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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE UNITED STATES

-- 2014 --

16-18 June 2015

This report is submitted by The United States to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 16-18 June 2015.

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1. Introduction

1. This report describes federal antitrust developments in the United States for the period of October 1, 2013 through September 30, 2014 (“FY 2014”).¹ It summarizes the competition enforcement and policy activities of both the Antitrust Division (“Division”) of the U.S. Department of Justice (“Department” or “DOJ”) and the Federal Trade Commission (“Commission” or “FTC”). The two agencies are collectively referred to throughout this report as the “Antitrust Agencies” or “Agencies.” For additional information on the Agencies’ activities during FY 2014, *see* the FTC’s Annual Highlights 2014, *available at* <https://www.ftc.gov/reports/annual-highlights-2014>, and the DOJ’s Spring 2015 Division Update, *available at* <http://www.justice.gov/atr/division-update/2015/division-update-spring-2015>.

1.1 Senior Leadership Update

2. On April 29, 2014, Terrell McSweeney began her term as FTC Commissioner that ends on September 25, 2017.

3. Brent Snyder became Deputy Assistant Attorney General (DAAG) for Criminal Enforcement on November 26, 2013, and Nancy L. Rose became DAAG for Economic Analysis on September 8, 2014.

4. On September 29, 2014, FTC Chairwoman Edith Ramirez appointed Francine Lafontaine as the Director of the Bureau of Economics. On October 21, 2014, Chairwoman Ramirez appointed Ashkan Soltani as Chief Technologist. On December 16, 2014, Chairwoman Ramirez appointed Marina Lao as Director of the Office of Policy Planning.

2. Changes in law or policies

2.1 Changes in Antitrust Rules, Policies, or Guidelines

5. **Sharing Cyber Security Information.** On April 20, 2014, the FTC and the Division jointly issued a policy statement regarding the sharing of cyber security information, making clear that properly designed cyber threat information sharing is not likely to raise antitrust concerns and can help secure the nation’s networks of information and resources. The Agencies recognize that sharing cyber threat information can improve the security, availability, integrity, and efficiency of information systems in the United States. The Agencies also recognize that sharing cyber security information is very different from sharing competitively sensitive information, such as current or future prices and output or business plans. Cyber security information is typically technical in nature and covers a limited type of information. The policy provides the analytical framework for information sharing among private entities and is consistent with a business review letter issued in October 2000, in which the Division stated that it had no intention of taking enforcement action against the proposed exchange of cyber security information. *See* <https://www.ftc.gov/news-events/press-releases/2014/04/ftc-doj-issue-antitrust-policy-statement-sharing-cybersecurity>.

6. On March 28, 2014, the Division announced a new streamlined procedure to lower the costs and expedite the review process for parties seeking to modify or terminate old antitrust settlements and litigated judgments. The new voluntary procedure can be used by parties seeking to modify or terminate perpetual decrees—settlements and litigated judgments—entered prior to 1980, when the Division determined that perpetual decrees were not in the public interest. Since that time, decrees have included “sunset” provisions that automatically terminate them after a term of years, not to exceed 10 years. Under the new protocol,

¹ In some sections of the Report, e.g., the following section on Senior Leadership Update, more recent information is provided.

the requesting party will publish, at its own expense, notice of its intent to seek termination or modification, and invite interested parties to provide the Division with relevant information; the Division will no longer seek extensive discovery or conduct an in-depth investigation into the relevant markets. See http://www.justice.gov/atr/public/press_releases/2014/304744.htm.

3. Enforcement of antitrust law and policies: actions against anticompetitive practices

3.1 Staffing and Enforcement Statistics

3.1.1 FTC

7. During FY 2014, the FTC employed approximately 538 staff and spent approximately \$129.5 million in furtherance of its Maintaining Competition mission.

8. During FY 2014, 1,618 proposed mergers and acquisitions were reported for review under the HSR Act, a 25.8 percent increase from the number of HSR transactions reported during FY 2013. The Commission staff issued requests for additional information (“second requests”) in 28 transactions. The Commission challenged 17 mergers, 13 of which were settled with consent orders, three in which the transaction was abandoned or restructured as a result of antitrust concerns raised during the investigation, and one in which the Commission initiated administrative litigation. In the case in which the Commission issued an administrative complaint, the Commission also voted to seek a preliminary injunction in federal court to permanently enjoin the acquisition pending resolution of the Commission’s administrative litigation.

9. During FY 2014, the FTC staff opened 26 non-merger initial phase investigations. The Commission brought eight non-merger enforcement actions, six of which were resolved by a consent order, one administrative complaint that was later resolved with a consent, and one permanent injunction action in federal court.

10. During FY 2014, the Commission filed amicus curiae briefs in 11 cases (ten before federal appeals courts and one before a federal district court). The Commission provided one advisory opinion (see Section 3.5 below) and submitted 16 advocacy filings. See <http://www.ftc.gov/policy/advocacy>.

3.1.2 DOJ

11. At the end of FY 2014, the Division had 615 employees: 303 attorneys, 48 economists, 121 paralegals, and 143 other professional staff. For FY 2014, the Division received an appropriation of \$160.4 million.

12. During FY 2014, the Division opened 113 investigations and filed 53 civil and criminal cases in federal district court. The Division filed 45 criminal cases, in which it charged a total of 18 corporations and 44 individuals with federal crimes. The Division obtained just over \$1.9 billion in criminal fines against 25 corporate defendants and 24 individuals. The courts sentenced 21 individuals, with an average sentence of just over two years.

13. During FY 2014, the Division investigated 80 mergers and challenged seven of them in court; 9 transactions were restructured or abandoned prior to the filing of a complaint as a result of an announcement by the Division that it would otherwise challenge the transaction. In addition, the Division screened a total of 544 bank mergers. The Division opened 88 civil investigations (merger and non-merger), and issued 331 civil investigative demands (a form of compulsory process). The Division filed one non-merger civil complaint.

3.2 *Antitrust Cases in the Courts*

3.2.1 *United States Supreme Court*

14. On February 25, 2015, the U.S. Supreme Court decided *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, affirming the FTC's position that a state may not give private market participants unsupervised authority to suppress competition even if they act through a formally designated "state agency." The North Carolina dental board's members, primarily dentists, were drawn from the very occupation they regulate, and they barred non-dentists from offering competing teeth whitening services to consumers. The Court's decision makes clear that state agencies constituted in this manner are subject to the federal antitrust laws unless the state actively supervises their decisions.

15. The Court's decision affirms a 2013 ruling by the U.S. Court of Appeal for the Fourth Circuit upholding a 2011 Decision and Order by the FTC that the North Carolina State Board of Dental Examiners illegally thwarted lower-priced competition by engaging in anticompetitive conduct to prevent non-dentists from providing teeth whitening services to consumers in the state. The FTC rejected the Dental Board's claim that the Board's conduct is protected from federal antitrust scrutiny by the state action doctrine. See <https://www.ftc.gov/news-events/press-releases/2015/02/statement-ftc-chairwoman-edith-ramirez-us-supreme-court-ruling>.

3.2.2 *U.S. Court of Appeals Cases*

16. On July 10, 2014, the U.S. Court of Appeals for the Ninth Circuit decided *United States v. Hsiung*, 758 F.3d 1074, in which the court affirmed the criminal convictions of two individual and two corporate defendants for participating in an international conspiracy between Taiwanese and Korean electronics manufacturers to fix prices for liquid crystal display panels known as TFT-LCDs. The court rejected the argument that the rule of reason, rather than the per se rule, should apply to the conspiracy because of its foreign character. The court also rejected several defense arguments based on the Foreign Trade Antitrust Improvements Act of 1982, 15 U.S.C. 6a ("FTAIA"). The court held that in light of the substantial volume of goods sold to customers in the United States, the verdict – both the indictment and the proof at trial – could be sustained as import commerce falling within the Sherman Act, to which the FTAIA did not apply.

17. In January 2015, the court denied the defendants' rehearing petitions. At the same time, it amended its opinion to further hold that the Sherman Act also applied because the foreign sales of panels that were incorporated into finished consumer products ultimately sold in the United States had a direct, substantial, and reasonably foreseeable effect on U.S. commerce, and thereby satisfied the effects exception to the FTAIA.

18. On June 4, 2014, the U.S. Court of Appeals for the Second Circuit decided *Lotes Co., Ltd. v. Hon Hai Precision Industry Co., Ltd.*, 753 F.3d 395, in which the district court had dismissed, for lack of jurisdiction under the FTAIA the claims of the plaintiff Taiwanese electronics manufacturer alleging that a group of five competing electronics firms attempted to leverage their ownership of certain key patents to gain control of a new standard for USB connectors and, by extension, to gain monopoly power over the USB connector industry. The Second Circuit held that the requirements of the FTAIA are substantive and not jurisdictional; that foreign anticompetitive conduct has a "direct" effect on U.S. domestic or import commerce under the FTAIA when there is a reasonably proximate causal nexus between the conduct and the effect; but affirmed the district court's judgment on the alternative ground that any effect alleged by the plaintiff did not "give rise to" the plaintiff's claims under a separate provision of the FTAIA.

