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COVID-19 has profoundly impacted our industry, with many people working from home, courts experiencing delays and closures, substantial exits from the workforce, etc. Nevertheless, Compass Lexecon has continued its upward trajectory with our two best years in our firm's history in 2020 and 2021. We are proud of our people and our client relationships which allowed us to flourish despite these obstacles.

In every one of our practice and geographic areas – from mergers to antitrust litigation, financial market issues to securities litigation; from mass torts to intellectual property matters and international arbitration proceedings; and from the U.S. to China, Europe, and South America, we were retained on the biggest and most important matters involving complex economic issues.

The fundamental reason why we continue to succeed year after year is our award-winning experts and staff. As the *Global Competition Review* concluded, we are an “economics heavyweight with a reputation to match, Compass Lexecon sets the standard for others to follow.” Recently we have been named Competition Economics Firm of the Year by Who's Who Legal and been named a leading “Band 1” firm by Chambers. Our role as an industry standard-bearer is reflected in the cases in which we have participated, examples of which are described in more detail in this newsletter.

We have also used the past two years to further strengthen our firm by adding multiple world-class experts in our traditional core practice areas of competition and finance, as well as in newer emerging areas such as data privacy and cryptocurrencies.

Because of the pandemic, we are only circulating our Newsletter electronically as opposed to also mailing out hard copies. You can download the letter including its Table of Contents [here](#).

While the past two years have seen significant positive developments and successful case outcomes, we want to stop and note with great sadness the loss of two intellectual giants who were an integral part of our firm. Christopher Culp, a passionate teacher and mentor, brought deep analytical expertise and encyclopedic institutional knowledge to studies of financial markets and products that were unmatched in the industry. Janusz Ordovery, a Compass institution from the very beginning, combined his love for life and the people around him with the sharpest of minds. His articles on vertical integration, predation, access to bottleneck facilities, and the nexus of competition policy and IP rights made significant contributions to our understanding of those issues.

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## **Sprint/T-Mobile Merger Trial**

In February 2020, the U.S. District Court for the Southern District of New York ruled in favor of Deutsche Telekom AG, T-Mobile US, Inc., Softbank Group Corp., and Sprint Corporation in *State of New York et al. v. Deutsche Telekom AG. et al.*, concluding that the proposed merger “is not reasonably likely to substantially lessen competition.” Thirteen states and the District of Columbia brought the lawsuit against the parties seeking to enjoin the merger of Sprint and T-Mobile.

Compass Lexecon expert Professor Michael Katz testified at the trial and Judge Victor Marrero cited favorably to his testimony numerous times in his decision approving the merger, agreeing with Professor Katz’s economic analyses regarding merger-specific efficiencies and the risks of anticompetitive unilateral and coordinated effects. Judge Marrero’s decision was consistent with previous decisions by the United States Department of Justice (DOJ) and Federal Communications Commission (FCC) to clear the deal, subject to certain conditions. During the DOJ and FCC regulatory review processes, Professor Katz, along with Drs. Mark Israel and Bryan Keating, filed several declarations and white papers showing that the proposed merger would be procompetitive.

Professor Katz and Compass Lexecon were retained by George S. Cary, Dan P. Culley, David I. Gelfand, and Mark W. Nelson of Cleary Gottlieb Steen & Hamilton LLP. Professor Katz and Compass Lexecon also worked closely with Joshua H. Soven of Wilson Sonsini Goodrich & Rosati, Hallie B. Levin of Wilmer Cutler Pickering Hale and Dorr LLP, Bradley S. Lui and David L. Meyer of Morrison & Foerster LLP, and Matthew P. Hendrickson and Steven C. Sunshine of Skadden, Arps, Slate, Meagher & Flom LLP. Professor Katz was supported by a Compass Lexecon team that included Bryan Keating, Allan Shampine, Theresa Sullivan, Ka Hei Tse, Josephine Xu, and others from the Compass Lexecon Washington, DC office. Other Compass Lexecon team members included Jai Choudhari, Yilin Li, Ian MacSwain, Endi Mato, Robert Oandasan, Michael Sabor, Matt Schmitt, Zain Shahid, Benjamin Spulber, Rachel Tosney, Glenn Woroch, and Allan Zhang.

## **California Holder’s Securities Fraud Jury Trial**

The Plaintiff in this unusual California state court holder’s action, Ahmed Hussein, claimed he planned to sell his large stake in Quality Systems Inc. (now known as NextGen Healthcare) after he became disillusioned with the company. Mr. Hussein further claimed that he was convinced not to do so by a series of false statements that he relied on that covered up a massive fraud which was later revealed. Hussein and his expert claimed that he suffered over \$400 million in damages as a result. After a two-week jury trial in Orange County, California, a jury wholly rejected Plaintiff’s claims. The trial was closely watched as the first holder’s action to go to trial since the 1930s.

Compass Lexecon’s President Professor Daniel R. Fischel was retained by Defendants to provide expert testimony concerning whether the economic evidence supported Plaintiff’s claims and to respond to Plaintiff’s expert’s opinion that Mr. Hussein suffered hundreds of millions of dollars in damages.

At trial, Professor Fischel testified that Mr. Hussein’s pattern of waging proxy contests, continual complaints about the Board and management, and his overall behavior were

inconsistent with a plan to sell shares in light of the economics of shareholder voting and the economic literature on the choice between exit and voice as applied to corporate shareholders. Professor Fischel also testified about the fundamental flaws underlying Mr. Hussein's expert's opinions about damages and opined that the economic evidence did not support an award of any damages. The jury agreed and rendered a total defense verdict.

Compass Lexecon worked closely with counsel from Latham & Watkins, LLP including Peter W. Wald (co-lead counsel with Michele D. Johnson), Nicholas J. Siciliano, and Whitney B. Weber who successfully represented the Defendants. Professor Fischel was assisted by a team in Compass Lexecon's Chicago office that included Jessica Mandel, Ran Wei, Nabila Lotayef, David Ross, Anne Marie Yale, and Samuel Hollander.

### **ADI/Maxim Merger**

Compass Lexecon successfully assisted Analog Devices, Inc. (ADI) in its acquisition of Maxim Integrated Products, Inc. (Maxim). Both companies are headquartered in the U.S. and are primarily active in the design, manufacture, and marketing of analog and mixed signal semiconductor devices, across a range of applications including the industrial, communications, automotive, and consumer sectors. As of August 2021, the transaction has received unconditional approval in all relevant regulatory jurisdictions, including the United States, European Union, China, Japan, South Korea, Singapore, Taiwan, and the Philippines.

Compass Lexecon advised the Parties throughout the regulatory review process, from pre-notification to the approval from the relevant regulatory agencies, providing economic analysis demonstrating the pro-competitive nature of the transaction.

The Compass Lexecon team was led by Miguel de la Mano and Elizabeth Wang, with Jason Wu as project manager and support from Cecilia Nardini, Jake Cheng, Alejandro Abisambra, Bella Li, Georg Clemens, Nancy Wang, Ruben Savelkoul, Josep Peya, Willow Liu, Wendy Wei, Janice Shiu, Siyi Chen, Alina Rymar, Ann-Christine Schwegmann, James Sood, and Justice Yennie from the U.S., EU, and China offices. Compass Lexecon worked closely with Joseph Larson, Lori Sherman, and Emily Samra from Wachtell, Lipton, Rosen & Katz; John Boyce, Jessica Staples, Madalina Secareanu, Shweta Vasani, and Gareth Goh from Slaughter and May; Janet Hui and Xuefei Bai from JunHe; and Jeff White, Kristin Sanford, Geneva Hardesty, Neil Rigby, and Chris Thomas from Weil, Gotshal & Manges LLP.

### **MAPS Acquisition Dispute in Delaware**

In this widely publicized case, MAPS Hotels and Mirae Asset (MAPS) represented by Quinn Emanuel Urquhart & Sullivan, LLP (Quinn Emanuel) obtained the first successful post-COVID-19 judicial ruling allowing a buyer to avoid closing a previously agreed upon transaction.

The case involved MAPS' September 2019 agreement to acquire Strategic Hotels & Resorts (Strategic) and its 15 U.S.-based luxury hotels for \$5.8 billion from AB Stable. MAPS alleged that subsequent to signing, with the spread and increasing effects of COVID-19, Strategic took actions, such as closing two hotels, limiting operations at others, and laying off thousands of employees without MAPS' consent. MAPS claimed that these actions were inconsistent with the covenant in the Sale and Purchase Agreement (SPA) to operate in the

ordinary course. MAPS also claimed that their ability to secure title insurance, a condition to closing, was impeded by AB Stable's inability to transfer clear title to the properties. Further, MAPS claimed that Strategic had suffered a material adverse effect (MAE) between signing and closing. As a result, on May 3, 2020, MAPS notified AB Stable that they were terminating the agreement.

In response, AB Stable filed a lawsuit in Delaware Chancery Court seeking specific performance and compelling MAPS to close based on its allegation that MAPS' attempts to terminate the sale and purchase agreement were invalid and that the true reason for their actions was buyer's remorse. MAPS filed counterclaims seeking a declaration that the AB Stable had breached multiple provisions of the SPA and validating its termination.

Compass Lexecon and its President Professor Daniel Fischel were retained by MAPS through their counsel Quinn Emanuel to assess the performance of Strategic after the signing and the resultant decline in value. Professor Fischel filed two expert reports and testified at trial, opining that the segment of the hotel industry in which Strategic operated suffered disproportionate declines and was not expected to recover for many years. Professor Fischel also responded to AB Stable's expert's claims that the 15 hotels had experienced similar or better performance than its closest competitors.

Compass Lexecon also supported the work of MAPS' contract language expert, Professor John Coates IV of Harvard University, who submitted an expert report and testified at deposition about the language of the ordinary course covenant and the material adverse effect definition.

In November 2020, Vice Chancellor J. Travis Laster found that AB Stable (and its subsidiaries) had failed to operate only in the ordinary course consistent with past practice in all material respects between the signing and closing, and that MAPS had shown that the AB Stable had failed to comply with other necessary closing conditions related to contested title to the hotel properties. As a result, the Court held that MAPS was not legally obligated to close the previously agreed upon transaction. On the MAE issue, Vice Chancellor Laster ruled that, because the pandemic could reasonably have been encompassed in one of the MAE exclusions and there was no disproportionate impact clause, he did not need to assess whether the company had suffered a MAE. In addition, the Court ruled that MAPS should be refunded their deposit of \$581.7 million plus interest, awarded their transaction expenses of approximately \$3.7 million, and in addition awarded millions of dollars of fees as the prevailing party.

Compass Lexecon worked closely with counsel from Quinn Emanuel including Michael B. Carlinsky, Andrew J. Rossman, and Kimberly E. Carson, who successfully represented MAPS. We also work closely with Michael A. Barlow of MAPS' Delaware counsel Abrams & Bayliss LLP. In addition to Professor Fischel, the Compass Lexecon team included Rajiv Gokhale, Jessica Mandel, Pavithra Kumar, Kevin Hartt, Heather Freilich-Farby, Monica Xie, and Nikita Tourani, among others.

This case is one of the many similar acquisition-related disputes that have emerged from the COVID-19 pandemic. Compass Lexecon has been retained on either the buyer or seller side in virtually all of these cases and in multiple other engagements as consultants where litigation was avoided. The MAPS victory follows the historic victory of Compass Lexecon's client Fresenius in the Akorn v. Fresenius case, where the Delaware Chancery Court (later affirmed by the Delaware Supreme Court) held for the first time that a buyer was excused from closing its

transaction because the target had suffered an MAE. Fresenius was successfully represented in that case by Paul, Weiss, Rifkind, Wharton & Garrison LLP.

### **Google/Fitbit**

In December 2020, the European Commission (EC) conditionally cleared the \$2.1 billion merger between Google and Fitbit, following a Phase II investigation. Google and Fitbit showed limited horizontal overlap in their activities, as Fitbit is a small player in the rapidly growing smartwatch sector and Google does not sell smartwatches.

The investigation by the EC focused on theories of harm related to vertical foreclosure as well as the aggregation of personal data which could be gathered by Google and used for advertising and other purposes. In particular, the EC expressed concerns that Google may restrict competitors' access to Fitbit's Web Application Programming Interface which would harm start-ups in the growing digital healthcare space. Similarly, Google could foreclose competing manufacturers of smartwatches by degrading their interoperability with smartphones that run on Google's Android operating system.

The Compass Lexecon European team provided economic advice to Google during the EC merger proceedings, collaborating closely with U.S. colleagues who continue to provide assistance in the ongoing reviews by the U.S. Department of Justice (DOJ) and the Australian Competition Authority (ACCC). Given concerns on the data aspect of the transaction, we conducted a 4-V (variety, volume, velocity, value) analysis of the Fitbit data. The European and U.S. teams cooperated to conduct a quantitative analysis to assess the merged entity's incentive to foreclose competing smartwatch vendors through degrading interoperability with Android. We also produced an economic rebuttal in response to submissions by complainants to the deal.

Compass Lexecon's European team included Thilo Klein, Miguel de la Mano, Christopher Milde, Tom Bowman, Manuel Zanoni, Rebecca Reichert, Tim Ciesla, Tianyu Chen, and Terhi Torronen. The teams worked closely with Google's counsel, Cleary Gottlieb Steen & Hamilton LLP, including Robbert Snelders, Elaine Ewing, Christian Fiscoeder, Paul Stuart, and Conor Opdebeeck-Wilson. The Compass Lexecon U.S. team continues to provide assistance with the ongoing reviews by the U.S. DOJ and Australian ACCC.

### **ExxonMobil Climate Change Securities Fraud Trial**

The Attorney General of the State of New York (NYAG) alleged that ExxonMobil provided false and misleading statements to the market regarding its management of "economic risks posed to its business by the increasingly stringent policies and regulations that it expects governments to adopt to address climate change." Specifically, the NYAG in this matter asserted that ExxonMobil engaged in a "longstanding fraudulent scheme" "sanctioned at the highest levels of the company," "effect[ively] erect[ing] a Potemkin village to create the illusion that it had fully considered the risks of climate change regulation and had factored those risks into its business operations." The NYAG further alleged that "in reality [ExxonMobil] knew that its representations were not supported by the facts and were contrary to its internal business practices."

Compass Lexecon and Senior Consultant, Professor Allen Ferrell were retained by Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel for ExxonMobil to respond to the NYAG's

allegations. A trial was held in the Supreme Court of the State of New York in October 2019. Professor Ferrell testified, among other things, that NYAG's experts failed to present evidence that ExxonMobil's alleged misrepresentations introduced inflation into ExxonMobil's stock price, that none of the purported corrective disclosures identified by the NYAG's experts caused a statistically significant decrease in ExxonMobil's stock price, and that as a result, NYAG's experts failed to establish that the alleged misrepresentations and purported corrective disclosures were material to the market's assessment of ExxonMobil's stock. Professor Ferrell also testified that the aggregate damages methodology offered by NYAG's expert was fundamentally flawed and unreliable.

In December 2019, Justice Barry R. Ostrager rejected the NYAG's claims in their entirety finding that the NYAG failed to establish that ExxonMobil violated either the Martin Act or Executive Law § 63(12) in connection with its public disclosures regarding its accounting for climate change risks. Justice Ostrager found that "the testimony of the expert witnesses called by the [NYAG] was eviscerated on cross-examination and by ExxonMobil's expert witnesses." Justice Ostrager's opinion extensively discussed and repeatedly relied upon Professor Ferrell's testimony. For example, based on Professor Ferrell's testimony, the court determined that "there is no evidence that any misleading statements in these publications inflated the price of ExxonMobil stock." In rejecting the NYAG's expert's claim that certain announcements related to investigations into ExxonMobil were corrective, the court emphasized that "as ExxonMobil's highly credentialed expert, Professor Ferrell, testified, there is something circular about claiming that a stock drop precipitated by the announcement of an investigation constitutes evidence of wrongdoing."

Professor Ferrell and Compass Lexecon worked closely with attorneys at Paul, Weiss, Rifkind, Wharton & Garrison LLP including Theodore V. Wells, Jr., Daniel J. Toal, Justin Anderson, Nora Ahmed, and Daniel G. Winter, who successfully represented ExxonMobil. Professor Ferrell was supported by a Compass Lexecon team led by Adel Turki in Compass Lexecon's New York office that included Michael Kwak, Nicholas Fasano, and Monica Xie. Dr. Ferrell was also assisted by Jessica Mandel and Michael Keable from Compass Lexecon's Chicago office.

### **Appeal of AT&T-Time Warner Merger Clearance**

In February 2019, the U.S. Court of Appeals rejected the Department of Justice's appeal of the U.S. District Court's opinion allowing the merger of AT&T and Time Warner to proceed without conditions. The Department of Justice announced soon thereafter that it would not seek additional review of this decision, bringing it to a successful close after more than two years of Compass Lexecon's work on this matter, involving more than 100 experts and staff.

Compass Lexecon was retained by AT&T and Time Warner, initially to provide economic support in the regulatory proceeding surrounding the merger of the two companies, and ultimately to assist with the litigation brought by the U.S. Department of Justice to block the deal (*United States of America v. AT&T Inc., DirecTV Group Holdings, LLC, and Time Warner Inc.*). Following almost two years of regulatory proceedings and a six-week trial, Judge Richard J. Leon in 2018 ruled in favor of AT&T and Time Warner, permitting the merger to proceed without conditions, setting up the DOJ's appeal, and the Court of Appeals' affirmation of the District Court decision.

