Professor Daniel Fischel, and the evidence he presented regarding the volume of trading in Pfizer's stock and the effect of disclosures on the stock price. We were retained by and worked with Jay Eisenhofer and Geoff Jarvis of Grant & Eisenhofer P.A. and David Kessler of Kessler Topaz Meltzer & Check, LLP. Professor Fischel was supported by Mike Keable, Kevin Dages, David Strahlberg, and Jennifer Milliron in Compass Lexecon's Chicago office.

HP Tax Litigation

In May 2012, United States Tax Court Judge Joseph Robert Goeke issued a memorandum opinion in favor of Respondent (Compass Lexecon's client) in Hewlett-Packard Company and

Consolidated Subsidiaries, Petitioner v. Commissioner of Internal Revenue, Respondent. Petitioner had sought approximately \$177.6 million in foreign tax credits and a \$15.6 million capital loss deduction in connection with the transaction at issue. The Court held that Petitioner's investment in the foreign entity Foppingadreef that it had characterized as equity was more appropriately characterized as debt. David Ross of Compass Lexecon provided expert testimony on this issue, and his testimony was specifically cited by the Court as being "of particular import to our decision." Respondent was represented by Jill Frisch, Anne Hintermeister, Caroline Chen, and Vincenza Taverna-Ciarlo. Mr. Ross was assisted by Kevin Hartt in Compass Lexecon's Chicago office.

ICSID Arbitration Between Investors and Argentina

Dr. Manuel Abdala and Professor Pablo Spiller provided expert testimony in an ICSID arbitration. They were retained by French investors led by SAUR. The June 2012 outcome resulted in a US\$208 million award against Argentina. An ICSID Tribunal found that Argentina's denial to adjust tariffs properly substantially eroded the value of Claimants' investments in electricity distribution. Abdala and Spiller demonstrated that the size of the investment had to be measured by the asset base, including the actual purchase price paid at privatization and not by the (lower) tag price set at the time of bid, as advocated by opposing experts. The Tribunal also dismissed the claim that Abdala and Spiller's fair market valuation exercise was circular by virtue of anchoring value to the asset base. It found that the exercise was proper since it included a drop in value due to adverse market conditions, similar to those experienced by benchmark traded utilities. The Tribunal agreed with Abdala and Spiller that electricity demand is highly inelastic, even in the presence of high but-for tariff increases. The Tribunal also endorsed Abdala and Spiller's view that the spread on sovereign bonds could not be used as a valid measure of country risk premium, under the circumstances of their defaulted status.

BankAtlantic Bancorp, Inc. Securities Litigation

In July 2012, the United States Court of Appeals for the Eleventh Circuit granted judgment on behalf of our clients BankAtlantic and the officer defendants because the court concluded the plaintiffs and their expert failed to demonstrate loss causation and damages. Specifically, the Court found that none of the evidence presented excluded the possibility that class members' losses resulted not from anything specific that the defendants hid from the public, but from market forces that it had warned of and that would likely have caused significant losses for an investor in any bank with a significant credit portfolio in commercial real estate in Florida in 2007. Mike Keable led a team from Compass Lexecon's Chicago office that included Laurel Van Allen in assisting the Defendants. We worked with Gene Stearns, Adam Schachter, Grey Mead and others of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

In Re: McAfee Inc. Shareholder Litigation

In November 2012, California State Judge James Kleinberg granted summary judgment for defendants, our clients, in a suit that claimed that McAfee's board had breached its fiduciary duty by entering into an Agreement and Plan of Merger under which Intel would acquire McAfee for \$38 per share. Plaintiffs alleged that the Acquisition was the product of a hopelessly

flawed process dominated by McAfee's purportedly conflicted CEO and was designed to ensure the merger of McAfee and Intel on terms preferential to Intel and defendants and detrimental to plaintiffs and McAfee's shareholders. Compass Lexecon's President, Professor Daniel Fischel submitted a report and a rebuttal report on behalf of the defendants and testified via deposition. McAfee's board of directors was represented by Boris Feldman and Rodney Strickland of Wilson Sonsini Goodrich & Rosati PC. Intel was represented by Wayne Smith and Paul Collins of Gibson Dunn & Crutcher LLP. Professor Fischel was assisted by David Ross, Rajiv Gokhale, Quinn Johnson, and Jonathan Polonsky of Compass Lexecon's Chicago office.

Ban on Exclusive Distribution of Cable-Affiliated Networks

In October 2012, the Federal Communications Commission (FCC) issued a Report and Order sunsetting the ban on exclusive contracts involving cable-affiliated programming networks, which had been in place since 1992. During the FCC's proceedings on this topic, Compass Lexecon expert Mark Israel submitted a Declaration on behalf of the National Cable and Telecommunications Association (NCTA) in support of the decision to let the ban lapse. Israel argued that although such a blanket ban on exclusive contracts involving cable-affiliated networks may have been justified when the market was less competitive, in today's environment with multiple satellite and telephone options for video service in most areas, such a blanket ban is not only no longer necessary but likely anti-competitive. Israel's Declaration was cited multiple times in the FCC's Report and Order allowing the ban to lapse. Israel was supported in his work by a Compass Lexecon team led by Theresa Sullivan including Bryan Keating, Paolo Ramezzana, and Jeff Tucker. The Compass Lexecon team worked closely with Rick Chessen, Senior Vice President of NCTA, other NCTA representatives, and James Casserly and others of Willkie Farr & Gallagher LLP.