19. On April 22, 2014, the U.S. Court of Appeals for the Sixth Circuit upheld a FTC Decision and Order that finding that ProMedica Health System's acquisition of rival St. Luke's Hospital was anticompetitive and likely would lead to higher prices for consumers in the Toledo, Ohio area. The FTC staff challenged the acquisition in January 2011, alleging that the loss of competition would significantly harm patients, employers, and employees in the Toledo area by eliminating significant, beneficial competition between ProMedica and St. Luke's through the creation of a combined hospital system with an increased ability to obtain supra-competitive reimbursement rates from commercial health plans, and, ultimately, from their members. In an Initial Decision, Chief Administrative Law Judge D. Michael Chappell ruled largely in favor of the FTC staff. See <https://www.ftc.gov/news-events/press-releases/2014/04/federal-appeals-court-upholds-ftc-order-finding-ohio-hospital>.

3.2.3 *U.S. District Court Cases*

20. On September 23, 2014, the U.S. District Court for the Northern District of California decided *In re Transpacific Passenger Air Transportation Antitrust Litigation*, 2014 U.S. Dist. LEXIS 134104, likely the first case to consider whether the filed-rate doctrine applies to the international airline industry. A class of individuals who purchased air transportation services from a group of international airlines alleged that the airlines fixed various prices for international flights between the U.S. and Asia/Oceania. The airlines raised as a defense the filed-rate doctrine, which provides that to the extent Congress has given an agency the authority to set rates, and the agency has exercised that authority, the rates are just and reasonable as a matter of law and cannot be challenged under federal antitrust law. The court held that Congress gave the Department of Transportation ("DOT") authority over all of the rates and charges at issue in the case; that DOT exercised that authority over the rates that the defendants actually filed with the DOT (known as Class B and C airfares); but the DOT did not exercise that authority over the rates that defendants did not file with the DOT (including Class A airfares and fuel surcharges).

21. On January 16, 2014, the U.S. District Court for the Southern District of New York decided *United States v. Apple Inc.*, 992 F. Supp. 2d 263, an extension of the court's 2013 final judgment against Apple for violating Section 1 of the Sherman Act by facilitating and encouraging various book publishers to collectively raise e-book prices. That final judgment and accompanying injunction created the position of court-appointed External Monitor to evaluate Apple's internal antitrust compliance policies and antitrust training program. In the 2014 order, the court denied Apple's motion to stay the monitorship and rejected Apple's objections to how the monitorship was ordered, how the Monitor conducted himself since his appointment, and arguments that the Monitor should be disqualified because of fee disputes and lack of impartiality.

3.3 *Statistics on Private and Government Cases Filed*

22. According to the 2014 Annual Report of the Director of the Administrative Office of the U.S. Courts, 799 new civil antitrust actions, both government and private, were filed in the federal district courts in FY 2014. See Table C-2A of the report, available at <http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2014/appendices/C02ASep14.pdf>.

3.4 Significant Enforcement Actions

3.4.1 DOJ Criminal Enforcement

23. In FY 2014, the Division charged 44 individuals, including 22 auto parts executives and 11 real estate investors, with criminal antitrust offenses. Twenty-one individuals were sentenced to serve time in jail. The average number of individuals sentenced to jail terms, and the average length of those terms, continue to increase. From 1990-1999, the average number of individuals sentenced to prison was 13; this number increased to 21 for the 2000-2009 period, and to 29 for 2010-2014. The average prison sentence for 1990-1999 was 8 months; for 2000-2009 it was 20 months, and for 2010-2014, it increased to 25 months.

24. In the first ever extradition on an antitrust charge, Romano Pisciotto, an Italian national, was extradited from Germany on a charge of participating in the conspiracy to suppress and eliminate competition by rigging bids, fixing prices, and allocating market shares for marine hose sold in the United States and elsewhere. Mr. Pisciotto was charged with participating in the conspiracy from 1999 to 2006; his 2010 indictment was unsealed in 2013, and after extradition, he appeared in the U.S. District Court for the Southern District of Florida on April 4, 2014. See http://www.justice.gov/atr/public/press_releases/2014/304888.htm. On April 24, 2014, Mr. Pisciotto pled guilty and was sentenced to serve two years in prison, with credit for the 9 months and 16 days he was held in custody of the German government pending his extradition. See http://www.justice.gov/atr/public/press_releases/2014/305376.htm.

25. In connection with the Division's environmental services investigation, the Division also successfully extradited Mr. John Bennet, a Canadian national charged with a kickback and fraud conspiracy and major fraud against the United States. As part of the alleged schemes, between 2000 and 2004 the co-conspirators exchanged kickbacks for the award of subcontracts at New Jersey Superfund environmental clean-up sites. Mr. Bennet made his initial appearance in U.S. District Court in Newark, New Jersey on November 17, 2014. See http://www.justice.gov/atr/public/press_releases/2014/309928.htm.

26. In FY 2014, an additional nine companies and 22 individuals were charged with participating in conspiracies to fix prices and rig bids in the ongoing investigation of **automobile parts**. These cases involved more than 20 different auto parts ranging from brake hoses to spark plugs to seatbelts. The Division continues to cooperate on this investigation with its counterparts in Japan, South Korea, the European Commission, Canada, and other jurisdictions. As of April, 2015, the auto parts investigation has resulted in charges against 34 companies and 52 individuals. In total, 29 executives have pleaded guilty and been sentenced to an average of nearly 15 months in jail. Additionally, 34 corporations have pleaded guilty or agreed to plead guilty and have agreed to pay more than \$2.4 billion in criminal fines. See <http://www.justice.gov/atr/division-update/2015/auto-parts-investigation-2015>.

27. In FY 2014 the Division continued to prosecute collusion and fraud in the **financial services industry**, including real estate investors and bidders at tax lien auctions. From 2009 to April 2015, the Division has obtained 109 convictions and more than \$1.3 billion in corporate fines, penalties, and settlements from the investigation and prosecution of collusion and fraud in the municipal bond securities, LIBOR, real estate, and tax lien industries. In FY 2014, 30 individuals were charged in the real estate foreclosure auction investigations. As of April, 2015, 81 individuals have pleaded guilty or been convicted and 21 are awaiting trial. See <http://www.justice.gov/atr/division-update/2015/real-estate-foreclosure-auctions-investigation-2015>. In the tax liens investigation, in FY 2014, five individuals and two companies were charged. Overall, as of April 2015, 16 individuals and five companies have been charged; 15 convictions have been obtained; and \$2 million in criminal fines have been imposed. Four individuals and two companies are still awaiting trial. See <http://www.justice.gov/atr/division-update/2015/municipal-tax-lien-auctions-investigation-2015>.

28. Nine individuals and three companies have pleaded guilty or been convicted of charges arising out of the **environmental services** investigation. As of April 2015, more than \$6 million in criminal fines and restitution have been imposed and six defendants have been sentenced to serve prison sentences; the last defendant to be sentenced received a 14-year sentence, the longest jail term ever imposed involving an antitrust crime in a multi-count indictment. See <http://www.justice.gov/atr/division-update/2015/environmental-services-investigation-2015>.

29. In FY 2014, the Division continued its ongoing investigation into a single, world-wide conspiracy involving price fixing, bid rigging, and market allocation in **international ocean shipping services** for roll-on, roll-off cargo to and from the United States and elsewhere. Roll-on, roll-off cargo is non-containerized cargo that can be both rolled onto and off of an ocean-going vessel; examples include new and used cars and trucks and construction and agricultural equipment. Three companies (Kawasaki Kisen Kaisha Ltd., Nippon Yusen Kabushiki Kaisha, and Compañía Sud Americana de Vapores S.A.) have pled guilty, and have been sentenced to pay total fines of over \$136 million, and four corporate executives have pled guilty and been sentenced to prison terms of 14, 15, 18, and 18 months, respectively. See http://www.justice.gov/atr/public/press_releases/2015/312415.htm; http://www.justice.gov/atr/public/press_releases/2014/310793.htm; http://www.justice.gov/atr/public/press_releases/2014/308903.htm; http://www.justice.gov/atr/public/press_releases/2014/308903.htm; http://www.justice.gov/atr/public/press_releases/2014/304053.htm.

3.4.2 DOJ Civil Non-Merger Enforcement

30. **American Express.** The Division filed suit on October 4, 2010, challenging rules American Express, MasterCard, and Visa instituted that prevented merchants from offering consumers discounts or rewards for using competing card brands and from providing information about the costs associated with the use of their credit cards. These policies caused consumers to pay more for their purchases and raised merchant costs. The Division reached a settlement with MasterCard and Visa, which the court approved in July 2011, in which both companies agreed to eliminate the anticompetitive provisions. See http://www.justice.gov/atr/public/press_releases/2010/262867.htm.