The appellate opinion cited repeatedly to the testimony of Compass Lexecon expert Professor Dennis Carlton, the primary economic witness for AT&T and Time Warner, as well as referencing points made by Professor Michael Katz and other witnesses for whom Compass Lexecon provided support. For example, at trial, Professor Carlton emphasized that the Department of Justice’s predicted price increases from the merger were unreliable given that similar previous mergers had not produced statistically detectable increases in prices. Professor Katz emphasized that the Department’s model failed to account for AT&T’s arbitration commitment. The Court of Appeals agreed with both, stating that “the government’s objections that the district court misunderstood and misapplied economic principles and clearly erred in rejecting the quantitative model are unpersuasive. Accordingly, we affirm.”

Compass Lexecon experts Dennis Carlton, Michael Katz, Daniel Fischel, and Rajiv Gokhale all filed reports in the litigation, and Professors Carlton and Katz were both called to testify. Compass Lexecon also provided support for Professor Peter Rossi. Compass Lexecon Senior Managing Director Mark Israel was the primary economic expert during the almost two-year regulatory process leading up to the trial.

These experts were supported by a team whose overall chief of staff was Executive Vice President Allan Shampine. Other Executive Vice Presidents and Compass Lexecon economic experts involved included Mary Coleman, Philip Haile, Todd Kendall, Jessica Mandel, Loren Poulsen, Marius Schwartz, Hal Sider, Thomas Stemwedel, Theresa Sullivan, and David Weiskopf. Other Compass Lexecon team members included Dzmitry Asinski, Daniel Cherette, Georgi Giozov, Otto Hansen, Margaret Hlebowitsh, Nauman Ilias, Alice Kaminski, Constance Kelly, John Kelly, Andrew Linde, Evan McKay, Federico Mini, Avisheh Mohsenin, Robert Oandasan, Joel Papke, Michael Sabor, Judy Smith, Ben Spulber, Ka Hei Tse, Duo Xu, and Allan Zhang.

In addition to in-house counsel for AT&T and Time Warner, including David R. McAtee, Paul T. Cappuccio, David Lawson, Jim Meza, David Smutny and many others, Compass Lexecon worked closely with counsel from seven outside law firms representing AT&T and Time Warner, including Daniel M. Petrocelli, M. Randall Oppenheimer, Katrina Robson and Sergei Zaslavsky from O’Melveny & Myers LLP; Wm. Randolph Smith, Christopher A. Cole and Jeane A. Thomas from Crowell & Moring LLP; Michael Kellogg, Evan Leo, Kevin Miller and Aaron Panner from Kellogg, Hansen, Todd, Figel & Frederick PLLC; Richard L. Rosen, Debbie Feinstein, Maureen R. Jeffreys and Jonathan Gleklen from Arnold & Porter Kaye Scholer LLP; Robert C. Walters, Mike Raiff, Joshua Lipton, Sean M. Royall and Eric J. Stock from Gibson, Dunn & Crutcher LLP; C. Frederick Beckner III, Peter D. Keisler and Jonathan E. Nuechterlein from Sidley Austin LLP; and Peter T. Barbur, Kevin J. Orsini, Christine A. Varney and Allison Davido from Cravath, Swaine & Moore LLP.

### **Regency Unitholder Litigation**

In February 2021, Chancellor Bouchard of the Delaware Chancery Court issued a 127-page memorandum opinion in favor of Compass Lexecon’s clients Regency GP LP and Regency GP LLC in an investor suit brought by a class of unitholders of Regency Energy Partners LP (Regency) arising from a unit-for-unit merger in which Energy Transfer Partners L.P. (ETP) acquired Regency for approximately \$10 billion (the Merger). At the time of the Merger, Regency and ETP were both controlled by Energy Transfer Equity, L.P. (ETE). Plaintiff alleged

that Defendants breached the partnership agreement's requirements that the Merger be fair and reasonable to Regency's unitholders and the agreement's covenant of good faith and fair dealing. In particular, Plaintiff alleged that ETE and ETP took advantage of a temporary decline in oil and gas prices to use their control over Regency GP to transfer Regency's valuable assets and growth opportunities to ETP at a price that was unfair to Regency's unitholders.

Plaintiff sought over \$1.6 billion in damages based on the opinion of its valuation expert that the stand-alone value of Regency's common units based on a discounted cash flow analysis using a dividend discount model (DDM) exceeded the price of the ETP units received in exchange for Regency units on the Merger date. Relying extensively on the opinions and analyses of Compass Lexecon expert Kevin Dages, the Court found that Plaintiff failed to prove damages. In particular, the Court found that "Dages' analyses showed that every apples-to-apples comparison (market-to-market or DDM-to-DDM) demonstrated that members of the Class suffered no damages and that the only way [Plaintiff's expert] could attest to the existence of damages was by making an apples-to-oranges comparison of a DDM-valuation of Regency's units to the market price of ETP's units," a valuation methodology the Court concluded was "unreliable."

Compass Lexecon was retained by Michael C. Holmes, John C. Wander, Craig E. Zieminski, Jeffrey Crough, and Meredith Jeanes Lyons of Vinson & Elkins LLP and Rolin P. Bissell and Tammy L. Mercer of Young Conaway Stargatt & Taylor, LLP. Mr. Dages was supported by a Compass Lexecon team that included Jennifer Milliron, David Strahlberg, and Andrew Lin.

### **Joint Venture of Solenis and BASF**

In 2019, Solenis and BASF completed the creation of a joint venture combining their global paper and water chemicals businesses, with a pro forma sales value of approximately \$3 billion. Compass Lexecon advised the parties and their legal advisors on the merger control process across a number of jurisdictions, including reviews carried out by the European Commission and by the competition authorities in Brazil and China.

Our experts assisted in the preparation of notification documents and responses to authority information requests and provided economic analyses to address a range of horizontal and vertical foreclosure concerns raised by the authorities and the complainants. These analyses included an assessment of the flexibility of production capacity, customer overlap and switching analyses, and an analysis of vertical foreclosure incentives.

The Compass Lexecon team was led by Kirsten Edwards-Warren with assistance from Andrew Swan and Cecilia Nardini.

### **Chrysler Dealers Takings Litigation Against the United States**

After struggling for years, in late 2008 Chrysler Corporation was forced to seek Government assistance to avoid failure. As part of the TARP program, the U.S. Treasury provided Chrysler a bridge loan which required Chrysler to develop a plan to achieve long term viability. In April 2009, Chrysler filed for bankruptcy, in the process rejecting 789 dealer franchise agreements. Several groups of rejected dealers sued the United States claiming that the Government, in its role as lender of last resort, coerced Chrysler into rejecting the franchise

agreements and claiming the rejection was an illegal taking under the Fifth Amendment. Plaintiffs claimed that, but for the rejections, the dealers would have survived and retained value under several scenarios. The dealers sought \$1 billion in damages.

Compass Lexecon and its President, Professor Daniel Fischel, were retained by the U.S. Department of Justice to respond to Plaintiffs' various alleged scenarios. At a trial was held in the Court of Federal Claims in April and May 2019, Professor Fischel testified, among other things, that Plaintiffs' scenarios were implausible and unsupported, that Chrysler was insolvent and could not have survived absent Government support, that Plaintiffs' experts claims that Chrysler could have been bought by various other auto companies were not plausible, that financing necessary for a restructuring with continued production was not available in the market, and the Government's terms, rather than being coercive, were consistent with terms commonly requested by commercial lenders to protect their capital.

In October 2019, Judge Nancy B. Firestone of the Court of Federal Claims rejected the Plaintiffs' claims in their entirety, holding that "the evidence established that Chrysler would have faced immediate liquidation" absent Government assistance and that Plaintiffs "failed to prove their franchise agreements would have had value" absent Government assistance. Her opinion extensively discussed and repeatedly relied upon Professor Fischel's testimony. The court emphasized, for example, that "Professor Fischel, with his extensive expertise, provided persuasive testimony which confirmed to the court that [Plaintiffs' expert's] opinions were based on pure speculation," and that Professor Fischel's testimony "systematically and convincingly explained" why Plaintiffs' claims had no merit.

In December 2020, the United States Court of Appeal for the Federal District affirmed the opinion of the lower court, agreeing that the dealers had not established that the franchise agreements had value.

Professor Fischel was supported by a Compass Lexecon team led by Jessica Mandel in Compass Lexecon's Chicago office that included Todd Kendall, Clifford Ang, Avisheh Mohsenin, Robin Stahl, Kevin Hartt, Andrew Lin, and Heather Freilich. We worked closely with attorneys at the United States Department of Justice including Kenneth Dintzer, Elizabeth Hosford, James Connor, Alison Vicks, and Zachary Sullivan.

### **Automotive and Industrial Bearing Price Fixing Litigation**

Plaintiffs in *In re: Bearings Cases* (part of *In re Automotive Parts Antitrust Litigation*) alleged that manufacturers of steel ball and roller bearings for automotive and industrial use conspired to elevate their prices. Compass Lexecon expert Professor Robert Willig was retained by Defendants to assess economic issues relevant to whether a class consisting of all direct purchasers of such bearings should be certified.

Judge Marianne O. Battani of the United States District Court for the Eastern District of Michigan denied direct purchaser Plaintiffs' motion for class certification in this litigation. This was the first class certification ruling in the many ongoing class actions related to the alleged price fixing of auto parts. Judge Battani ruled that the named Plaintiffs differed from large portions of the class in both size and how their prices were set and that, as a result, Plaintiffs failed to satisfy the "typicality" and "adequacy" requirements for class certification under Rule 23(a). She also ruled that Plaintiffs failed to demonstrate that questions of common evidence and

methods predominate over individual ones because their expert's damages model did not distinguish between the various mechanisms of alleged price fixing.

Professor Willig marshaled evidence and performed analyses that were relied upon by Defendants' counsel in persuasively making the arguments on which Judge Battani based her ruling. In particular, Professor Willig showed that the named Plaintiffs (which are small distributors of industrial aftermarket bearings) differed materially from other members of the proposed class (such as automotive OEMs) in the types of bearings they purchased, the mechanisms through which such purchases were made, and the prices they paid. Professor Willig also testified that Plaintiffs' expert's damages model estimated a single overcharge for all transactions and applied that overcharge to all customers in spite of the heterogeneity across customer size, products purchased, purchasing mechanisms, and the conduct to which they were allegedly subjected.

Professor Willig was retained by counsel for a joint defense group and worked closely with teams from Cleary Gottlieb Steen & Hamilton LLP, Lane Powell PC, Reed Smith LLP, and Winston & Strawn LLP. Professor Willig was supported by a team led by Dr. Jith Jayaratne in Compass Lexecon's Oakland office that included Dr. Maya Meidan, Dr. Chris Cavanagh, Ani Gupta, Todd Bettisworth, Kelvin Huang, and Nathan Hyatt.

### **Channel Medsystems Delaware Material Adverse Effect Litigation**

In November 2017, Boston Scientific entered into an agreement to acquire Channel Medsystems conditional on Channel Medsystems receiving FDA approval for their Cerene device. Boston Scientific terminated this agreement in May 2018 alleging that Channel Medsystems had breached its representations and warranties under the agreement, and that such breaches gave rise to a Material Adverse Effect (MAE). Channel Medsystems filed a complaint in the Delaware Court of Chancery seeking a declaratory judgment that Boston Scientific had breached its obligations under the merger agreement, that no MAE had occurred, that Channel Medsystems did not breach any representations or warranties that would reasonably be expected to have resulted in an MAE, and that Boston Scientific had no right to terminate the merger agreement. Boston Scientific filed counterclaims for fraud based on alleged misrepresentations and omissions regarding Channel Medsystems' quality systems, seeking rescission of the merger agreement based on breaches of various representations and warranties, and seeking a declaratory judgment that Boston Scientific had the right to terminate the merger.

Compass Lexecon and Senior Consultant Professor Kenneth Lehn were retained by Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel for Channel Medsystems to respond to Boston Scientific's valuation expert who purported to show that Channel Medsystems had suffered a MAE. A four-day trial was held in the Delaware Court of Chancery in April 2019. Professor Lehn testified, among other things, that Boston Scientific's expert inappropriately included expected synergies from the transaction in his valuation of Channel Medsystems and failed to account for any uncertainty as to whether the FDA would approve the Cerene device. Professor Lehn also testified that Boston Scientific's expert failed to independently validate key assumptions provided by Boston Scientific, including free cash flow projections, the discount rate, the terminal value, and the implicit assumption that delays related to the fraud would affect Channel Medsystem's free cash flows in perpetuity.

On December 18, 2019, Chancellor Andre G. Bouchard of the Delaware Court of Chancery, ruled that Boston Scientific had failed to prove that Channel Medsystems had suffered a MAE and was therefore not entitled to terminate its merger agreement. The Court also ruled that Boston Scientific had breached its obligations to use commercially reasonable efforts to consummate the merger and had failed to prove its counterclaim, that it was fraudulently induced to invest approximately \$11 million in Channel Medsystems in making a series of investments from 2015 to 2017. Chancellor Bouchard's opinion relied upon Professor Lehn's testimony which was described by the Court as credible and without contradiction.

Professor Lehn and Compass Lexecon worked closely with attorneys at Paul, Weiss, Rifkind, Wharton & Garrison LLP including Andrew G. Gordon, Jaren Janghorbani, Daniel Mason, Paul A. Paterson, and Andrew J. Markquart. We also worked closely with William M. Lafferty from Morris, Nichols, Arsht & Tunnell LLP. Professor Lehn was supported by a Compass Lexecon team led by Adel Turki in Compass Lexecon's New York office that included Michael Kwak and Monica Xie.

### **SoundExchange Copyright Royalty Board Proceeding**

On June 11, 2021, the Copyright Royalty Board (CRB) Judges issued a determination in favor of SoundExchange in a proceeding to set royalty rates for digital performances of sound recordings over the internet by non-interactive music streaming services, known as *Web V*. Representing sound recording copyright owners and recording artists, SoundExchange retained Compass Lexecon economists Jonathan M. Orszag and Professor Robert D. Willig to analyze the issues and provide expert testimony. Opposing parties sponsored reports and testimony from five economic experts. Mr. Orszag put forth testimony proposing royalty rates based on a benchmarking analysis and rebuttal testimony addressing flaws in all five opposing economic experts' analyses, while Professor Willig proffered testimony proposing royalty rates based on opportunity cost and bargaining models fit to financial and consumer survey data, and rebutted testimony from two of the opposing economic experts.

After hearing nearly seven days of trial testimony from Mr. Orszag and Professor Willig, the CRB Judges established per-play royalty rates that are 17% higher for ad-supported services and 8% higher for subscription non-interactive streaming services. As a result, SoundExchange, the record companies, and music artists will earn many hundreds of millions of dollars more from streaming royalty revenues between 2021 and 2025. The opposing experts had proposed a range of decreases in these rates (with some opposing experts proposing sharp decreases); the CRB Judges rejected such low rates and promulgated new rates with significant increases. In the prior *Web IV* proceeding, the CRB Judges had lowered the then-statutory rates, so their decision to increase rates in the *Web V* decision reflects an important victory for SoundExchange, the record companies, and music recording artists. As SoundExchange CEO Mike Huppe put it, the decision "means that creators will be compensated more fairly when their recordings are played on digital music services" and represents "a step forward toward building a healthier music industry."

Mr. Orszag was supported by Aren Megerdichian, who led a team that included Marc Huntley, Lily Chen, Robert Foley, Nathan Hyatt, Neil Ries, Anastasia Thatcher, Yu Zhu, Akawin Tanjitpiyanond, and Eugia Yao. Professor Willig was supported by Peter Clayburgh, who led a team that included Gilad Levin, Rodrigo Montes, David Fenichel, James Tam, and

May Huang. Compass Lexecon worked with Jenner & Block LLP, including David A. Handzo, Steven R. Englund, Previn Warren, Alex Trepp, Emily Chapuis, Loreal R. Rock, Andrew B. Cherry, and Sarah J. Clark.

### **Estate of George P. Floyd Wrongful Death Settlement**

On May 25, 2020, George P. Floyd, Jr., a resident of the City of Minneapolis (the “City”), was arrested by Minneapolis Police Department officers. After one of the officers pressed his knee against Mr. Floyd’s neck for almost nine minutes, he became unconscious and was transported to a nearby hospital, where he was pronounced dead. Mr. Floyd’s death sparked widespread protests in Minneapolis and that later spread to cities throughout the U.S. and other cities globally.

A federal civil rights lawsuit was filed by the Trustee of George Floyd’s family against the City of Minneapolis and the four officers accused of causing Mr. Floyd’s death. The ability of the City to pay a substantial settlement or judgment was expected to be a major source of contention between the parties.

Counsel for the Trustee approached Compass Lexecon’s President, Professor Daniel Fischel, about being an expert for the family on the ability to pay issue. Professor Fischel accepted the engagement and offered, under the circumstances, for he and Compass Lexecon to go forward on a pro bono basis. With that understanding, Professor Fischel, together with Compass Lexecon Executive Vice Presidents Andria van der Merwe and Todd D. Kendall, prepared an analysis based on a detailed review and evaluation of the City’s finances, outstanding debt, and other liabilities which also compared the City along these dimensions with other large cities. The Compass Lexecon team also analyzed market evidence, including commentary from credit agencies, and concluded that the City had the ability to pay a settlement well in excess of a typical wrongful death payment.

In March 2021, the parties reached a \$27 million settlement, which attracted national attention when it was announced. The commentary focused on the societal significance of the settlement including its historic size. For example, *The New York Times* reported that “the settlement was among the largest in a case of police misconduct,” and substantially larger than settlements in other well-publicized cases of police killings in recent years. Counsel for Mr. Floyd’s family said that the settlement was “the largest pretrial settlement ever for a civil rights claim.” A portion of the settlement amount will be used to benefit the neighborhood where Mr. Floyd was killed.

Compass Lexecon worked with Nicolette Ward of Romanucci & Blandin LLC, who represented the Trustee for the Next of Kin of Mr. Floyd.

