



March 2012

Compass Lexecon's 2011 Client Newsletter

This past year was the best year in our history by a large margin. We continued to be hired in the highest percentage of the biggest, most complex cases and transactions around the globe ranging from the British Petroleum oil spill litigation to the proposed AT&T – T-Mobile merger (where Compass Lexecon experts were retained by both the Government and the private parties involved). Significantly, the most recent survey published by the *Global Competition Review* compared us to our competitors in the competition area and concluded that “Compass Lexecon continues to dwarf its rivals.” Also notable among the many victories our clients enjoyed in the past year, our President, Professor Daniel Fischel, testified successfully in four consecutive major trials/arbitrations.

We were also able to expand our pool of expert talent, as leading figures in economic consulting either joined us after government service or defected from other firms. Bradford Cornell, a professor at Cal Tech and an expert in valuation and financial markets (formerly with Charles River Associates), Jonathan Baker, a professor at American University and former Chief Economist at the FTC and FCC (affiliated with Charles River Associates before his government service), and Walter Torous, a professor at UCLA and an expert in mortgage-related securities and the Founding Director of the Ziman Center for Real Estate (formerly with Analysis Group), all joined us in the past year as did senior staff from Cornerstone Research and other firms.

We also expanded our geographic footprint when the leading European competition practice, led by Jorge Padilla, and the leading international arbitration group, led by Professor Pablo Spiller and Manuel Abdala elected to join us from LECG. We now have 14 offices in six countries and roughly 300 professional staff, including more than 120 PhD economists.

In 2011, we thus further strengthened our preeminent competition, finance, energy, intellectual property, international arbitration, and general litigation practices. We have developed cutting-edge expertise and experience in a range of areas, including credit markets, derivatives and credit default swaps, hedge funds, private equity, mortgage-backed securities, the use of innovative econometric techniques to analyze the competitive and synergistic effects of mergers, economic analysis of the requirements for class certification, sophisticated tests of the competitive effects and rationales of challenged business practices, and the determinants of energy prices.

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

LITIGATION

Rambus Antitrust Case

In a case closely watched by the high technology industry, a California jury rejected Rambus, Inc.'s nearly \$4 billion claim (before trebling) that Micron Technology Inc. and Hynix Semiconductor Inc. conspired to block the marketplace penetration of RDRAM, Rambus's proprietary DRAM technology, in favor of an alternative technology, SDRAM, and its succeeding generations. The result was a complete defense victory. Compass Lexecon was retained separately by counsel for each defendant to undertake independent economic analyses and provide trial testimony regarding liability and impact on behalf of Micron and Hynix.

Professor Robert Willig, together with a Compass Lexecon team led by Doug Fontaine, Gilad Levin, Yair Eilat, and Rebecca Schindel, was retained by counsel for Micron, Bill Price, Jon Steiger, Robert Becher, and Kevin Teruya at Quinn Emanuel Urquhart & Sullivan, LLP, to thoroughly analyze, from an economic perspective, the merits of Rambus' liability and impact claims. In his testimony, Professor Willig emphasized that economic logic and the market data showed that the concerted boycott alleged by Rambus made no economic sense. Professor Willig and his team's analysis of DRAM pricing across technologies, time, and suppliers showed that Rambus's allegations of a concerted scheme to boycott RDRAM through manipulation of its relative prices was not supported by the data.

Professor Janusz Ordover, along with a Compass Lexecon team led by Jith Jayaratne, Assaf Eilat, and Brianne Limber, was retained by counsel for Hynix, Tad Allan, Kenneth Nissly, Ken O'Rourke, and Susan van Keulen of O'Melveny & Myers LLP, to develop an economic framework to assess the merits of Rambus' claim that Hynix acted in concert with other DRAM manufacturers to disadvantage RDRAM. Professor Ordover and his Compass Lexecon team's analysis of the RDRAM pricing data demonstrated that Hynix's conduct was inconsistent with Rambus' allegations of RDRAM price manipulation and also inconsistent more generally with the cartel alleged by Rambus.

Tribune Bankruptcy Hearing

The Tribune Co. undertook a two-step reorganization in 2007. In the first step, a newly formed ESOP purchased a portion of Tribune's outstanding common shares financed by \$8 billion of borrowings. In the second step, the remaining common shares were repurchased and Tribune became wholly owned by the ESOP and Tribune borrowed another \$2.1 billion. On December 8, 2008, Tribune and certain subsidiaries filed voluntary petitions under Chapter 11 of the U.S. bankruptcy code. JP Morgan (JPM), one of Tribune's principal lenders, represented by Davis Polk & Wardwell LLP retained Compass Lexecon's President, Professor Daniel Fischel, to analyze Tribune's solvency at both steps of its reorganization.

After the parties reached a tentative settlement, the court decided to hold a hearing in March 2011 because of objections raised. Two competing reorganization plans were presented at the hearing for confirmation, one supported by JPM and others, and a second supported by holders of certain bonds. Professor Fischel testified at the hearing, concluding that his study

demonstrated that Tribune was solvent at both steps of its reorganization. After the hearing and subsequent briefing, Bankruptcy Judge Kevin J. Carey concluded in a lengthy opinion that the plan supported by JPM “should be approved because it is fair, reasonable, and in the best interest of the Debtor’s estates” but did not reach a final decision because of several remaining issues. Judge Carey cited and quoted favorably from Professor Fischel’s testimony in his opinion. We worked with Donald Bernstein, Dennis Glazer, Elliot Moskowitz, Sharon Katz, Lynn Busath, and others at Davis Polk who successfully represented JPM. Professor Fischel was supported by a team in our Chicago office including Rajiv Gokhale, Rahul Sekhar, Avisheh Mohsenin, Robin Stahl, Cliff Ang, Quinn Johnson, and Erika Morris.

Abbott Prevails Over Glaxo on Antitrust Claims

In March 2011, a jury in Oakland rejected GlaxoSmithKline’s antitrust claims against Abbott Laboratories. GSK claimed that Abbott engaged in anticompetitive bundled discounting by increasing the price of one of its HIV drugs, Norvir, which is used to “boost” the effects other HIV drugs called protease inhibitors, and keeping constant the price of another Abbott HIV drug, Kaletra. Kaletra includes both the active ingredient in Norvir (ritonavir) and a protease inhibitor (lopinavir). According to GSK, Abbott’s pricing anticompetitively disadvantaged rival protease inhibitors, including GSK’s drug Lexiva, that are prescribed with Norvir as a booster. The jury rejected all of GSK’s antitrust claims. The jury awarded Glaxo \$3.4 million on its breach of contract claims, much less than the more than \$1.7 billion (after trebling) that GSK alleged. Compass Lexecon expert, Professor Richard Gilbert, offered testimony on antitrust liability issues on behalf of Abbott. Professor Joel Hay, supported by a Compass Lexecon team, testified for Abbott on market definition issues and alleged damages. The Compass Lexecon team supporting Professors Gilbert and Hay included Andres Lerner, Emmett Dacey, Guy Ben-Ishai, Dan Adomian, Rob Oandasan, and Janin Wimer. Compass Lexecon was retained by James Hurst at Winston & Strawn LLP and by Jeffrey Weinberger at Munger, Tolles & Olson LLP.

BankAtlantic Bancorp Injunction Hearing

On November 11, 2001, BankAtlantic Bancorp, Inc. and BB&T agreed to a transaction wherein BB&T was to acquire 100% of the equity of BankAtlantic, a federal savings bank, from BankAtlantic Bancorp. The holders of several series of trust preferred securities (“TruPS”) issued by BankAtlantic Bancorp sued to enjoin the transaction and enforce covenants that generally prohibit BankAtlantic Bancorp from transferring or selling all or substantially all of its assets without the debt being assumed by the purchaser. Compass Lexecon was retained to analyze the relevant economic evidence on the percentage of assets transferred and the effect of the proposed transaction on the TruPS holders.

After submitting a detailed expert report, Compass Lexecon’s President, Professor Daniel Fischel provided direct and rebuttal testimony at trial on the quantitative measures of the portion of assets that would be transferred in the transaction, and the market evidence as it related to the portion of assets transferred and to whether the amount of assets that would be left with BankAtlantic after the transaction would be enough to cover its obligations to the TruPS.

On February 27, 2012, Vice Chancellor J. Travis Laster of Delaware Chancery Court, permanently enjoined BankAtlantic Bancorp from consummating the sale to BB&T. Vice Chancellor Laster noted that even though the TruPS' value almost doubled when the proposed transaction was announced, they still traded at under two-thirds of their par value, and found, consistent with Professor Fischel's testimony and contrary to the testimony of Plaintiffs' expert, that the transaction constituted a sale of all or substantially all of BankAtlantic Bancorp's assets and therefore violated the applicable covenants. Compass Lexecon was retained by Jonathan Pickhardt and Richard Werder, Jr. at Quinn Emanuel Urquhart & Sullivan, LLP, who successfully represented the preferred securityholders. Professor Fischel was supported by Rajiv Gokhale, Cliff Ang, and Paul Eastwood in our Chicago office.

Audit Malpractice Arbitration Proceeding

Compass Lexecon was retained by Ernst & Young, the Respondent to an arbitration claim brought by the Liquidation Trustee of Le-Nature's, Inc., which had filed for bankruptcy on November 1, 2006. The Trustee brought claims for professional malpractice, negligent misrepresentation, aiding and abetting breach of fiduciary duty, and breach of contract and claimed damages of over \$400 million for the alleged deepening of Le-Nature's insolvency. Compass Lexecon Affiliate, Professor Kenneth Lehn, supported by David Ross and a team in our Chicago office, testified on issues of loss causation and damages at the arbitration proceeding. The arbitrators rendered a complete defense verdict finding, among other things, that the Trustee had failed to prove any recoverable damages against E&Y. E&Y was represented by Emily Nicklin and Gabor Balassa at Kirkland & Ellis LLP.

Morgan Stanley and Van Kampen Auction Rate Preferred Securities Litigation

Morgan Stanley and Van Kampen served as investment advisors to various closed-end municipal and taxable bond funds. In order to generate leverage, the funds issued auction rate preferred securities (ARPS). In February 2008, the downgrades of monoline bond insurers and other ripple effects of the financial crisis resulted in a virtual freeze in the ARPS market, thereby eliminating liquidity for investors in ARPS. The funds decided to redeem a percentage of their ARPS at par and replace the leverage with other types of financing (notably, tender option bonds). Classes of common stock shareholders in the funds sued Morgan Stanley and Van Kampen in shareholder derivative actions, and the boards of directors of the funds appointed special litigation committees (SLCs) in order to determine whether to support the class action suit. The SLCs engaged Compass Lexecon Affiliate, Professor Christopher Culp, along with a team in our Chicago office led by David Gross and Laura Sekhar, to analyze the ARPS market and to determine whether shareholders were damaged by the boards' decisions to redeem ARPS. Both SLCs extensively cited Professor Culp's expert reports and concluded that it was not in the funds' best interest to support the derivative litigation. We were retained in this matter by Richard Rosen and others at Paul, Weiss, Rifkind, Wharton & Garrison LLP.