Apple/AuthenTec Transaction Litigation

In September 2012, Brevard County, Florida Circuit Court Judge Robert T. Burger denied Plaintiffs' motion for a preliminary injunction of the proposed merger of AuthenTec, Inc. with Apple Inc., finding that Plaintiffs had failed to prove they would suffer irreparable harm, that there is no adequate remedy at law, and that a preliminary injunction would not serve the public interest. Compass Lexecon's President, Professor Daniel Fischel submitted a declaration on behalf of the AuthenTec Defendants and testified via deposition. The AuthenTec Defendants were successfully represented by Todd David and Lisa Bugni of Alston & Bird LLP and John Neuwirth of Weil, Gotshal & Manges LLP. Professor Fischel was assisted by David Ross, Rajiv Gokhale, Quinn Johnson, and Jonathan Polonsky of Compass Lexecon's Chicago office.

ChampionsWorld LLC v. United States Soccer Federation and Major League Soccer

In August 2012 the Honorable Harry D. Leinenweber (U.S. District Court for the Northern District of Illinois, Eastern Division) issued an opinion and order granting Defendants' motions to exclude opposing expert testimony and issuing summary judgment findings on the antitrust claims in Defendants' favor in a long-running dispute brought by ChampionsWorld, a bankrupt promoter of exhibition soccer matches. Among other things, ChampionsWorld disputed the legitimacy of sanctioning fees charged by USSF to entities holding exhibition matches in the United States. Counsel for USSF and MLS retained Compass Lexecon expert, Professor Joseph Kalt to provide analysis of the antitrust claims and to critique the testimony of a sports economist

retained by ChampionsWorld. Professor Kalt, with the assistance of a Compass Lexecon team headed up by Steven Peterson and Eric Henson, demonstrated that no inference of conspiracy was found in the economic evidence available, no exclusionary conduct was undertaken by USSF and/or MLS, the sanctioning fees charged by USSF arose from legitimate economic purposes, and the testimony of the opposing economist failed to define a relevant market and failed to demonstrate harm to competition or consumers. We worked with attorneys from Latham & Watkins LLP (representing USSF) and Proskauer Rose LLP (representing MLS). Lead attorneys from Latham & Watkins included, among others, Russell Sauer and Christopher Yates. Lead attorneys from Proskauer included, among others, Bradley Ruskin and Colin Kass.

Ofcom

In May 2012, the Competition Appeal Tribunal (CAT), the UK appeals court for competition matters, upheld Ofcom's decision to move from an average cost to a marginal cost measure for the way that interconnection rates between mobile networks are computed. In Europe, mobile operators pay regulated wholesale interconnection rates to other networks for terminating cross-network calls. Philip Kalmus of Compass Lexecon's London office acted as the expert for mobile operator "Three," an intervener on behalf of Ofcom. Kalmus' economic reasoning, set forward at the hearing, was accepted by the Competition Commission, acting as advisors to the CAT, over the arguments of opposing experts from three other firms. During the course of the proceedings, Compass Lexecon took on a larger role, replacing another firm that had acted as a joint advisor. Kalmus was assisted by Bertram Neurohr, Stefano Trento, and Scott Holbrook in our London office.

SISTIC v. Competition Commission of Singapore

In its first abuse of dominance decision, the Competition Commission of Singapore found in 2010 that SISTIC, the near monopoly ticketing agency in Singapore, had abused its dominant position through a network of exclusive agreements with the main concert venues and promoters. SISTIC challenged this decision before the Singapore Competition Appeal Board. In May 2012, the Appeal Board upheld the Commission's decision and dismissed SISTIC's appeal on liability. Compass Lexecon expert, Justin Coombs acted as the Commission's economic expert, providing two expert reports on SISTIC's market power and conduct, as well as appearing before the Board. Coombs was assisted by a Compass Lexecon team of Ingrid Liedorp in Brussels and Sergey Khodjamirian in London.

Zurich Re

Compass Lexecon affiliate David K.A. Mordecai testified on behalf of Zurich Re, a major reinsurance firm, in a multibillion dollar asbestos dispute with a bankruptcy trust. The dispute involved a complex arrangement which included excess of loss reinsurance, risk financing (in the form of both a stop-loss and loss portfolio transfer facilities), and investment management agreements, as well as a credit derivative. After a resounding win for the client on summary judgment, the plaintiffs later agreed to abandon their appeal with prejudice for a de minimus settlement amount. As a high profile, multibillion dollar test case with national scope as well as international policy implications for the reinsurance industry, this was a significant outcome not just for Zurich Re, but for insurance regulators as well. In connection with our work in this case, we worked with Richard Mancino and others of Willkie Farr & Gallagher LLP. Dr.

Mordecai was assisted by David Gross, Peter Clayburgh, Rahul Sekhar, Andria van der Merwe, and Timothy McAnally in Compass Lexecon's Chicago office.

The Anschutz Corporation

Compass Lexecon affiliate David K.A. Mordecai advised Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C. and its client, The Anschutz Corporation, in a multimillion dollar securities dispute against a global banking institution and certain credit rating agencies. The dispute involved substantial investment losses related to a series of structured instruments which employed Auction Rate Securities to fund a complex structured transaction which involved Asset Swaps, Medium Term Notes, and Credit Linked Notes referencing the returns underlying a Leveraged Supersenior tranche of a CDS index. Dr. Mordecai was assisted in his analysis by David Ross and Peter Clayburgh, as well as a support team which included George Hickey, Quinn Johnson, and Agustina Levy. The dispute was settled on favorable terms for the client.

Variable Universal Life Analysis

Compass Lexecon affiliated expert David K.A. Mordecai advised a consulting firm in the review of the terms, conditions, and disposition of a multimillion dollar portfolio of Variable Universal Life policies belonging to a client of the consulting firm. Dr. Mordecai, with modeling support from Michael Kwak, conducted a comparative scenario analysis of the cash flows underlying the policy investment performance and death benefits as loan collateral.