31. In the summer of 2014, Division's suit against American Express went to trial for seven weeks. On February 19, 2015, the court ruled that American Express's policies violated Section 1 of the Sherman Act. Under the court order issued on April 30, 2015, merchants must be permitted to offer discounts, express a preference, and engage in other conduct to encourage the use of a particular credit card. The order also requires American Express to repeal any rules blocking merchant steering, notify merchants of their freedom to engage in steering activities, and adopt measures to ensure its employees understand that they cannot continue to block steering from the merchants. See http://www.justice.gov/atr/public/press_releases/2015/313617.htm.

32. **eBay.** In 2012, the Division filed a civil antitrust suit to challenge eBay's agreement not to recruit or hire employees from Intuit Inc. Division staff worked closely with the California Attorney General's Office, which filed a similar lawsuit. The Division sought to prevent eBay from upholding its agreement with Intuit or entering into similarly anticompetitive agreements with other companies. These types of agreements eliminate competition to hire affected employees, depriving them of access to improved job and salary opportunities. See http://www.justice.gov/atr/public/press_releases/2012/288865.htm. On May 1, 2014, the Division reached a settlement with eBay, which was approved by the court. The settlement prohibits eBay from entering or maintaining agreements relating to employee hiring and retention for five years, including any agreement that prevents any person from soliciting, cold calling, recruiting, hiring, or otherwise competing for employees. This lawsuit was the Division's most recent challenge to a "no-poach" agreement; earlier

cases involving Adobe Systems Inc., Apple Inc., Google Inc., Intel Corp., Intuit Inc., Lucasfilm Ltd., and Pixar resulted in consent decrees. See http://www.justice.gov/atr/public/press_releases/2014/305616.htm.

33. **Samsung.** On February 7, 2014, the Division closed its investigation of Samsung Electronics Co. Ltd's use of standards-essential patents that it had committed to license on fair, reasonable, and non-discriminatory terms to exclude certain Apple, Inc. products from the U.S. market. Samsung obtained exclusion orders from the U.S. International Trade Commission ("ITC") relating to certain iPhone and iPad models. The U.S. Trade Representative reviewed the ITC exclusion order against Apple and overturned it on public interest grounds. As a result, the Division determined that no further action was required. See http://www.justice.gov/atr/public/press_releases/2014/303547.htm.

3.4.3 *FTC Non-Merger Enforcement Actions*

34. **Federal Trade Commission v. AbbVie Inc., et al.** On September 8, 2014, the FTC filed a complaint in federal district court charging several major pharmaceutical companies with illegally blocking American consumers' access to lower-cost versions of the blockbuster drug AndroGel. The FTC's complaint alleges that AbbVie Inc. and its partner Besins Healthcare Inc. filed baseless patent infringement lawsuits against potential generic competitors to delay the introduction of lower-priced versions of the testosterone replacement drug AndroGel. While the lawsuits were pending, AbbVie entered into an allegedly anticompetitive pay-for-delay settlement agreement with Teva Pharmaceuticals USA, Inc., allegedly to further delay generic drug competition. See <https://www.ftc.gov/news-events/press-releases/2014/09/ftc-sues-pharmaceutical-companies-illegally-blocking-consumer>.

35. In the Matter of National Association of Residential Property Managers, Inc. and In the Matter of National Association of Teachers of Singing, Inc. On August 22, 2014, the National Association of Residential Property Managers, Inc. ("NARPM") and the National Association of Teachers of Singing, Inc. ("NATS") agreed to eliminate provisions in their respective codes of ethics that limit competition among their members. The FTC's complaint against NARPM, which represents more than 4,000 real estate managers, brokers, and agents, alleges that NARPM and its members restrained competition in violation of the FTC Act through provisions in its code of ethics that restrict comparative advertising and solicitation of competitors' clients. In a separate complaint, the FTC charged that NATS, which represents more than 7,300 vocal arts teachers in the United States, restrained competition in violation of the FTC Act through a code of ethics provision that prohibits members from soliciting students from other members. See <https://www.ftc.gov/news-events/press-releases/2014/08/settle-ftc-charges-professional-associations-property-managers>.

36. **In the Matter of InstantUPCCodes.com and In the Matter of 680 Digital, Inc.** On July 21, 2014, two Internet resellers of UPC barcodes used by retailers for price scanning and inventory purposes settled charges that they violated the FTC Act by inviting competitors to join in a collusive scheme to raise the prices charged for barcodes sold online. In separate complaints, the FTC charged that InstantUPCCodes.com and its principal, Jacob J. Alifraghis, and 680 Digital, Inc., d/b/a Nationwide Barcode and its principal, Philip B. Peretz, violated the FTC Act by inviting competitors to collude to raise prices for barcodes sold over the Internet. See <https://www.ftc.gov/news-events/press-releases/2014/07/two-barcode-resellers-settle-ftc-charges-principals-invited>.

37. **In the Matter of Tecnica Group S.p.A. and In the Matter of Marker Völkl (International) GmbH.** On May 19, 2014, ski equipment manufacturers Marker Völkl (International) GmbH and Tecnica Group S.p.A. settled FTC charges that for many years they illegally agreed not to compete for one another's ski endorsers or employees. The orders settling the FTC's charges bar each firm from engaging in similar anticompetitive conduct in the future. The FTC alleged that starting in 2004 Marker Völkl and Tecnica agreed not to compete with each other to secure endorsements by professional skiers, in violation

of Section 1 of the Sherman Act. Specifically, the FTC charged that Marker Völkl agreed not to solicit, recruit, or contact any skier who previously endorsed Tecnica skis, and Tecnica agreed to a similar arrangement with respect to Marker Völkl's endorsers. In addition, the complaint stated that in 2007, the companies expanded the scope of their non-compete agreement to cover all of their employees. See <https://www.ftc.gov/news-events/press-releases/2014/05/ski-manufacturers-marker-volkl-tecnica-settle-ftc-collusion>.

38. In the Matter of Music Teachers National Association, Inc. and In the Matter of California Association of Legal Support Professionals. On December 16, 2013, two professional associations, of music teachers and legal support services providers, agreed to eliminate provisions in their codes of ethics that limited competition among their members. The FTC's complaint against the Music Teachers National Association, Inc., which represents over 20,000 music teachers nationwide, alleged that the association and its members restrained competition in violation of the FTC Act through a code of ethics provision that restricted members from soliciting clients from rival music teachers. In a separate complaint, the FTC charged that the California Association of Legal Support Professionals, which represents companies and individuals that provide legal support services in California, violated the FTC Act through code of ethics provisions that restrained its members from competing against each other on price, disparaging each other through advertising, and soliciting legal support professionals for employment. See <https://www.ftc.gov/news-events/press-releases/2013/12/professional-associations-settle-ftc-charges-eliminating-rules>.

3.5 *Advisory Letters from the FTC*

39. Under its Rules, the Commission or its staff may offer industry guidance in the form of advisory opinions regarding proposed conduct in matters of significant public interest. These competition advisory opinions inform the public about the Commission's analysis in novel or important areas of antitrust law. In FY 2014, FTC staff issued one advisory opinion, discussed below. For more information on the Commission's advisory letters, see <http://www.ftc.gov/policy/advisory-opinions>.

40. Quest NPIA. On March 7, 2014, FTC staff issued a letter advising Quest Analytics Group that its proposal to operate a prescription drug program for the benefit of a group of non-profit schools, colleges, and universities would fall within the Non-Profit Institutions Act ("NPIA"). The NPIA provides an exemption for certain non-profit entities to the Robinson-Patman Act, a U.S. antitrust statute that prohibits certain price discrimination. The staff letter concluded that, consistent with Supreme Court and prior Commission precedent, the schools, colleges, and universities could purchase discounted specialty drugs through Quest's proposed program without violating the Robinson-Patman Act, because 1) the proposed program will benefit only non-profit entities eligible for the NPIA exemption, 2) the purchases appear to fit within the NPIA's "own use" requirement, and 3) sufficient safeguards exist to ensure that no ineligible for-profit entity will benefit from the NPIA exemption. See <https://www.ftc.gov/news-events/press-releases/2014/03/ftc-staff-opinion-rx-program-operated-benefit-non-profit-schools>.

3.6 *Business Reviews Conducted by the DOJ*

41. Under the Department's business review procedure, a person may submit a proposed business action to the Department and receive a statement as to whether the Department would likely challenge the action under the antitrust laws. The Department issued one business review letter in FY 2014. Business review letters can be found at <http://www.justice.gov/atr/public/busreview/letters.html#page=page-0>.

42. On September 23, 2014, the Department announced it would not challenge a proposal by two chassis leasing companies that would allow the interchange of chassis, used for intermodal transportation of marine containers, among their separately managed chassis pools. The proposal responded to

congestion at California port terminals and shortages of chassis caused by the requirement that motor carriers drop off chassis at a location operated by the pool from which the chassis originated. The proposal is not likely to produce anticompetitive effects because the parties will a) continue to manage their respective pools; b) independently establish their published merchant haulage rates; c) compete openly with one another and other chassis providers; d) negotiate independently with other users in the region for access to chassis; and e) use a third-party service provider to support the operations of the agreement.