### **Amazon/Deliveroo**

In August 2020, the UK Competition and Markets Authority (CMA) cleared Amazon's minority investment in Deliveroo, after a Phase II investigation. The CMA stated Deliveroo is active in the online restaurant delivery and, in addition, delivers convenience groceries through partnerships with retailers. It found Amazon’s activities to include operating as an online retailer as well as being active in the online restaurant delivery market up until November 2018. The CMA initially provisionally cleared the transaction concluding that Deliveroo could be

considered a 'failing firm' due to the financial impact of the coronavirus pandemic on its business. However, in light of the speedy recovery of the restaurant food delivery market and after reviewing Deliveroo's financial position in April 2020, the CMA concluded that it would resume its substantive assessment of the transaction, and no longer consider Deliveroo as a failing firm. The CMA ultimately found that the minority investment of 16% will not substantially lessen competition in the relevant markets.

Compass Lexecon assisted Roofoods (trading as Deliveroo) during the CMA investigation of Amazon's investment in Deliveroo. We prepared replies to the CMA's RFI and made a review of the competitiveness of the online restaurant delivery market in the UK. More specifically, while using information on all of Deliveroo's transactions since 2016, we provided an analysis of the Parties' grocery offerings, and we prepared, conducted, and analyzed a survey of Deliveroo customers.

The Compass Lexecon team included Neil Dryden, Stefano Trento, Segye Shin, Gwilhem Charbonnier, Su-Ann Lim, and Felix Giallombardo, with assistance from Jorge Padilla, Alejandro Requejo, John Davies, Patricia Lorenzo, Lotta Vaananen, and Rashid Muhamedrahimov.

### **Pacific Gas and Electric Company**

Compass Lexecon was retained by Pacific Gas and Electric Company (PG&E) to provide analysis and expert testimony related to the magnitude of losses suffered by individuals, businesses, and government entities resulting from the 2017 North Bay Wildfires. In December 2020, Compass Lexecon's President Professor Daniel Fischel testified on behalf of PG&E in a regulatory hearing before the California Public Utilities Commission (CPUC) to establish that at least \$7.5 billion of the settlement funds that PG&E paid in connection with its plan of reorganization for wildfire-related claims of individuals, businesses, and government entities was reasonably attributable to the 2017 North Bay wildfires.

Based on analysis of a wide variety of public data sources, Professor Fischel determined that substantially more than \$7.5 billion in PG&E settlements are attributable to the 2017 North Bay wildfires. That analysis estimated losses relating to the value of destroyed and damaged residential and commercial buildings and their contents; alternative living expenses for individuals displaced from their homes; losses in business income and employee wages; and agricultural losses and other losses relating to fatalities; injuries; and emotional distress as well as government losses. In the spring of 2021, the CPUC issued a decision finding that PG&E had met this requirement. The CPUC's decision favorably cited Professor Fischel's testimony, noting that "we are persuaded that at least \$7.5 billion of the wildfire claims costs paid as part of PG&E's Reorganization Plan are attributable to the 2017 North Bay Wildfires."

Professor Fischel was assisted in his analysis by a team in Compass Lexecon's Chicago office that included Hal Sider, Alice Kaminski, and Otto Hansen. Compass Lexecon worked closely with attorneys at Munger, Tolles & Olson LLP on this project.

### **Litigation re: Expropriation of ConocoPhillips Crude Oil Assets in Venezuela**

Dr. Manuel A. Abdala and Professor Pablo T. Spiller were retained by Claimants ConocoPhillips Company et al. to provide their independent assessment regarding the value of

two large-scale heavy crude oil projects (Petrozuata and Hamaca) and an offshore crude oil project (Corocoro) that had been expropriated by the Bolivarian Republic of Venezuela in June 2007. After a 12-year arbitration process, an ICSID Tribunal awarded US\$8.45 billion in damages to Claimants related to expropriation and US\$286.7 million related to other compensation arising from the shareholder association agreements.

The opinions of Dr. Abdala and Professor Spiller involved the fair market valuation of the expropriated assets under multiple methodologies, as well as the economic interpretation of contractual compensation caps, all of which were assessed at multiple valuation dates. The Tribunal accepted Dr. Abdala and Professor Spiller's proposed use of the DCF methodology as the main approach to valuation and concurred with their opinion that the post-expropriation performance of the companies should only be considered insofar as it would be representative of how Claimants would have managed the Projects. The Tribunal agreed with the Compass Lexecon experts' explanation about the distinction between IRRs and discount rates, and the need to set interest rates commensurate with the opportunity cost of financing an investment in the expropriated assets.

Dr. Abdala and Professor Spiller were supported by a team led by Pablo López Zadicoff that included Carla Chavich who provided strategic support to the team throughout the process. The team also included Andres Barrera and Rachel Marx. Compass Lexecon worked with D. Brian King and Elliot Friedman of Freshfields Bruckhaus Deringer LLP and Constantine Partasides QC, Jan Paulsson, Luke Sobota, Gaëtan Verhoosel, and Manish Aggarwal of Three Crowns LLP.

### **EC Investigation of NBC Universal Pay-TV Broadcasting**

In March 2019, the European Commission (EC) closed its investigation into the licensing practices of a number of Hollywood studios and large European pay-TV broadcasters after the parties accepted legally binding commitments to change their practices. The EC had investigated territorial restrictions in pay-TV broadcasting, which allegedly violated competition law by restricting customers in certain European countries from accessing pay-TV movies which were shown by pay-TV operators in other countries, a practice also referred to as 'geo-blocking'.

Compass Lexecon advised NBC Universal, one of the movie studios subject to the EC's investigation. We assessed the efficiency benefits from the territorial restrictions and conducted an analysis regarding the alleged anticompetitive effects.

Our team, led by Lorenzo Coppi, and including Stefano Trento, Kadu Prasad, Raquel Diez, Agata Lewicka, Michele Avagliano, Gwilhem Charbonnier, and Su-Ann Lim, worked with lawyers from Clifford Chance.

### **ExxonMobil Subsidiaries' ICSID Arbitration Against Argentina**

Compass Lexecon experts Dr. Manuel A. Abdala and Professor Pablo T. Spiller were retained by two ExxonMobil subsidiaries, Mobil Exploration and Development Argentina Inc. and Mobil Argentina S.A., to assess damages in their ICSID international arbitration claim against the Argentine Republic. The Claimants sought compensation for the reduction in value of their investments in the upstream natural gas sector in Argentina, because of the government

imposing export restrictions and taxes, re-routing dispatch orders, and interfering with wellhead price formation.

In its 2016 award made public in March 2019, the Tribunal followed Dr. Abdala and Professor Spiller's proposed valuation methodology and relied on their valuation model to determine compensation to Claimants of US\$196.2 million, plus six percent interest, from March 31, 2014, until the date of payment. The Tribunal relied on the natural gas supply and demand model developed by Dr. Abdala and Professor Spiller to determine the counterfactual wellhead prices applicable to Argentine basins and thus to Claimants' investments.

Dr. Abdala and Professor Spiller were supported by a Compass Lexecon team led by Ariel Medvedeff and Miguel Nakhle. Claimants were represented by Doak Bishop, Craig S. Miles, Guillermo Aguilar-Álvarez and Silvia Marchili of King & Spalding LLP and Argentine counsels José A. Martínez de Hoz (h.) and Jimena Vega Olmos.

### **Symbiont Breach of Contract Suit**

Compass Lexecon's client Symbiont.io, Inc. (Symbiont) entered into a joint venture agreement (JVA) with Ipreo Holdings, LLC (Ipreo) that was implemented through a separate entity, Synaps Loans LLC (Synaps). Subsequently, Ipreo was acquired by IHS Markit (Markit). Symbiont filed suit alleging that Ipreo breached the non-competition provision in its JVA when Ipreo was acquired by Markit because Markit had a business that competed with Synaps called ClearPar that Symbiont claims should have been run through Synaps, as described in the JVA.

In August 2021, Vice Chancellor Laster of the Delaware Chancery Court issued a 129-page memorandum opinion in favor of Symbiont finding that Ipreo breached the non-competition provision in the JVA and awarding Symbiont its share of the after-tax profits of Markit's ClearPar business from August 2, 2018 (the date Markit's acquisition of Ipreo closed) through November 30, 2020. The Court noted that "Symbiont's share of a liquidating distribution will likely be in the vicinity of \$70 million," which is based on a damages calculation proffered by Compass Lexecon Executive Vice President Rajiv B. Gokhale. In addition, to support that such a damages award was not "an unconscionable result," the Court relied on Mr. Gokhale's alternative estimate of damages – two discounted cash flow analyses that the Court described as using "conservative assumptions" and "reasonable set[s] of inputs."

Compass Lexecon worked closely with counsel from Paul, Weiss, Rifkind, Wharton & Garrison LLP, including Andrew Gordon, Jaren Janghorbani, Daniel Mason, and Maia Usui. Mr. Gokhale was assisted by a Compass Lexecon team consisting of Adel Turki, Cliff Ang, and Andrew Linde.

### **EC Merger Investigation of Marsh & McLennan Companies' Acquisition of Jardine Lloyd Thomson**

Following a Phase I investigation, the European Commission (EC) cleared the acquisition by Marsh & McLennan Companies (MMC), one of the leading global insurance and reinsurance brokers, of Jardine Lloyd Thomson (JLT) conditional on the divestment of JLT's global Aerospace practice. The transaction was valued at £4.3 billion (approximately US\$5.6 billion).

Compass Lexecon's experts advised MMC during the EC merger control process. They analyzed dozens of overlap markets in insurance broking and reinsurance broking, which helped

narrow the concern to insurance broking in Aircraft Operators and Aerospace Manufacturing. Compass Lexecon also assisted with economic analysis of the design of the proposed divestment remedy, which fully addressed the EC's concerns.

The Compass Lexecon team was led by Neil Dryden, who was assisted by Thomas Bowman, Verdi Choo, Alyssa Lam, and Ferenc Pető. Compass Lexecon worked alongside partners John Boyce, Bertrand Louveaux, Lisa Wright, and associates Alexander Chadd, Jantira Raftery, Poppy Smith, and Rebecca West of Slaughter and May (advising MMC); partner Greg Olsen, and associates Cintia Aguilar Flores, Chandralekha Ghosh, and Sabra Ferhat of Clifford Chance (advising JLT); and Peter Beshar, Mikhail Vanyo, Katherine Brennan, and Connor Kuratek of MMC's in-house counsel team.

### **LCIA Arbitration Involving DP World-Led Consortium**

Compass Lexecon expert, Professor Pablo T. Spiller, was retained by DP World Djibouti FZCO, Dubai (International) Djibouti FZE, and Doraleh Container Terminal SA (DCT) (Respondents) as a damages expert in an arbitration in front of the London Court of International Arbitration. The arbitration was started by Djibouti (Claimant) with the purpose of rescinding the DCT concession. As part of the arbitration, Respondents filed various counterclaims and instructed Professor Spiller to provide his independent assessment of damages pertaining to the breach of DCT's exclusivity of container traffic in Djibouti and unpaid historical royalties for container traffic not transferred to DCT. In a prior Award, the Tribunal rejected Djibouti's claims in their entirety. In its Award in 2019, the Tribunal awarded damages for the two counterclaims of US\$ 500 million.

Regarding the breach of exclusivity, Professor Spiller's opinion involved the assessment of the loss in profits that DCT would suffer due to the construction of additional container ports in Djibouti. The Tribunal relied fully upon Professor Spiller's explanations, including the traffic that would be lost, the relevant discount rate, and the rationale for future profitable expansions of the port. The Tribunal also relied on Professor Spiller's explanation for calculating the historical amounts of royalties owed.

Professor Spiller was supported by a team led by Carla Chavich and included Jack Ghaleb. Compass Lexecon worked with A. William Urquhart, Anthony Sinclair, Ted Greeno, Jonathan Cooper, and Jagdish J. Menezes of Quinn Emanuel Urquhart & Sullivan, LLP as well as with Mark Howard QC of Brick Court Chambers.

### **Acquisition of Exterior Media by Global Media & Entertainment**

In April 2019, the Competition and Markets Authority (CMA) approved the acquisition of Exterior Media by Global Media & Entertainment Limited (Global) at Phase I, combining two of the largest outdoor advertising companies in the UK. Compass Lexecon experts worked closely with the legal team and leadership at Global throughout the merger review process to address the CMA's concerns.

The Parties overlap in out-of-home (OOH) advertising in the UK. Global is active in OOH advertising via two providers that it acquired in 2018, namely Primesight and Outdoor Plus. Global subsequently acquired Exterior Media in November 2018. The acquisition combined OOH assets across various environments including roadside and transport, such as the

London Underground. Our experts assisted in showing that the Parties are not close competitors in either the procurement of sites or the supply of OOH advertising in the UK and/or London. Our experts also addressed the conglomerate theories of harm, showing that Global would have neither the ability nor the incentive to foreclose OOH competitors.

The Compass Lexecon team was led by Neil Dryden, who was assisted by Andy Parkinson, Segye Shin, and Gabriele Corbetta. Compass Lexecon worked alongside partners Rod Carlton and Simon Priddis, and associates Imogen Ditchfield, Mark Wagh, and Nathan Wilkins of Freshfields Bruckhaus Deringer LLP; CEO Stephen Miron, Chief Strategy Officer Will Harding, General Counsel Ruth Daniels, Head of Strategy and Development Seb Enser-Wright, and the heads of the OOH businesses of Global; and John Fingleton and Alex Baker of Fingleton LTD.

### **NextEra Energy Arbitration Dispute Against Spain**

Compass Lexecon experts Dr. Manuel A. Abdala and Professor Pablo T. Spiller were retained by NextEra Energy (Claimant) as regulatory and quantum experts in an Energy Charter Treaty arbitration against the Kingdom of Spain, held under ICSID rules. The dispute focused on several claims affecting the value of Claimant’s investments as developer and operator of two concentrated solar plants, due to the overhaul of Spain’s regulatory regime for renewables, which started in mid-2013.

The Tribunal found that the overhaul of the renewables regulatory framework in mid-2013 was a fundamental and radical change of regime that “...went beyond anything that might have been reasonably expected by Claimants when they undertook their investment”, concluding that there was a denial of fair and equitable treatment. To determine damages, the Tribunal relied exclusively on the regulatory and quantum analysis put forward by Dr. Abdala and Professor Spiller, based on providing Claimant’s solar plants with a reasonable rate of return aligned with the promises and expectations of the original regulatory framework. Such rate of return was based on the industry’s WACC plus a premium, which the Tribunal set at 2%. The Tribunal also agreed with Compass Lexecon’s experts on the measurement of the asset base, which at €720.6 million was computed based on actual investment costs, as opposed to standardized costs, as argued by Spain’s economic experts.

Dr. Abdala and Professor Spiller were supported by a team led by Julian Delamer that included Alan Rozenberg, Jack Ghaleb, James Wong, and Vladimir Tsimaylo. Compass Lexecon worked with Karyl Nairn, David Herlihy, and George A. Zimmerman of Skadden, Arps, Slate, Meagher & Flom LLP.

### **IBM Acquisition of Red Hat**

In June 2019, the European Commission unconditionally approved the acquisition of Red Hat by IBM at Phase I. The Commission’s clearance decision followed unconditional approvals by the U.S. Department of Justice and several other national competition authorities. The \$34 billion transaction, which at the time was the largest software and third-largest tech merger ever completed, combined IBM’s wide range of enterprise software, hardware, and IT services offerings with Red Hat’s leading position in open-source enterprise software and support services.

Compass Lexecon experts worked closely with IBM and its legal advisors, Hogan Lovells and Cleary Gottlieb Steen & Hamilton LLP, throughout the Commission's merger review process and on reviews by other national authorities. Our experts assisted the parties to respond to concerns related to a range of horizontal, vertical, and conglomerate effects that were raised by the Commission and third parties during the review process, including that the merger would: lead to a reduction in competition in middleware and system infrastructure software; give IBM the ability and incentive to bundle, or to degrade the interoperability of, the parties' offerings with rivals' hardware and software offerings, to weaken competition from these rivals across the enterprise IT stack; and cause IBM to restrict access to Red Hat's source code or to influence the direction of its open source projects to weaken competition from existing and potential competitors.

Compass Lexecon's experts' analyses demonstrated that substantial pro-competitive benefits would result from the merger. These included IBM's intention to use the complementary capabilities of Red Hat to further develop and offer open hybrid cloud solutions, thereby increasing the choice for enterprise customers.

The Compass Lexecon team included Jorge Padilla, Kirsten Edwards-Warren, Gregor Langus, Andrew Swan, Su-Ann Lim, Aiden Lo, Shiva Shekhar, Kacem El Guernaoui, Juho Anttila, and Balram Sennik in Europe, and Elizabeth Wang, Todd Kendall, Sophie Yang, Mary Li, Jake Cheng, Theodore Kalambokidis, Bella Li, Willow Liu, and Xiao Yu in the United States.

### **American Airlines-Qantas Airways Joint Venture**

Compass Lexecon was retained by American Airlines and Qantas Airways to provide an economic analysis of the competitive effects of a proposed "metal-neutral joint venture" that would include joint capacity planning and pricing on flights between North America and Australia and New Zealand. Such joint ventures require a grant of antitrust immunity (ATI) by the U.S. Department of Transportation (DOT), which determines whether public benefits are likely to result from immunized cooperation and whether the benefits can only be achieved by granting ATI. In July 2019, the DOT gave final approval to the application, via a Final Order adopting an earlier tentative decision. The DOT explained that "[a]fter examining the record before us, we tentatively conclude that [American and Qantas] have presented a persuasive case regarding the need for ATI to provide the claimed public benefits."