Advance Auto Parts

Compass Lexecon economists Mary Coleman and David Weiskopf were retained by William Berkowitz of Bingham McCutchen LLP to conduct an economic analysis of the proposed acquisition of more than 100 BWP auto parts locations by Advance Auto Parts (AAP). Drs. Coleman and Weiskopf were supported by a Washington DC based Compass Lexecon team including Syre Khan and Piyal Hyder. Compass Lexecon interacted extensively with Bingham counsel and AAP and also presented an economic analysis to staff at the (United States) Federal Trade Commission. The FTC ultimately decided to let the Hart-Scott-Rodino waiting period expire, terminating its investigation of the proposed acquisition.

Outdoor Advertising Investigation

In May 2012, the UK Office of Fair Trading (OFT) closed an investigation into outdoor advertising. The OFT had opened a competition investigation into street furniture advertising contracts held by Clear Channel and JC Decaux following its 2011 market study into outdoor advertising. As a result of the voluntary assurances it received from the two firms, the OFT closed its investigation without reaching a finding of infringement of the Competition Act 1998. A Compass Lexecon team including Jorge Padilla, Neil Dryden, and Segye Shin provided economic analysis and advice to Clear Channel. Compass Lexecon worked with Marc Hansen and John Colahan of Latham & Watkins LLP in London.

KFTC Investigation into Air Products Korea Contracting Practices

In February 2013, the Korean Fair Trade Commission closed its investigation into the contracting and pricing practices used by Air Products Korea in its supply of industrial gases in Ulsan, South Korea. A Compass Lexecon team including Professor Dennis Carlton, Mary Coleman, and Jonathan Bowater, working with Robert Schlossberg of Freshfields Bruckhaus Deringer LLP, counsel to Air Products, submitted an expert report to the KFTC on behalf of Air Products. In May 2012, the KFTC dismissed claims related to minimum take-or-pay and contract amount terms after an initial hearing in February 2012, but continued to pursue claims related to contract length, renewal, and early termination provisions. In February 2013, after a second hearing, the KFTC decided to close the investigation with no further action or undertakings from Air Products. The case was ultimately closed on the basis of the briefs and expert reports, and the examiner at the KFTC characterized Compass Lexecon's report as excellent.

D'Andrea Brothers LLC v. The United States

In this breach of contract case involving a contract between a producer of nutritional energy bars and the United States Army's Natick Soldier Research, Development and Engineering Center. Plaintiff alleged that the United States breached its implied covenant of good faith and fair dealing by failing to support development of the product and "bad mouthing" the D'Andrea Brothers to others. Plaintiff sought reliance damages, claiming that it never would have entered into the contract had it known the government would breach the contract. Compass Lexecon expert, Bradley Reiff testified on behalf of the United States in the Court of Federal Claims in October 2012 that Plaintiff's reliance damages would be speculative because, even absent the alleged breach of contract by the government, the evidence showed that Plaintiff's investment pursuant to the contract would have failed. In an opinion issued in February 2013, the Court adopted Reiff's logic in awarding zero damages, despite a liability finding on behalf of the Plaintiff. Reiff was supported by Lynette Neumann in our Chicago office. Compass Lexecon worked with Sheryl Floyd of the United States Department of Justice.

IRS/Bank of New York

In February 2013 United States Tax Court Judge Diane L. Kroupa issued a tax court opinion in favor of Respondent (our client) in Bank of New York Mellon Corporation, as Successor in Interest to The Bank of New York Company, Inc., Petitioner v. Commissioner of Internal Revenue, Respondent. Petitioner had sought approximately \$199 million in foreign tax credits in connection with a Structured Trust Advantage Repackaged Securities ("STARS") transaction for the combined years at issue. The Court held that petitioner is not entitled to the claimed foreign tax credits because the STARS transaction lacked economic substance. The Court also held that that petitioner is not entitled to deduct certain expenses incurred in furtherance of the STARS transaction for the same reason. David Ross of Compass Lexecon provided expert testimony on behalf of respondent concerning the economic effects of the STARS transaction. The Respondent was represented by Jill Frisch, Curt Rubin, Anne O'Brien Hintermeister, Matthew Avon, Justin Campolieta, and Michal Sienkiewicz. Mr. Ross was assisted by Kevin Hartt in Compass Lexecon's Chicago office.

Google

In January 2013, the U.S. Federal Trade Commission announced that it had voted unanimously to close its 19-month investigation of Google, concluding that Google's search-related practices did not stifle competition in violation of antitrust law. In particular, the Commission unanimously voted against bringing charges related to allegations of "search bias," despite complaints by competitors that Google's search results favor its own content and disadvantage "specialized" search websites. The FTC also found no evidence of anticompetitive conduct with regard to other search-related practices. Michael Katz, Andres Lerner, and Emmett Dacey submitted several papers, presented findings to FTC staff, and worked closely with counsel throughout the investigation. Compass Lexecon expert, Benjamin Klein also consulted with counsel on a variety of topics. The Compass Lexecon team included Janin Wimer, Aren Megerdichian, Robert Oandasan, and Seth Chapman. Compass Lexecon worked with Google's in-house counsel and outside counsel Wilson Sonsini Goodrich & Rosati PC, including Susan Creighton, Jonathan Jacobsen, and Scott Sher.

Deutsche Bahn/EuroCargoRail

In December 2012, the French competition authority sanctioned the State-owned railway operator, SNCF for, *inter alia*, exclusionary pricing practices in the market for block-train railway freight services in France, following a claim lodged by EuroCargoRail (ECR), a French subsidiary of Deutsche Bahn A.G. The French NCA found that SNCF excluded direct competitors on strategic traffics through prices below average incremental costs, thereby hampering their development in a market recently opened to competition. We submitted a report in response to the second round of writings of the French NCA in which we clarified the analytical foundations of the predation test to be applied to assess SNCF's practices and presented our findings at a hearing. This analytical framework was eventually followed by the French NCA which found that SNCF abused its dominant position and imposed behavioral injunctions onto SNCF. A Compass Lexecon team with David Sevy, Frédéric Palomino and Anastasia Tseomashko assisted ECR and its outside counsel François Brunet of Cleary Gottlieb Steen & Hamilton LLP.