PRIAC ERISA Litigation

On February 3, 2012, Judge Richard J. Holwell (Southern District of New York) ruled in favor of Compass Lexecon's client, Prudential Retirement Insurance and Annuity Co. (PRIAC),

in the lawsuit it had brought against State Street Bank and Trust Company. Acting on behalf of nearly 200 retirement plans, PRIAC alleged that State Street had breached its fiduciary duties under ERISA by failing to prudently manage two intermediate-term bond funds which, among other things, had sizable investments in mortgage-backed securities. Two Compass Lexecon experts testified at trial: Compass Lexecon's President, Professor Daniel Fischel, testified concerning damages, and Compass Lexecon Affiliate Christopher Culp testified concerning State Street's failure to follow its own risk management procedures. Professors Culp and Fischel also responded to and demonstrated the flaws in the analysis of the defendant's expert. After hearing the testimony, Judge Holwell determined that State Street breached its duty to manage the investment options prudently, and awarded PRIAC \$76,733,879 in damages. Judge Holwell quoted from Professor Culp's testimony extensively and accepted Professor Fischel's damage methodology and calculations in their entirety. Professors Fischel and Culp were assisted by David Ross, Laurel Van Allen, Andrea Neves, and Laura Sekhar in Compass Lexecon's Chicago office. PRIAC was represented by Edwin Schallert, Jeremy Klatell, Courtney Dankworth, and others at Debevoise & Plimpton LLP.

Netflix Wins Summary Judgment in Purchaser Class Antitrust Suit

Professor Janusz Ordover and a Compass Lexecon team led by Doug Fontaine and Assaf Eilat in our Oakland office, were retained by Jonathan Jacobson, Dylan Liddiard, and David Reichenberg at Wilson Sonsini Goodrich & Rosati, counsel for Netflix, and Stephen Morrissey and Genevieve Vose at Susman Godfrey L.L.P., counsel for Wal-Mart, to analyze Plaintiffs' claims that (i) Defendants entered into a market allocation arrangement pursuant to which Wal-Mart would exit the online DVD rental marketplace in exchange for Netflix's agreement to refrain from entry into the business of new DVD sales, and (ii) Wal-Mart's exit from the DVD rental business materially lessened the competitive constraints on Netflix and led to higher subscription prices for its rental plans. Professor Ordover and the Compass Lexecon team analyzed the purported market allocation agreement with respect to the economics of cartels, examined the competitive viability of Wal-Mart's online DVD rental service in terms of its actual results and its quality and features *vis-à-vis* Netflix (and Blockbuster), studied the economic factors that influenced Netflix pricing decisions, and developed a comprehensive critique of Plaintiffs' economic expert demonstrating his failure to show any causal connection between Wal-Mart's exit from the online DVD rental business and Netflix's subsequent pricing behavior. The Court granted defendants' motion for summary judgment, holding that Wal-Mart had no impact on Netflix's pricing, and similarly that the evidence provided no reasonable basis on which to conclude that Wal-Mart's continued operation would have compelled Netflix to reduce its then-current prices consistent with Professor Ordover's conclusions.

ICSID Tribunal Ruling

Compass Lexecon expert, Andres Chambouleyron, supported by Julian Delamer of Compass Lexecon's Buenos Aires office, testified before a Tribunal at an ICSID Hearing, in which Claimant alleged that The Republic of Peru had expropriated its investment in early 2005 by freezing its bank accounts due to a tax debt with the Government. Chambouleyron showed that damages to Claimant, a Chinese national (Mr. Tza Yap Shum) by The Republic of Peru, were less than US \$1,000,000, while the opposing expert argued that damages were as high as

US \$20 million, based on a DCF analysis that incorporated the sharp increase in worldwide fish flour prices since mid 2005. The Tribunal rejected the opposing expert's DCF model criticizing its use of hindsight information unknown at the time of expropriation and determining that it was too speculative given the company's lack of a track record of profits prior to Peru's measures. Instead, the Tribunal adopted Chambouleyron's recommendation to use an "adjusted book value" approach. The Tribunal also followed Chambouleyron's recommendation to use the 10-year US Treasury bond rates for purposes of pre-judgment interest calculations, based on the concept that Claimant was no longer exposed to commercial risks after its assets were expropriated. The Republic of Peru was represented by Stephen Jagusch, Anthony Sinclair, Nicole Duclos, and others at Allen & Overy LLP.

Ruby/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 valued at approximately \$1.8 billion. In the leveraged buy-out, Archstone gave Claimants a choice between exchanging their common units for preferred units or cash. Claimants, and their two experts, argued that the buy-out presented them with a Hobson's Choice because the preferred units were inferior to their common units and they would be forced to realize capital gains if they chose cash. 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 the large premium offered by the buy-out. The Panel cited Professor Fischel's testimony favorably in concluding that Archstone had not breached the agreements because the preferred stock offered a viable, market-based alternative to Claimants' common units. The result was a complete victory for Archstone. Professor Fischel was supported by a team in Compass Lexecon's Chicago office including Jerry Lumer, Vince Warther, Jessica Mandel, Elizabeth Wall, and Laura Sekhar.

Asda Wal-Mart v Office of Fair Trading

In a 2010 decision, the UK Office of Fair Trading (OFT) concluded that two tobacco manufacturers and ten retailers had entered into illegal vertical agreements whereby the retailers agreed to set their shelf prices for the two manufacturers' corresponding brands at fixed relative prices. The OFT imposed total fines of £225m, the largest in any OFT case. Compass Lexecon expert Neil Dryden was retained by Asda Wal-Mart for its appeal to the Competition Appeal Tribunal (CAT). In a series of three expert reports, Dryden and his team set out evidence suggesting that Asda had not entered into such agreements, would not have had incentives to enter into such agreements, and that small changes in the nature of the agreements could lead to very different results to those predicted by the OFT. At the appellate hearing in December 2011, the CAT ruled against the OFT. Assisting Neil Dryden were Erik Langer, Bertram Neurohr, and Eduard Barniol Barcons in our London and Madrid offices, and Gerard Llobet, Associate Professor of Economics at CEMFI. We worked with Mark Jones and Peter Scott at Norton Rose LLP, and James Flynn QC and Robert O'Donoghue at Brick Court Chambers.

Massey Energy Derivative Litigation

Plaintiffs in this case sought to enjoin the acquisition of Massey Energy by Alpha Natural Resources, alleging that Massey's Board had failed to secure the best possible price in order to extinguish their potential liability from derivative claims arising from the tragic accident at the Massey's Upper Big Branch mine. We were retained by counsel for Defendants to analyze the economic evidence as it related to Plaintiffs' claims. Compass Lexecon's President, Professor Daniel Fischel, filed an affidavit which demonstrated that the merger consideration provided for a substantial premium to Massey's shareholders, that the economic evidence did not establish that the derivative claims had substantial monetary value, and that the deal terms were fair to Massey shareholders. Vice Chancellor Strine refused to enjoin the merger and cited Fischel's affidavit favorably in his written opinion. Professor Fischel was assisted by David Ross and a team in Compass Lexecon's Chicago office. We worked with Stuart Gold and Julie North at Cravath, Swaine & Moore LLP, Kevin Abrams and Brad Davey at Abrams & Bayliss LLP, and Greg Danilow at Weil Gotshal & Manges LLP, who successfully represented the defendants.

Alice H. Allen et al. v. Dairy Farmers of America and Dairy Marketing Services

On December 9, 2011 Chief Judge Christina Reiss of the United States District Court for the District of Vermont denied Plaintiffs' motion for certification of a proposed class of dairy farmers who alleged that Defendants conspired to monopsonize dairy farmers in the northeastern United States and to suppress raw milk prices. Judge Reiss's opinion referred extensively to expert and reply reports submitted by Compass Lexecon expert, Professor Joseph Kalt, on behalf of Defendants Dairy Farmers of America (a dairy farmer cooperative) and Dairy Marketing Services (a "cooperative of cooperatives"), both of whom are owned by dairy farmers. Judge Reiss's opinion quoted Professor Kalt's conclusion that Plaintiffs' theory of monopsonization was "complex and novel" in that they claimed "that so many cooperatives owned and run by farmers have acted to harm the very farmers who own and run those cooperatives." Judge Reiss held that Plaintiffs had "not sustained their burden of proffering 'significant' proof that causation and damages may be established by common proof" and also that there is "a fundamental conflict" within the class proposed by plaintiffs. Professor Kalt was supported by Charles Augustine and Andrew Lemon of Compass Lexecon's Boston office, in cooperation with another economic consulting firm. The defense team was led by Steve Kuney at Williams & Connolly LLP.

Dismissal of Claim Against Central European State

A Compass Lexecon team successfully assisted outside counsel for a Central European state (Respondent) in dismissing a claim in excess of €230 million raised by a major multinational pharmaceutical company (Claimant). The Compass Lexecon team included Manuel Abdala and Pablo Spiller as quantum experts, with Sebastian Zuccon as case manager, and Pablo López Zadicoff, Gustavo De Marco, and Alan Rozenberg providing key support. Claimants alleged expropriation of their investment following the denial by Respondent to renew the marketing authorizations of two products. Claimant's economic expert recommended damages based on a lost profit analysis, as if the State had breached a sales contract with the pharmaceutical company, rather than breached an investment treaty. The Compass Lexecon

team showed that damages ought to be assessed as the loss in value to the affected investments, which Claimant defined as the intangible assets related to the trademark, copyrights and rights to industrial processes conducted within the host country, as opposed to the pharmaceutical's overall lost profits from the State's failure to renew their marketing authorizations. The Tribunal fully sided with Compass Lexecon quantum experts' assessment of damages, and found that they accurately determined the loss to Claimants, estimated at only €3.9 million for the loss of their intangible investments in the one product the Tribunal found Respondent to have breached the Treaty.

Florida Cement and Concrete Antitrust Litigation (Direct Purchaser Matter)

On January 3, 2012, The United States District Court (Southern District of Florida) denied class certification in the direct purchaser action in favor of our clients, several producers of ready-mix concrete in Florida. The Court relied heavily on the opinions of Compass Lexecon expert, Professor Janusz Ordover, in its ruling. In particular, "The Court finds persuasive Dr. Ordover's opinion that when coupled with the substantial variation in the size and presence of Defendants and non-Defendants by geographic area, the fact that competition for Concrete is localized necessitates a localized analysis of potential impact to class members." The Court also found that correlations using highly aggregated price series are not dispositive, again citing the customer-level analysis of Professor Ordover. Mary Coleman, David Weiskopf, and Nauman Ilias, working with a team of research analysts, supported Professor Ordover on this matter. We worked with several legal teams including Bruce Hoffman, Ryan Shores, Melissa Levitt, and Leslie Kostyshak at Hunton & Williams LLP; Shepard Goldfein, Paul Eckles, Matthew Martino, Marissa Troiano, and Nick Danella at Skadden, Arps, Slate, Meagher & Flom LLP; Richard Brosnick and Benjamin Steffans at Butzel Long, and James Cooper and Ryan Watts at Arnold & Porter LLP.