4. Enforcement of antitrust laws and policies; mergers and concentrations

4.1 Enforcement of Pre-merger Notification Rules

43. **Berkshire Hathaway.** On August 20, 2014, at the request of the FTC, the Division filed a civil suit against Berkshire Hathaway Inc. for violating the pre-merger reporting and waiting requirements when it acquired voting securities of USG Corp. in December 2013. As a result of the acquisition, Berkshire Hathaway held approximately 28 percent of USG voting securities, valued at more than \$950 million. Under the terms of the consent decree filed simultaneously with the charges, Berkshire Hathaway Inc. must pay an \$896,000 civil penalty for its violation. See http://www.justice.gov/atr/public/press_releases/2014/308144.htm.

4.2 Select Significant Merger Matters

4.2.1 FTC Merger Investigations and Challenges

44. In the Matter of Fidelity National Financial, Inc., and Lender Processing Services. On December 13, 2014, Fidelity National Financial, Inc. agreed to settle FTC charges that its proposed \$2.9 billion acquisition of Lender Processing Services, Inc. (“LPS”) would have likely substantially lessened competition by combining the firms’ title plant assets in several local markets in Oregon. To preserve competition, the settlement required Fidelity to sell a copy of LPS’s title plants in six Oregon counties and an ownership interest equivalent to LPS’s share of a jointly owned title plant in the Portland, Oregon, metropolitan area. These divestitures were designed to counteract the likely anticompetitive effects of the transaction, while preserving any efficiencies that might arise from the combination of Fidelity and LPS. See <https://www.ftc.gov/news-events/press-releases/2013/12/ftc-puts-conditions-fidelity-national-financials-acquisition>.

45. **In the Matter of Prestige Brands Holdings, Inc. and Insight Pharmaceuticals Corporation.** On August 28, 2014, pharmaceutical company Prestige Brands Holdings, Inc. (“Prestige”), the maker of Dramamine, agreed to divest assets and marketing rights for the over-the-counter motion sickness drug Bonine to settle FTC charges that Prestige’s acquisition of Insight Pharmaceuticals Corp. (“Insight”) would likely have been anticompetitive. The FTC’s settlement with Prestige required the company to divest Bonine to Wellspring Pharmaceuticals within 10 days after the acquisition takes place. According to the FTC’s complaint, Prestige’s Dramamine, which was the best-selling branded product in the market for over-the-counter motion sickness drugs, and Insight’s Bonine, were the only two branded products with significant sales. Absent a remedy, the acquisition would have eliminated the close competition between Dramamine and Bonine, likely leading to higher prices for consumers. See <https://www.ftc.gov/news-events/press-releases/2014/08/ftc-puts-conditions-proposed-acquisition-insight-pharmaceuticals>.

46. **In the Matter of Akorn, Inc.** On August 4, 2014, pharmaceutical company Akorn, Inc. agreed to sell its rights to develop, manufacture, and market the generic injectable tuberculosis drug, rifampin, in order to settle FTC charges that Akorn’s acquisition of VersaPharm Inc. and its parent company, VPI Holdings Corp., would likely have been anticompetitive. The FTC’s settlement with Akorn required the company to divest its Abbreviated New Drug Application for generic injectable rifampin – which was

pending before the Food and Drug Administration – to Watson Laboratories, Inc. Akorn proposed to acquire VersaPharm for approximately \$324 million, under an agreement dated May 9, 2014. According to the FTC’s complaint, only VersaPharm and two other firms had FDA approval to sell generic injectable rifampin. There were no viable substitutes for rifampin as a course of treatment for tuberculosis. Absent the acquisition, Akorn likely would have entered the market for generic injectable rifampin in the near future, resulting in a significant price reduction for the drug. According to the FTC’s complaint, if Akorn were to consummate its acquisition of VersaPharm, as originally proposed, the combined company would have likely foregone or delayed the introduction of Akorn’s generic injectable rifampin. See <https://www.ftc.gov/news-events/press-releases/2014/08/ftc-puts-conditions-akorn-incs-proposed-acquisition-versapharm>.

47. **In the Matter of Valeant Pharmaceuticals International and Precision Dermatology.** On July 3, 2014, Valeant Pharmaceuticals International, Inc. (“Valeant”) and Precision Dermatology, Inc. (“Precision”) agreed to sell or relinquish rights to Precision’s branded single-agent topical tretinoin and generic Retin-A, common acne treatments, to settle FTC charges that Valeant’s proposed \$475 million acquisition of Precision would likely have been anticompetitive. According to the FTC complaint, Valeant’s acquisition of Precision would have likely reduced competition in the market for branded and generic single-agent topical tretinoin, and in a separate market for generic Retin-A. Valeant and Precision were the only two significant suppliers of branded single-agent topical tretinoin, and the acquisition would have eliminated competition between them. The companies were also the two largest suppliers of generic Retin-A. The acquisition would allegedly have given Valeant a monopoly in four of five versions of generic Retin-A and reduced competition in the remaining version. See <https://www.ftc.gov/news-events/press-releases/2014/07/ftc-puts-conditions-valeant-pharmaceuticals-proposed-acquisition>.

48. **In the Matter of Visant/Jostens/American Achievement.** On April 17, 2014, Jostens, Inc. (“Jostens”) announced that it would abandon plans to acquire Acquisition of American Achievement Corp. (“AAC”). Earlier that day the FTC voted to seek a preliminary injunction in federal court to stop Jostens, one of the nation’s largest sellers of high school and college class rings, from proceeding with the approximately \$500 million proposed acquisition of its close rival, AAC. The FTC charged that the proposed combination of Jostens and AAC would likely have been anticompetitive and led to higher prices and reduced service for both high school and college students who buy class rings. The FTC also approved an administrative complaint, alleging that a combined Jostens/AAC would control an unduly high percentage of the high school and college rings markets with only one smaller meaningful competitor in both markets. The complaint alleged that Jostens’ acquisition of AAC would have eliminated head-to-head competition between the two companies, allowing the combined firm to raise prices, while reducing the incentives to provide better quality and service to students and making it easier for the two remaining competitors to coordinate. See <https://www.ftc.gov/news-events/press-releases/2014/04/statement-ftc-bureau-competition-director-deborah-feinstein>.

49. **In the Matter of Akorn and Hi-Tech Pharmacal.** On April 14, 2014, Akorn Enterprises, Inc. and Hi-Tech Pharmacal, Inc. agreed to sell the rights and assets to three generic prescription eye medications and two generic topical anesthetics to Watson Laboratories, Inc., to settle FTC charges that Akorn’s proposed \$640 million acquisition of Hi-Tech would have been anticompetitive and led to higher prices for consumers. The order settling the FTC’s charges is designed to remedy the alleged anticompetitive effect of the proposed transaction. It requires the parties to sell either Akorn’s or Hi-Tech’s rights and assets to each of the five drug products to Watson, and requires Akorn to assign Watson its contract for making branded and generic EMLA cream within 10 days after the deal is consummated. See <https://www.ftc.gov/news-events/press-releases/2014/04/ftc-puts-conditions-akorn-enterprises-proposed-purchase-hi-tech>.

50. **In the Matter of CoreLogic, Inc.** On March 24, 2014, CoreLogic, Inc. agreed to settle FTC charges that its proposed \$661 million acquisition of DataQuick Information Systems, Inc. from TPG VI Ontario 1 AIV L.P. (“TPG”) would likely have substantially lessened competition in the market for national assessor and recorder bulk data. According to the FTC’s complaint, the proposed combination of CoreLogic’s and DataQuick’s national assessor and recorder bulk data businesses would have eliminated one of only three providers of national assessor and recorder bulk data. The complaint alleged that the proposed acquisition would have increased the risk of anticompetitive coordination between the remaining two market participants and the risk that CoreLogic would unilaterally exercise market power and raise prices to customers. To preserve competition that would allegedly be lost due to the acquisition, the FTC’s settlement order requires CoreLogic to license to Renwood RealtyTrac (“RealtyTrac”) national assessor and recorder bulk data as well as several ancillary data sets that DataQuick provides to its customers. The order allows RealtyTrac to offer customers the data and services that DataQuick used to offer and to become an effective competitor in the market. RealtyTrac operated an online marketplace of foreclosure real property listings and provided national foreclosure data services to real estate consumers, investors, and professionals. See <https://www.ftc.gov/news-events/press-releases/2014/03/ftc-puts-conditions-corelogic-incs-proposed-acquisition-dataquick>.

51. **In the Matter of Bi-Lo Holdings, LLC.** On February 25, 2014, grocery store operator Bi-Lo Holdings, LLC, the parent of Bi-Lo and Winn Dixie grocery store chains, agreed to sell 12 supermarkets in Florida, Georgia, and South Carolina to settle FTC charges that its proposed \$265 million acquisition of 154 stores from Delhaize America — 73 Sweetbay supermarkets (and leases to 10 closed stores), as well as 71 Harveys supermarkets and 10 Reid’s supermarkets — would have harmed competition in several local markets in those states. The FTC settlement preserves competition in 11 local markets in the three states. According to the FTC’s complaint, Bi-Lo’s acquisition of the Delhaize stores would likely have harmed consumers through higher prices, diminished quality and reduced service levels in several markets in Florida, Georgia, and South Carolina. See <https://www.ftc.gov/news-events/press-releases/2014/02/ftc-requires-bi-lo-sell-12-supermarkets-florida-georgia-south>.