French Banks/Digital Check Image (EIC) interchange fee

In February 2012, the Paris Court of Appeal fully annulled a September 2010 decision by the French competition authority according to which nine major French banks had been sanctioned for a total of 385 million Euros for infringement of Article 101 EC (French code de commerce L.420-1). Those banks (including Banque de France, the French central bank) collectively agreed to set an interchange fee when a new merchant-bank check interchange scheme was introduced in 2002. The French NCA ruled that this agreement infringed Article 101 EC and could not be exempted under Article 101.3, because it was deemed unnecessary to achieve the transition to the new scheme and was likely to yield anticompetitive effects on merchant charges. The Court ruled that the agreement could not be considered a restriction of competition, insofar as the French NCA could not demonstrate an anticompetitive intent and likely anticompetitive effects at an adequate standard of proof. A Compass Lexecon team led by David Sevy assisted the nine French banks and their outside counsels throughout the competition proceedings, before the NCA and the Court of Appeal. We filed several expert submissions at different stages of the proceedings and presented our findings at the hearing before the French

NCA. Our submissions dealt, among other things, with the objective justification of the interchange fee in consideration of the impact of the new scheme on each bank individually, as well as on the standard to assess the likelihood of anticompetitive effects and its implications.

MERGERS, ACQUISITIONS, AND JOINT VENTURES

Glencore's Acquisition of Xstrata

In November 2012 the European Commission approved the acquisition by Glencore of Xstrata, subject to conditions. The transaction combines the world's leading metals and thermal coal trader with the world's fifth largest metals and mining group. The clearance is conditional on the termination of Glencore's off-take arrangements for zinc metal in the European Economic Area (EEA) with Nyrstar, the world's largest zinc metal producer, and the divestiture of Glencore's minority shareholding in Nyrstar. The Compass Lexecon team assisting the parties and their respective legal advisers, Linklaters LLP (for Glencore) and Freshfields Bruckhaus Deringer LLP (for Xstrata), consisted of Jorge Padilla, Peter Davis, Enrique Andreu, Urs Haegler, David Shaharudin, Bertram Neurohr, and Manuel Mertel Morillo. The European Commission granted approval at the end of its 'Phase-I' investigation. However, this was preceded by a lengthy pre-notification period, during which Compass Lexecon submitted several papers. Those contributions included an analysis of the geographic delineation of the market for zinc metal and an assessment – based on the use of critical loss analysis and the Generalised Upward Pricing Pressure Index (GUPPI) – of the price impact of the concentration in a putative EEA-wide market for zinc metal. Compass Lexecon worked with Christian Ahlborn and his team at Linklaters LLP, as well as with Rafique Bachour and his team at Freshfields Bruckhaus Deringer LLP.

Random House/Penguin Merger

A Compass Lexecon team including Professor Robert Willig, Mary Coleman, Jonathan Bowater, and Maria Stoyadinova assisted Jacqueline Grise and Mark Schechter of Cooley LLP, outside counsel to Bertelsmann, and Harry Robins and Scott Stempel of Morgan, Lewis & Bockius LLP, outside counsel to Pearson, in seeking DOJ approval of the proposed merger between Random House (a subsidiary of Bertelsmann) and Penguin (a subsidiary of Pearson). It was commonly viewed that a Second Request was highly likely. The Compass Lexecon team joined counsel in presenting persuasive evidence to the DOJ in meetings and white paper material demonstrating that concentration in publishing today, when accurately assessed, does not raise competition concerns, and that the digital publishing revolution has created powerful new avenues of competition. As DOJ granted early termination, the parties did not need to substantially comply with the Second Request. Before the early termination was granted, Compass Lexecon also assisted in preparing the draft responses to the Second Request. While clearance for the proposed merger is still being sought in other jurisdictions, including the European Union and Canada, the U.S. Department of Justice closed its investigation in mid-February 2013.

Universal's Acquisition of EMI's Recorded Music Business

In September 2012, the European Commission cleared Universal's acquisition of EMI's recorded music business, subject to conditions. The merger brought together two of the four so-

called global ‘major’ record companies, leaving only three majors. The clearance was made conditional upon the divestment of EMI’s Parlophone label and numerous other music assets including, EMI France and EMI’s classical music labels, Chrysalis and Mute. Jorge Padilla, Peter Davis, Nadine Watson, and Urs Haegler from Compass Lexecon assisted EMI and its owner Citigroup, as well as their respective legal advisers, Freshfields Bruckhaus Deringer LLP and Clifford Chance LLP. The Commission’s decision followed its in-depth (‘Phase II’) investigation, initiated due to concerns that, as a result of the merger, Universal would enjoy excessive market power vis-à-vis its direct customers that sell physical and digital recorded music at retail level (‘platforms’). The Commission’s view was based on the notion that access to additional repertoire becomes less and less valuable the wider the repertoire already available to the platform (substitutability between majors’ repertoires). In our response to the Commission’s Statement of Objections, Compass Lexecon provided a critique of the Commission’s econometric analysis and noted, among other things, that the empirical findings were instead consistent with the repertoires of the different recorded music companies being complementary. Compass Lexecon worked with Tony Reeves and his team at Clifford Chance LLP and Thomas Janssens and his team at Freshfields Bruckhaus Deringer LLP.