Florida Cement and Concrete Antitrust Litigation (Indirect Purchaser Matter)

On January 3, 2012, The United States District Court (Southern District of Florida) denied class certification in the indirect purchaser action in favor of our clients, several producers of ready-mix concrete in Florida. The Defendants retained Compass Lexecon expert, Professor Janusz Ordover, to testify regarding class certification issues. The Court found that the typicality and adequacy requirements of Rule 23(a) were not satisfied, a finding sufficient to deny class certification. The Court also found that the Plaintiffs failed to show that impact on direct purchasers is susceptible to common proof, consistent with the Court's decision in the direct purchaser action. Lastly, the Court indicated that Plaintiffs' expert erred in assuming a 100% pass-through rate and that such an assumption was counter to industry realities. Mary Coleman, David Weiskopf, and Nauman Ilias, working with a team of research analysts, supported Professor Ordover on this matter. We worked with several legal teams including Bruce Hoffman, Ryan Shores, Melissa Levitt, and Leslie Kostyshak at Hunton & Williams LLP; Shepard Goldfein, Paul Eckles, Matthew Martino, Marissa Troiano, and Nick Danella at Skadden, Arps, Slate, Meagher & Flom LLP, Richard Brosnick and Benjamin Steffans at Butzel Long, and James Cooper and Ryan Watts at Arnold & Porter LLP.

Valuation of Structured Notes in Lehman Bankruptcy

David K. A. Mordecai served as a technical advisor to the Unsecured Creditor Committee (“UCC”) in the Lehman Brothers bankruptcy proceedings. In this capacity, his role involved technical oversight and peer review for a valuation team conducting independent analysis on behalf of the UCC with regard to an extensive portfolio of structured notes with complex payoffs referencing equity, credit, interest rates, and currencies. The valuation of this exotic structured note portfolio, with a notional amount outstanding in excess of \$15 Billion, involved evaluating path-dependent Monte Carlo simulation models that incorporated both econometric analysis of historic market data and market implied forward prices.

France Telecom

On March 31, 2011, the Tribunal de Commerce de Paris ruled on a dispute opposing France Télécom, the French incumbent telecommunications operator, and Numericable. Numericable claimed damages ranging from €157 million to €1.5 billion as compensation for the presumed effects of anticompetitive predatory practices upon its position in the broadband Internet market in France. Compass Lexecon economists, David Sevy and Jeremiah Juts, were retained by France Télécom and their legal advisors, Jacques-Philippe Gunther and Adrien Giraud at Willkie, Farr & Gallagher LLP, to prepare an expert report and testify on the damage claimed by Numericable. The Tribunal awarded €10 million, less than one fifteenth the lower bound of Numericable’s claim, on the mere principle that a competitor would have necessarily been hurt by anticompetitive practices, yet rejected most of the elements put forth by the claimant, citing in support and following all the methodological objections the Compass Lexecon experts raised, including the redundancy between various components of the claim that have been traditionally considered in comparable litigations.

IBM and Neon Enterprises Settlement

In late May 2011, IBM and Neon Enterprise Software LLC reached a settlement widely regarded as very favorable to Compass Lexecon’s client, IBM. At the heart of the dispute was a software product, zPrime, offered by Neon that allowed IBM’s mainframe customers to run certain workloads without incurring software charges in contravention of IBM’s agreements with its customers. As a result of the settlement, the court issued a permanent injunction against Neon, ordering Neon to withdraw its zPrime software from the market, to cancel all existing licenses for zPrime (effectively recalling the product), to ensure that its customers do in fact cease using zPrime, and to transfer to IBM any additional licensing revenue that Neon may continue to receive from its zPrime customers. The injunction also ordered Neon to publicly announce on its website and by press release the immediate withdrawal of zPrime from the market. A team from Compass Lexecon’s Oakland office including Professor Richard Gilbert, Jim Ratliff, Kun Huang, Rebecca Schindel, and Brianne Limber worked on this matter. We worked with Teena-Ann Sankoorikal of Cravath, Swaine & Moore LLP and Eric Stock of Hogan Lovells LLP among others.

Bacon et al. v. Stiefel et al.

Plaintiffs claimed that certain board members of Defendant Stiefel Laboratories failed to provide adequate disclosures in connection with the Company's offer to repurchase shares from employees and asked the Court to certify a class consisting of employees who sold pursuant to the offer. Compass Lexecon Affiliate, Professor Allen Ferrell, submitted a declaration on behalf of Defendants demonstrating that there was no basis in economics for the assumption that all class members would have retained their shares. United States District Court Senior Judge James Lawrence King denied class certification, finding that questions of reliance, investment strategy and damages necessitated individual inquiry and therefore Plaintiffs' proposed class action claims did not predominate. Professor Ferrell was assisted by David Ross and Jonathan Polonsky in Compass Lexecon's Chicago office. We worked with Dave Coulson at Greenberg Traurig, LLP.

CME Opposition to Proposed Clearinghouse Regulation

Compass Lexecon experts Professor Robert Willig, Professor Dennis Carlton, and Dr. Hal Sider assisted CME Group in its successful opposition to a proposed regulation that would require the CME Clearinghouse to transfer open interest to a rival exchange's clearinghouse. ELX, an electronic exchange that trades contracts that are "clones" of those traded at CME Group's Chicago Board of Trade (CBOT), argued that competition was harmed by CBOT rules requiring market participant firms to close all positions through open market transactions. ELX advocated that the Commodities Future Trading Commission (CFTC) require CME Group to transfer open interest to rival clearinghouses. Professors Willig, Carlton and Dr. Sider showed that the proposed regulation (i) would enable ELX to free-ride on prior investments by CBOT thus harm incentives for exchanges to invest in creating contracts and improving trading services; and (ii) would harm competition by enabling traders to circumvent CBOT rules that promote market transparency, liquidity and integrity. After proceedings spanning nearly two years in which the CFTC staff initially endorsed the ELX position, the CFTC concluded that the CBOT's rules did not harm competition and rejected the proposed regulation. CME Group's effort was led by Ben Crisman and John Lyons at Skadden, Arps, Slate, Meagher & Flom LLP.

DVD CCA v. Kaleidescape

On January 9, 2012, the Superior Court of California (County of Santa Clara) granted a complete victory to Compass Lexecon's client, DVD CCA. The Court ruled that Kaleidescape, a manufacturer of DVD movie servers, breached its license agreement with DVD CCA, the organization responsible for licensing the security technology that protects against unauthorized copying of DVD content. Citing extensively to the testimony of Compass Lexecon expert, Professor Richard Gilbert, the Court ruled that the harm suffered by DVD CCA as a result of the breach could not be adequately remedied through money damages and therefore that a permanent injunction was warranted. Professor Gilbert was supported by Bret Dickey and Jim Ratliff, working with Kun Huang, Chris Rhyu and others in Compass Lexecon's Oakland Office. DVD CCA was represented by Steve Zager, Reg Steer, and others at Akin Gump Strauss Hauer & Feld LLP and Mark Weinstein, Mark Lambert, and others at Cooley LLP.

Innkeepers Material Adverse Effect Litigation

In May 2011, a Cerberus fund agreed to purchase 64 hotels from Innkeepers USA Trust for \$1.12 billion. In August 2011, Cerberus notified Innkeepers that it was terminating the agreement pursuant to the Material Adverse Effect clause in the purchase agreement. Innkeepers filed suit claiming Cerberus was in breach of their obligations and that there had been no material adverse effect to its business conditions or prospects. Compass Lexecon's President, Professor Daniel Fischel, was retained by Alan Glickman, Howard Godnick, and Michael Swartz at Schulte Roth & Zabel LLP on behalf of Cerberus to analyze the changes in Innkeepers conditions and prospects after May 2011. After extensive negotiations the purchase was consummated at a substantially reduced price. Professor Fischel was supported by a team headed up by Vince Warther and Jessica Mandel in Compass Lexecon's Chicago office that included Cliff Ang and Tim McAnally.

Moundridge Appellate Decision

On February 25, 2011, the United States Court of Appeals for the District of Columbia affirmed the District Court's 2009 grant of summary judgment to Exxon Mobil, BP America, ConocoPhillips, and Shell, Compass Lexecon's clients. These companies hired Compass Lexecon expert, Professor Joseph Kalt, to assess Plaintiffs' claims that the Defendants had colluded to fix the price of natural gas sold in North America. Professor Kalt's analysis found that there was no evidence of market concentration and, more fundamentally, that there was no credible evidence of any parallel or coordinated conduct among the Defendants with respect to supply or pricing decisions. The initial grant of summary judgment relied heavily on Professor Kalt's analysis which demonstrated that Defendants' behavior simply reflected independent, self-interested conduct. The Appeals Court concurred, emphasizing that the Plaintiffs failed to meet their affirmative burden to present evidence that "tends to exclude the possibility that the alleged conspirators acted independently." We worked with legal teams representing each of the Defendant companies including counsel at White & Case LLP, Fulbright & Jaworski LLP, Howrey LLP and Kirkland & Ellis LLP.

SEC Investigation of Front Running on a "Dark Pool" Trading Platform

Pipeline Trading operated an alternative stock-trading platform (commonly referred to as a "dark pool") where customers' interests in trading large blocks of stock were anonymously matched. In 2011, the United States Securities and Exchange Commission raised concerns about possible illegal front running on Pipeline's trading platform by a Pipeline affiliate. Compass Lexecon worked with Michael Biggers, Michael Clear, and Eric Rieder at Bryan Cave LLP on behalf of Pipeline to analyze the empirical evidence with regard to trading on Pipeline's trading platform. We extensively analyzed trading patterns in the dark pool and the effect of trading by Pipeline's affiliate on customer execution quality. After Compass Lexecon's analyses were presented to the SEC, the SEC dropped its allegations that Pipeline's affiliate was illegally front running customers. The Compass Lexecon team was headed by Vince Warther, Compass Lexecon Affiliate, David K.A. Mordecai, and Neal Lenhoff.

AT&T Mobility

AT&T Mobility entered into a settlement with a proposed consumer class that claimed that AT&T had illegally charged its customers state and local taxes for mobile internet access, despite a prohibition on the collection of taxes during the period from November 1, 2003 through November 1, 2014. Judge Amy St. Eve, of the U.S. District Court Northern District of Illinois, (Eastern Division) approved a preliminary class settlement in the case in August 2011, after which a number of objectors filed briefs in opposition to the settlement agreement. Compass Lexecon expert, Dr. Elisabeth Landes, testified on behalf of the settling parties at the fairness hearing in March 2011. In her opinion approving the settlement, the Court cited Dr. Landes's testimony, stating that "Dr. Landes provided a convincing expert opinion" as to the value of the continuing tax savings to the class as a result of AT&T's no longer collecting the challenged taxes. Compass Lexecon was retained by Bartimus, Frickleton, Robertson & Gorny.