The application for ATI submitted by American and Qantas relied heavily on a variety of Compass Lexecon studies which found that a grant of ATI would generate \$221 million per year in consumer benefits from codeshare availability improvements; \$89 million per year from fare reductions; and 180,000 new passengers per year stimulated by the additional codesharing and lower fares. The Compass Lexecon studies were presented in a report included in the ATI application. Compass Lexecon subsequently prepared additional studies for the DOT in response to follow-up questions from DOT staff.

In addition to in-house counsel for American, including Stephen Johnson, Bruce Wark, and James Kaleigh, Compass Lexecon worked closely with outside counsel including Daniel M. Wall, Farrell J. Malone, Andrew Paik, Carla Weaver, and Cassandra Martin from Latham & Watkins LLP, and Dennis Schmelzer from Dechert LLP. Compass Lexecon economists involved

in the preparation of the studies included Gustavo Bamberger, Lynette Neumann, and Narsid Golic in Chicago; Mark Israel in Washington, DC; and Robert Calzaretta in Oakland.

### **American Airlines, Inc. Dispute with Mechanics' Union**

In August 2019, U.S. District Court Judge John H. McBryde of the Northern District of Texas issued Compass Lexecon's client, American Airlines, Inc. (American or the Company), a permanent injunction against the Transport Workers Union of America, AFL-CIO (TWU), and the International Association of Machinists and Aerospace Workers (together with the TWU, the Union) for failing to exert every reasonable effort to prevent and stop an illegal slowdown campaign by their American mechanic members. Judge McBryde's decision relied heavily on the expert reports and trial testimony of Compass Lexecon's Executive Vice President Darin N. Lee.

Beginning in February 2019—in and around the same time that the Union began to ratchet up its rhetoric about obtaining a favorable contract—American began to experience a decline in overnight work productivity from its Union-represented mechanics. Several other maintenance-related metrics were heavily influenced by mechanic behavior started to exhibit atypical changes. At the same time, American began to experience increased operational disruption with elevated numbers of maintenance-related cancellations and prolonged delays.

American retained Dr. Lee to analyze various mechanic- and maintenance-related metrics to determine whether the observed changes could be attributed to a concerted change in behavior by the Company's mechanics. Dr. Lee submitted multiple reports and testified at trial, opining that mechanics had indeed been working slower than usual and restricting their work product. Dr. Lee further opined that the cumulative effect of mechanics' behavioral changes had led to statistically significant increases in maintenance-related cancellations and delays, which was indicative of a concerted slowdown to disrupt American's operations.

Following a July 2019 trial, Judge McBryde issued a concise opinion rejecting as “implausible” the Union's expert's analysis, which purported to demonstrate that the observed changes were due to exogenous events such as a CBS news report that allegedly incited mechanics to work more slowly as a safety precaution, noting that “Defendants could have refuted [Dr. Lee's analysis] by arguing that Lee failed to consider some other factor that could also explain the slowdown, but they failed to do anything of the sort. Their criticisms instead reflect a misunderstanding of statistics and Dr. Lee's analysis.” Instead, Judge McBryde relied heavily on Dr. Lee's statistical analysis in finding the mechanics to be the “culprit” of the slowdown, reacting to “heated, years-long contract negotiations that eventually reached a boiling point.” Following Judge McBryde's ruling, the Union and its American mechanic members are permanently enjoined from continuing the slowdown and are under specific orders to return behavior to status quo.

Dr. Lee was assisted by a team in Compass Lexecon's Boston office that included Eric Amel, Erin Secatore, Mu Liu, and Doug Schwartz. The consulting team was led by Eric Amel and Erin Secatore. Compass Lexecon worked closely with counsel from O'Melveny & Myers LLP, including Robert Siegel, Mark W. Robertson, Sloane Ackerman, Rachel S. Janger, and Charles J. Mahoney who successfully represented American.

### **GSK and Pfizer Over-the-Counter Drug Business Joint Venture**

In December 2018, GlaxoSmithKline plc (GSK) and Pfizer Inc. agreed to combine their consumer healthcare businesses through a multi-billion-dollar transaction. GSK markets common over-the-counter health care products such as Excedrin, TUMS, Prevacid, and Triaminic, while Pfizer markets Nexium, Advil, Robitussin, and Dimetapp. Compass Lexecon teams in the US and UK provided economic and econometric analyses in support of the transaction. In the US, the Compass Lexecon team presented detailed econometric results to the FTC showing little competition between the parties' brands, and strong pricing constraints from generic medications. In the UK, the Compass Lexecon team supported the European Commission's review along with other international filings. The deal received clearance without a second request in the U.S. in March 2019 and received approval in the EU in July 2019.

The Washington, DC-based Compass Lexecon team included Ben Wagner, John Campbell, Rob Oandasan, Eric Yde, and Carlos Paez. The non-US-based Compass Lexecon team included Kirsten Edwards-Warren, John Davies, and Marion Chabrost. Compass Lexecon worked closely with a legal team from Kirkland and Ellis LLP that was led by Matthew J. Reilly, Paula Riedel, Marin Boney, Jeffrey Ayer, Stephanie Greco, Joel Gory, Lauren Taylor, Jordan Goater, and Arjun Chandran, and with a team from Ropes & Gray LLP that was led by Michael S. McFalls and Jonathan S. Klarfeld.

### **Banner Health ERISA Trial**

Plaintiff in this litigation claimed that Banner Health failed to fulfill certain fiduciary obligations under ERISA by, among other actions, failing to prudently monitor the Mutual Fund Window offered under the Banner Health Employees 401(k) Plan, retaining the Fidelity Freedom Funds investment options for too long, and paying excessive recordkeeping fees.

After an eight-day bench trial, Judge William J. Martínez rejected in their entirety Plaintiffs' claims regarding the Mutual Fund Window and the Fidelity Freedom Funds and found Plaintiffs' damages claims with respect to recordkeeping fees to be unreliable. Judge Martínez awarded only a small damages amount (unrelated to Plaintiffs' expert's testimony) totaling less than three percent of the overall damages claimed by Plaintiffs.

Compass Lexecon Senior Managing Director Dr. Adel Turki was retained by Banner Health to provide expert rebuttal testimony concerning the alleged damages from the Mutual Fund Window and the Fidelity Freedom Funds. At trial, Dr. Turki opined that there was "no evidence whatsoever that [the Mutual Fund Window funds analyzed by Plaintiffs' expert] systematically underperformed their benchmarks or . . . created any loss to the participants [who] chose to invest in those options." The Court agreed with Dr. Turki's conclusion. Citing Dr. Turki's testimony, the Court found that "there is simply no credible evidence (in the form of expert opinion or otherwise), that Plan Participants who invested in these four selected funds suffered any economic loss as a result." Also crediting the opinions of Dr. Turki, the Court further found that Plaintiffs' expert "made a large number of unjustified assumptions and serious calculation errors, and that as a result [Plaintiffs' expert's] loss calculations are so unreliable and unsupportable that they cannot form the basis for any finding in favor of Plaintiffs..."

Dr. Turki was also retained by Banner Health to provide expert rebuttal testimony concerning the alleged excessive recordkeeping fees calculated by Plaintiffs' experts. At trial, Dr. Turki opined that Plaintiffs' expert's damages model was unreliable as the expert had not provided any empirical evidence to support his allegedly reasonable recordkeeping fees.

Therefore, Dr. Turki opined that the claimed expected per-participant fees and related damages calculations were unverifiable. The Court agreed with Dr. Turki concluding that Plaintiffs' expert's "estimate of the losses incurred by the Plan as a result of the excessive recordkeeping and administrative fees charged to the Plan by Fidelity to be unreliable..." Nonetheless, the Court concluded that the Plan's recordkeeping and administrative fees should have been more closely monitored and that this breach of the duty of prudence caused economic losses to the Plan. Given that the Court found Plaintiffs' expert's damages analysis unreliable, the Court fashioned its own method for calculating damages unrelated to Plaintiffs' expert's testimony.

Compass Lexecon worked closely with counsel from McDermott Will & Emery, including, Margaret H. Warner, Jennifer B. Routh, Theodore M. Becker, and Richard J. Pearl. Dr. Turki was assisted by a team in Compass Lexecon's New York office that included Michael Kwak and Nicholas Fasano.

### **Abra and Caliber Merger**

In December 2018, ABRA Auto Body Repair and Caliber Collision announced a merger that would create the collision repair provider with the largest geographic coverage in the United States. Compass Lexecon was retained by counsel for both ABRA and Caliber to provide economic analysis in support of the transaction. Compass Lexecon's work was used to demonstrate that significant competition for collision repair services would remain post-merger. In January 2019, the Federal Trade Commission cleared the transaction with no remedies.

The Washington-based Compass Lexecon team included Benjamin Wagner, Bo Bourke, Damien Peng, and Donovan Kaddis. Compass Lexecon worked closely with Peter Thomas, John Goheen, and Andrew E. Hasty of Simpson Thacher & Bartlett LLP and Nathaniel L. Asker and Aleksandr B. Livshits of Fried, Frank, Harris, Shriver & Jacobson LLP.

### **Merger Between PostNL and Sandd**

In September 2019, the Dutch Authority for Consumers and Markets (ACM) prohibited the transaction by which former Dutch state postal monopoly PostNL would acquire rival operator Sandd. The decision followed an in-depth Phase II investigation. PostNL and Sandd argued that the combination of their postal networks was necessary to ensure the continuity and affordability of postal services, in the context of rapidly declining postal volumes. However, the ACM rejected their arguments as the acquisition would create a monopolist in the postal delivery market, with the risk of significant price increases outweighing potential efficiencies or universal postal service obligations.

One month later, in October 2019, the Dutch Minister of Economic Affairs & Climate overruled the ACM's decision based on overriding public interests, but subject to conditions to, for example, ensure cost-based postal tariffs and provide regional transport companies access to PostNL's national network. It was the first time in the Netherlands that the Minister has overruled the refusal of a merger license by the ACM.

Compass Lexecon was retained by the ACM and conducted an independent review of the acquisition from an economic perspective. In particular, the ACM asked us to review the efficiency defense by the parties with regards to whether the efficiencies were significant,

verifiable, merger-specific, and passed on to consumers. Our analysis confirmed the conclusions of the ACM.

The Compass Lexecon team included Miguel de la Mano and Guillaume Duquesne.

### **Capacity Market Design for Lithuanian Transmission System Operator LitGrid**

Compass Lexecon advised the Lithuanian Transmission System Operator, LitGrid, on the design and market rules of the Capacity Market in the electricity sector. The Lithuanian Capacity Mechanism (CM) will be the first in the Baltic States. To ensure the security of supply, several European countries have initiated power market reforms to introduce CMs. The European Commission considers CMs as State Aid measures and requires a thorough assessment of their competitive effect on the electricity market.

LitGrid engaged Compass Lexecon to support in the development of a CM that would be suitable for the Lithuanian electric power system. The system faces specific supply issues related to the retirement of large volumes of existing thermal capacity; high reliance on imports from interconnectors; and plans for the synchronization of the Baltic electricity network with the Central European Network in 2025.

Our energy experts worked closely with LitGrid and their legal advisors, TGS Baltic, to align the CM design, market rules, and legislation with the requirements of other project parties, including the Ministry of Energy and the National Commission for Energy Control and Prices (NCC). Our experts demonstrated that the CM complied with EU State aid guidelines and managed interactions with the DG Competition case team. Together with the legal advisors, our experts also assisted in the implementation of the CM and prepared detailed Market Rules defining the terms and conditions of collaboration between the capacity market operator and the capacity market participants.

The Compass Lexecon team included Fabien Roques and Dmitri Perekhodtsev.

### **E.ON Acquisition of Innogy**

Following a Phase-II investigation, the European Commission (EC) cleared the acquisition by E.ON of Innogy's distribution and consumer solutions business as well as certain electricity generation assets of Innogy, subject to conditions. This Transaction is part of an extensive asset swap between E.ON and RWE. Both headquartered in Germany, E.ON and Innogy are active across the whole energy supply chain, including generation, wholesale supply, transmission, distribution, retail supply, and energy-related activities (such as metering and e-mobility). Both companies are present in several member States, although their activities mainly overlap in Czechia, Germany, Hungary, Slovakia, and the UK.

Compass Lexecon experts advised E.ON throughout the merger control proceedings. They developed and presented to the EC several economic analyses to assess the likelihood of unilateral effects in the energy market in Germany, the UK, and three CEE countries (Czechia, Hungary, and Slovakia). Compass Lexecon prepared, among other things, a margin-concentration analysis of the German retail market, as well as other economic analyses based on market share data at the municipality-level, tariffs, metering points, and switching data, which showed that the merging parties were rarely each other's rivals in the supply of regular electricity and gas and will continue to face strong competitive pressure from many suppliers. An analysis

of concession tender data for electricity and gas distribution networks in Germany also showed that the merging parties focused on different geographic areas. For the UK and CEE markets, they conducted several analyses related to market definition and closeness of competition through, for example, the analysis of switching, tariffs, margins, and tender data. Compass Lexecon experts also provided support in the assessment of remedies.

The Compass Lexecon team included Enrique Andreu, Miguel de la Mano, Urs Haegler, Thilo Klein, and Nadine Watson, assisted by Martina Caldana, Guillaume Duquesne, Scott Holbrook, Valérie Meunier, Orjan Sandewall, Bernardo Sarmiento, with several economists and analysts. Compass Lexecon worked alongside Christian Ahlborn, Christoph Barth, and Carsten Grave of Linklaters.

### **EagleView Technologies Patent Infringement Case Against Verisk Analytics**

Compass Lexecon's client EagleView Technologies claimed Verisk Analytics infringed multiple patents. In a twelve-day jury trial, EagleView prevailed and the jury awarded the full \$125 million in lost profits damages Compass Lexecon Senior Consultant Dr. Jonathan Arnold testified to at trial.

At issue was the market for rooftop aerial measurement products. In particular, EagleView created an entirely new class of products that saved time and money in the roof repair industry. Dr. Arnold offered detailed testimony quantifying lost profits under the *Panduit* test. He successfully demonstrated that EagleView satisfied each predicate for recovering the profits lost. In addition to quantifying lost profits, Dr. Arnold demonstrated that the presence of Defendants' infringing products in the market caused price to erode over time. Despite the fact that infringing sales represented a relatively small portion of overall demand, Dr. Arnold showed that price erosion caused about two-thirds of EagleView's overall economic loss. Dr. Arnold also quantified a reasonable royalty pursuant to the *Georgia-Pacific* factors and explained why a royalty would not adequately compensate the patent owner given the facts and circumstances of the dispute.

EagleView Technologies was successfully represented by Adam R. Alper, Michael W. De Vries, Brandon H. Brown, Reza Dokhanchy, Patricia A. Carson, Leslie M. Schmidt, Gianni Cutri, Joel R. Merkin, and Kristina N. Hendricks of Kirkland & Ellis LLP; Liza M. Walsh, Hector D. Ruiz and Eleonore Ofosu-Antwi of Walsh Pizzi O'Reilly Falanga LLP and David Silverman, General Counsel of EagleView Technologies. The Compass Lexecon team supporting Dr. Arnold was led by Anne Marie Yale with assistance from Kevin Hartt, Judy Smith, and Amessha Jones from Compass Lexecon's Chicago office.

### **Telia and Bonnier Broadcasting Merger**

In November 2019, the European Commission (EC) approved the €868.6 million (\$957 million) acquisition of Bonnier Broadcasting by Telia, subject to conditions, after a Phase II investigation. The investigation focused primarily on the parties' activities in the wholesale supply and retail distribution of TV channels in Finland and Sweden, where the EC feared a reduction of competition as a result of the transaction. Compass Lexecon was hired by Tele2, a rival operator, to analyze the potential anticompetitive effects of the transaction. We submitted a report with quantitative analyses showing that the merged entity would have the ability and

incentive to implement a strategy of (partial) foreclosure in various segments of the market. The EC's approval of the transaction was subject to a commitments package that addressed these foreclosure concerns.

The Compass Lexecon team included Miguel de la Mano, Enrique Andreu, Thilo Klein, Guillaume Duquesne, Mats Holmstrom and Shiva Shekhar.

### **Caverion Merger with Maintpartner**

In November 2019, the Finnish Competition and Consumer Authority (FCCA) conditionally approved the acquisition by Caverion of Maintpartner, after a Phase II investigation and commitments by Caverion. Caverion and Maintpartner are both active in industrial maintenance services. Caverion acquired all the shares of Maintpartner, including subsidiaries in Finland, Poland, and Estonia.

Compass Lexecon advised Caverion and assisted during the merger proceedings before the FCCA. We analyzed the Parties' tender data to address market definition and to investigate potential competitive effects arising from the transaction.

The Compass Lexecon team included Pekka Sääskilahti, Otto Toivanen, Nadine Watson, Lotta Väänänen, Eeva Hietamäki, Mats Holmström and Kristian Teromaa.

### **NVIDIA Acquisition of Mellanox**

In March 2019, NVIDIA, a manufacturer of graphical processing units (GPUs) and other computer processing components, announced plans to acquire Mellanox, which manufactures various network interconnects, for \$6.9 billion. Compass Lexecon experts Jonathan Orszag, Elizabeth Wang, Daniel O'Brien, and Mary Coleman were retained by counsel for NVIDIA and Mellanox to provide economic analysis concerning the merger and to assist the companies with the review of the deal by competition authorities in the U.S., Europe, China, and Mexico. NVIDIA is a leading supplier of GPUs used in high performance computing platforms with workloads in artificial intelligence, scientific computing, and data analytics, among others. Mellanox is a leading supplier of interconnects used in such platforms. Compass Lexecon provided economic analyses regarding potential bundling and foreclosure concerns raised by various competition authorities. The transaction was ultimately cleared by all authorities (with conditions in China).