In September 2012, the U.S. Federal Trade Commission also announced that it had closed its investigation of the proposed acquisition by Universal of EMI’s recorded music business. Professor Daniel Rubinfeld, together with a Compass Lexecon team led by Duncan Cameron, was retained by counsel for Universal, Glenn Pomerantz and Stuart Senator of Munger, Tolles & Olson LLP and Bruce Hoffman of Hunton & Williams LLP, to conduct analyses of competition in the recorded music industry and to provide support for Universal’s efforts to secure regulatory approval. The Compass Lexecon team studied the recorded music industry and analyzed data on recorded music sales and determined that the proposed transaction would be unlikely to lessen competition or increase prices, primarily because there did not appear to be any meaningful pre-merger substitution between Universal and EMI and because the presence of piracy likely provides substantial discipline with respect to legitimate music prices. The Compass Lexecon team also concluded that the proposed transaction was unlikely to impact prices to consumers for nascent music streaming services, or the relative bargaining power and distribution of rents between record labels and streaming services. The FTC concluded that there was not sufficient evidence of head-to-head competition to conclude that the combination of Universal and EMI would substantially lessen competition. The FTC also determined that because each of the four major labels appeared to be necessary for a competitive streaming service, the repertoires of each of the major labels are likely to be complements rather than substitutes. The FTC stated that while it worked closely with the European Commission throughout the investigation, it reached different conclusions due to different evidence unique to each jurisdiction. However, the FTC noted that while it did not conclude that a remedy was needed to protect competition in the U.S., the remedy obtained by the European Commission would reduce concentration in the U.S. as well.

Sony’s Acquisition of EMI’s Music Publishing Business

In April 2012, the European Commission cleared Sony’s acquisition of EMI’s music publishing business, subject to conditions. The merger creates the largest business of its kind and reduces the number of so-called global ‘major’ publishing companies from four to three. The clearance was made conditional upon the divestment of EMI’s publishing rights to four catalogues and the works of 12 contemporary artists. Jorge Padilla, Peter Davis, David

Shaharudin, and Luke Ravenscroft from Compass Lexecon assisted EMI and its owner Citigroup, as well as their respective legal advisers, Freshfields Bruckhaus Deringer LLP and Clifford Chance LLP. The Commission's decision followed its initial ('Phase I') investigation. The Commission was initially concerned about the merged entity's ability to control the online licensing of chart hits in the European Economic Area. Post transaction, the merged entity would have fully or partially owned publishing rights in more than half of the chart hits in the UK and Ireland. However, Sony offered divestments of valuable and attractive catalogues, satisfying the Commission that the competitive dynamics in the online music publishing business would be maintained. Compass Lexecon worked with Tony Reeves and his team at Clifford Chance LLP and Thomas Janssens and his team at Freshfields Bruckhaus Deringer LLP.

In June 2012, the Federal Trade Commission cleared Sony's acquisition of EMI's music publishing business. The merger of the two company's music publishing catalogs created a library of more than two million songs, making the combined entity the world's largest music publisher. Janusz Ordover and Doug Fontaine from Compass Lexecon assisted Sony ATV (Sony's music publishing division), as well as its counsel, Debbie Feinstein, Chester Choi, and Michael Bernstein of Arnold & Porter LLP. Bobby Willig, Jith Jayaratne and Yair Eilat assisted EMI and its counsel, Dale Collins, Tim Haney, and Jessica Delbaum of Shearman & Sterling LLP in this transaction. The FTC approved the merger once satisfied that the combination of the two enterprises likely would not harm competition in any of the numerous business segments in which music publishing rights are licensed. Compass Lexecon worked with counsel to prepare a white paper that addressed the principal competitive concerns raised by the FTC, namely the parties' withdrawal of digital performance rights from the U.S. performing rights organizations and the parties' possibly enhanced control over the publishing rights associated with "hit" songs. With regard to both concerns, economic analyses and arguments prepared by Compass Lexecon persuasively demonstrated that such concerns were unwarranted due to continuing robust competition among music publishers, including the need to both maintain and replenish relationships with songwriters, and the material bargaining leverage held by numerous digital service providers.

Sports Direct/JJB Sports

In December 2012, the UK Office of Fair Trading unconditionally approved a completed acquisition by Sports Direct of certain JJB Sports stores. This approval came two years after the UK Competition Commission had concluded that Sports Direct and JJB Sports together comprised a relevant antitrust market. In the latest case, the OFT accepted the failing firm defense on the grounds that the acquired stores would inevitably have exited the market but for the transaction, that there was no less anti-competitive purchaser than Sports Direct, and that the exit of the purchased stores and dispersal of their sales across the 'out of market' competitors would not have been substantially less anticompetitive than their purchase by Sports Direct. A Compass Lexecon team led by Neil Dryden advised Sports Direct. Compass Lexecon worked with Stephen Smith of RPC LLP in London.

Digital Globe/GeoEye Merger

Compass Lexecon experts Jon Orszag and Brad Cornell were retained by GeoEye as part of the regulatory review of its proposed merger with DigitalGlobe. GeoEye and Digital Globe were the only remaining U.S.-based companies providing geospatial imagery to commercial and

governmental customers throughout the world. After an extensive review, which included multiple white papers submitted to the agency by counsel and two expert reports by Dr. Cornell analyzing the prospects for GeoEye's business in the absence of the merger, the United States Department of Justice cleared the combination in early January 2013. The Compass Lexecon team also included David Weiskopf, Syre Khan, and Sara Leshen in our Washington, DC office; Peter Clayburgh and Richard Mills in our Pasadena office; and Rajiv Gokhale, Rahul Sekhar, Robin Stahl, Donnie Hong, Agustina Levy, Jim Libby, and Mike Pugh in our Chicago office. We worked with Tad Lipsky, William O'Neill, and Jason Cruise of Latham & Watkins LLP, and Cliff Aronson of Skadden, Arps, Slate, Meagher & Flom LLP.