J. Crew Acquisition Litigation

After J. Crew Group, Inc. agreed to be acquired by a private equity group including TPG Capital, Leonard Green, and the company's CEO Mickey Drexler, shareholders filed suit claiming that the acquisition price was too low, the process the Board of Director's pursued was improper, the deal provisions were unfair, and the disclosures made by the company were misleading and inadequate. Compass Lexecon's President, Professor Daniel Fischel, was retained on behalf of defendants to analyze the economic evidence with regard to the plaintiffs' claims. J. Crew subsequently entered into an agreement to settle the lawsuit challenging the pending \$3 billion acquisition. The favorable settlement included a series of relatively minor concessions by J. Crew, such as extending its "go-shop" period, reducing its termination fee in certain circumstances, eliminating certain matching rights provisions, and providing that a majority of unaffiliated shareholders must approve the merger which was then overwhelmingly approved. Professor Fischel was assisted by David Ross, Laurel Van Allen, George Hickey and others in Compass Lexecon's Chicago office. We worked with Meredith Kotler at Cleary Gottlieb Steen & Hamilton LLP and Wes Earnhardt at Cravath, Swaine & Moore LLP.

Sunbeam Television Corp. v. Nielsen Media Research, Inc.

In January 2011, the U.S. District Court (Southern District of Florida) granted summary judgment in favor of Compass Lexecon's client, Nielsen, on Sunbeam's antitrust claims. Sunbeam, operator of the FOX television affiliate in the Miami-Fort Lauderdale area, alleged that Nielsen, a provider of television audience measurement services, had unlawfully maintained monopoly power through, among other practices, the introduction of a new audience measurement technology (which adversely affected Sunbeam's ratings and advertising revenue). Nielsen retained Professor Daniel Rubinfeld and Compass Lexecon to evaluate causation and damages issues. Consistent with Professor Rubinfeld's opinions, the Court concluded that Sunbeam failed to demonstrate that any of Nielsen's allegedly anticompetitive practices had excluded a viable competitor or caused Sunbeam antitrust injury in the form of decreased advertising revenue. Compass Lexecon was retained by Aidan Synnott at Paul, Weiss, Rifkind, Wharton & Garrison LLP. Professor Rubinfeld was supported by Bret Dickey, Kun Huang, and a team in the Oakland office.

JPMorgan Chase Debit Card Fee Litigation

On February 6, 2012, JPMorgan Chase reached an agreement with a potential class of debit cardholders who allege that JPMorgan Chase charged excessive overdraft fees on debit cards. Plaintiffs' claims stem from the bank's method of posting transactions in a given day from highest to lowest amount rather than an alternative posting order. The posting order can affect the number of overdraft fees because account balances are more likely to go negative when larger transactions are processed before smaller transactions. JPMorgan Chase retained Robert Willig to address the class certification question of whether there exists a common methodology for determining class-wide damages. Dr. Willig filed an expert report in which he showed that an individual's checking and debit card transactions are affected by posting order. Therefore, determination of damages would require an individualized inquiry into each debit cardholder's likely transactions under an alternative posting order. The settlement with plaintiffs was reached prior to the court's ruling on class certification. The Compass Lexecon team included Neal Lenhoff, Lynette Neumann, Eugene Orlov, and Bradley Reiff. Compass Lexecon worked with David Lesser and Christopher Lipsett of WilmerHale.

US Airways vs. USAPA

In September 2011, a U.S. District Court judge enjoined the pilots union at US Airways from orchestrating an illegal job action aimed at disrupting the carrier's flight operations. Compass Lexecon's Darin Lee testified on behalf of US Airways at the hearing. Dr. Lee's expert report and testimony analyzing the statistical impact of pilot job actions on the carriers' on-time performance and cancellations were frequently cited in the Judge's order. A Compass Lexecon team including Eric Amel, Respina Jani, Ethan Singer, and Diane Lee in our Boston office supported Dr. Lee. We worked with Robert Siegel, Mark Robertson, and Mike McGuinness at O'Melveny & Myers LLP, who successfully represented US Airways.

Cantor Fitzgerald v. Port Authority of New York and New Jersey

Cantor Fitzgerald, a financial services company that had offices in the World Trade Center, claimed that it suffered nearly \$500 million in business interruption damages, due to the February 1993 terrorist bombing of the building, for which the Port Authority was the landlord. Compass Lexecon was retained by Richard Rothman and Salvatore Romanello at Weil, Gotshal & Manges LLP to evaluate the damages claim. Compass Lexecon's President, Professor Daniel Fischel, filed an expert disclosure that involved trade-by-trade analysis of Cantor's revenues and showing that Cantor's actual damages due to the bombing were actually less than \$4 million. The Port Authority ultimately prevailed on liability and concluded the case successfully. Professor Fischel was supported by a team of economists in Compass Lexecon's Chicago office, including Hal Sider, Dzmitry Asinski, and Todd Kendall.

Fresh Del Monte Pineapple Litigation

On November 29, 2011, Judge Donald W. Hafele of 15th Circuit Court in Florida denied certification of a class of indirect purchasers of Fresh Del Monte Pineapples in Florida. On

March 7, 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 had 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.

Harbinger Capital Partners

Compass Lexecon was retained by Bruce Birenboim at Paul, Weiss, Rifkind, Wharton & Garrison LLP on behalf of their client Harbinger Capital Partners in a case involving a suit by NACCO Industries, Inc. alleging that Harbinger acquired shares of Applica at less than fair value. NACCO claimed that it suffered damages resulting from the forgone value of the synergies that it could have gained through a merger with Applica. The case ultimately settled favorably for Harbinger, at a fraction of the damages NACCO was seeking. Compass Lexecon Affiliate, Professor Allen Ferrell provided expert testimony on the value of the Applica shares and Compass Lexecon Affiliate, Professor Kenneth Lehn, provided expert testimony on the value of the alleged synergies NACCO would have gained through a merger with Applica. Professors Ferrell and Lehn were supported by Dr. Atanu Saha and a team of Compass Lexecon economists in the New York office including Erica Liang and Carina Chambarry.

IDEXX Laboratories

On November 17, 2011 the UK Office of Fair Trading (OFT) announced that it was closing an investigation into the conduct of IDEXX Laboratories and published its "No Grounds for Action" decision. A Compass Lexecon team of Justin Coombs, David Shaharudin, and Sergey Khodjamirian advised IDEXX and its counsel, including Edward Miller and Angela Gregson at Reed Smith LLP. The OFT investigated claims that IDEXX, a manufacturer of lab testing equipment and provider of testing services to vets, was using bundled discounts and other incentives to foreclose competitors. Compass Lexecon provided a report to the OFT which showed that IDEXX's discounts and other incentives were not capable of excluding equally-efficient competitors.

Lehman Auction Rate Securities Arbitration

Compass Lexecon Affiliate, David K.A. Mordecai, testified regarding the dynamics of the auction rate securities market before, during, and following the financial crisis at a FINRA arbitration hearing on behalf of Lehman Brothers, Inc. and certain of its employees. A former corporate client of Lehman's asserted several causes of action against Lehman, including breach of contract, suitability, and negligent misrepresentation/deceit related to the recommendation and purchase of auction rate securities. Following a two-week hearing in Houston, the three-member panel returned a decision denying Claimant's claims in their entirety. Compass Lexecon worked with Philip Cook, Michael Wilson, and Haley McIntosh at Jones Day. Dr. Mordecai was supported by Kevin Dages and George Hickey in Compass Lexecon's Chicago office.

Primerica Regulatory Proceeding

The Department of Labor proposed a rule extending the definition of "fiduciary" under ERISA to cover a wider range of investment brokers and advisers. Working with Lewis Clayton and others at Paul, Weiss, Rifkind, Wharton, and Garrison LLP, as well as in-house counsel at Primerica, Compass Lexecon's President, Professor Daniel Fischel and Dr. Todd Kendall authored a white paper on the proposed rule, submitted as a comment to the Department of Labor (DOL). Professor Fischel and Dr. Kendall's paper criticized the cost-benefit study performed by the DOL for not properly accounting for many costs that would likely follow from the proposal, and for overstating the potential benefits of the proposal. The DOL subsequently withdrew the proposed rule. In an editorial applauding the decision, the *Wall Street Journal* wrote that the Department "may also have seen defeat coming in courts that are showing less tolerance for sloppy rule-making."

Surface Transportation Board Testimony

In a March 2011 decision, the Surface Transportation Board, relying on the testimony of Compass Lexecon experts, Professor Joseph Kalt and Dr. Glenn Mitchell, found that BNSF Railway's coal containment polices were reasonable. Professor Kalt and Dr. Mitchell provided written testimony to the Board on behalf of BNSF in opposition to requests that certain of BNSF's coal containment polices be deemed unreasonable. Their testimony focused on proper policymaking in situations of uncertainty, the appropriate application of the Precautionary Principle, and the role and limits of cost-benefit analyses. Professor Kalt and Dr. Mitchell concluded that the BNSF policy requiring shippers to contain (rather than clean up) coal dust emissions was a reasonable and efficient practice. Compass Lexecon worked with Sam Sipe and Tony LaRocca at Steptoe & Johnson LLP. Professor Kalt and Dr. Mitchell were assisted by Catherine Barron in Compass Lexecon's Washington, DC office.

US Airways Transition Dispute #10

In September 2011, a System Board of Adjustment denied a grievance filed by the union representing US Airways' pilots challenging the Company's closure of its Boston, Las Vegas, and LaGuardia pilot domiciles. Compass Lexecon's Darin Lee testified at the arbitration, demonstrating that the Company's decision to close the domiciles did not violate its Collective

Bargaining Agreement because it would enable the carrier to more productively utilize its pilot workforce by shifting reserve pilots to other, more efficient domiciles. Dr. Lee was supported by Ethan Singer in Compass Lexecon's Boston office and worked with Robert Siegel and Guy Brenner at O'Melveny & Myers LLP.

Standard and Poor's CUSIP Service Bureau

On November 17, 2011 the European Commission announced it was closing an Article 102 investigation into the CUSIP Service Bureau operated by Standard and Poor's. The Commission had investigated complaints that the CUSIP Service Bureau was charging excessive prices and closed the case following commitments from Standard and Poor's regarding its future pricing. A joint Compass Lexecon and FTI Consulting team of Jorge Padilla, Justin Coombs, Danny Ryan, Navin Waghe, David Shaharudin, and Patrick Coen advised Standard and Poor's and its lawyers Alex Nourry, Simon Deeble, and others at Clifford Chance LLP.

BankAtlantic Bancorp, Inc. Securities Litigation

Plaintiffs filed a class action securities case against BankAtlantic Bancorp, Inc. and several of its officers alleging that Defendants misrepresented and concealed the true quality and consequent value of certain assets in BankAtlantic's loan portfolio. Ultimately, the Court ruled that Plaintiffs did not present evidence to support a finding of loss causation and damages. Mike Keable led a team from Compass Lexecon's Chicago office, including Laurel Van Allen and Sam Hollander, in assisting the Defendants. We worked with Gene Stearns, Adam Schachter, and Grey Mead at Stearns Weaver Miller Weissler Alhadeff & Sitterson P.A.