The Compass Lexecon team also included Sophie Yang, Rodrigo Montes, Joel Papke, Jake Cheng, and Linchun Chen. Compass Lexecon worked closely with NVIDIA's outside counsel, Jones Day, led by Craig A. Waldman and Peter A. Julian in the U.S., Alexandre G. Verheyden and Phillipe Laconte in Europe, and Peter J. Wang and Yizhe Zhang in China; NVIDIA's co-counsel in Europe, Cleary Gottlieb Steen & Hamilton LLP, led by Francisco Enrique Gonzalez-Diaz and Conor Opdebeeck-Wilson; NVIDIA's co-counsel in China, T&D Associates, led by John Yong Ren; Mellanox's counsel, Latham & Watkins LLP, led by Joshua N. Holian and Yanyan Yang; and co-counsel in China, Sunland Law Firm, led by Yao Feng.

### **Belsport and International Global Sourcing Merger**

In January 2020, the Chilean competition authority (FNE) approved the merger between Belsport and International Global Sourcing (IGS). Belsport is a sportswear firm, intensive in the marketing of footwear, while IGS is active in the production and marketing of footwear and apparel in different segments. The FNE analyzed the overlap between the parties' activities both in the wholesale and retail channels. It concluded that the transaction would not lead to significant anti-competitive effects on a horizontal or a vertical level.

Compass Lexecon provided the merging parties with an economic assessment of the proposed transaction. We produced a national market shares analysis and a local geographical analysis, calculating market shares around each party's retail store using road travel time obtained via geographical information systems.

The Compass Lexecon team, led by Fernando Coloma and Enrique Andreu, included Jaime Coronado Hinojosa, Sara Cosimo and Nathan Viles.

### **Cofina Merger with Media Capital**

In January 2020, the Portuguese competition authority (AdC) approved the €255 million transaction by which Cofina acquired sole control of Media Capital. Both parties are active in the supply of basic pay-TV channels, in the market for digital press and contents, as well as in TV and online advertising markets. The AdC concluded that the merger was unlikely to harm competition in any of the relevant markets, as the increase in market share was small and did not give rise to competitive concerns. This conclusion was also underwritten by the sector regulator for communications (ANACOM) and the sector regulator for media (ERC), who did not oppose the merger.

Compass Lexecon assisted Cofina with an economic analysis of the potential competitive effects arising from the transaction. We identified the overlaps between the Parties, assessed their position in the relevant markets, and analyzed the potential unilateral and conglomerate effects of the transaction.

The Compass Lexecon team included Enrique Andreu, Jorge Padilla, Nadine Watson, Bernardo Sarmiento, Miguel de la Mano, and Joanna Hornik.

### **Hearst Litigation re: Below Cost Pricing**

In January 2020, the Court of Appeal of the State of California unanimously affirmed the trial court's grant of Summary Judgment in favor of Defendant Hearst Corporation (owner of the San Francisco Chronicle), rejecting Plaintiff San Francisco Print Media's (owner of the San Francisco Examiner) suit contending that Chronicle sold certain types of print advertising at prices below cost in violation of California's Unfair Practices Act and Unfair Competition Law.

Compass Lexecon Senior Consultant, Professor Daniel Rubinfeld was retained by counsel for Defendant Chronicle to analyze Plaintiff Examiner's expert's analyses of "cost, causation and damages." Professor Rubinfeld filed two reports criticizing the Examiner's expert's analyses on numerous grounds. The trial court excluded the Examiner's expert's "cost, regression and yardstick" testimony pursuant to the *Sargon* standard. Because such exclusion meant that Examiner could not show a triable issue of fact as to the elements of below-cost sales, loss leader sales, or secret unearned discounts, the trial court granted Hearst Corporation's Motion for Summary Judgment.

Professor Rubinfeld was retained by Stephen L. Saxl and Alan Mansfield of Greenberg Traurig LLP, counsel for Chronicle. Professor Rubinfeld was assisted by Duncan Cameron and Christopher Fasel in Compass Lexecon's Pasadena office.

### **TDR Capital/Stonegate Pub Acquisition of EI Group**

In February 2020, the UK Competition and Markets Authority (CMA) approved Stonegate Pub Company's anticipated acquisition of EI Group (formerly Enterprise Inns), subject to commitments proposed by the merging parties. The £3 billion transaction between the two pub groups was not found to raise potential national concerns, however, after an analysis of the potential impact of the merger in more than 500 local areas, the CMA identified significant competition concerns in 51 local areas. The merging parties proposed undertakings – the divestment of 42 sites – to overcome the specific local concerns.

Compass Lexecon assisted TDR Capital, the private equity firm that owns Stonegate Pub Company, in relation to the merger proceedings before the CMA. We analyzed the competitive impact of the transaction. In particular, we conducted a catchment area analysis by producing isochrones around the merging parties' pubs to study the local overlaps. We also advised TDR on its proposed remedy package based on this local overlap analysis.

The Compass Lexecon team, led by Neil Dryden, included Scott Holbrook, Gwilhem Charbonnier, Pawani Malhotra, Juho Anttila, and Richard Kamp.

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

Bank of America offered \$39.9 million to settle claims relating to representations and warranties on mortgages conveyed to an RMBS Trust. An investor in the Trust petitioned the New York State Supreme Court to direct the Trustee, Deutsche Bank National Trust Company, to reject the settlement on the ground that it provided inadequate consideration. The Trustee responded to the petition and asked the New York State Supreme Court to approve the settlement. Justice Marcy S. Friedman of the New York State Supreme Court asked the Trustee to retain an expert to evaluate the settlement. Michael S. Kraut and Susan F. DiCicco of Morgan, Lewis & Bockius LLP, counsel to the Trustee, retained Compass Lexecon's President Professor Daniel R. Fischel to provide an independent opinion of the reasonableness and adequacy of the settlement.

Professor Fischel, supported by a team at Compass Lexecon, analyzed the risk associated with rejecting the proposed settlement, the support and opposition to it, and compared the proposed settlement to recent settlements involving similar issues. Professor Fischel provided a report outlining his methodology and his recommendation that the proposed settlement was reasonable and adequate. He then provided a rebuttal report responding to arguments made by experts retained by the investor objecting to the settlement.

Justice Friedman cited Professor Fischel's analyses and recommendations in concluding that the Trustee exercised its discretionary power reasonably and in good faith in approving the proposed settlement. Professor Fischel was supported by a team at Compass Lexecon led by Jerry Lumer that included Neal Lenhoff, Kevin Hartt, and Donald Hong in Compass Lexecon's Chicago office.

## **Vodafone Hutchison Australia/TPG Merger**

In February 2020, the Federal Court of Australia ruled in favor of Vodafone Hutchison Australia Pty Limited (VHA) and TPG Telecom Limited (TPG) against the ACCC, concluding that the proposed AUD15 billion (US\$10.1 billion) VHA/TPG merger should be permitted to proceed.

VHA is one of Australia's three mobile network operators. TPG is primarily active in fixed-line services, but also sells some mobile services relying on access to VHA's network. In April 2017, TPG announced plans to roll out its own mobile network in parts of Australia but later abandoned its plans due to commercial and regulatory challenges. After a lengthy review, the ACCC blocked the merger, arguing that there was a "real chance" (as defined by case law) that TPG would roll out its own mobile network and compete to build its customer base. The ACCC contended that future competition would be stronger without the merger than with the merger.

Compass Lexecon's Senior Managing Director Dr. Jorge Padilla testified at the trial in Melbourne regarding the likelihood that future competition in Australia's mobile retail markets would be more intense with the merger than without the merger. Dr. Padilla's testimony focused on the analysis of the competitive dynamics of Australia's retail mobile market, including whether the combination of the parties' assets would make for a more effective competitor to the benefit of consumers than if the parties remained as separate entities. The Court concluded that the merger would not have the effect, nor be likely to have the effect, of substantially lessening competition. Justice Middleton found that TPG was extremely unlikely to roll out a mobile network or become an effective competitor absent the merger and that the merged entity would be a stronger competitive force against the two main mobile network operators in Australia, Telstra and Optus.

Dr. Padilla and Compass Lexecon were retained by Fiona Crosbie, Chris Prestwich, Robert Walker, and Anita Thompson of Allens, acting for VHA. Dr. Padilla was supported by a Compass Lexecon team that included Thilo Klein, Paul Reynolds, and Cecilia Nardini.

## **Damages Claims Against Lactalis**

In February 2020, the Paris Commercial Court rejected all damages claims made by distribution companies against dairy manufacturers before the Consular Court. The damages claims followed a cartel in the sector for fresh dairy products in France (including price fixing and volume allocation) which was fined by the French Competition Authority in March 2015. One of the claims against our client, dairy producer Lactalis, was by retailing company Cora and its purchasing unit Provera.

A Compass Lexecon team provided economic support to Lactalis during the 3 years of litigation. We produced two expert reports rebutting opposing experts' opinions on which the damages claims were based. For instance, we tested whether the economic hypotheses considered by Provera were in line with the alleged practices, by using multinomial regression analysis for the overcharge, present value scenarios, and pass-on defense. Our expert David Sevy also testified during a court hearing. In its rejection of the claims, the Paris Commercial Court primarily underlined the need for a causal link between the practices and the alleged damages and relied on Compass Lexecon's analysis to conclude that such a causal link was not proven.

The Compass Lexecon team comprised, at various stages of the litigation, David Sevy, Jeremiah Juts, Thibaut de Bernard, and Jaime Coronado.

### **CenturyLink and CenturyLink Investment Management ERISA Class Action**

Plaintiffs in this litigation claimed that Defendants breached their fiduciary duties by creating the Active Large Cap U.S. Stock Fund and maintaining it as an investment option for Plan participants and as one of the investments underlying the Plan’s target date funds. In March 2020, United States District Judge Christine M. Arguello, of the District of Colorado, ruled in favor of Compass Lexecon clients CenturyLink and CenturyLink Investment Management (CIM), granting Defendants’ motion for summary judgement.

Compass Lexecon provided support for Charles M. Porten, an investment management industry expert who was retained by CenturyLink and CIM to review the processes that Defendants used to design, manage, operate, and administer the disputed funds and to provide an opinion regarding Defendants’ compliance with industry standards. The Court recognized Mr. Porten’s more than three decades of experience in the investment management industry and relied on Mr. Porten’s opinions that Defendants’ design, management, oversight, and monitoring of the Active Large Cap U.S. Stock Fund and the Plan’s target date funds were consistent with industry standards. In particular, the Court found that “CIM has shown that it satisfied its duty of prudence with respect to the Fund’s design” based on “the robust procedures involved in designing the Fund and Mr. Porten’s assessment that those procedures were comprehensive and consistent with industry standards...” Likewise, the Court found that “CIM has shown that it satisfied its duty of prudence with respect to its monitoring procedures” based on, among other things, Mr. Porten’s conclusion that “the process used by CIM to monitor the [Fund] was very comprehensive, analytical and reflects thorough due diligence, consistent with industry standards.”

Mr. Porten was assisted by a team at Compass Lexecon led by Adel Turki and Constance Kelly. Compass Lexecon worked closely with attorneys at Jenner & Block LLP, including Craig C. Martin, Matt D. Basil, Amanda S. Amert, Laura L. Norris, and Michele L. Slachetka.

### **Mutares Acquisition of Ruukki Building Systems**

In April 2020, the Finnish Competition and Consumer Authority (FCCA) conditionally approved the transaction by which Donges Teräs Oy (owned by Mutares) acquired Ruukki Building Systems Oy (a subsidiary of SSAB Group). Both parties are steel structure suppliers with Ruukki Building Systems specializing in the design, manufacture, and installation of building frame, envelope, and bridge structures out of steel. The FCCA identified competition concerns in the market for steel frame structures for business premises and industrial buildings, as well as in the market for turnkey deliveries of steel bridge structures. These concerns were removed by commitments given by the Parties.

Compass Lexecon provided economic support to Mutares and its portfolio company Donges Teräs (Donges Steel) during the merger proceedings. We investigated market definition and the potential unilateral effects arising from the transaction. We analyzed tender data and conducted a B2B survey together with the national competition authority.

The Compass Lexecon team included Pekka Sääskilähti, Lotta Vaananen, and Eeva Hietamäki, with support from Nadine Watson.

### **Airline Payroll Support Agreement with U.S. Treasury Department**

In April 2020, the U.S. Treasury Department announced that it had reached agreements with ten U.S. passenger carriers (Alaska Airlines, Allegiant Air, American Airlines, Delta Air Lines, Frontier Airlines, Hawaiian Airlines, JetBlue Airways, United Airlines, SkyWest Airlines, and Southwest Airlines) for their portion of the \$25 billion in payroll support allocated to U.S. passenger airlines as part of the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act.

Airlines for America retained a team of airline experts from Compass Lexecon—Dr. Eric Amel, Dr. Darin Lee, and Dr. Ethan Singer—to quantify the economic benefit of the payroll support to the U.S. Treasury, state treasuries, and the broader U.S. economy. Their report demonstrates that by preventing involuntary furloughs and pay rate reductions at U.S. passenger airlines for the next six months, the CARES Act provides a critical and essential bridge for airlines and their employees so that they are in the position to provide the most efficient, effective, and economical air service to help fuel the U.S. economy’s rebound. By analyzing wage data for nearly 500,000 different airline employees, Compass Lexecon’s analysis calculated that the CARES Act’s payroll support to U.S. airline employees will yield an estimated \$18.0 to \$27.8 billion in primary benefits to the U.S. economy (including increased state and federal tax revenue, avoided unemployment insurance payments, increased spending flowing directly from the payment of airline employees’ wages, additional supply chain activity, domestic traffic stimulation, and more international visitors). Compass Lexecon’s analysis also demonstrated that because the CARES Act creates the strong incentive and capability for U.S. carriers to restore capacity faster than they otherwise would, it will lead to incremental capacity that will add another \$24.9 billion in direct benefits over the next two years, plus an additional \$46.2 billion in secondary GDP benefits by enhancing U.S. passenger airlines’ unique ability to accelerate the rebound in the U.S. economy.

Drs. Amel, Lee, and Singer were supported by members of Compass Lexecon’s Boston-based airline team including Amy Feldman, Neha Georgie, Jackie Glasheen, Erin Secatore, and Pramish Thapa.

### **Republic of Guatemala Damages Appeal**

In a resubmitted investment treaty claim by TECO Guatemala Holdings LLC, economic experts Manuel Abdala and Julian Delamer successfully assisted the Republic of Guatemala to defend against a US\$202.3 million claim involving an undue regulatory process leading to low electricity distribution tariffs on TECO’s subsidiary EEGSA. The award, dated April 27, 2020, resulted in a US\$26.7 million plus interest ruling to Claimant, or 13% of the total sum demanded. Dr. Abdala and Mr. Delamer provided regulatory and economic evidence to help demonstrate that the effects of the tariff reduction for the 2008-2013 regulatory process could not be extended over subsequent tariff review cycles, a key position of Guatemala’s defense.

Dr. Abdala and Mr. Delamer were supported by a Compass Lexecon team led by Alan Rozenberg in Madrid and included Federico González Loray in London and Andrés Barrera in

New York. Compass Lexecon's experts were retained by Nigel Blackaby, Lluís Paradell Trius, and Francesca Loreto of Freshfields Bruckhaus Deringer LLP, and Jean-Paul Dechamps of Dechamps International Law.

### **Faurecia Merger with SAS Automotive Systems**

In January 2020, the European Commission (EC) announced an investigation into the EUR 225 million merger transaction by which international automotive parts manufacturer Faurecia acquired the remaining 50% share capital of SAS Automotive Systems (SAS). As a result of the transaction, Faurecia became the sole owner and controller of SAS. The parties received approval for the transaction from the EC, as well as from competition authorities in Turkey, Mexico, and Brazil.

Compass Lexecon assisted Faurecia with the pre-notification proceedings before the EC, including conducting a competitive assessment of the merger's economic effects, which enabled the transaction to be approved in a short timeframe.

The Compass Lexecon team was led by Miguel de la Mano.

### **Colorado Attorney General Investigation of Aurora Police**

In 2020, the Attorney General of Colorado, Philip J. Weiser, appointed a team to investigate whether the Aurora Police Department and Aurora Fire Rescue had exhibited a pattern and practice of violating state and federal law. The investigation, the first of its kind under Senate Bill 217 (a law enforcement accountability bill enacted in the summer of 2020 in the wake of large-scale protests against police brutality following the murder of George Floyd by a Minneapolis police officer), focused on police stops, arrests, uses of force, and possible discrimination in enforcement activities conducted by the Aurora Police Department and Aurora Fire Rescue.

Compass Lexecon, along with Dr. David K. A. Mordecai and Samantha Kappagoda of Risk Economics, Inc. conducted extensive statistical and empirical analyses of data retrieved from the Aurora Police Department related to police interactions, arrests, and uses of force. The team presented statistical evidence that police interactions, arrests, and uses of force occurred disproportionately and disparately with people of color, and particularly Black people, relative to white people in the City of Aurora. Based on this work, the investigation team concluded that “[They] observed statistically significant racial disparities — especially with respect to Black individuals — in nearly every important type of police contact with the community, from interactions to arrests to uses of force,” and that “[t]hese disparities persisted across income, gender and geographic boundaries.” This evidence played a critical role in supporting the Attorney General's findings that Aurora Police engages in racially biased policing, treating people of color (and Black people in particular) differently from their white counterparts.

As a result of these findings, Attorney General Philip J. Weiser will seek to create a legally binding consent decree with the Aurora Police Department that will outline the steps his office believes necessary to fix the problems uncovered by the investigation. The investigative report and its findings have been mentioned by the New York Times, the Wall Street Journal, and the Guardian, among others.

The Compass Lexecon team included Michael Kwak, Mihir Gokhale, Noah Mathews, and Peter Horvath from our New York Office.