Joint Venture Between Verizon and Major Cable Companies

A Compass Lexecon team lead by Janusz Ordover and Andres Lerner assisted in obtaining U.S. Department of Justice approval for a joint venture between Verizon, Comcast, Time Warner Cable, Cox Communications, and Bright House Networks. The Compass Lexecon team included David Weiskopf, Nauman Ilias, Aren Megerdichian, Robert Oandasan, Jeff Tucker, and Matt Krietzberg. Compass Lexecon worked closely with counsel for each of the parties, including Janet McDavid of Hogan Lovells, Arthur Burke and Howard Shelanski of Davis Polk & Wardwell LLP, and Joseph Simons of Paul, Weiss, Rifkind, Wharton & Garrison LLP. The joint venture between the companies includes agency arrangements that allow Verizon Wireless and the cable partners to sell the services of the other party as well as a technology venture to develop and license technologies which integrate wireline and wireless services. Compass Lexecon experts, Janusz Ordover and Andres Lerner submitted several white papers and made presentations to the Department of Justice demonstrating that the transaction would not adversely affect competition in the provision of wireline services. Compass Lexecon's analysis successfully showed that the sales commissions that Verizon Wireless would earn under the agency arrangement by selling cable services would not give Verizon incentives to raise the price of FiOS, despite its majority interest in Verizon Wireless and the fact that FiOS and the cable partners compete head-to-head in many geographic areas. Compass Lexecon's analysis also showed that the transaction would not materially affect Verizon's incentives to expand the FiOS footprint.

Another Compass Lexecon team, led by Mark Israel, supported by David Weiskopf, Jay Ezrielev, and Piyal Hyder presented analyses to the Federal Communications Commission (FCC) showing that the joint venture would not give the involved cable companies the incentive or ability to harm Verizon Wireless' rivals through unattractive terms for backhaul or Wi-Fi offload services. Mark Israel submitted an expert report and, together with David Weiskopf, made a presentation to the FCC on these topics. Ultimately, the FCC placed no conditions on either backhaul or Wi-Fi offload services in its approval of the transaction. In addition to the attorneys listed above, this Compass Lexecon team worked closely with Michael Hammer, Brien Bell, and Mia Hayes of Willkie Farr & Gallagher LLP.

Vivatis/AVE Regau

The Austrian Cartel Court appointed Compass Lexecon's Thilo Klein to draft an expert report analyzing whether the acquisition of AVE Tierkörperverwertungs GmbH by Vivatis Holding AG was likely to create or strengthen a dominant position. The transaction combined two of the three Austrian operators of animal rendering plants. Compass Lexecon's analysis

found that the transaction did not raise competition concerns with respect to any customer segment. In response to the expert report, the Federal Cartel Office and the Federal Cartel Prosecutor withdrew their requests for the Cartel Court to conduct an in-depth review. The Court closed the case in August 2012, paving the way for the transaction to proceed.

Objet/Stratasys

Compass Lexecon expert, Professor Jonathan Baker was retained by Howard Morse of Cooley LLP to assist in securing DOJ approval for a merger between Objet and Stratasys, two of the top manufacturers of 3D printers. Compass Lexecon assisted in formulating arguments that suggested, based on data analysis and a review of industry materials, that the products of the two companies were more likely to be complements than substitutes, and therefore the merger should not raise competitive concerns. These arguments were presented to the DOJ, which granted early termination. Professor Baker was supported by Yair Eilat and Colleen Mallahan from our Oakland office.

Hutchison 3G Austria Acquisition of Orange Austria

In December 2012, the European Commission cleared the acquisition by Hutchison 3G of Orange Austria, subject to remedies. The transaction combined two of the four mobile communications network operators in the Austrian market. The clearance followed a Phase II investigation, during which the Commission issued a statement of objections opposing the merger. The remedies concern commitments to divest spectrum and to provide mobile virtual network operators access to the merged entity's network. Compass Lexecon's Jorge Padilla, Elena Zoido, and Thilo Klein supported Hutchison 3G and its legal advisers, Freshfields Bruckhaus Deringer LLP. Compass Lexecon submitted several papers to the Commission, assessing, among other things, the Commission's analysis of the "Upward Pricing Pressure" (UPP) generated by the merger. This is one of the first cases in which the Commission relied on the UPP method. Compass Lexecon worked with Thomas Wessely, Axel Reidlinger, and Bertram Burtscher of Freshfields Bruckhaus Deringer LLP.

S&P/Dow Jones Joint Venture

In June 2012, the Department of Justice closed with no divestitures its investigation into the proposed joint venture combining CME Group's Dow Jones index business and McGraw Hill's Standard & Poor's index business. The parties retained Compass Lexecon expert, Professor Robert Willig to analyze the competitive effects of the transaction. Professor Willig's analysis showed that the flagship equity and commodity indexes provided by Dow Jones and S&P did not closely compete with each other, and that there were numerous other dynamic providers of financial index services. Professor Willig was supported by a team headed by Tom Stemwedel in our Chicago office. CME was represented by Ben Crisman and John Lyons of Skadden, Arps, Slate, Meagher & Flom LLP, and McGraw Hill was represented by Joseph Larson of Wachtell, Litpon, Rosen & Katz.

Buitenfood/Ad van Geloven Joint Venture

In September 2012, the Dutch competition authority, the NMa, approved the planned joint venture between Buitenfood and Ad van Geloven subject to a rebranding remedy for Van

Dobben meatballs and croquettes. A Compass Lexecon team including Neil Dryden, Enrique Andreu, and Sergey Khodjamirian advised the parties. Compass Lexecon worked with Paul Glazener of Allen & Overy LLP in Amsterdam.