52. **In the Matter of Endo Health Solutions Inc., Boca Life Science Holdings, LLC, and Boca Pharmacal, LLC.** On January 31, 2014, pharmaceutical companies Endo Health Solutions Inc. (“Endo”) and Boca Life Science Holdings, LLC and Boca Pharmacal, LLC (“Boca”) agreed to a settlement resolving FTC charges that Endo’s acquisition of Boca would be anticompetitive. Under the settlement, the companies relinquished their rights to market and distribute four generic multivitamin fluoride drops for children, and sold three other generic drugs in development. According to the FTC’s complaint, Endo’s acquisition of Boca as originally proposed likely would have caused U.S. consumers to pay significantly higher prices for these generic drugs. Boca was the exclusive marketer and distributor of the four prescription multivitamin drop products, which were owned and manufactured by Sonar Products, Inc., and competed with Endo in the sale of these products. According to the complaint, the proposed acquisition also would have eliminated one likely future entrant from a very limited pool of future entrants in each of the three other generic drug markets. See <https://www.ftc.gov/news-events/press-releases/2014/01/ftc-puts-conditions-endo-health-solutions-acquisition-boca-life>.

53. **In the Matter of Thermo Fisher Scientific Inc.** On January 31, 2014, Thermo Fisher Scientific Inc. (“Thermo Fisher”), a leading manufacturer of products used in scientific research, agreed to sell assets to GE Healthcare to settle FTC charges that its proposed \$13.6 billion acquisition of Life Technologies Corporation (“Life”) would likely substantially lessen competition. According to the FTC’s complaint, aside from Thermo Fisher and Life, there were few meaningful competitors in the three relevant markets the Commission identified – siRNA reagents, cell culture media, and cell culture sera. Moreover, the two merging companies were particularly close competitors in each relevant market, and because they were difficult markets to enter, the deal as proposed would likely have substantially lessened competition in each market. The FTC alleged that the combined company would have had a share of more than 50

percent of the worldwide market for individual siRNA reagents, and greater than 90 percent of the market for siRNA reagent libraries. Post-acquisition, Thermo Fisher would have had at least a 50 percent share of the worldwide market for cell culture media, and 60 percent of the market for cell culture sera. Throughout the investigation, FTC staff cooperated with competition agencies reviewing the transaction in Australia, Austria, Brazil, Canada, China, the European Union, India, Japan, Korea and Lithuania. *See*

54. <https://www.ftc.gov/news-events/press-releases/2014/01/ftc-puts-conditions-thermo-fisher-scientific-incs-proposed>.

55. **In the Matter of Community Health Systems and Health Management Associates.** On January 22, 2014, the FTC required one of the nation's largest hospital operators, Community Health Systems, Inc. ("CHS") to divest hospitals and related assets, including outpatient facilities, in Alabama and South Carolina as a condition of its \$7.6 billion acquisition of rival health system Health Management Associates, Inc. ("HMA"). The divestitures resolved Commission charges that the combination would likely have substantially lessened competition for general acute care inpatient services sold to commercial health plans and provided to commercially insured patients in two local markets in Alabama and South Carolina. Absent relief, CHS's acquisition of HMA would have eliminated valuable price and quality competition that benefitted local patients in these markets. *See* <https://www.ftc.gov/news-events/press-releases/2014/01/ftc-requires-community-health-systems-inc-divest-two-hospitals>.

56. **In the Matter of AB Acquisition, LLC.** On December 23, 2013, the FTC required the parent company of Albertson's LLC, AB Acquisition LLC, to sell two stores in Texas to settle charges that its proposed acquisition of United Supermarkets LLC is likely to substantially lessen competition in violation of Section 5 of the FTC Act and Section 7 of the Clayton Act. According to the FTC's complaint, the proposed merger of Albertson's and United was likely to reduce competition in local grocery markets within Amarillo and Wichita Falls, which would harm consumers through higher prices, lower quality, and reduced service levels. To preserve competition in these markets, Albertson's sold its lone stores in Amarillo and Wichita Falls, Texas, to MAL Enterprises, Inc., which operates under the Lawrence Brothers IGA, Cash Saver and Save-A-Lot supermarket banners. *See* <https://www.ftc.gov/news-events/press-releases/2013/12/ftc-requires-albertsons-supermarkets-sell-two-texas-stores>.

57. **In the Matter of Service Corporation International and Stewart Enterprises, Inc.** On December 23, 2013, Service Corporation International (SCI), the nation's largest provider of funeral and cemetery services, agreed to sell 53 funeral homes and 38 cemeteries to resolve FTC charges that its proposed \$1.4 billion acquisition of Stewart Enterprises, Inc. (Stewart) was likely to have substantially lessened competition in 59 communities throughout the United States. The complaint alleged that each of these local markets for funeral and cemetery services was highly concentrated, and that the deal as proposed would have eliminated direct competition between the two firms. The FTC charged that the deal would have enabled the merged firm to unilaterally raise prices charged to consumers in these local markets and would have substantially increased the risk of collusion between SCI and the few remaining competitors in the affected local areas. *See* <https://www.ftc.gov/news-events/press-releases/2013/12/ftc-puts-conditions-service-corporation-internationals-proposed>.

4.2.2 DOJ Public Merger Investigations and Challenges

58. **Flakeboard/SierraPine.** On October 1, 2014, the Division announced that Flakeboard America Ltd. had abandoned its planned acquisition of one medium-density fiberboard ("MDF") and two particleboard mills from SierraPine. The Division had expressed concerns about the transaction's likely anticompetitive effects in the MDF market in California, Oregon, and Washington. The proposed merger would have given the combined firm a 58 percent market share for the thicker and denser grades of MDF that Flakeboard and SierraPine sell on the West Coast, enabling Flakeboard to raise prices by restricting

the amount of MDF available. The transaction also raised concerns of possible postmerger coordination on output and prices between Flakeboard and its few remaining rivals. *See* http://www.justice.gov/atr/public/press_releases/2014/309005.htm.

59. Moreover, on November 7, 2014, the Division announced a settlement with Flakeboard America for disgorgement and civil penalties under Section 1 of the Sherman Act and Section 7A of the HSR Act, respectively, to redress the parties' allegedly illegal premerger coordination. *See* http://www.justice.gov/atr/public/press_releases/2014/309786.htm.

60. **Tyson Foods/Hillshire Brands.** On August 27, 2014, the Division and the States of Illinois, Iowa, and Missouri filed a civil suit to block Tyson Foods, Inc.'s \$8.5 billion acquisition of the Hillshire Brands Company. The Division simultaneously filed a proposed settlement, which the court approved, requiring Tyson to divest Heinhold Hog Markets, its sow purchasing business, to an independent buyer approved by the Division. Under the original proposal, the combined firm would have accounted for more than a third of sow purchases from U.S. farmers, and this would likely reduce competition in the market for sows. *See* http://www.justice.gov/atr/public/press_releases/2014/308299.htm.

61. **Sinclair/Perpetual.** On July 15, 2014, the Division and the Commonwealth of Pennsylvania filed a civil suit to block Sinclair Broadcast Group's \$963 million acquisition of Perpetual Corp. The Division simultaneously filed a proposed settlement, later approved by the court, requiring the parties to divest their interests in WHTM-TV, an ABC affiliate in Harrisburg, Pennsylvania, to Media General. Without the divestiture, Sinclair would have owned or controlled three of the six broadcast television stations in the Harrisburg-Lancaster-Lebanon-York designated market area, likely to lead to price increases for broadcast television spot advertising in parts of central Pennsylvania. *See* http://www.justice.gov/atr/public/press_releases/2014/307134.htm.

62. **Martin Marietta/Texas Industries.** On June 26, 2014, the Division and the State of Texas filed a civil suit to block Martin Marietta Materials Inc.'s \$2.7 billion acquisition of Texas Industries Inc. The Division simultaneously filed a proposed settlement, which the court approved, requiring Martin Marietta to divest an Oklahoma quarry and two Texas rail yards to an independent buyer approved by the Division. As originally proposed, the acquisition would have combined two of the three suppliers of aggregate (crushed stone) approved for use by the Texas Department of Transportation ("DOT"), impacting customers handling DOT projects in the Dallas metropolitan area. *See* http://www.justice.gov/atr/public/press_releases/2014/306733.htm.