Century 21 Franchisee Litigation

A class of Century 21 franchisees brought suit against Century 21 and Cendant, claiming they failed to provide Century 21 franchisees with agreed-upon support and advertising services. Plaintiffs' expert claimed that class members suffered damages from the alleged misconduct of more than \$100 million due to alleged reductions in the commissions earned by class members' agents. Compass Lexecon's President, Professor Daniel Fischel, was retained by Joseph Sacca and Jim Brown at Skadden, Arps, Slate, Meagher & Flom LLP on behalf of Century 21 and Cendant to analyze the alleged damages, and Professor Fischel filed a report responding to plaintiffs' expert. Century 21 and Cendant settled with plaintiffs on favorable terms following the submittal of Professor Fischel's report. Professor Fischel was supported by a team headed up by Vince Warther and Tom Stemwedel in our Chicago office.

Settlement of Kraft Foods Global Inc. ERISA Class Actions

On February 23, 2012, Kraft Foods Global Inc. and plaintiffs representatives announced they had reached a tentative settlement of two proposed class actions. Plaintiffs had alleged, among other things, that the fiduciaries responsible for overseeing a 401(k) plan for Kraft employees and retirees had breached their duties under ERISA by, among other things, offering imprudent investment options in the company's retirement plan. Plaintiffs' expert claimed that inclusion of two allegedly imprudent investment funds damaged the retirement plan by between

\$109.4 million and \$179.6 million, and that the retirement plan suffered additional losses of \$28.5 million from excessive fees. In his rebuttal report, Compass Lexecon's David Ross opined that Plaintiffs' expert's calculations were fundamentally flawed and that the plan's losses, assuming liability, ranged from \$0 to \$22 million depending on the alternative investment. The tentative settlement provides for a \$9.5 million monetary payment as well as non-monetary relief. Mr. Ross was assisted by Laurel Van Allen and Gina Vinogradsky in Compass Lexecon's Chicago office. Kraft Foods Global Inc. was represented by Ronald Kramer, Ian Morrison, and Amanda Sonneborn at Seyfarth Shaw LLP.

Amaranth

Compass Lexecon expert Dr. Atanu Saha was retained by Stephen Senderowitz at Winston & Strawn LLP to serve as an expert witness in a class action lawsuit against Amaranth. The Plaintiffs alleged that Amaranth, through their trading of natural gas futures, manipulated natural gas futures prices for select contracts for approximately seven months in 2006. Dr. Saha submitted two expert reports and was deposed in this matter. The parties agreed to a settlement for a small fraction of the Plaintiffs' claims. Dr. Saha was assisted by Hans-Jürgen Petersen, Elizabeth Wall, and Carina Chambarry in our New York office.

Greek Spectrum License

The Greek telecommunications regulator EETT was considering conditions for renewing GSM mobile phone licenses and Compass Lexecon's client Wind Hellas was concerned that its own GSM licenses would be sold off in an auction in which it would be outbid by its larger competitors, resulting in a position of unsustainably high network costs. Working together with management consulting firms Altman Vilandrie and Solon Mangement Consulting, Compass Lexecon economists Philip Kalmus and Bertram Neurohr showed that if an open auction were conducted, larger competitors would have anti-competitive incentives to outbid Wind Hellas, creating and benefitting from a less competitive market environment ex-post. EETT decided to reserve 75% of the relevant Wind Hellas spectrum. In addition to Philip Kalmus and Bertram Neurohr, the Compass Lexecon team included Darin Lee of the Boston office and Oscar Volij of Ben Gurion University.

Groupement des Cartes Bancaires

On July 7, 2011, following a two-year investigation and regulatory proceedings, Autorité de la Concurrence, the French NCA, issued a decision regarding the level of card and ATM interchange fees applied by Groupement des Cartes Bancaires (GCB) for card payment and cash withdrawal in France. The Compass Lexecon team, led by David Sevy and involving Laure Schulz and Patricia Perennes from the Paris office, instructed by GCB and its legal advisors, Alain Georges and others at Latham & Watkins LLP, as well as Luc Gyselen from Arnold & Porter LLP, submitted three main economic documents on cost-based evaluations of the interchange fees and a tourist test approach, the latter in response to data on the relative costs of cash and card payment submitted by plaintiffs. The French NCA accepted a cap on card interchange fees that was consistent with the findings of our tourist test approach. The cap on ATM withdrawal interchange fee was set in reference to cost levels identified in our study.

Fonterra Regulatory Study

Compass Lexecon experts, Professor Robert Willig, Meg Guerin-Calvert and Andres Lerner were commissioned by Fonterra to conduct an economic evaluation of whether the Dairy Industry Restructuring Act (DIRA) of 2001 has been effective in ensuring competitive and economically efficient dairy markets in New Zealand. A primary goal of DIRA was to foster a competitive environment in which Fonterra faces effective competitive constraints both in the purchase of raw milk from dairy farmers and in markets for dairy outputs. Compass Lexecon experts concluded that empirical evidence on the dairy processing market and across the dairy supply chain (including upstream dairy farming, downstream domestic dairy markets, and dairy exports) is consistent with DIRA achieving its intended goal of promoting competition and economic efficiency.

Jarra Creek v. Corrugated Fiberboard Manufacturers

Jarra Creek was the lead plaintiff for a class of purchasers of corrugated fiberboard products (“CFP”) who filed suit in the Federal Court of Australia in 2006 alleging a price fixing and customer allocation agreement between the two largest CFP manufacturers in Australia, Amcor Ltd. and Visy Industries Pty. Ltd. Maurice Blackburn Lawyers, acting for Jarra Creek, retained Compass Lexecon expert, Professor Daniel Rubinfeld, to address liability issues and to assess potential damages arising from the alleged cartel. After Professor Rubinfeld issued two reports detailing Amcor’s and Visy’s liability and using complex econometric models to estimate the amount the class was overcharged during the cartel, the case was settled in 2011 for approximately US\$100 million plus all costs. The settlement was the highest payout for price-fixing claims in Australian legal history and over three times larger than the next largest payout. Professor Rubinfeld was supported by Dr. Duncan Cameron in the Los Angeles office. Compass Lexecon worked with Rebecca Gilsenan, Richard Ryan, Min Guo, and others at Maurice Blackburn.

Vodafone España v. Telefónica

In 1997, the *Comisión Nacional de Competencia* (CNC, the Spanish National competition authority) imposed a €4.5 million fine on the Spanish incumbent telecom operator, Telefónica, for an abuse of its dominant position in the Spanish mobile telephony market. According to the CNC, Telefónica signed exclusive distribution agreements to delay the entry of competitors in the market. In 2009, Vodafone España (formerly, Airtel Móvil) claimed compensation from Telefónica for lost profits. Compass Lexecon was retained by Telefónica to assess an expert report on the quantification of the alleged damages. Our team, which included Alejandro Requejo and Patricia Lorenzo, demonstrated that the available evidence did not allow a conclusion that the alleged abuse of dominant position had an effect on Telefonica’s competitors and, therefore, that Vodafone did not suffer any damage. Compass Lexecon’s experts testified before the Spanish Court of First Instance. In April 2011, the Court rejected the claim for damages.

Employment Discrimination Damages Analysis

Compass Lexecon expert David Weiskopf was retained by Joseph Meadows of Arnold & Porter LLP to conduct a damages analysis on behalf of an individual who was allegedly the victim of employment discrimination and physical abuse. Supported by Doja Khandakar of the Washington office, Dr. Weiskopf prepared a detailed damages analysis and testified at a hearing regarding the results of his analysis. The judge awarded our client a total of \$6 million in damages, including \$1.6 million in economic damages that closely matched the figure computed by Dr. Weiskopf.

MERGERS, ACQUISITIONS, AND JOINT VENTURES

Seagate – Samsung Transaction

Seagate's acquisition of Samsung's Hard Disk Drive (HDD) business closed in December 2011 after announcements by several regulatory authorities that their investigations closed without any determination that the transaction would harm competition. The European Commission announcement occurred in October, and the U.S. FTC voted unanimously to close their investigation in December. This transaction also required review by Chinese competition authority (the Anti-Monopoly Bureau of the Ministry of Finance and Commerce, or MOFCOM), which rendered its decision in December. Seagate retained Compass Lexecon experts Daniel Rubinfeld in the U.S. and Jorge Padilla in Europe to conduct analyses of competition in the HDD industry and to provide findings to various regulators. Glenn Mitchell, in the Los Angeles office, managed the analysis, with the assistance of Duncan Cameron. Lorenzo Coppi managed the team in the London office. The Compass Lexecon team analyzed bidding and competition, pricing, and innovation among HDD manufacturers and developed a number of empirical results showing that the proposed transaction would not lessen competition, increase prices or decrease innovation. Compass Lexecon experts made presentations to regulatory authorities in the U.S., China and Europe. We worked with both U.S. and Europe based counsel, headed up by Scott Sher at Wilson Sonsini Goodrich & Rosati in Washington, DC and Philip Mansfield at Allen & Overy LLP in London and Brussels.

Southwest and AirTran Merger

On April 26, 2011, the Department of Justice (DOJ) announced that it closed its investigation of the proposed acquisition of AirTran Airways by Southwest Airlines Company. Compass Lexecon was retained by Southwest, through its counsel Steven Sunshine at Skadden, Arps, Slate, Meagher & Flom LLP, to provide support for Southwest's efforts to secure regulatory approval. Our team, which included Professor Dennis Carlton, Chip Bamberger, Theresa Sullivan, Bryan Keating, Lynette Neumann, Nancy Bonn, Antara Dutta, Deidre Ciliento, and Jeff Raileanu, quantified the consumer benefits and assessed potential competitive harms arising out of the transaction. Using sophisticated econometric modeling and working closely with network planners at Southwest, we demonstrated that the merger would result in substantial consumer benefits through the enhancement of existing service and the introduction of new service. The team also dealt with novel issues arising out of the merger of two low cost carriers

(LCCs). In particular, we modified econometric models typically used by the DOJ to assess competitive effects on overlap routes to also show that the introduction of new LCC service would lower fares on many routes. The DOJ acknowledged these consumer benefits as the reason that it did not challenge the acquisition.

UPM Acquisition of Myllykoski and Rhein Papier

On September 2, 2011 the European Commission announced that it had unconditionally cleared UPM's acquisitions of rival paper manufacturers Myllykoski and Rhein Papier. The clearance followed an extensive Phase-II investigation by the Commission during which it had issued a Statement of Objections opposing the merger. A Compass Lexecon team of Jorge Padilla, Janusz Ordover, Justin Coombs, Urs Haegler, Enrique Andreu, Wim Koevoets, and Ingrid Liedorp, advised UPM and their lawyers, Freshfields Bruckhaus Deringer LLP. Compass Lexecon submitted papers to the Commission that analyzed market definition, competitive effects, and the expected efficiencies arising from the transaction. These papers included extensive econometric analyses of substitution between different paper grades and a simulation model of the expected impact of the merger on prices. Compass Lexecon worked with Frank Montag, Andreas von Bonin, and Martin McElwee at Freshfields Bruckhaus Deringer LLP.