Eurotunnel/SeaFrance

In October 2012, the French competition authority cleared, under conditions, the acquisition of SeaFrance's assets by Eurotunnel, after its Phase I investigation. The ferry company SeaFrance went bankrupt in 2011 and its vessels were auctioned and awarded to Eurotunnel, which operates the tunnel between France and UK and cross-channel train transportation services, under the condition that Eurotunnel notifies its acquisition to the French NCA. A Compass Lexecon team with David Sevy and Jeremiah Juts supported Eurotunnel and its outside counsels, Jacques-Philippe Gunther and Adrien Giraud of Willkie Farr & Gallagher LLP, in the proceedings before the French NCA. We submitted a report providing an economic analysis of potential unilateral, coordinated and conglomerate effects and assisted Eurotunnel and Willkie Farr & Gallagher in the ensuing discussions with the Authority about these effects and potential remedies.

HONORS, APPOINTMENTS, PRESENTATIONS & PUBLICATIONS

- Chris Culp presented "Credit Derivatives and Synthetic Securitizations: Mechanics, Post-Crisis Developments, and Pending Regulatory Issues" at Northwestern University School of Law in Chicago as a Guest Lecture to the "Derivatives: Uses, Abuses, and Regulation" Class in December 2012 and "The Future of Structured Finance" at the 10th Annual Offshore Alert Financial Due Diligence Conference in Miami Beach in May 2012.
- Chris Culp also published "U.S. Structured Finance Markets: Recent Recoveries, Post-Crisis Developments, and Ongoing Regulatory Uncertainties," *Journal of Structured Finance*, Winter 2012; "The 'At-Risk' Metrics and Measures," *Alternative (Re)insurance Strategies*, 2012 and "Recent Developments and Regulatory Uncertainties in the U.S. Structured Finance Market," *Cayman Financial Review*, 2012Q4, (with J. Paul Forrester).
- Daniel Rubinfeld presented the following speeches, "Lectures on Antitrust Law and Economics," Genzensee, Switzerland, April 2012; "The Delta-Northwest Merger," Brookings DC Conference, May 2012; "Understanding the Democratic Transition in South Africa," Georgetown Law School, October 2012 and "Current Issues in Merger Control," Bergen Norway, November 2012.
- Dan Rubinfeld also authored *Microeconomics*, 8th Edition (with Robert Pindyck) and "Federal Institutions and the Democratic Transition: Learning from South Africa," *Journal of Law, Economics, and Institutions*, 2012.
- Dan Rubinfeld and Bret Dickey published "Would the *Per Se* Illegal Treatment of Reverse Payment Settlements Inhibit Generic Drug Investment?" *Journal of Competition Law and Economics*, 2012.
- Peter Davis was appointed to be a Visiting Professor at University College London (UCL) Faculty of Laws; he was also cited in the *Financial Times* and interviewed on *BBC News* regarding the public interest test in UK merger control following the collapse of the BskyB deal.

- Peter Davis published “Facts and the Estimation of Cartel Damages” in *ECLR* and also a piece in the *Law Society Gazette* on “Market Investigations” at the UK Competition Commission.
- Peter Davis also spoke at a number of conferences including IBC’s Competition Economics Conference, presented “Brands and Competition Law” and “Behavioural Economics and Antitrust” at UCL and gave a talk “Coordinated effects in merger analysis” at the Toulouse School of Economics.
- David K.A. Mordecai was an invited speaker for the session entitled Computational Economics and Big Data: How Technology is Transforming Business Decision Making at the National Association of Business Economics (NABE) 2012 Annual Conference: Bridging the Gap Between Finance and the Real Economy in New York City.
- The U.S. Treasury Office of Financial Research (OFR), on March 26th, 2012, circulated “Forging Best Practices in Risk Management,” as the second paper of its Working Paper Series to promote best practices in financial risk management, co-authored by David K.A. Mordecai, as well as Mark Flannery, University of Florida, Paul Glasserman, Columbia University and the Office of Financial Research, and Clifford Rossi, University of Maryland. The paper provides a broad assessment of risk management practices and makes recommendations from the three perspectives of risk measurement, risk governance and systemic risk tradeoffs. The co-authors introduced and discussed the paper at The Macroprudential Toolkit: Measurement and Analysis Conference sponsored by the OFR and Financial Stability Oversight Council (FSOC) the previous December.
- David K.A. Mordecai has also been appointed as Senior Research Scholar in Commerce, Law and Geo-Politics at NYU Stern Graduate School of Business, in addition to his appointment as a Visiting Scholar, as well as principal scientist and lead investigator for the RiskEcon® Lab for Decision Metrics at the Courant Institute for Mathematical Sciences at NYU. He is also a member of the working group of the university’s data science initiative, an adjunct professor of applied mathematics at Courant, and a Fellow and member of the Advisory Board of the Mathematical Finance Program at Courant, having served as a guest lecturer for the program since 2006.
- Neil Dryden presented “Economics 101 – The Economist’s Toolbox,” 2012 ICN Merger Workshop, The Role of Economic Evidence in Merger Analysis, International Competition Network, Bogotá, Colombia, November 2012; “Economic analysis of competitive effects of minority equity stakes”, A discussion of competition policy, law and economics, Compass Lexecon, Villa d’Este, Lake Como, Italy, November 2012; “Exclusive dealing – economic framework of analysis,” International Competition Network, Singapore, July 2012; “Framing of and Response to Regulators’ Questions,” City of London Law Society Competition Law Committee, London, June 2012; “FMCG retailer and manufacturer mergers,” GCR 3rd Annual Competition Law, Consumer Goods and Retail Conference, London, May 2012; “UK tobacco case: parity and differential requirements,” IBC Legal’s 6th Annual Competition Economics 2012, London, March 2012.
- Neil Dryden and Justin Coombs gave presentations on market definition and abuse of dominance at a competition law training day in Mumbai for Indian corporate counsel, organized by the Indian Corporate Counsel Association (ICCA), February 2012. Compass Lexecon co-sponsored this event (with Baker McKenzie).