63. **Ardent Mills JV.** On May 20, 2014, the Division filed a civil suit to block the formation of Ardent Mills, a flour milling joint venture between ConAgra Foods, Inc., Cargill Inc., CHS Inc., and Horizon Milling LLC. The Division simultaneously filed a proposed settlement, which the court approved, requiring the parties to divest mills in four states to Miller Milling Company LLC, and prohibiting the companies from engaging in certain information exchanges relating to wheat purchases and customer use of wheat. *See* http://www.justice.gov/atr/public/press_releases/2014/306051.htm.

64. **Louisiana-Pacific/Ainsworth.** On May 14, 2014, the Division announced that Louisiana-Pacific Corp. ("LP") had abandoned its planned acquisition of Ainsworth Lumber Co. Ltd. after the Division had expressed concerns about the transaction's likely anticompetitive effects on the oriented strand board ("OSB") market in the Pacific Northwest and Upper Midwest region. Under the proposed merger, the combined firm would have had 63 percent market share in the Pacific Northwest and a 55 percent market share in the Upper Midwest, enabling LP to better target its customers in these areas for price increases. The proposed transaction also raised the concern that by gaining control over Ainsworth, LP would be able to better restrict OSB supply in these regions, and coordinate output and price decisions with the remaining

competitors. The Division closely coordinated its investigation with Canada's Competition Bureau. *See* http://www.justice.gov/atr/public/press_releases/2014/305936.htm.

65. **Heraeus/Midwest Instrument.** On January 2, 2014, the Division filed suit to require Heraeus Electro-Nite LLC to divest certain assets from its 2009 acquisition of Midwest Instrumental Company Inc., which Heraeus was not required to report under the premerger notification laws. The Division simultaneously filed a proposed settlement, which the court later approved, requiring Heraeus to divest a package of assets to an identified purchaser, Keystone. The proposed settlement also requires Heraeus to waive non-compete provisions that it had imposed on some former employees, and to notify the Division of any future acquisitions in the market of sensors and instruments that might otherwise not be subject to the reporting requirements of the premerger notification law. *See* http://www.justice.gov/atr/public/press_releases/2014/302701.htm.

66. **Gannett/Belo.** On December 16, 2013, the Division filed suit to block Gannett's proposed acquisition of Belo, valued at approximately \$2 billion, and Sander Media LLC's related acquisition of six Belo television stations that Gannett cannot hold under Federal Communications Commission rules. At the same time, the Division filed a proposed settlement to resolve its competitive concerns by requiring Belo and Sander to divest their interests in a CBS affiliate station in St. Louis. The proposed transaction would have given Gannett a dominant position in broadcast television spot advertising in the St. Louis designated market area, resulting in higher prices to advertisers. The proposed settlement requires Gannett, Belo, and Sander to divest all assets used primarily in the operation of the CBS affiliate to an independent buyer approved by the Division. *See* http://www.justice.gov/atr/public/press_releases/2013/302344.htm.

67. **US Airways/American Airlines.** On August 13, 2013, the Division, seven state attorneys general, and the District of Columbia filed a civil suit to block the \$11 billion merger between US Airways Group Inc. ("US Air") and AMR Corp., the parent company of American Airlines. The lawsuit alleged that the bulk of domestic routes were already highly concentrated, and that the proposed transaction would not only result in the world's largest airline, but also would allow four airlines to control more than 80 percent of domestic commercial air travel. The planned merger between US Air and American would have eliminated direct competition between the two companies. These airlines were head-to-head competitors for nonstop service on routes worth approximately \$2 billion in annual route-wide revenues, and competed directly on more than a thousand routes where one or both offered connecting service. *See* http://www.justice.gov/atr/public/press_releases/2013/299960.htm.

68. On November 12, 2013, the Division and the states reached a proposed settlement with US Air and AMR Corp. The agreement requires the companies to divest slots and gates to low-cost carriers at key constrained airports nationwide, including airports in Washington DC, New York, Boston, Chicago, Dallas, Los Angeles, and Miami, in order to enhance system-wide competition. These divestitures include 138 slots at Reagan National and LaGuardia airports. This settlement will increase the presence of low cost carriers at key airports, enhancing meaningful competition in the industry and benefiting air travellers. *See* http://www.justice.gov/atr/public/press_releases/2013/301616.htm. On April 25, 2014, the district court approved the decree and entered final judgment. *See* http://www.justice.gov/atr/public/press_releases/2014/305491.htm.

5. International antitrust cooperation and outreach

5.1 International Antitrust Cooperation Developments

69. In FY 2014, the Antitrust Agencies continued to play a lead role in promoting cooperation and convergence toward sound competition policies internationally, through building strong bilateral ties with major enforcement partners and participation in multilateral bodies such as the Competition Committee of the Organization for Economic Cooperation and Development (“OECD”), International Competition Network (“ICN”), the United Nations Conference on Trade and Development (“UNCTAD”), and the Asia-Pacific Economic Cooperation (“APEC”).

70. On September 16, 2014, the Agencies announced that they had signed an antitrust cooperation agreement with Colombia’s Superintendence of Industry and Commerce. The agreement contains provisions for antitrust enforcement cooperation and coordination, consultations with respect to enforcement actions, and technical cooperation, and is subject to effective confidentiality protections. The agreement also includes mutual acknowledgment of the importance of antitrust cooperation, including information sharing and coordination of enforcement actions. See <https://www.ftc.gov/news-events/press-releases/2014/09/federal-trade-commission-department-justice-sign-antitrust>; <http://www.justice.gov/atr/cases/f309000/309025.pdf>.

71. On May 20, 2014, FTC Chairwoman Ramirez, FTC Commissioner Maureen K. Ohlhausen, and DOJ DAAG Leslie Overton met with officials from China’s antitrust agencies to follow up on the U.S. and Chinese agencies’ high-level dialogue regarding antitrust developments and priorities. The FTC and DOJ officials met with Shang Ming, Director General of the Anti-Monopoly Bureau of the Ministry of Commerce (MOFCOM), Hu Zucui, Vice Minister of the National Development and Reform Commission (NDRC), Xu Kunlin, Director General of NDRC’s Price Supervision and Anti-Monopoly Bureau, and Ren Airong, Director General of the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau of the State Administration for Industry and Commerce (SAIC), to discuss antitrust issues of mutual interest. See

72. <https://www.ftc.gov/news-events/press-releases/2014/05/ftc-chairwoman-meets-officials-chinese-antitrust-agencies>.

73. On March 25, 2014, the DOJ, the FTC, and the Canadian Competition Bureau issued a set of “best practices” to make more transparent how they coordinate merger reviews that affect the United States and Canada. The best practices set forth how effective day-to-day cooperation works between the two U.S. agencies and the Competition Bureau, including how the agencies communicate with each other, benefit from the similarity of their respective merger review timetables, cooperate in the analysis of evidence, use waivers of confidentiality provided by the parties, and address remedies and settlements. The best practices also seek to promote cooperation and coordination between the U.S. and Canadian agencies in order to enhance the likelihood of consistent outcomes when the same merger is reviewed in both countries. In addition, the best practices acknowledge the contribution that merging parties can make in facilitating cooperation, and provide guidance to firms about how to work with the agencies to coordinate and facilitate the reviews of their proposed transactions. See http://www.justice.gov/atr/public/press_releases/2014/304654.pdf; <https://www.ftc.gov/news-events/press-releases/2014/03/us-canadian-antitrust-agencies-issue-best-practices-coordinating>.

74. On February 13, 2014, the heads of the Agencies met in Washington with their counterparts from Mexico’s Federal Commission on Economic Competition and Canada’s Competition Bureau to discuss their mutual efforts to ensure continued effective antitrust enforcement cooperation in their increasingly interconnected markets. The discussions covered a wide range of topics, including recent enforcement

developments, cooperation and mutual support, and priority setting and efficiency in resource constrained environments.

75. During FY 2014, the Agencies cooperated on merger reviews – often pursuant to waivers from parties and third parties – with many competition agencies around the world, including those of Australia, Canada, China, the European Union, Germany, Japan, Mexico, South Korea, Taiwan, and the United Kingdom. To foster convergence with counterparts, the Agencies also held bilateral antitrust consultations with the Japan Fair Trade Commission and the Korea Fair Trade Commission.

76. The FTC cooperated with foreign counterparts on 31 merger and six non-merger investigations with many competition agencies around the world. Investigations on which the FTC cooperated with foreign counterparts included Medtronic’s acquisition of Covidien, in which the FTC worked with antitrust agencies in Canada, China, the European Union, Japan, and Mexico to reach consistent results. *See <https://www.ftc.gov/news-events/press-releases/2014/11/ftc-puts-conditions-medtronics-proposed-acquisition-covidien>*. Commission staff cooperation with non-U.S. counterparts also included extensive coordination on a number of non-public matters in which the Commission ultimately closed its investigation without taking enforcement action or that resulted in abandonment of the transaction by the parties, some after second requests were issued.