### **UK Interchange Fee Litigation**

In June 2020, the UK Supreme Court issued a landmark judgment in relation to three sets of proceedings involving Mastercard, Visa, and various claimant retailers. The judgment found in favor of Compass Lexecon's retailer clients, drawing on analysis provided by Compass Lexecon expert Neil Dryden.

The appeal concerned aspects of the analysis of restriction of competition under Article 101(1) TFEU and of efficiencies under Article 101(3) TFEU, applied to interchange fees. In two previous cases at the High Court, Neil Dryden gave extensive evidence, contested by the card schemes, that the merchant indifferent test (MIT) framework developed by Professors Jean-Charles Rochet and Jean Tirole needed to be applied taking account of the degree of pass through of interchange fees by issuers to card holders and of the extent of "always card" transactions.

In its 2018 judgment, the Court of Appeal relied heavily on that evidence in its judgment, making numerous references to Neil Dryden's "framework" for balancing the costs and benefits of interchange fees. In particular, the Court held that this framework identified "a critical aspect of the balancing exercise required".

The UK Supreme Court confirmed that approach and clearly stated that interchange fees complying with the MIT do not automatically qualify for exemption and that a balancing exercise needs to be performed taking account of the variables mentioned above. In so doing, the Court has confirmed the need for economic empirical evidence in the context of applying Article 101(3).

Neil Dryden was assisted on this matter by a team at Compass Lexecon including Stefano Trento, Laura Phaff, Robin Rander, Catalina Campillo, Gwilhem Charbonnier, Scott Holbrook, Orjan Sandewall, Segye Shin, and Daniel Westrik. Compass Lexecon worked closely with a team at Stewarts Law LLP led by Kate Pollock, including Inge Forster, Stuart Carson, Matthew Tighe, and Zachary Sananes. Compass Lexecon also worked closely with the barrister team including Jon Turner QC, Meredith Pickford QC, Christopher Brown, Max Schaefer, and Laura Elizabeth John.

### **General Motors and Polaris Class Action Product Defect Cases**

Compass Lexecon experts provided analysis in two recent and successful outcomes in consumer class action cases alleging product defects. The first was GM's class settlement of economic loss claims resulting from recalls of ignition switch assemblies, side airbags, and electronic power steering systems covering millions of vehicles. The second was the denial of class certification in an action against Polaris, a manufacturer of all-terrain vehicles (ATVs).

In the GM matter, Plaintiffs claimed in court filings that class members suffered more than \$77 billion in damages. However, they agreed in late March to settle for less than 1% of that amount following summary judgment rulings in favor of GM on key issues. Compass Lexecon supported multiple experts who rebutted Plaintiffs' damage claims, which relied on conjoint

surveys to evaluate the impact of GM's alleged misrepresentations about product reliability on the price of vehicles purchased by Plaintiffs.

Compass Lexecon Senior Consultant Professor John List of the University of Chicago testified for GM about the deficiencies of Plaintiffs' damage analysis and showed that their conjoint-based analysis was unreliable and failed to establish the impact of the alleged defects on prices paid by Plaintiffs. Compass Lexecon Senior Consultant Professor Robert Willig of Princeton University showed that Plaintiffs' experts failed to establish class-wide impacts. Dr. Laurentius Marais, Executive Vice President at Compass Lexecon, showed that the survey methods and statistical analysis applied by Plaintiffs' expert were unreliable. Professor Peter Rossi of UCLA, who was supported by Compass Lexecon, testified about the deficiencies of Plaintiffs' expert's conjoint survey and damage analysis.

Although the damage methodology used by Plaintiffs' experts was similar to those previously accepted by other courts, Judge Jesse M. Furman (SDNY) concluded that Plaintiffs' experts' analyses failed to meet the requirements of Plaintiffs' "benefit of the bargain" damage theory by failing to establish the price of vehicles that would have prevailed in the absence of the alleged misrepresentation. Judge Furman also concluded that Plaintiffs' experts failed to establish that Plaintiffs were injured. His conclusions were consistent with opinions expressed by the Compass Lexecon experts whose reports were submitted by GM in support of its successful summary judgment motion.

In the Polaris case, Judge Nancy E. Brasel (DMinn) denied certification of a class of purchasers of ATVs who alleged heat-related safety defects. Plaintiffs' experts in this case also attempted to use conjoint surveys and market simulation analysis to establish that customers overpaid for ATVs due to Polaris' alleged misrepresentations of product quality. The Court, however, ruled that Plaintiffs' expert-driven overcharge theory was insufficient to meet class certification requirements in that it failed to "supplant required showings of causation, injury and damages."

Professors List and Rossi were supported by a Compass Lexecon team based in Chicago that included Hal Sider, Evan McKay, Yoad Shefi, Ron Laschever, Peter Clayburgh, and Jonnie Tompkins. Professor Willig was supported by a Compass Lexecon team based in Oakland that included Jith Jayaratne, Gilad Levin, and Yoad Shefi. Professor Uri Gneezy of the University of California San Diego also worked closely with the Compass Lexecon teams on both cases. Compass Lexecon previously assisted counsel for GM in settling thousands of personal injury claims related to the recalls.

The Compass Lexecon experts were retained by Richard C. Godfrey, Wendy L. Bloom, and Andrew B. Bloomer of Kirkland & Ellis LLP in Chicago. *The American Lawyer* named this group as "Litigators of the Week" in April for their successful representation of GM and Polaris in the 2 cases.

### **PKN Orlen Merger with Lotos**

In July 2020, the European Commission cleared the merger between PKN Orlen, the largest oil refiner in Poland, with its smaller counterpart Lotos, to create an integrated oil and gas supplier with a market capitalization of around \$14bn. The approval is conditional on a range of commitments including divesting a 30% stake in Lotos's refinery in Gdansk, divestment and

contractual opening of much of the country's fuel distribution infrastructure, and divestment of retail stations.

Compass Lexecon advised PKN Orlen throughout the process, from pre-notification over two years ago, and through Phase I and Phase II assessments, including participating in the Phase II Hearing. Our economic analysis focused on demonstrating the role of imports in constraining domestic suppliers in wholesale fuels, as well as detailed area-by-area analysis of local competitive effects in retail by applying multiple rules to geocoded data assessing competitive effects using overlaps, market shares, monitoring data, and other criteria, then optimizing to find the minimum divestment required to satisfy the Commission that all local competition concerns had been solved. We also supported PKN Orlen and the four law firms advising them in all quantitative submissions and responses to the Commission, across the many products supplied by the merging parties in Poland and neighboring countries, using techniques including bidding data analysis, price correlation analysis, and critical loss analysis.

The Compass Lexecon team was led by John Davies, with Martina Caldana as project manager. The core team was Marta Adembri, Verdi Choo, and Alessia Paulicelli, along with many others from Compass Lexecon's London, Paris, and Brussels offices. PKN Orlen's legal advisors were Euclid Law, Geradin Partners, Gide Loyrette Nouel, and SMM Legal.

### **Alstom Acquisition of Bombardier**

Following a Phase I investigation, the European Commission (EC) approved the acquisition of Bombardier Transportation by Alstom, subject to conditions in markets for very high-speed rolling stocks, mainline rolling stocks, and mainline signaling. The proposed transaction followed the recent prohibition of the acquisition of Alstom by Siemens in 2019, where Alstom and Siemens did not offer remedies sufficient to clear the EC's competition concerns. The acquisition of Bombardier Transportation by Alstom would have raised similar concerns absent the right remedies. Compass Lexecon experts assisted in identifying the remedies package. This resulted in this complex transaction being cleared in Phase I without delays.

More generally, Compass Lexecon experts advised Bombardier Transportation throughout the merger control proceedings. They developed economic arguments and analyses to assess the likelihood of horizontal, vertical, and conglomerate effects of the proposed transaction. *Inter alia*, they prepared bidding analyses to assess the closeness of competition between Alstom and Bombardier Transportation. They analyzed the merged entity's ability and incentive to leverage its installed base in the mainline rolling stock market to foreclose competitors in the signaling on-board unit market.

The Compass Lexecon team included Enrique Andreu, Guillaume Duquesne, Catalina Campillo assisted by Jaime Coronado, with several economists and analysts. Compass Lexecon worked alongside Bernard Amory, Charles de Navacelle, Lucia Stoican, and Henry de la Barre of Jones Day.

### **IC Power Asia Development Tax Claim Against Republic of Guatemala**

Compass Lexecon's experts Marcelo Schoeters, Gustavo De Marco, and Alan Rozenberg successfully assisted the Republic of Guatemala (Respondent) in getting a tax claim of over \$100 million raised by IC Power Asia Development Ltd (Claimant) dismissed.

The Claimant owned two power distribution companies in Guatemala (DEOCSA and DEORSA, collectively known as Energuate), acquired in January 2016 and sold in December 2017. IC Power claimed Energuate's past and future tax savings related to the deduction of interest expenses and amortization of goodwill arising from a leveraged buy-out of Energuate performed by the previous owner in 2011. Compass Lexecon's experts provided an opinion on characteristics of leveraged buy-out transactions, the reasonability of goodwill estimations, the tax due diligence of Claimant's acquisition of Energuate, and its implication on the alleged damages' assessment. The Tribunal dismissed all claims and ordered IC Power to pay for two-thirds of Respondent's costs.

Compass Lexecon's experts were supported by Pedro Legris in the Buenos Aires office. Compass Lexecon worked with a legal team led by Eduardo Silva Romero, José Manuel García Represa, and Juan Felipe Merizalde Urdaneta of Dechert LLP.

### **European Commission Revision of the State Aid Guidelines for EU Emission Trading Scheme**

In September 2020, the European Commission (EC) adopted the revised European Emission Trading Scheme (ETS) State Aid Guidelines aimed at reducing the risk of carbon leakage related to indirect ETS costs (through electricity prices) for the next phase of the EU ETS (2021-2030). These Guidelines define the sectors eligible for compensation and the methodology for defining the compensation that can be granted by member states to the different sectors.

A team of Compass Lexecon experts assisted DG COMP in the retrospective evaluation of the State Aid Guidelines for the compensation of these eligible industrial sectors, and the prospective impact assessment of the future Guidelines post 2021:

- We provided the EC with an economic analysis of the different factors affecting the risk of carbon leakage for 41 electro-intensive industries whose competitiveness might be negatively impacted by the ETS indirect carbon costs.
- Our economists also assisted the EC in evaluating the methodology for the calculation of the compensation that can be awarded to the eligible sectors. This analysis covered the different relevant parameters considered for the compensation of indirect carbon costs such as the emission factor, the aid intensity, and the gradual decrease of the aid.

The Compass Lexecon team included Fabien Roques, Catherine Doulache, David de Magalhaes, and Anastasia Tseomashko.

### **Ex Libris Acquisition of Innovative Interfaces Inc.**

In December 2019, Ex Libris, a ProQuest Company, signed an agreement to acquire Innovative Interfaces Inc., a leading provider of integrated library systems for public, academic, and other types of libraries.

Dr. Mark Israel and Compass Lexecon assisted the parties during all phases of the U.S. Federal Trade Commission's (FTC's) investigation of the transaction. Compass Lexecon conducted an in-depth analysis of the likely competitive effects of the acquisition, demonstrating that it would not harm competition, but rather would create pro-competitive benefits. Among other things, this analysis quantified the de minimis extent of head-to-head competition between Ex Libris and Innovative, as well as the effect of recent industry trends – including the recent decline of Innovative – on the evaluation of competitive effects. Dr. Israel presented his work to the FTC first in March 2019, and then in several subsequent follow-up meetings and submissions. The FTC closed its investigation, allowing the acquisition to proceed unchallenged, in October 2020.

Dr. Israel was supported by a team led by Matt Schmitt, which also included Carlos Paez, John Campbell, Siyi Chen, Jai Choudhari, Chris He, and Aaron Wolfe. Compass Lexecon worked closely with Nathaniel L. Asker and Aleksandr B. Livshits of Fried, Frank, Harris, Shriver & Jacobson LLP, and Arthur J. Burke, Jon Leibowitz, and Suzanne Munck of Davis Polk & Wardwell LLP.

### **Swedish Competition Authority Dominance Investigation Into Insurance Company Folksam**

The Swedish Competition Authority (SCA) has decided to close a long-running investigation into whether insurance company Folksam ömsesidig sakförsäkring (Folksam) was abusing a dominant position by selling below cost. Folksam could have been liable to pay a fine of up to 10% of its annual turnover if the SCA had found it was abusing a dominant position. Compass Lexecon advised Folksam on the economic arguments in the SCA's investigation. The SCA assessed whether Folksam had a dominant market position in the supply of certain niche insurance products and whether Folksam had sold such insurance at prices that could exclude rival insurance companies. Compass Lexecon analyzed Folksam's market position to support the contention that niche insurance products formed part of a wider product market and that Folksam, therefore, could not have a dominant position.

The Compass Lexecon team developed arguments and evidence to demonstrate that it would be easy for rival insurance providers, not currently present in niche insurance, to launch niche insurance products. This threat of entry means that Folksam could in practice not have a dominant position. The team further developed arguments and evidence to demonstrate that there is competition between different distribution channels for niche insurance. Such competition would be inconsistent with Folksam having a dominant position. In its decision to close the investigation, the SCA refers to the ease with which rivals can launch niche insurance products and competition between distribution channels.

Compass Lexecon's team comprised Pekka Säskilahti, Mats Bergman, Nadine Watson, Robin Rander, and Mats Holmström. The team worked alongside a legal team from law firm Cederquist, comprising Fredrik Lindblom, Elsa Arbrandt, and Fanny Fernlöf.

### **Fiat Chrysler Automobiles N.V. / Peugeot S.A. Phase II Merger**

In December 2020, the European Commission approved the proposed \$52bn (£38bn) merger between automotive companies Fiat Chrysler Automobiles N.V. (FCA) and Peugeot S.A.

(PSA) following a Phase II investigation, subject to conditions. Both companies are active worldwide, with a strong manufacturing base in the European Economic Area (EEA). The transaction will lead to the creation of the fourth largest automotive group in the world, to be called “Stellantis”.

Compass Lexecon advised the Parties throughout the Commission’s in-depth investigation. The Commission had concerns that the transaction would harm competition in the market for light commercial vehicles (LCV) in nine EEA Member States (Belgium, Czechia, France, Greece, Italy, Lithuania, Poland, Portugal, and Slovakia), where the companies have high combined market shares and are particularly close competitors.

Our experts assisted the Parties in responding to these concerns by analyzing the closeness of competition between the Parties and price effects in the markets in question, using market shares, diversion patterns, and detailed margin information to determine price pressure indices (GUPPIs). We submitted price and customer analyses for the LCV segment and an efficiencies analysis to the Commission. Our analyses demonstrated that the LCV segment is characterized by several strong competitors, which could exert a competitive constraint on the Parties post-merger. They also showed that the deal could lead to material market efficiencies to the benefit of consumers. We also supported the Parties in designing a remedy package to allay the Commission’s competition concerns in the LCV market in the EEA. In addition, we supported the Parties in their interactions with several other competition agencies reviewing the merger, including Tunisia, Turkey, Ukraine, Mexico, Brazil, and Chile.

The Compass Lexecon team included David Sevy, Lorenzo Coppi, Martina Caldana, Thibaut de Bernard, Aleksandra Khimich, and Cecilia Nardini, supported by a team of analysts. The work before the Chilean competition authority also involved Fernando Coloma.

### **American Airlines Antitrust Trial**

In January 2021, Judge Sean H. Lane of the U.S. Bankruptcy Court for the Southern District of New York ruled in favor of AMR Corporation *et al.* in a case related to the AMR/US Airways merger. Private parties brought suit in August 2013 alleging that the then-proposed merger between AMR Corporation—the owner of American Airlines—and US Airways Group violated Section 7 of the Clayton Antitrust Act because its “effect . . . may be substantially to lessen competition, or to tend to create a monopoly in the transportation of airline passengers in the United States.” Shortly after the suit was filed, the U.S. Department of Justice (DOJ) and several states filed a complaint against AMR and US Airways seeking to enjoin the merger. In December 2013, AMR and US Airways reached agreement on a settlement in the DOJ action, and the merger was completed in 2014. The private action continued.

A trial was held in March 2019. Defendants presented written expert testimony from three Compass Lexecon experts—Professor Dennis Carlton, Daniel Kasper, and Professor Janusz Ordover—each of whom testified at trial. Judge Lane ruled for Defendants on all issues, citing the testimony of all three Compass Lexecon experts, and concluded that Plaintiffs failed to show that the merger lessened competition. Judge Lane further concluded, based on the evidence presented by Professor Carlton, that the merger was procompetitive, writing that “Dr. Carlton’s three econometric analyses and his related testimony credibly demonstrate that the Merger has expanded airline output, and that it has resulted in a reduction of average fares, an increase in the number of total passengers, and an increase in the number of seats available.” Judge Lane also

cited a published study authored by several Compass Lexecon economists, which showed that the series of mergers of “legacy” carriers creating the current American, Delta, and United Airlines have been pro-competitive, both separately and collectively.

Compass Lexecon was retained by Daniel M. Wall and Sadik Huseny of Latham & Watkins LLP, and also worked with American Airlines’ inside counsel, including Stephen Johnson and Bruce Wark. Professor Carlton was supported by a Compass Lexecon team that included Gustavo Bamberger, Lynette Neumann, and Eugene Orlov; Mr. Kasper was supported by a Compass Lexecon team that included Darin Lee, Eric Amel, and Ethan Singer; and Professor Ordover was supported by a Compass Lexecon team that included Yair Eilat and Eric Amel.