- Atanu Saha coauthored a paper with Hans-Jürgen Petersen, entitled “Detecting Price Artificiality and Manipulation in Futures Markets: An Application to Amaranth,” *Journal of Derivatives and Hedge Funds*, 2012.
- Atanu Saha also coauthored a paper with Prof. Burton Malkiel, entitled “Valuation of Cash Flows with Time-Varying Cessation Risk,” *Journal of Business Valuation and Economic Loss Analysis*, 2012.
- Dennis Carlton published “Upgrades, Switching Costs, and the Leverage Theory of Tying,” (with M. Waldman), *Economic Journal*, 2012 and “Brantley Versus NBC Universal: Where’s the Beef?” (with M. Waldman), *Competition Policy International*, 2012.
- Dennis Carlton was also appointed Member of the ABA Transition Task Force, Antitrust and Consumer Protection, 2012.
- Janusz Ordover and Jith Jayaratne published “Thinking about Coordinated Effects” in *Concurrences* N°. 3-2012 and published “Economics and Competition Policy: A Two-Sided Market?” *Antitrust*, Fall 2012.
- Meg Guerin-Calvert was an invited panelist at the 2012 Ninth Circuit Judicial Conference, August 2012 in its major session on “The Direction and Economic Impact of Health Care Reform Post the Supreme Court Decision.” Her presentation (with panelists Dawn Gideon, and Bruce Sokler) addressed the challenges confronting hospital, insurer, government and employers, including excess or misaligned capacity, methods to control the rate of increase of costs, improve access and enhance quality, and the impact of the Supreme Court decision in Summer 2012 on health care reform.
- Meg Guerin-Calvert was also a faculty member in the Section of Antitrust Law’s Spring Meeting Fundamentals Program, March 2012, a recurring program, and presented on empirical methods used in economic analyses of merger and non-merger matters; “Fundamentals – Antitrust Economics Analytical Tools.”
- Meg Guerin-Calvert was appointed as a member of the International Task Force of the Section of Antitrust Law, ABA.
- Allan Shampine presented “Testing Interchange Fee Models Using the Australian Experience,” as part of a special session “Interchange Fees: Regulation and Implications” at Economics of Payments VI conference, Bank of Canada, May 2012.
- Compass Lexecon and German think tank the Mannheim Centre for Competition and Innovation (MaCCI) hosted the conference entitled “The SIEC-test in the 8th Amendment of the Act Against Restraints of Competition” in Bonn, September 2012. The speakers discussed a recent reform of German merger control, under which Germany adopts the same substantive test that in 2004 was introduced into the EC Merger Regulation. Under this test, mergers are to be prohibited when they are expected to lead to a substantial impediment of effective competition (“SIEC”). The speakers included Compass Lexecon’s Jorge Padilla, Philip Kalmus and Thilo Klein.
- Robert Willig and Jon Orszag published “The Liftoff of Consumer Benefits from the Broadband Revolution,” (with Mark Dutz), *Review of Network Economics*, Volume 11, Issue 4, Article 2, 2012.

- Jon Orszag also published “Antitrust Guidelines for Private Purchasers Engaged in Value Purchasing of Health Care,” (with Tim Muris and Bilal Sayyed), July 2012; and “Jack Welch Could Help Improve U.S. Jobs Data,” (with Peter Orszag), *Bloomberg*, October 9, 2012.
- Jon Orszag made the following speeches and presentations since the last newsletter: “An Economic Perspective on Reverse Payment Settlements in the Pharmaceutical Sector,” Speech to the Generic Pharmaceutical Association 2013 Annual Meeting, Orlando, Florida, February 21, 2013; “Navigating Our Economic Challenges and the Role of Public Policy,” Speech to the South Carolina Manufacturers Alliance Fourth Annual Textile Summit, Spartanburg, South Carolina, January 10, 2013; “Upward Price Pressure and Merger Analysis: What Is UPP’s Proper Role and How Can UPP Deal With Real-World Issues?” Presentation to Gilbert + Tobin, Sydney, Australia, December 4, 2012; “Obama’s Second Term: What It Means for the U.S. and World Economies,” FTI Consulting, Inc., Brisbane, Australia, December 3, 2012; “Merger Substance: How to Conduct a Proper Analysis of a Merger’s Competitive Effects, and How to Frame Related Legal Standards?” Panelist at Antitrust in Asia, American Bar Association, New Delhi, India, December 1, 2012; “Financial Issues in College Sports,” Panelist at the Third Annual Sports Law Symposium: What is the Proper Role of Sports in Higher Education?, Institute of Sports Law and Ethics, Santa Clara University, September 6, 2012; “Pricing and Bundling of IT Products: Drawing The Line Between Lawful and Unlawful Behaviour,” Panelist on GCR Live’s Antitrust and Technology 2012, London, England, March 14, 2012; and “The Role of Economic Evidence in Cartel Enforcement,” Speaker on ABA Section of International Law Teleconference, February 28, 2012.
- David Sevy gave a presentation on “Private enforcement” at a conference organized by Journal Concurrences in Brussels in July 2012; proceedings of that conference were published in *Revue Concurrences*, N°4-2012, “*Applications privées du droit de la concurrence: questions d’actualité*”. David Sevy also gave a presentation on “Antitrust sanctions and effect assessment” at a conference organized by the Competition Committee of the International Chamber of Commerce, in Paris in October 2012 and on “Effect assessment in antitrust” at the Compass Lexecon conference, “A discussion of competition, law and economics”, Lake Como, November 2012.

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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