77. In FY 2014, the Division cooperated with international counterparts on many civil non-merger, merger, and cartel investigations. Among the Division’s most notable instances of international cooperation was its *LP/Ainsworth* matter (*see* above, para 69). In May 2014, Louisiana-Pacific abandoned its plan to acquire Ainsworth Lumber Co., its close competitor in the sale of a type of manufactured wood-based panel called oriented strand board, after the Division expressed concerns about the transaction’s likely anticompetitive effects. With waivers from the parties early in the investigation, the Division was able to achieve an unprecedented level of cooperation with the Canadian Competition Bureau (“CCB”). The Division and CCB conducted joint interviews, CCB attended party depositions taken by the Division, and Division and CCB attorneys and economists held frequent, approaching daily, calls on theories of harm and analytical approaches. This level of cooperation allowed each agency to reach its own independent determination of how to proceed, but to do so more efficiently than working alone. In total, the Division cooperated with international counterparts in roughly a dozen merger investigations in FY 2014. The Division also coordinated and cooperated with competition agencies in other jurisdictions in many ongoing international cartel investigations.

78. During FY 2014, the Agencies continued to play leadership roles in the International Competition Network (“ICN”) and served as ICN Steering Group Members. At the ICN’s annual conference in Marrakesh, Morocco on April 22-25, 2014, the ICN adopted new recommended practices for predatory pricing analysis and competition assessment, and approved new work product on international merger enforcement cooperation, confidentiality protections during investigations, digital evidence gathering and leniency policies. *See <http://www.internationalcompetitionnetwork.org/>*.

79. During FY 2014, the Division continued to serve as co-chair of the ICN Cartel Working Group, together with Germany’s Bundeskartellamt and the Netherlands Authority for Consumers and Markets. The group revised a reference guide for agencies on digital evidence gathering to showcase the range of ICN member approaches to digital evidence gathering techniques and also to identify good practices and procedures. *See <http://www.internationalcompetitionnetwork.org/uploads/library/doc1006.pdf>*. The group also drafted a reference guide on cooperation with procurement agencies, to provide competition authorities with practical tools for building constructive relationships with public procurement bodies.

80. In FY 2014, the FTC served as co-chair of the ICN’s Agency Effectiveness Working Group (“AEWG”), together with the Finnish Competition and Consumer Authority and the Norwegian Competition Committee. The FTC co-led the Investigative Process Project, which resulted in ICN guidance on investigative process to promote fair and informed enforcement. In 2014, the working group also produced a report on confidentiality protections that underscored common approaches to these practices. See <http://www.internationalcompetitionnetwork.org/uploads/library/doc1028.pdf>; <https://www.ftc.gov/news-events/press-releases/2014/04/international-competition-network-adopts-recommended-practices>.

81. During FY 2014, both Agencies contributed to a two-year ICN Merger Working Group project on international merger enforcement cooperation. The Agencies participated in a teleseminar series on that topic, and helped to prepare a practical guide for agencies on merger cooperation. See <http://www.internationalcompetitionnetwork.org/uploads/library/doc1031.pdf>.

5.2 Outreach

82. In FY 2014, the Agencies continued to engage in technical cooperation on competition law and policy matters to their international counterparts. In FY 2014, the FTC continued its robust technical assistance program in which it shares the agency’s experience with competition and consumer protection agencies around the world, conducting 42 programs in 28 countries, including Brazil, Bulgaria, the Dominican Republic, El Salvador, Honduras, Guatemala, India, Indonesia, Mexico, Philippines, Slovenia, South Africa, Turkey, and Vietnam. The FTC also conducted judicial training in the Mexico and Panama.

83. As part of its ongoing effort to build effective relationships, the FTC provides opportunities for staff from foreign agencies to spend several months working directly with FTC staff on investigations through its International Fellows and Interns program. In FY 2014, the FTC hosted five international fellows from Argentina, Chile, the European Union, Japan, and Mexico. These assignments provide valuable opportunities for participants to obtain a deeper understanding of their international partners’ laws and challenges. This knowledge provides critical support for coordinated enforcement and promotes cooperation and convergence towards sound policy.

84. In FY 2014 Division attorneys and economists traveled to Peru, Romania, Vietnam, India, Turkey, South Africa, Hungary, El Salvador, Honduras, South Korea, Mexico and Thailand (12 countries) for technical cooperation programs. A total of 17 travelers participated in 14 different trips.

6. Regulatory and Trade Policy Matters

6.1 Regulatory Policies

6.1.1 DOJ Activities: Federal and State Regulatory Matters

85. In a May 14, 2014, letter to the FCC, the Division reiterated its views expressed in April 11, 2013 comments, that FCC rules should ensure that the smaller nationwide wireless networks, which currently lack substantial low-frequency spectrum, have an opportunity to acquire such spectrum, as this could improve the competitive dynamic in the wireless market and benefit consumers. See <http://www.justice.gov/atr/public/comments/305961.pdf>.

86. On February 20, 2014, the Division filed an *ex parte* submission with the Federal Communications Commission (“FCC”) relating to the FCC’s Quadrennial Regulatory Review of its Broadcast Ownership Rules, including its rules on attribution and various forms of “sharing” agreements between broadcast stations. The filing described DOJ’s enforcement experience in the broadcast television and radio industries, including its experience analyzing a variety of cooperation or “sharing” agreements

such as joint sales agreements (“JSAs”), shared services agreements (“SSAs”), and local news service (“LNS”) agreements. Such arrangements often confer influence or control of one broadcast competitor over another. Failure to account for the effects of such arrangements can create opportunities to circumvent FCC ownership limits and the goals those limits are intended to advance. As a consequence, the Department encouraged the FCC’s ownership “attribution” rules to treat any two stations participating in a JSA (or agreement similar in substance to a JSA) as under common ownership. Furthermore, even where a sharing agreement did not create an attributable interest under the FCC’s bright-line rules, the submission suggested that the FCC should scrutinize agreements on a case-by-case basis and take action where those agreements do not serve the public interest. *See* <http://www.justice.gov/atr/public/comments/303880.pdf>.

6.1.2 *FTC Staff Activities: Federal and State Regulatory Matters*

87. **Health Care.** In FY 2014, FTC staff issued advocacy comments to legislators in Massachusetts and Missouri, as well as a policy paper, addressing the scope of practice of advanced practice nurses. The policy paper suggests that state legislators should be cautious when evaluating proposals to limit the scope of practice of Advanced Practice Registered Nurses. By limiting the range of services APRNs may provide and the extent to which they can practice independently, such proposals may reduce competition that benefits consumers. *See* https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-missouri-house-representatives-regarding-missouri-house-bills-1481-1491/140505missouri-aprn.pdf; https://www.ftc.gov/system/files/documents/advocacy_documents/policy-perspectives-competition-regulation-advanced-practice-nurses/140307aprnpolycyaper.pdf; https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-massachusetts-house-representatives-regarding-house-bill-6-h.2009-concerning-supervisory-requirements-nurse-practitioners-nurse-anesthetists/140123massachusettsnursesletter.pdf.

88. **Health Care.** On October 6, 2014, FTC staff, in response to a notice requesting public comments, urged the Texas State Board of Dental Examiners to reject two proposed rules that impose new restrictions on the ability of Texas dentists to enter into contracts with non-dentists, such as dental service organizations, for the provision of nonclinical, administrative services. The comment explains that such restrictions may reduce competition, likely resulting in higher prices and reduced access to dental services, especially for underserved populations. *See* https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-texas-state-board-dental-examiners/141006tsbdecomment1.pdf.

89. **Transportation.** In May 2014, FTC staff submitted written comments to legislators in Missouri and New Jersey in response to requests for comment on legislative proposals that would alter the ability of automobile manufacturers to sell their cars directly to consumers. The proposed Missouri bill would expand current prohibitions of such sales by franchisors to also include sales by any manufacturer, regardless of whether they use independent dealers. In New Jersey, several bills would create limited exceptions to state law that, as currently interpreted, requires motor vehicles to be sold only through independent auto dealers. According to the FTC staff, current laws in both jurisdictions “operate as a special protection for [independent motor vehicle dealers] – a protection that is likely harming both competition and consumers.” The comments note the staff’s strong opposition to state laws that mandate a single method of distributing automobiles to consumers. *See* https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-missouri-house-representatives-regarding-house-bill-1124-which-would-expand/140515mo-autoadvocacy.pdf; https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-new-jersey-general-assembly-regarding-assembly-bills-2986-3096-3041-3216-which/140516nj-autoadvocacy.pdf.

90. **Transportation.** On March 26, 2014, FTC staff, in response to a request from a State Senator, provided written comments to the Illinois State Senate on the competitive impact of repealing the state’s prohibition on the sale or long-term lease of vehicles on Sundays. The staff comment states that repealing the mandatory Sunday closing provisions of the Illinois Vehicle Code would enhance competition and benefit consumers. See https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-illinois-state-senate-regarding-senate-bill-2629-which-would-repeal-certain/140327illinoisautostaffcomment.pdf.