### **Mylan EpiPen Antitrust Litigation**

In December 2020, the U.S. District Court for the District of Kansas granted summary judgment in favor of Compass Lexecon’s client Mylan Inc. on antitrust claims brought by Sanofi-Aventis U.S. LLC (Sanofi). Sanofi alleged that Mylan entered rebate agreements with pharmacy benefit managers (PBMs) for favorable and exclusive formulary placement of Mylan’s EpiPen Auto-injector that had the effect of excluding Sanofi’s rival product, Auvi-Q, from the market. Applying a rule of reason standard, the Court concluded that the summary judgment facts presented no triable issue whether Mylan’s rebate offers to PBMs were anticompetitive or that Sanofi sustained antitrust injury sufficient to support its claims.

Favorably citing the opinions of Compass Lexecon expert Professor Robert Willig, the Court found that Mylan’s use of rebates to compete for exclusivity on certain formularies did not foreclose Sanofi from competing in the market for epinephrine auto-injectors (EAI). Rather, the Court found that Mylan’s rebate offers “promoted competition in the EAI market – something the antitrust laws encourage.” In particular, the Court observed that Mylan’s rebates for formulary exclusivity were “not the product of any unlawful coercion on Mylan’s part,” but rather the result of PBM negotiating strategies to use exclusive formulary placement as a tool to stimulate competition among therapeutic equivalents in order to obtain higher rebates and thus lower prices paid to Mylan and Sanofi. The evidence also indisputably showed that Sanofi was able to compete effectively for the same business, and that PBMs were able to shift the vast majority of demand to Auvi-Q by excluding EpiPen from a formulary. Critically, the Court concluded that Professor Willig’s analysis demonstrated that Mylan’s rebate offers lowered prices for EAIs below the prices that would have existed but for the challenged rebates, meaning they were pro-competitive. Finally, the Court concluded that the evidence supported neither Sanofi’s expert’s claim that there was a large fraction of demand that was “non-contestable” for which Auvi-Q was unable to compete, nor the related claim that Mylan’s conditional rebates imposed such a large “tax” on its rivals that an equally efficient competitor could not win sales with above-cost pricing.

Compass Lexecon was retained by Philip A. Sechler and Roy T. Englert, Jr. of Robbins, Russell, Englert, Orseck and Untereiner. Professor Willig was supported by a Compass Lexecon team that included Bret Dickey, Kun Huang, Tully Lillis, and Todd Bettisworth.

### **First Connecticut Bancorp Proxy Statement Litigation**

In April 2021, the U.S. District Court for the District of Maryland granted summary judgment in favor of Compass Lexecon’s clients First Connecticut Bancorp, Inc. and its board of directors on all claims made by a shareholder plaintiff proposing to represent a class of all First Connecticut shareholders. Plaintiff had alleged that, in the acquisition of First Connecticut by People’s United Financial, Inc., the merger proxy statement issued to First Connecticut shareholders failed to disclose certain projections for after-tax free cash flows, and that the First Connecticut directors negligently failed to properly review the merger proxy statement appropriately.

In dismissing Plaintiff’s claims in their entirety, the court relied on the testimony of Compass Lexecon expert Dr. Adel Turki. The court cited Dr. Turki’s empirical study of comparable bank mergers, which showed that less than 3% of proxy statements in these mergers provided the type of projections that Plaintiff claimed should have been included in First Connecticut’s proxy statement. The court stated that, in light of this fact, “[t]o hold that the omission of cash flow projections in the context of [the First Connecticut acquisition] would fly in the face of regular practice and is simply unsupported by the record in this case.” The court also cited Dr. Turki’s conclusion that the omission of cash flow projections could not have caused economic harm to the First Connecticut shareholders in concluding that there is no issue of material fact on the issue of loss causation.

The court also favorably cited the testimony of a second expert, Jonathan Foster, who was supported by a Compass Lexecon team. Mr. Foster demonstrated that, as a matter of custom and practice, directors of the selling company review the merger proxy statement but do not decide on the inclusion or exclusion of specific items or seek to verify specific information in the proxy statement. The court stated that “Plaintiffs have not provided any evidence that refutes this testimony.”

Compass Lexecon was retained by Robert R. Long, Elizabeth Gingold Clark, and Timothy J. Fitzmaurice of Alston & Bird LLP, who represented First Connecticut and its directors. Dr. Turki was supported by a Compass Lexecon team led by Cliff Ang, and Mr. Foster was supported by a Compass Lexecon team led by Todd D. Kendall.

### **UK Telecoms Merger Between Liberty Global and Telefónica**

In May 2021, the UK CMA cleared the £31.4 billion (\$38.45 billion) transaction by which Liberty Global and Telefónica combine their British telecom operations Virgin Media and O2 in a joint venture. The deal brings together the UK’s second-largest broadband network (Virgin Media) with the largest mobile network (O2), creating a player with the assets required to compete in the fixed-mobile converged (FMC) space.

The acquisition was initially notified to the European Commission, but upon request referred to the UK CMA, where it was fast-tracked to a Phase-II investigation. Compass Lexecon provided economic support to Telefónica/O2 throughout the processes of both authorities. The CMA’s investigation focused on theories of input foreclosure related to the provision of leased lines for mobile backhaul and wholesale access to mobile networks.

We assessed horizontal and vertical theories of harm in mobile markets, showing *inter alia* that the JV would not have the ability or incentive to increase prices in the retail mobile market, or to foreclose access to its network to competing mobile virtual network operators

(MVNOs). We also assisted in the design and analysis of a survey to understand consumers' propensity to switch in response to a price increase, particularly in the FMC space.

The team, led by Miguel de la Mano and Thilo Klein, included Scott Holbrook, Cecilia Nardini, and Angelos Stenimachitis with the assistance of Gytautas Karklius, Sara Cosimo, Nathan Viles, Nikki Hui, Pawani Malhotra, and Bo Bourke. We worked closely with Telefónica's legal advisers of Clifford Chance (led by Jenine Hulsmann and Miguel Odriozola) and Cleary Gottlieb Steen & Hamilton LLP (led by Francisco Enrique González Díaz).

### **Hewlett-Packard Breach of Contract Appeal**

In June 2021, a California appellate court rejected arguments by Oracle Corporation (Oracle) and affirmed a trial court ruling and jury award of more than \$3 billion in damages to Hewlett-Packard Company (HP) in a breach of contract dispute between the companies.

Compass Lexecon Senior Managing Director Jonathan Orszag testified on behalf of HP in the 2016 trial regarding the amount of damages suffered by HP as a result of Oracle's breach and the jury awarded HP the exact amount of damages calculated by Mr. Orszag: \$3.014 billion. Oracle appealed the jury award, arguing that Mr. Orszag's testimony on damages should have been excluded because his damages model contained a fundamental flaw and was impermissibly speculative.

In its ruling, the Court of Appeal concluded in extensive detail that Mr. Orszag's damages model was not subject to the flaw claimed by Oracle, dismissing completely each of Oracle's arguments. It also rejected Oracle's argument that the model was impermissibly speculative after "carefully consider[ing] Oracle's arguments with respect to Orszag's methodology and assumptions." The Court of Appeal concluded that Mr. Orszag "appropriately relied" on a variety of different data and sources and rejected completely each of Oracle's contentions.

Compass Lexecon was retained by Jeffrey T. Thomas and Samuel Liversidge of Gibson, Dunn & Crutcher LLP. Mr. Orszag was supported by a Compass Lexecon team that included Kevin Green, Michael Smith, and Stephen Stanis.

### **White Paper on U.S. Export Control Policy Impacting Vendors of EDA Tools**

In October 2020, Compass Lexecon was retained by Cadence Design Systems, Inc., a U.S.-based electronic design automation (EDA) firm that provides software to design computer chips, to evaluate the economic implications of a potential unilateral U.S. export restriction on EDA tools.

Dr. Elizabeth Wang, Dr. Sophie Yang, and Dr. Stephen Cacciola prepared a white paper that was submitted as part of Cadence's response to the Advance Notice of Proposed Rulemaking issued by the Department of Commerce, Bureau of Industry and Security regarding Foundational Technology implementation of the 2018 Export Control Reform Act (ECRA) of 2018. The white paper provided detailed analyses of foreign (non-U.S.) availability of EDA tools and possible Chinese customers' work-arounds to the potential unilateral export control restrictions of U.S. EDA tools. Our white paper concluded that Chinese customers have ample short-term, medium-term, and long-term solutions at different stages of the semiconductor

production chain that will render stricter, unilateral export controls ineffective in stemming Chinese semiconductors by means of denying access to EDA tools.

Dr. Wang, Dr. Cacciola, and Dr. Yang led a team that included Vendela Fehrm, Daisy Sun, Rafael del Villar, Sharon Jiang, Showroop Pokhrel, and Judy Yan. The Compass Lexecon team worked closely with a team at Cadence, as well as Kevin Wolf, Shiva Aminian, Cono Carrano, Sohrab Hajarian, and Brock Wilson from Akin Gump Strauss Hauer & Feld LLP.

### **APP / Bohui Merger**

In December 2019, Asia Pulp & Paper, one of the largest pulp and paper companies in the world, announced its acquisition of Shandong Bohui, a leading Chinese supplier of pulp and paper. Compass Lexecon was retained by Asia Pulp & Paper to provide economic analysis to assist with its regulatory approval in China. The Compass Lexecon team applied various economic tools to determine the appropriate antitrust relevant markets and demonstrated through economic analyses that the transaction is unlikely to have any anticompetitive effects.

In June 2020, the State Administration for Market Regulation (SAMR) of China approved the transaction without condition.

A Compass Lexecon team, led by Dr. Elizabeth Wang, including Dr. Kun Huang, Dr. Aston Zhong, and Dr. Lily Chen, worked closely with Zhifeng Chai of King & Wood Mallesons on this matter.

### **Cisco/Acacia Merger**

On January 19, 2021, China's State Administration for Market Regulation (SAMR) issued a conditional approval of Cisco Systems, Inc. (Cisco) acquisition of Acacia Communications, Inc. (Acacia). Cisco is a manufacturer of networking and telecommunication equipment and software. Acacia designs and manufactures advanced high-speed optical interconnect technologies. The transaction was largely vertical where Acacia's digital signal processors, photonic integrated circuits, and optical transceiver modules are used in optical transport systems and routers manufactured by Cisco and others.

Dr. Elizabeth Wang submitted two reports to SAMR to address its potential concerns. The first report evaluated whether the proposed transaction would result in harm to competition through vertical input foreclosure utilizing vertical arithmetic analyses. The second report evaluated the possibility of conglomerate effects due to the proposed transaction.

Dr. Wang was supported by Thomas Stemwedel, Dzmitry Asinski, Daniel Stone, and Narsid Golic in Compass Lexecon's Chicago office and Sophie Yang and Sharon Jiang in Compass Lexecon's Boston office. The team worked closely with closely Gil Ohana from Cisco, Andrew Foster and Kexin Li from Skadden, Arps, Slate, Meagher & Flom LLP, and Yao Feng and Shipo Xie from Beijing Sunland Law Firm.

### **Tencent Music Entertainment's Acquisition of China Music Corp.**

In February 2021, Compass Lexecon was retained by Tencent Music Entertainment Group (TME), China's largest digital music streaming platform, to evaluate the competitive effects of TME's acquisition of China Music Corp (CMC). The acquisition was initiated in 2016

and consummated in 2017, but the merger was not filed with China’s State Administration for Market Regulation (SAMR). In 2020, SAMR launched an investigation into this merger and the resulting impacts on digital music streaming in China.

The Compass Lexecon team, led by Dr. Elizabeth Wang, submitted a report to evaluate issues related to market definition, TME’s market power, and the competitive effects of this merger on the relevant markets. The team utilized factual evidence, economic data, and econometric models to evaluate the actual competitive impact of this consummated merger, including its impact on consumer prices, digital music output, and the innovation of music streaming platforms. In addition, the Compass Lexecon team also performed a comprehensive review of the business model of digital music licensing in China.

Dr. Elizabeth Wang was supported by a Compass Lexecon team across the Beijing and U.S. offices, including Dr. Kun Huang, Dr. Jason Wu, Dr. Aston Zhong, Jake Cheng, Bella Li, Wendy Wei, and Wenye Sun. The team worked closely with Xie Lin, Tian Chen, and Jiang Ning at TME.

### **Salesforce’s Acquisition of Slack**

In July 2021, the United States Department of Justice (DOJ) closed its investigation of Salesforce’s proposed acquisition of Slack, allowing Salesforce to complete the \$27.7 billion transaction. The deal combines Salesforce’s innovative customer relationship management software solutions with Slack’s dynamic enterprise communications platform.

Compass Lexecon was retained by Salesforce to assist with obtaining U.S. regulatory clearance of its acquisition of Slack, working closely with Salesforce’s legal advisors at Covington & Burling LLP and Wachtell, Lipton, Rosen & Katz. The Compass Lexecon team was led by Dr. Mary Coleman and Professor Dennis Carlton and also included Drs. Rodrigo Montes, Loren Poulsen, Josephine Xu, and Ms. Margaret Hlebowitsh further assisted by Rudra Ramchandran, Zain Ul Abideen Shahid, Belen Goicoechea, and Carlos Paez.

### **Jimmy John’s No-Poach Litigation - Class Certification Stage**

Compass Lexecon’s client Jimmy John’s defeated a motion for certification of a putative class of Jimmy John’s restaurant employees in *Conrad v. Jimmy John’s*, relying in part on the expert testimony of Compass Lexecon Senior Consultant Dr. Janusz A. Ordover. The case is one of the first fast food franchise no-poach cases for which a motion for class certification has been decided. Plaintiff alleged that the so-called “no-poach provision” contained in Jimmy John’s franchise agreements constituted a per se horizontal agreement to suppress the wages of employees of Jimmy John’s branded stores. Judge Nancy J. Rosenstengel denied Plaintiff’s motion for class certification, finding that it did not meet the Rule 23 standards for adequacy, typicality, and predominance. In particular, Judge Rosenstengel ruled that Plaintiff had not shown that common issues predominated over individualized issues. Judge Rosenstengel elaborated that, while Plaintiff’s economic expert (who was excluded under *Daubert* in an opinion citing Dr. Ordover’s analysis) claimed that all putative class members’ wages were suppressed, Dr. Ordover “ably demonstrated that—after adjusting for [Plaintiff’s expert’s] error—‘managers paid on an hourly basis had an average wage suppression of approximately two percent, while salaried managers suffered no suppression at all.’”

Further, Judge Rosenstengel held that Plaintiff's allegations should be analyzed under the rule of reason, necessitating an analysis of the relevant market, which Plaintiff's expert narrowly defined as employment at Jimmy John's branded restaurants. Judge Rosenstengel found that the relevant market was much broader, stating that "the Court remains of the same mind as Dr. Ordover ... whose prudent analyses revealed that the relevant labor market includes not merely Jimmy John's franchisees but also other quick-service restaurants (QSRs). Dr. Ordover recognized, for example, that 'it is likely that the putative class members seek employment in a labor market (or multiple labor market) that is (or are) much broader than Jimmy John's branded stores.' ... He then aptly demonstrated that '99 percent of Jimmy John's branded stores have at least ten other QSR brands within ten miles, with an average number of nearby brands of 53' and 'an average number of QSR locations of nearly 257.'"

Dr. Ordover was supported by a Chicago-based Compass Lexecon team that included Thomas A. Stemwedel, Ron Laschever, Alice Kaminski, and Deborah Healy. Jimmy John's was successfully represented by Rachel S. Brass and Caeli A. Higney of Gibson Dunn & Crutcher LLP.

### **Motorola ITC Proceedings**

In this matter, Compass Lexecon's client, Motorola Solutions claimed that certain Hytera products infringed Motorola's patents and sought (i) a determination from the U.S. International Trade Commission that certain products exported to the U.S. from China should be subject to exclusion and cease and desist orders and (ii) a bond from respondent Hytera to compensate for any further economic injury caused by importation during the "presidential review period." Hytera sought to avoid such a determination by arguing, among other things, that no "domestic industry" was implicated by the products in dispute.

Compass Lexecon Senior Consultant Dr. Jonathan Arnold testified on economic aspects of the domestic industry and the nature and availability of non-infringing alternatives at the hearing. In November 2018, the ITC issued a Notice of Final Determination confirming that certain Hytera products infringe four Motorola Solutions U.S. patents and issued exclusion and cease-and-desist orders for three of those patents. In its Notice of Final Determination, the ITC made repeated references to Dr. Arnold's testimony relating to the existence of a Domestic Industry.

Motorola also sought a substantial bond sufficient to protect it from any injury arising from continued importation during the 60-day presidential review period. Dr. Arnold testified that such a bond should be set at 44 percent (based on a certain measure of Motorola's profitability) of the value of estimated imports. The Commission also relied on Dr. Arnold's testimony and rejected Hytera's argument relating to the size of bond Hytera was required to provide to protect against any ongoing infringing activities.

Motorola Solutions was successfully represented by Adam R. Alper, Michael W. De Vries, Anders P. Fjellstedt, Jonathan Jones, and Justin Singh of Kirkland & Ellis LLP, and Mark S. Hacker, General Counsel of Motorola Solutions. The Compass Lexecon team supporting Dr. Arnold was led by Dzmityr Asinski with assistance from Joseph Dykstra and Amessha Jones from Compass Lexecon's Chicago office.

## **D.E. Shaw Composite Holdings, L.L.C. and Madison Dearborn Capital Partners IV, L.P. Contractual Payment Dispute**

Compass Lexecon's clients D.E. Shaw Composite Holdings, L.L.C and Madison Dearborn Capital Partners IV, L.P., (Plaintiffs), obtained a successful summary judgment ruling awarding them \$230,893,998.54 in damages relating to a contractual payment due under a Purchase and Sale Agreement. Compass Lexecon expert Rajiv Gokhale submitted expert reports in which he provided a damage estimate which was relied upon for the award.