Delta Air Lines – US Airways Slot Swap

Compass Lexecon experts evaluated the impact on consumer welfare of Delta Air Lines' and US Airways' swap of landing slots at LaGuardia Airport and Reagan Washington National Airport. Compass Lexecon expert, Professor Robert Willig was retained by Donald Flexner, Jim Denvir and Elliott Seiden at Boies, Schiller & Flexner LLP, and Ben Hirst and Peter Kenney at Delta Air Lines. Compass Lexecon expert Professor Janusz Ordover was retained by Rick Rule and Andrew Forman at Cadwalader, Wickersham & Taft LLP, and Stephen Johnson and Howard Kass of US Airways. Professors Willig and Ordover, supported by a Compass Lexecon team that included Theresa Sullivan, Mark Israel, Steve Peterson, Eugene Orlov, and Deidre Cilento, evaluated the competitive effects and consumer benefits arising from the asset exchange. The deal won approval from the Department of Transportation, and the Department of Justice has not challenged it; Delta and US Airways completed the transaction in December 2011.

Delta – Virgin Blue Antitrust Immunity

On June 10, 2011, the US Department of Transportation (DOT) approved the application of Delta Air Lines and affiliates of the Virgin Blue Group for antitrust immunity which will allow the applicants to form an alliance and coordinate flights between the United States and Australia. As part of Delta's response to an adverse September 2010 decision, Delta retained Compass Lexecon to assess the consumer benefits that are likely to arise from the joint venture. Professor Robert Willig, Mark Israel, Bryan Keating, and Jon Orszag, supported by Jeff Raileanu in Compass Lexecon's Washington, DC office, filed two reports with the DOT that made use of sophisticated econometric modeling to demonstrate the substantial benefits that the joint venture will generate. The DOT recognized the substantial public benefits in granting approval. In its press release announcing the approval, Delta highlighted the benefits estimated by Compass Lexecon.

Asda Wal-Mart Acquisition of Netto Foodstores

Compass Lexecon expert Neil Dryden was retained by Asda Wal-Mart in the context of its acquisition of Netto Foodstores Limited. Compass Lexecon assisted in analyzing approximately 12,000 face-to-face surveys and implementing a more complex form of the illustrative price rise (IPR) formula than had been used previously to account for the asymmetry of Asda and Netto. The OFT accepted the extensive survey evidence and the IPR analysis, stating “The OFT had considerable interaction with the parties on the calculation of [the] input variables and accepts the parties’ approach”. The Compass Lexecon team also assisted by assessing efficiencies. The OFT accepted efficiencies in only the second merger case ever, stating “Overall the OFT is persuaded to the requisite high standard that some purchasing synergies will arise as a result of the proposed merger”. The OFT cleared the merger subject to local divestments in March 2011. The Compass Lexecon team also included Erik Langer and Segye Shin in our London office. We worked with Bertrand Louveaux at Slaughter and May.

Unilever’s Acquisition of Alberto Culver

A Compass Lexecon team including Professor Dennis Carlton, Mary Coleman, Jonathan Bowater, and Loren Poulsen assisted Deborah Feinstein at Arnold & Porter LLP, Unilever’s outside counsel, in obtaining U.S. Department of Justice approval for Unilever’s acquisition of Alberto Culver. The Compass Lexecon team worked with counsel to draft several white papers outlining the economic evidence which showed that the acquisition would not likely have any anticompetitive effects in the mid-tier shampoo, conditioner, and styling aids segments. The transaction was then approved by the DOJ subject to an agreement to divest the VO5 brand and Suave Rave Hairspray brand to resolve concerns in the retail store value shampoo/conditioner and hairspray segments.

Datatel – SunGard Higher Education Merger

On December 7, 2011, Datatel and SunGard Higher Education announced that the proposed combination of the two companies cleared Department of Justice review. Datatel and SunGard Higher Education both produce enterprise resource planning (ERP) software for educational institutions worldwide. Professor Dennis Carlton, Bradley Reiff, and Lynette Neumann of Compass Lexecon conducted analyses of the competitive conditions in the ERP for higher education industry, showing that the proposed combination was unlikely to reduce competition. They presented their results at the Department of Justice and in a report submitted to the DOJ. Following submission of the report, the Department decided to terminate its investigation without conditions. Compass Lexecon worked with legal teams headed by Peter Thomas at Simpson Thatcher & Bartlett LLP (representing Datatel) and John Harkrider at Axinn Veltop Harkrider LLP (representing SunGard Data Systems).

Western Digital – Hitachi Transaction

On March 5, 2012, the Federal Trade Commission cleared Western Digital Corp.’s acquisition of Hitachi Global Storage Technologies. The companies produce hard disk drives

(HDD) for use in computers and other devices. In a settlement with the FTC, the companies agreed to divest to Toshiba Corp. assets used to produce 3.5” HDDs for desktop computers. In November 2011, the European Commission approved the acquisition with divestiture of certain assets. Along with Seagate’s acquisition of Samsung Electronics Co.’s HDD business, the Western Digital – Hitachi transaction reduces the number of HDD producers from 5 to 3. Professor Dennis Carlton, Bradley Reiff and Lynette Neumann of Compass Lexecon were retained by Western Digital to analyze the competitive effects of the proposed acquisition and to evaluate its efficiencies. They presented their findings at the Federal Trade Commission and in a report presented to the European Commission. Compass Lexecon worked with legal teams headed by George Cary at Cleary Gottlieb Steen & Hamilton LLP (representing Western Digital in the U.S.), Francisco Enrique Gonzalez-Diaz at Cleary Gottlieb Steen & Hamilton LLP (representing Western Digital in Europe), and Stephen Smith at Morrison & Foerster LLP (representing Hitachi Global Storage Technologies).

Advantest Acquisition of Verigy

On June 10, 2011, the U.S. Department of Justice closed its investigation of Compass Lexecon’s client Advantest’s acquisition of Verigy, two of the three largest suppliers of automated semiconductor testing systems. Initial concern over the deal centered on significantly increased concentration and the removal of a major supplier. Advantest and Verigy maintained that the deal would benefit customers by promoting continued innovation and competition. Compass Lexecon assisted Advantest’s counsel, Alec Chang, Thomas Pak and Steven Sunshine at Skadden, Arps, Slate, Meagher & Flom LLP, and conducted a detailed empirical analysis that combined extensive technical and industry fact gathering with detailed econometric analysis of transactions, competitive interactions, and margins. Compass Lexecon Affiliate, Professor Richard Gilbert, Kevin Green, and Glenn Mitchell headed up a team from the Century City and Los Angeles offices that included Aren Megerdichian, Steve Stanis, Robert Oandasan, Todd Bettisworth and Matt Krietzberg.

Global Crossing – Level 3 Transaction

Compass Lexecon experts Neil Dryden and Jon Orszag were retained by Level 3 and Global Crossing as part of the merger review process at the UK Office of Fair Trading and the U.S. Department of Justice. The parties overlapped in the provision of Internet connectivity, global telecommunication and carrier services. Despite some customer concerns, the merger was cleared during “phase one” in both jurisdictions. The Compass Lexecon team also included Scott Holbrook and Rob Connors in our London and Oakland offices. We worked with John Colahan and Tad Lipsky at Latham & Watkins LLP and Matt Evans at Jones Day.

Grupo Bimbo Acquires Sara Lee Corp’s North American Bakery Business

In October 2011, the Department of Justice cleared, with some required divestitures, the acquisition by Grupo Bimbo of Sara Lee Corp.’s North American bakery business. The Compass Lexecon team, led by expert Professor Daniel Rubinfeld, was supported by Chris Cavanagh, Mark Rodini, and Dan Ingberman. Compass Lexecon worked closely with White & Case LLP

partners George Paul and Noah Brumfield, as well as a Cleary Gottlieb Steen & Hamilton LLP team that included Mark Leddy, Jeremy Calstyn, and Kathy Bradish.

Hayes Lemmerz – Iochpe-Maxion Merger

Professor Janusz Ordover, Jith Jayaratne, and Yair Eilat, supported by a Compass Lexecon team from our Oakland office were retained by Colin Kass and Rhett Krulla at Proskauer Rose LLP, and Kenneth Schwartz and James Keyte at Skadden, Arps, Slate, Meagher & Flom LLP, to assist in securing FTC approval for a merger between Hayes Lemmerz and Iochpe-Maxion, the top two suppliers of automotive steel wheels in the United States. Compass Lexecon assisted in formulating arguments that suggested, based on economic theory and industry research, that substitution from other types of wheels and the threat of entry would curb any attempt to raise wheel prices following the merger. These arguments and others were presented to the FTC, which granted early termination in December 2011.

IMS Health – SDI Merger

In December 2011, the Federal Trade Commission approved IMS Health's acquisition of SDI Health, bringing together two of the largest data providers servicing the pharmaceutical industry. Compass Lexecon was retained by David Gelfand at Cleary Gottlieb Steen & Hamilton LLP on behalf of IMS Health and also worked closely with Michael Sohn and Arthur Burke at Davis Polk & Wardwell LLP, who represented SDI Health. In its investigation, the FTC expressed concern that the transaction would reduce the number of firms providing "commercial APLD" services, data services making use of anonymized patient level data for commercial research on the success of various pharmaceutical products, from three to two. Compass Lexecon experts, Professor Dennis Carlton, Mark Israel, and Antara Dutta, with support from Maria Stoyadinova, submitted a white paper and made presentations to the FTC demonstrating that other firms not currently providing commercial APLD services could easily enter the commercial APLD space to discipline any attempt by the merging parties to raise prices for these services. On the basis of these and related arguments, the FTC approved the transaction with no divestitures or conditions on APLD services, requiring only divestiture of two of SDI's much smaller "audit" products.

Ineos – BASF Transaction

Compass Lexecon economists Mary Coleman and David Weiskopf were retained by Garret Rasmussen and Antony Kim at Orrick, Herrington & Sutcliffe LLP to conduct an economic analysis of the proposed joint venture between Ineos and BASF in the styrenics industry. Supported by a Compass Lexecon team in Washington, DC including Syre Khan, Georgi Giozov, and Doja Khandakar, Compass Lexecon interacted extensively with the parties and presented a number of economic analyses to staff at the United States Federal Trade Commission. The FTC ultimately decided not to issue a second request, terminating its investigation of the proposed joint venture.

Citrovita and Citrosuco Transaction

On May 5, 2011, the European Commission (EC) cleared without conditions the proposed combination of Citrovita (Votorantim group) and Citrosuco (Fisher group) to form the world's largest wholesale supplier of orange juice. Unconditional clearance was awarded after an in-depth, Phase II review of the transaction by the EC. Compass Lexecon economists were retained by Marc Pittie of Bredin Prat for both parties. The Compass Lexecon team included David Sevy (Paris), Nadine Watson (Madrid) and Jeremiah Juts (Paris) and received support from Kirsten Edwards (London), Enrique Andreu (Madrid) and Catalina Campillo (Madrid). We provided economic analyses relating to market definition (at wholesale and retail levels) and potential unilateral effects. Statistical and econometric analyses emphasized the likely persistence of significant competitive constraints exerted by other products and by the two other main orange juice suppliers on the combined entity after the merger. In particular, we demonstrated that competitors would not be limited by capacity constraints to offset any declines in production volumes of the merged entity.