91. **Utilities.** On March 10, 2014, FTC staff submitted a comment in response to a request from the Commonwealth of Massachusetts Department of Public Utilities (“Mass. DPU”) for comments on its investigation of dynamic pricing for residential electricity customers. Dynamic prices are rates that vary over time, based on wholesale electricity prices and transmission congestion conditions. According to the comment, with dynamic pricing, customers who respond to incentives to trim demand for power during peak demand periods can save money, lessen environmental impact, and reduce the costs and improve the reliability of the electric system. Such actions benefit all customers, even those who do not respond to the incentives. The staff comment identifies fundamental difficulties in reconciling the “basic” rate-regulated service in Massachusetts with rapid innovations in services and equipment – such as “smart” appliances and electric cars – that enable customers to respond to incentives to reduce electricity consumption during peak demand. To reach this goal, the comment recommends that the Mass. DPU adopt a peak-time rebate plan once appropriate electric meters, as well as consumer education and consumer protection programs, are in place. See https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-massachusetts-department-public-utilities-regarding-its-investigation-time-varying/140318dpustaffcomment.pdf.

92. **Utilities.** On January 13, 2014, the FTC staff submitted a comment in response to a request from the District of Columbia Public Service Commission (“DC PSC”) for comments on Potomac Electric Power Company’s (“Pepco’s”) proposed dynamic pricing program for residential customers. Pepco’s proposal would offer cost savings to customers who respond to incentives to reduce electricity consumption during peak demand periods – incentives made possible via use of devices such as “smart” electric meters. The FTC staff comment encourages the DC PSC to adopt the proposal as “a constructive initial step toward improving the efficiency of the electric system in a way that can benefit many customers but also leave the existing price structure in place for customers who do not (or cannot) respond to the efficiency incentives.” It also recommends that the DC PSC “periodically review the effects of the proposed approach with a focus on the accuracy of the price signals being conveyed, consumer participation in and satisfaction with the program, and methods to enhance consumer participation and satisfaction over time.” See https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-reply-comment-district-columbia-public-service-commission-concerning-proposed-program.1086-1109/140117dcdynamicpricing.pdf.

6.1.3 *DOJ and FTC Trade Policy Activities*

93. The Agencies are involved in interagency discussions and decision-making with respect to the formulation and implementation of U.S. international trade and investment policy as concerns competition policy. The Agencies participate in interagency trade policy discussions chaired by the Office of the U.S. Trade Representative, and provide antitrust and other legal advice to U.S. trade agencies. In addition, the Division works with other Department components (including the Civil, Criminal, and Environmental and Natural Resources Divisions) on international trade and investment issues that affect those components or the Department as a whole. The FTC coordinates on consumer protection aspects of trade policy with a number of U.S. government agencies.

94. The Agencies also participate in negotiations and working groups related to regional and bilateral trade agreements. The FTC and the DOJ participate in competition policy discussions and negotiations associated with the Trans-Pacific Partnership (“TPP”) and the Transatlantic Trade and Investment Partnership (“TTIP”).

7. New Studies Related to Antitrust Policy

7.1 *Joint Conferences and Reports*

95. **Conditional Pricing Practices Workshop.** On June 23, 2014, the FTC and DOJ held a public workshop to explore the economics and legal policy implications of certain pricing practices, such as loyalty and bundled pricing. The workshop consisted of presentations and roundtable discussions that focused on practices in which prices are explicitly or effectively contingent on commitments to purchase or sell a specified share or volume of a single product or a mix of multiple products. Workshop participants considered theoretical and empirical developments in the economic understanding of these practices, discussed developments in the relevant case law, and assessed the implications for the proper treatment of these practices under the antitrust laws. See <https://www.ftc.gov/news-events/events-calendar/2014/06/conditional-pricing-practices-economic-analysis-legal-policy>.

7.2 *FTC Conferences, Reports, and Economic Working Papers*

7.2.1 *Conferences and Workshops*

96. **Health Care Competition Workshop.** On March 20-21, 2014, the FTC held a public workshop to study certain activities and trends that may affect competition in the evolving health care industry. The workshop explored current developments related to professional regulation of health care providers, innovations in health care delivery, advancements in health care technology, measuring and assessing health care quality, and price transparency of health care services. See <https://www.ftc.gov/news-events/events-calendar/2014/03/examining-health-care-competition>.

97. **Follow-On Biologics Workshop.** On February 4, 2014, the FTC held a workshop to explore competition issues involving biologic medicines and follow-on biologics. The workshop focused on issues including the potential impact of state regulations affecting competition and how regulations might be structured to facilitate competition while still protecting patient health and safety. The workshop also covered the experience of other countries with follow-on biologic competition. See <https://www.ftc.gov/news-events/events-calendar/2014/02/follow-biologics-workshop-impact-recent-legislative-regulatory>.

98. **Sixth Annual Microeconomics Conference.** On November 7-8, 2013, the FTC held its sixth annual conference on microeconomics, bringing together researchers from academia, government agencies, and other organizations to discuss economic issues in antitrust and consumer protection. See <https://www.ftc.gov/news-events/events-calendar/2013/11/sixth-annual-microeconomics-conference>.

7.2.2 *Bureau of Economics Working Papers*

99. The FTC’s Bureau of Economics issued the following working papers during FY 2014. The papers are available at <https://www.ftc.gov/policy/reports/policy-reports/economics-research/working-papers>.

- Daniel O’Brien and Doug Smith, Privacy in Online Markets: A Welfare Analysis of Demand Rotations, August 2014

- Matthew Chesnes, The Impact of Outages on Prices and Investment in the US Oil Refining Industry, June 2014
- Matthew Chesnes, Weijia (Daisy) Dai, Ginger Jin, Banning Foreign Pharmacies from Sponsored Search: The Online Consumer Response, April 2014
- Nathan Wilson, Market Structure as a Determinant of Patient Care Quality, March 2014

7.3 *DOJ Economic Working Papers*

7.3.1. *DOJ Economic Analysis Group Discussion Papers*

100. The DOJ Economic Analysis Group issued the following papers during FY 2014. The papers are available at www.usdoj.gov/atr/public/eag/discussion_papers.htm.

- Craig T. Peters, Bargaining Power and the Effects of Joint Negotiation: The “Recapture Effect,” *EAG 14-3, September 2014*
- Mitsukuni Nishida and Marc Remer, Search, Price Dispersion, and Local Competition: Estimating Heterogeneous Search Costs in Retail Gasoline Markets, *EAG 14-2, July 2014*
- Alexander MacKay, Nathan H. Miller, Marc Remer, and Gloria Sheu, Bias in Reduced-Form Estimates of Pass-through, *EAG 14-1, February 2014*
- Matthew R. Backus, Joseph Uri Podwol, and Henry S. Schneider, Search Costs and Equilibrium Price Dispersion in Auction Markets, *EAG 13-2, November 2013*

APPENDICES

Department of Justice: Fiscal Year 2014 FTE² and Resources by Enforcement Activity

	FTE	Amount (\$ in thousands)
Criminal Enforcement	262	\$64,160
Civil Enforcement	392	\$96,240
Total	654	\$160,400

Federal Trade Commission: Fiscal Year 2014 Competition Mission
FTE and Dollars by Program, Bureau & Office

	FTE	Amount (\$ in thousands)
Total Promoting Competition Mission		
<i>Bureau of Competition</i>	271.7	47,351.1
<i>Bureau of Economics</i>	76.0	13,095.8
<i>Regional Offices</i>	24.6	5,351.1
<i>Mission Support</i>	128.9	56,604.4
Premerger Notification		
<i>Bureau of Competition</i>	26.7	4,304.8
<i>Bureau of Economics</i>	0.2	23.6
<i>Regional Offices</i>	0.3	42.7
Merger & Joint Venture Enforcement		
<i>Bureau of Competition</i>	130.9	23,383.5
<i>Bureau of Economics</i>	40.8	6,892.4
<i>Regional Offices</i>	14.7	3,303.0
Merger & Joint Venture Compliance		
<i>Bureau of Competition</i>	5.0	806.8
<i>Bureau of Economics</i>	---	---
<i>Regional Offices</i>	---	0.8

² An "FTE" or "full time equivalent" amounts to one employee working full time for a full year. Because the number of employees fluctuates throughout the year through hiring, attrition, and varying schedules, an agency typically has more employees than FTEs (e.g., two employees working 20 hours per week for one full year equals one FTE).

	FTE	Amount (\$ in thousands)
Nonmerger Enforcement		
<i>Bureau of Competition</i>	94.2	15,903.0
<i>Bureau of Economics</i>	17.8	3,167.1
<i>Regional Offices</i>	7.2	1,453.3
Nonmerger Compliance		
<i>Bureau of Competition</i>	0.1	17.5
<i>Bureau of Economics</i>	---	---
<i>Regional Offices</i>	---	---
	FTE	Amount (\$ in thousands)
Antitrust Policy Analysis		
<i>Bureau of Competition</i>	0.1	16.1
<i>Bureau of Economics</i>	9.0	1,514.7
<i>Regional Offices</i>	---	---
Other Direct		
<i>Bureau of Competition</i>	14.7	2,919.4
<i>Bureau of Economics</i>	8.2	1,498.0
<i>Regional Offices</i>	2.4	551.3
Support	128.9	56,604.4