United Health's Acquisition of XL Health

Jon Orszag and Guillermo Israilevich were retained by Bruce Prager at Latham & Watkins LLP and John Harkrider at Axinn, Veltrop and Harkrider LLP to assist in securing DOJ approval for UnitedHealth Group's \$2 billion acquisition of XL Health, a privately owned provider of Medicare Advantage plans with a focus on managing care of Medicare members with special needs (*e.g.*, multiple chronic conditions). Compass Lexecon assisted in formulating arguments that suggested limited overlap markets between the two health insurers and dynamic competition with frequent entry and exit into different types of Medicare Advantage plans. These arguments and others were presented to the DOJ, which declined to block or further investigate the deal after the premerger review required under the Hart-Scott-Rodino Act. Orszag and Israilevich were assisted by Maria Stoyadinova, Katie Milliken, and Ben Wagner in the Washington, DC office.

DAK Americas Acquisition of Eastman Chemical and Wellman Inc.

Compass Lexecon assisted with the successful regulatory approval of DAK Americas' acquisitions of two North American PET businesses. DAK Americas, a wholly owned subsidiary of Alfa S.A.B. de C.V. of Monterrey Mexico, acquired Wellman, Inc.'s PET business and Eastman Chemical's PET, PTA and related performance polymers businesses. Both transactions were cleared by the FTC without a request for additional information. We developed evidence of the global trade in various chemical inputs and final products and analyzed the speed of trade flows by examining the market dynamics following Hurricane Katrina, which affected the supply of key inputs for PET production. Professor Dennis Carlton and Rick Flyer headed the Compass Lexecon team, which included Colleen Loughlin, Todd Kendall and Dan Stone. We were retained by Steve Newborn at Weil, Gotshal & Manges LLP, and worked with his team that included Jonathan Sickler and Jeff White.

Gaz de France Suez – International Power Transaction

A team of Boaz Moselle, Philip Kalmus and Bertram Neurohr advised the Abu Dhabi Regulation & Supervision Bureau in a merger clearance procedure of Gaz de France Suez / International Power. Both merging parties have traditionally been active participants in the bidding market for building and operating of new gas power and desalination capacity in the emirate. Compass Lexecon estimated the competition effects of the merger using structural econometrics of auction data and provided advice on potential remedies.

Dean Foods – Foremost Farms Transaction

On March 29, 2011, the U.S. Department of Justice cleared Dean Foods' acquisition of Foremost Farms. The two companies process milk that is sold in Illinois, Michigan, Minnesota and Wisconsin. In a settlement with the DOJ, Dean Foods agreed to divest a plant in Waukesha, WI. Professor Dennis Carlton, Bradley Reiff and Lynette Neumann of Compass Lexecon were retained by Dean Foods to conduct econometric analyses of the proposed merger's likely effects on prices for fluid milk and milk sold to school districts. Compass Lexecon worked with a legal team headed by Paul Denis and Steven Bradbury at Dechert LLP.

Stericycle – Healthcare Waste Solutions Merger

Meg Guerin-Calvert, supported by a Compass Lexecon team including David Fenichel, Jeff Raileanu, and Richard Mills, provided economic analysis in the proposed acquisition of Healthcare Waste Solutions (HWS) by Stericycle in the medical waste collection, transportation, and treatment industry. The focus of the work was on relevant geographic markets, competitors, and the potential for entry in a number of Eastern states. Compass Lexecon worked closely with the parties and their counsel throughout the second request process, contributed analyses to written submissions to the Department of Justice, and participated in presentations before the agency. The deal was cleared subject to the divestiture of a transfer station in the NYC area. Stericycle was represented by David Clanton, Brian Burke, and David Laing at Baker & McKenzie, and HWS was represented by William Kolasky, James Lowe, and Andrew King at WilmerHale.

APPOINTMENTS, PRESENTATIONS & PUBLICATIONS

Compass Lexecon experts have been active in making presentations/speeches to various groups and organizations. Some of the appointments, presentations and/or speeches in the past year include:

- Compass Lexecon hosted its UK Competition Policy Weekend in Hampshire, March 18 and 19, 2011 where panels discussed developments in merger control, competition in the financial sector, and pricing strategies and compliance. Our keynote speaker was Bernadette Kelly from the Department for Business, Innovation & Skills (BIS). Panelists and attendees were from the UK Competition Commission, the British Institute of International and

Comparative Law, the Office of Fair Trading, Ofcom, Lloyds Banking Group and several major law firms and competition chambers.

- Compass Lexecon offered four panels at the Competition Policy Forum in Lake Como, Italy, October 28-30, 2011 covering several law and economic topics of significant practical and policy relevance. The first panel discussed whether the European Commission had raised the bar in merger control; the second panel dealt with competition and cooperation in the airline sector; the third panel examined the quantification of damages; and lastly the fourth panel addressed what competition agencies and regulators can do to promote innovation in Europe. Distinguished guests included Judge Nicholas Forwood, member of the Chamber at the General Court of the European Union, as keynote speaker. Also this year, we were fortunate to have panelists from the European Commission, Ofcom, the Office of Fair Trading, the UK Competition Commission, the Autorite de la Concurrence and the Cour of Cassation. Panelists and participants attended from Austria, Belgium, France, Germany, Italy, Luxembourg, Spain, the UK and the U.S.
- David K. A. Mordecai was appointed to Co-Executive Director of the newly established Center for Computational Economics and Algorithmic Data Analytics at the New York University Courant Institute of Mathematical Sciences, in addition to even further broadening his role at Courant by accepting an appointment to be an adjunct instructor.
- Dennis Carlton presented the paper “The Economics of Patent Ambush” at the Concurrences, New Frontiers of Antitrust Conference in Paris, France, 2011.
- David K. A. Mordecai served as a keynote panelist on topics regarding liability, damages, and causation implications of complex environmental and food safety and security exposures at the Mealey’s 18th Annual Insurance Insolvency and Reinsurance Roundtable in Phoenix, AZ and at the Casualty Actuary Society annual conference in Palm Beach, FL.
- Mordecai also served as an invited panelist at the National Academy of Sciences summit: “Managing Extreme Risks” co-sponsored by Willis Re and the NAS, the Federal Emergency Management Association, the US Geological Survey, the National Center for Atmospheric Research, and Environmental Systems Research Institute. He also served as a panelist at the Treasury’s Office of Financial Research summit on macroprudential governance and regulation of financial markets: “The Macroprudential Toolkit.” His corresponding essay on systemic risk is forthcoming as a contributed section of an OFR working paper, “Risk Management: What’s The Frontier” co-authored with Mark Flannery, Paul Glasserman, and Clifford Rossi.
- Richard Gilbert made the following presentations: The Antitrust Economics of Bundling, presented at *Antitrust/IP 276.2, Boalt Law School*, October 24, 2011; Deal or No Deal: Licensing Negotiations By Standard Development Organizations, presented at *UniSA Competition and Consumer Workshop*, Adelaide, Australia, October 15, 2011; Are Patent Acquisitions Different?, presented at *Antitrust and IP in Silicon Valley and Beyond*, Stanford, CA, October 6, 2011; Roundtable on the FTC’s Report on The Evolving IP Marketplace, *ABA Antitrust Section Spring Meeting*, Washington, D.C., March 30, 2011; FRAND v. Negotiation by Standard Development Organizations, presented at *The Pros and Cons of Standard Setting*, Swedish Competition Authority, Stockholm, November 12, 2010 and at *Microsoft Corporation*, Redmond, WA, January 30, 2011. Also, Dr. Gilbert was the Economics representative to the Executive Committee of the Antitrust Section of the American Bar Association.

- Jorge Padilla presented on several panels including: “Current developments in merger law and enforcement” for the IBC at the IBA’s 15th Annual Competition Conference; “How and Why We Deal with Market Power: The Economic Rationale For Intervention” at Kings College Lunch Seminar, Lecture Competition Law & Regulated Network Industries; and “The Future of Publishing and the Power of Search” at IESE Business School’s Second US-EU Media Seminar: On the Future of Online Content.
- Meg Guerin-Calvert participated in a Section of Antitrust Law working group of former FTC or DOJ economists and lawyers with significant responsibility for health care antitrust enforcement matters, led by Robert Leibenluft and consisting of Mark Botti, Meg Guerin-Calvert, Arthur Lerner, Toby Singer and Greg Vistnes. The working group assisted in preparation of comments on proposed guidelines for antitrust review of Accountable Care Organizations in May 2011.
- Meg Guerin-Calvert moderated the “Economist Debate on Revised Horizontal Merger Guidelines” at the American Bar Association Section of Antitrust Law Fall Forum with a panel including FTC and DOJ economists reviewing implementation of the new Merger Guidelines with particular focus on competitive effects (unilateral and coordinated effects), power buyers, and approaches to market definition.
- Meg Guerin-Calvert presented “Fundamentals – Antitrust Economics Analytical Tools” at the American Bar Association Section of Antitrust Law Spring Meeting.
- Meg Guerin-Calvert participated in a panel at titled “Antitrust-Intellectual Property Regulatory and Litigation Update” at Pepper Hamilton’s Annual Antitrust Developments Update CLE Event.
- Meg Guerin-Calvert is serving as the co-chair of the Section of Antitrust Law Economics Task Force.
- Jon Orszag presented to the House Energy and Commerce Committee in July about reverse payment patent settlements in the pharmaceutical industry.
- Eugene Orlov presented a research paper “The Effect of the Internet on Product Quality in the Airline Industry” at the International Industrial Organization Conference in April 2011.
- Mary Coleman served on the faculty of George Mason’s Antitrust Law & Economics Institute for Judges program, presenting on “Market Definition, Market Share and Entry Barriers as Circumstantial Evidence of Market Power.” Mary was also named Co-Chair of the Economics Committee of the ABA’s Antitrust Section.
- Anne Layne-Farrar gave several presentations this year including: “Working Towards a Meaningful Definition of RAND,” ANSI Legal Issues Forum, October 13, 2011, Washington, DC; “SSO Participation and the Role of Incremental Value Licensing,” 7th Conference on Standardisation and Information Technology, Sponsored by IEEE, September 30, 2011, Berlin, Germany; Invited panelist, Federal Trade Commission Workshop on Intellectual Property Rights in Standard Setting: Tools To Prevent Patent Hold-Up, Washington DC, June 21, 2011; “Use of Economic Analysis in Resolving Complex Single Firm Conduct Cases,” U.S. Chamber of Commerce, Global Regulatory Cooperation Project, Conference for Visiting Chinese Supreme People’s Court Judges to Discuss IP and Antitrust, Washington DC, May 16, 2011; “Incremental Value and FRAND Licensing,” The 3rd Annual Conference on Recent Developments in Competition Enforcement, INTERTIC & IMEDIPA, Autorità Garante della Concorrenza e del Mercato, Rome, Italy, May 6, 2011; and “Making Sense of FRAND Commitments: Theory and (EC) Application,” IPR Conference,

Innovation, Competition & Regulation Law Center at Korea University Law Institute, April 8, 2011.

- Glenn Woroch was made Senior Policy Scholar with The Georgetown Center for Business and Public Policy last fall and gave a keynote address, “A Behavioral Approach to Telecoms Regulation” at the 3rd annual conference of the “CMT” or Comisión del Mercado de las Telecomunicaciones (Telecommunications Market Commission), Barcelona Spain, November 2010.
- Darin Lee presented his research paper “Interpreting The ‘Fair and Equitable’ Standard in Labor Force Seniority Integration” (joint with Ethan Singer) at the 2011 International Industrial Organization in Boston and presented his research paper “Airline Competition and Domestic U.S. Airfares: A Comprehensive Reappraisal” (joint with Jan Brueckner and Ethan Singer) at the American Bar Association, Section of Public Utility, Communications and Transportation Law in Washington, DC on March 7, 2011.
- Neil Dryden presented “Does the EU Block Exemption Make Economic Sense?” Vertical Agreements Block Exemption Regulation in the Internet Age 2011, IBC Legal Conferences, Brussels, 24 January 2011; “An economic approach to land agreements,” The new regime prohibiting anti-competitive land agreements, Henry Stewart Conference, London, May 2011; and, as a discussant at “State Aid & Privatisation,” Nineteenth Conference on Postal and Delivery Economics, St. Helier, Jersey, 1-4 June 2011.
- Bryan Keating presented a paper on “Consumer Benefits and Airline Mergers” at the International Industrial Organization Conference.
- Mark Israel made multiple presentations on competition panels: Panelist in ABA Forum on Air and Space Law Panel: “Antitrust Issues: What’s on the Horizon for the Industry,” February 2011; Panelist in Technology Policy Institute Aspen Forum, on Panel: “Watching the Future: The Economic Implications of Online Video,” August 2011 and Panelist on CLE Panel: “The FCC’s Approach to Analyzing Vertical Mergers,” October 2011.
- David Sevy gave two talks in the Droit & Economie cycle organized by the review Concurrences: David Sevy, David Tayar, Anne Perrot, Analyse économique de la concurrence multiproduits, Concurrences, No. 2-2011, No. 35548; David Sevy, Philippe Choné, Régulation et Concurrence, Concurrences, No. 1-2011, No. 334185.
- David Sevy presented, “Transport, Competition and Competition Policy”, transcribed in the Journal of Regulation.

Compass Lexecon experts have also been active in publishing and writing papers in the past year. They include:

- Brad Cornell authored “Market Efficiency and Securities Litigation: Implications of the Appellate Decision in Thane,” *Virginia Law and Business Review*, 2011; “Investment Strategies and Investment Track Records,” invited editorial, *Journal of Portfolio Management*, 2011; and “The Intriguing Case of KMP and KMR,” *Journal of Portfolio Management*, 2011.
- Jonathan Baker published “The Year in Economics at the FCC, 2010-11: Protecting Competition Online,” Review of Industrial Organization, 2011 (with Mark Bykowsky, Patrick DeGraba, Paul LaFontaine, Eric Ralph & William Sharkey); “Comcast/NBCU: The FCC Provides a Roadmap for Vertical Merger Analysis,” *Antitrust*, 2011; “Merger Simulation in an Administrative Context,” *Antitrust Law Journal*, 2011; and “Sector-Specific

Competition Enforcement at the FCC,” *New York University Annual Survey of American Law*, 2011.

- Jonathan Baker also published “The Year in Economics at the FCC, 2010-11: Protecting Competition Online,” *Review of Industrial Organization* (with Mark Bykowsky, Patrick DeGraba, Paul LaFontaine, Eric Ralph & William Sharkey) 2011.
- Benjamin Klein authored “How Exclusivity is Used to Intensify Competition for Distribution--Reply to Zenger” (with Kevin M. Murphy), *Antitrust Law Journal*, 2011.
- Meg Guerin-Calvert and Guillermo Israilevich published “Assessment of Cost Trends and Price Differences for U.S. Hospitals,” a research paper examining the development of new and innovative healthcare delivery arrangements, such as Accountable Care Organizations (“ACOs”), medical homes and other arrangements. The paper, commissioned by the American Hospital Association, involved extensive analyses of hospital costs using data from thousands of hospitals across the country among other data. The authors were assisted by Jeff Raileanu and Matt Gibb.
- Dennis Carlton published “Use and Misuse of Empirical Methods in the Economics of Antitrust,” in *Competition Policy International Antitrust Chronicle*, 2011.
- Dennis Carlton and Mark Israel published “Proper Treatment of Buyer Power in Merger Review,” *Review of Industrial Organization*, July 2011.
- Atanu Saha coauthored a paper with Prof. Burton Malkiel of Princeton University, entitled “DCF Valuation with Cash Flow Cessation Risk,” which will be published in the *Journal of Applied Finance* in 2012.
- Saha and Allen Ferrell have a paper forthcoming in the *Journal of Corporation Law* entitled “Forward-casting 10b-5 Damages: A Comparison to Other Methods.”
- Richard Gilbert and Michael Katz published “Efficient Division of Profits from Complementary Innovations,” *International Journal of Industrial Organization*, July 2011.
- Richard Gilbert authored “Deal or No Deal? Royalty Negotiations by Standard Development Organizations,” *Antitrust Law Journal*, 2011 and “A World Without Intellectual Property?: Boldrin and Levine, Against Intellectual Monopoly,” *Journal of Economic Literature*, 2011.
- Daniel Rubinfeld and Bret Dickey published “Antitrust Class Certification: Towards an Economic Framework,” *New York University Annual Survey of American Law*, 2011.
- Daniel Rubinfeld and Richard Gilbert published: “Revising the Horizontal Merger Guidelines: Lessons from the U.S. and the E.U.,” in Faure, M. and Zhang, X. (eds.), *Competition Policy and Regulation: Recent Developments in China, Europe and the U.S.*, Cheltenham, Edward Elgar, 2011.
- Daniel Rubinfeld also published “Current Issues in Antitrust Analysis,” in Josef Drexler, Wolfgang Kerber, and Rupperecht Podszun, eds., *Competition Policy and the Economic Approach: Foundations and Limitations* UK: Edward Elgar, 2011.
- Justin Coombs and Jorge Padilla published “The Use of Economic Evidence Before the European Community Courts” in Claus-Dieter Ehlermann and Mel Marquis (eds.), *European Competition Law Annual*, Hart Publishing, 2011.
- Justin Coombs and David Shahaudin published “Customers switching in retail banking markets,” GCR, *European Antitrust Review* 2012.
- Manuel Abdala, Pablo Lopez Zadicoff and Pablo Spiller published “Invalid Round Trips in Setting Pre-Judgment Interest in International Arbitration” in the *World Arbitration and Mediation Review*, 2011.

- Anne Layne-Farrar authored “Innovative or Indefensible? An Empirical Assessment of Patenting within Standard Setting,” in *International Journal of IT Standards and Standardization Research*, 2011 and “An Economic Defense of Flexibility in IPR Licensing: Contracting Around ‘First Sale’ in Multilevel Production Settings,” *Santa Clara Law Review*, 2011.
- Anne Layne-Farrar and Jorge Padilla published “Assessing the Link between Standard Setting and Patent Holder Market Power” in *International Journal of IT Standards and Standardization Research*, 2011 and “Elves or Trolls? The Role of Non-Practicing Patent Owners in the Innovation Economy,” (with Damien Geradin), *Industrial and Corporate Change*, June 2011.
- Anne Layne-Farrar authored “Patent Value Apportionment Rules for Complex, Multi-Patent Products” (with Damien Geradin), *Santa Clara Computer & High Tech Law Journal*, September 2011.
- Anne Layne-Farrar published “To Join Or Not To Join: Examining Patent Pool Participation and Rent Sharing Rules” (with Josh Lerner), *International Journal of Industrial Organization*, March 2011.
- Anne Layne-Farrar and Jorge Padilla published “Increments and Incentives: The Dynamic Innovation Implications of Licensing Patents under an Incremental Value Rule” in Geoffrey A. Manne and Joshua D. Wrights (eds.), *Regulating Innovation: Competition Policy And Patent Law Under Uncertainty*, Cambridge University Press, 2011 (with Gerard Llobet).
- Antara Dutta authored “From Free Entry to Patent Protection: Welfare Implications for the Indian Pharmaceutical Industry,” *The Review of Economics and Statistics*, February 2011.
- Greg Pelnar published “In Search of Antitrust Guidance and Safe Harbors for Accountable Care Organizations,” *CPI Antitrust Chronicle*, March 2011 and “Rule of Reason Analysis for Accountable Care Organizations,” *Antitrust Source*, December 2011 (with Gretchen Weiss).
- Frederic Palomino co-authored “Overconfidence and delegated portfolio management,” *Journal of Financial Intermediation*, 2011 and published a reference book entitled *Comment faut-il payer les patrons?* Opuscule du CEPREMAP, Presse de la rue l’Ulm.
- Darin Lee published “Alliances, Codesharing, Antitrust Immunity and International Airfares: Do Previous Patterns Persist?” (with Jan Brueckner and Ethan Singer) was published in the May 2011 edition of the *Journal of Competition Law & Economics*.
- Andrew Lemon and Steven Peterson co-authored “Using Economics to Identify Common Impact in Antitrust Class Certification,” American Bar Association, Section of Antitrust Law, Economics Committee Newsletter, Spring 2011. The article addresses how economics can help courts determine whether lawsuits satisfy the legal requirements to proceed as class actions.
- Jay Ezrielev published “The 2010 Merger Guidelines, Critical Loss, and Linear Demand” (with Joseph Simons), *Journal of Competition Law & Economics*, September 2011.
- Santiago Dellepiane co-authored “Using an Event Study Method to Compute Damages in International Arbitration Cases,” published in August in *The Journal of International Arbitration*, 2011.
- Jon Orszag and Bryan Keating submitted comments to the FCC regarding the Connect America Fund designed to provide voice and high-speed data services to rural America. Compass Lexecon was retained by John Janka of Latham and Watkins.
- Jon Orszag authored an op-ed published in *The Hill* about Clintonomics.

- Jon Orszag and Kevin Green published a white paper about the economic benefits of Pharmacy Benefit Managers (PBMs). The study was commissioned by both Express Scripts and Medco.
- Jon Orszag submitted written testimony to the Senate Judiciary Committee’s Subcommittee on Antitrust, Competition Policy, and Consumer Rights about the Express Scripts/Medco Merger.
- Jon Orszag authored an op-ed published in *The Hill* about the role of Pharmacy Benefit Managers and how they save the health care system money.

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

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