The case concerned whether TerraForm LLC and TerraForm Inc. (collectively, TerraForm or the Defendants) were liable for an earnout payment due under a Purchase and Sale Agreement (the PSA). TerraForm LLC acquired First Wind's operating renewable energy facilities and non-party SunEdison acquired the rest of First Wind's portfolio. The PSA defined TerraForm LLC and SunEdison as "Buyers". Under the PSA, an "Accelerated Earnout Payment" would become immediately due and payable by both Buyers upon the occurrence of a specified "Acceleration Event," which occurred in May 2016 after SunEdison's bankruptcy filing.

Plaintiffs sought to hold TerraForm LLC liable for the aggregate Accelerated Earnout Payment and to hold TerraForm Inc. liable as a guarantor of TerraForm LLC's payment obligation. Plaintiffs moved for summary judgment arguing that the PSA unmistakably established TerraForm LLC's primary liability for the accelerated payment as one of the delineated Buyers, and that damages should be computed based on the PSA's definitions and formulas.

Defendants responded that the word "Buyers" appeared in the PSA in reference to the Accelerated Earnout Payment only because of a mutual mistake, and instead should have read that SunEdison would deliver the accelerated payments. Defendants also argued that the acceleration obligation was unenforceable because the PSA did not set forth clearly the amount owed.

Compass Lexecon and Rajiv Gokhale were retained by Plaintiffs through their counsel Debevoise & Plimpton, LLP. Mr. Gokhale filed reports and was deposed. Mr. Gokhale concluded that the aggregate Accelerated Earnout Payment due was \$230,893,998.54, and that contemporaneous economic evidence demonstrated that TerraForm was expected to benefit from its purchase of First Wind.

In December 2020, the Honorable Jennifer G. Schechter of the Supreme Court of the State of New York found that the PSA must be enforced as written, and therefore granted summary judgment to Plaintiffs on the mutual-mistake defense. The Court found TerraForm Inc. to be liable as guarantor of TerraForm LLC's obligation. The Court further rejected Defendants' argument that the PSA did not contain any formula for computing the Accelerated Earnout Payment and ruled that Plaintiffs were entitled to the full amount of their requested award of \$230,893,998.54 in damages, plus 9% statutory pre-judgment interest, as Mr. Gokhale's opening expert report estimated.

Compass Lexecon worked closely with counsel from Debevoise & Plimpton including Shannon Rose Selden, Wendy B. Reilly, and Melanie Burke, who successfully represented Plaintiffs in this matter. In addition to Mr. Gokhale, the Compass Lexecon team included Pavithra Kumar, Noah Mathews, and Monica Xie in Compass Lexecon's New York office.

## **WESCO International Acquisition of Anixter International**

In August 2020, following agreement with the Competition Bureau of Canada (CBC), WESCO International completed regulatory clearance of its \$4.5 billion acquisition of Anixter International. WESCO and Anixter are two prominent distributors of electrical, communications, and utility components in North America. Compass Lexecon was retained by counsel for WESCO and Anixter to evaluate the competitive effects of the transaction in the U.S. and Canada. After HSR termination in the U.S., the investigation focused on Canada. CBC expressed concerns about potential adverse competitive effects from the transaction in the distribution of datacom products and pole line hardware products.

Compass Lexecon worked closely with counsel to analyze and present the parties' sales and bid data and to respond to the CBC's supplementary information request. Compass Lexecon also submitted white papers presenting econometric evidence showing that the presence of the merging parties in certain Canadian provinces had no statistically significant effect on each other's profit margins. CBC ultimately approved the merger following an agreement with WESCO and Anixter to divest certain legacy utility and datacom assets in Canada, which generate revenues that amount to a de minimis share of the parties' total revenues.

The Compass Lexecon team was headed by Jonathan Orszag and Aren Megerdichian and included support from Christopher Fasel, Marc Huntley, Linchun Chen, Rob Foley, Todd Bettisworth, Kelvin Huang, Akawin Tanjitpiyanond, Yu Zhu, and Donovan Kaddis. Compass Lexecon worked closely with Ilene Gotts and Emily Samra of Wachtell, Lipton, Rosen & Katz; and Mark Katz, Charles Tingley, and Dajena Pechersky of Davies Ward Phillips & Vineberg LLP.

## **Simon Property MAE Litigation**

In February 2020, Simon Property Group (Simon) and Taubman Centers (Taubman) entered into a merger agreement in which Simon agreed to acquire an 80% ownership interest in Taubman by acquiring all of Taubman's common stock for \$52.50 per share and one-third of the Taubman family's 30% ownership interest for a total consideration of approximately \$3.6 billion. Simon filed a complaint in June 2020 alleging that Taubman had suffered a material adverse effect (MAE) that allowed Simon to terminate the merger and refuse to close without penalty. Simon claimed that Taubman was affected disproportionately by the COVID-19 pandemic as compared to other companies that operated in the same industries as Taubman.

Counsel for Simon retained Compass Lexecon and several of our experts. Compass Lexecon Senior Consultant Professor Kenneth Lehn was retained to analyze Taubman's actual and expected financial performance in light of the pandemic. Professor Dhruv Grewal was retained to analyze the impact of the COVID-19 pandemic on Taubman and the industry in which it operates. Compass Lexecon Senior Consultant Robert Daines was retained to evaluate the economic evidence regarding industry definitions in light of the contract language. Jonathan Foster was retained to evaluate certain Taubman financing actions during the COVID-19 pandemic. Compass Lexecon also supported several medical and epidemiology experts.

On November 15, 2020, shortly before trial, the parties reached an agreement to move forward with the deal at a lower price of \$43 per share, a reduction of 18% from the initially agreed upon price.

We worked with Lewis Clayton, Bruce Birenboim, Brette Tannenbaum, Paul Paterson, Arianna Markel, and others of Paul Weiss and Thomas Cranmer, Michael Palizzi, and others of Miller, Canfield, Paddock and Stone, P.L.C. The Compass Lexecon team was led by Adel Turki, with assistance from Cliff Ang, Ed Grgeta, Todd Kendall, Jessica Mandel, Avisheh Mohsenin, Robin Stahl, Samuel Hollander, Kevin Hartt, and others.

### **Acquisition of Teksid by Tupy**

Compass Lexecon economist Mark Israel was retained by Weil, Gotshal & Manges to conduct economic analysis of Tupy's proposed acquisition of Teksid. Both companies supply cast-iron automotive components. Drs. Israel and Weiskopf submitted several white papers to the U.S. Department of Justice (DOJ) highlighting the results of their economic studies. After issuing a second request for additional information, the DOJ ultimately allowed Tupy to acquire Teksid's operations in Brazil and Portugal but prohibited Tupy from purchasing Teksid's operations in Mexico.

Compass Lexecon worked closely with John Scribner, Carolina Velarde, and Rob Meyer at Weil, Gotshal & Manges and Bradley Smith, Samantha Hynes, and Steven Holley at Sullivan & Cromwell LLP. Drs. Israel and Weiskopf were supported by a Compass Lexecon team in our Washington, D.C. office that included Bo Bourke, Zain Ul Abideen Shahid, and Chris He.

### **U.S. Bank RMBS Settlement Approval**

In this matter, Bank of America offered a \$77 million settlement to U.S. Bank, the Trustee for two RMBS Trusts, to settle claims relating to representations and warranties on mortgages conveyed to the Trusts. The claims had been litigated in the New York State Supreme Court and survived motions to dismiss and a motion for summary judgment. U.S. Bank retained Compass Lexecon expert Gerald Lumer to provide an independent opinion on the reasonableness of the settlement for one of the Loan Groups in each Trust and to identify the factors the Trustee should consider in evaluating the settlement as a whole.

Dr. Lumer analyzed the settlement, explained his methodology to the Trustee, and advised the Trustee that the settlement was reasonable for each Loan Group. He also identified the factors the Trustee should consider when evaluating the settlement as a whole. The Trustee relied on the advice of Dr. Lumer and concluded the settlement was in the best interests of the Trusts.

The Trustee then asked the District Court of the State of Minnesota to approve the settlement. Two investors in the Trusts filed objections to the settlement and subsequently retained experts who submitted expert reports opining that the settlement was inadequate. The Trustee asked Dr. Lumer to review the objections and expert reports. Dr. Lumer submitted two reports, explaining his analysis of the settlement and the reasons the objectors' experts' reports did not change his views on it. In April 2021, the District Court held a proceeding on the settlement. Dr. Lumer testified for two days before Judge Laura Nelson of the District Court of the State of Minnesota. He explained his methodology, the basis for his conclusions, and the reasons the objectors' experts' reports did not change his views. In her opinion, Judge Nelson described Dr. Lumer as "highly qualified and experienced" and repeatedly relied upon his analyses and opinions. She authorized and approved the Trustee's entry into the settlement and

ruled that its conduct had been in good faith and reasonable and in the best interests of the Trusts.

U.S. Bank was successfully represented by Michael C. McCarthy, James F. Killian, and Michael L. Sheran of Maslon LLP. Dr. Lumer was supported by Kevin Hartt and Donald Hong of Compass Lexecon's Chicago office.

### **Foundation Resolution Corp. Pension Committee vs. Aon Hewitt Investment Consulting, Inc. and Alight Solutions**

Plaintiffs (Foundation Resolution Corp. Pension Committee (FRC)) in this litigation claimed that Defendants (Aon Hewitt Investment Consulting, Inc. (AHIC) and Alight Solutions, (collectively Aon)) breached their fiduciary duties with regards to the management of a defined benefit pension plan sponsored by Plaintiffs, resulting in alleged millions of dollars of losses to the pension plan.

Compass Lexecon Affiliate, Professor Laura T. Starks, the Charles E. and Sarah M. Seay Regents Chair in Finance and Co-Executive Director of the Social Innovation Initiative at McCombs School of Business, University of Texas at Austin, was retained by Defendants to review and analyze Plaintiffs' claims regarding AON's management of the Plan's investment portfolio and to offer opinions regarding whether the investment decisions made by AON Hewitt were reasonable, and also to respond to Plaintiffs' expert. Professor Starks offered the following opinions: (i) Aon made reasonable investment choices on behalf of the Plan over the relevant period; (ii) Aon appropriately managed and monitored the Plan's asset portfolio over the relevant period, which resulted in a reduced deficit; (iii) Aon clearly disclosed the risks associated with its investment policy and with the winding down of an underfunded defined benefit pension plan; (iv) Plaintiffs' expert's claims that Aon's investment choices on behalf of the Plan were deficient were fundamentally flawed; (v) Plaintiff's expert's loss analysis was fundamentally flawed and could not be relied upon to estimate the damages incurred by Plaintiffs as a result of Aon's alleged misconduct; and (vi) there was no basis to conclude that Aon breached its fiduciary duty to the Plan and thus there is no basis to conclude that Plaintiff was entitled to damages. At trial, Professor Starks testified to these opinions as Defendants' last witness. The Court ultimately found that Defendants' actions were appropriate, reasonable, and prudent.

Compass Lexecon worked closely with counsel from Willkie Farr & Gallagher LLP led by Craig C. Martin, that included Matthew J. Thomas and Aaron J. Hersh. Professor Starks was assisted by a team in Compass Lexecon's Chicago and New York offices that included Adel Turki, Compass Lexecon affiliate Andrea Neves, Joseph Goodman, Constance Kelly, Mihir Gokhale, and Pat Cuscaden.

### **Fincantieri/ Chantiers de l'Atlantique**

Compass Lexecon advised the Italian shipbuilder Fincantieri during its proposed acquisition of French shipbuilder Chantiers de l'Atlantique. The transaction was under an in-depth Phase II investigation by the European Commission, but without obtained approval, it was withdrawn in January 2021 to accommodate for the unprecedented circumstances of the Covid-19 health crisis and its impact on the shipbuilding market. The European Commission mainly

expressed concerns related to competition in the global cruise shipbuilding market, a concentrated market characterized by capacity constraints and high entry barriers.

Compass Lexecon assisted the parties throughout the notification process, Phase I and Phase II proceedings. We calculated market shares and conducted a bidding analysis to assess the closeness of competition between the merging parties. We also put forth a paper with an assessment of the unilateral effects arising from the transaction, including a price concentration analysis (regression analysis and GUPPI) and a cost and profitability analysis that supported the argument that cruise operators discipline the parties by means of their buyer power. Finally, we discussed the different efficiencies arising from the transactions.

The Compass Lexecon team was led by Lorenzo Coppi and included Alan Rozenberg, Kadambari Prasad, Ferenc Peto, Gianmarco Calanchi, Cecilia Nardini, James Wong, James Andrews, Valentina Bianchi Vimercati, Josep Peya, Salvatore Piccolo, Martina Kaplanova, A Schwegmann and Julian Alves. They worked closely together with the team from Van Bael & Bellis, led by Porter Elliott.

### **Fraikin/Via Location**

In September 2020, the French competition authority (FCA) conditionally approved the acquisition of Via Location by Fraikin. The parties are active in the short and long-term rental of dry and refrigerated commercial and industrial vehicles in Europe. The FCA analyzed the competitive effects of the transaction and concluded that there was a risk of significant competitive harm on local French markets where post-merger there would be insufficient alternatives for the rental of certain types of vehicles. During the Phase I investigation, the Parties offered the divestment of a limited number of agencies and vehicles, which was deemed sufficient to overcome the FCA's concerns in local markets.

Compass Lexecon assisted during the merger proceedings before the FCA. We assessed competitive effects on a local level, based on travel distances and actual footprints. We also analyzed the potential coordinated effects of the transaction. Our analyses were submitted as notes to the FCA. Our team also assisted with the responses to several Requests For Information (RFIs) from the FCA and with the proposed remedy package to address residual local concerns.

The Compass Lexecon team led by David Sevy included Thibaut de Bernard and Alexandre Nouvel. We worked with Jacques-Philippe Gunther, Mathilde Saltiel, Laure Maes, and Amine Mansour from Latham & Watkins.

### **Restaurant Voucher Cartel France**

In December 2019, the French Competition Authority (FCA) fined the four big providers of meal vouchers for a total of nearly 415 M€, for infringing Article 101 TFEU, arguing that the companies Edenred, Up, Natixis and Sodexo restricted competition by exchanging commercially sensitive information as well as by locking the highly concentrated market for meal vouchers.

Compass Lexecon provided economic analysis to meal voucher issuers during the proceedings in front of the FCA. We examined the economic foundations of the claims laid out by the FCA in its Statement of Objections and submitted several expert reports on these claims, one of which with an econometric analysis of the hypothetical effects of the information exchanges upon commissions charged to firms using meal vouchers.

Our teams were led by David Sevy, Damien Neven, and Valerie Meunier and included Patricia Lorenzo, Jérémiah Juts and Thibaut de Bernard.

### **La Poste**

As per Decision n° 20-D-06 of 2 April 2020, the French competition authority has accepted commitments from La Poste which ended a decade-long investigation about potentially abusive pricing practices in the sector of parcel deliveries.

La Poste, historical incumbent in the postal sector in France, has been targeted by a complaint of one of its main competitors for an array of potentially anticompetitive practices, including the pre-emption of delivery points, predatory pricing, and loyalty rebates.

We have assisted La Poste in addressing a number of issues raised by the FCA during the investigation and in particular in designing a “quasi-incremental” rebate scheme that would alleviate exclusionary concerns while maintaining the business logic favored by La Poste. We have also analyzed the objective justification of some individual contracts that retained some loyalty-inducing properties. We have submitted several technical notes during the investigation, assisted in the negotiation of the commitments, and presented the main conclusions of our analysis in the hearing.

The Compass Lexecon team included David Sevy, Thibaut de Bernard, and Alexandre Nouvel. They worked together with a team from La Poste, with Bernard Lesage, head of a legal department in the La Poste Group’s European and national regulation department, Denis Joram, head of the economics team, and a Bredin Prat team comprising Marie-Cécile Rameau, Anne Jussiaux, and Guillaume Vatin.

### **Orange vs SFR**

In July 2021, Orange and SFR eventually settled one of the largest ever follow-on claims in respect of unilateral conduct in France (above €3 billion), lodged by SFR against Orange before the Paris commercial court. SFR’s claim followed a decision by the French competition authority from 2015 in which it concluded that Orange abused its dominant position in the market(s) of telecommunication services to corporates and SMEs. We advised Orange during the whole litigation process, which included attending data room and submitting several expert reports and rebuttals with complex economic arguments. David Sevy testified at three successive hearings on the claimed damages on the mobile and fixed markets respectively.

The Compass Lexecon team included David Sevy, Jérémiah Juts, and Alexandre Nouvel.

### **Orange Romania/TKR**

In July 2021, the European Commission cleared conditionally the acquisition by Orange Romania, the first mobile operator and nascent convergent operator in Romania, of TKR, the fixed telecommunication arm of the telecommunication business of Deutsche Telekom in Romania (case M.10153). The phase I clearance was conditional upon the divestiture of the minority ownership stake held by TKR in TRMC, the mobile business kept by Deutsche Telekom (which also required the approval of the Romanian Government). We supported Orange throughout the whole notification and phase I investigation processes, calculating market

shares on the multiple affected markets, assessing horizontal and vertical effects (or the lack thereof) on several residential and corporate markets, and investigating the efficiencies that the merger could generate.

The CL team comprised David Sevy, Jérémiah Juts, Alexandre Nouvel, Hippolyte Brosse. We worked closely with Orange's advisors, a Latham Watkins team led by Jacques-Philippe Gunther and Adrien Giraud, with Clément Pradille, Mathilde Ayel and Juliette Raffaitin.

### **Forescout MAE Litigation**

In February 2020, Advent agreed to acquire Forescout for \$33 per share in cash for total consideration of approximately \$1.9 billion. Following the start of the COVID-19 pandemic, on May 15, 2020, Advent notified Forescout that it would not close the transaction as originally scheduled, arguing that a material adverse effect (MAE) had occurred and was continuing. In May 2020, Forescout filed suit in the Delaware Court of Chancery seeking to compel Advent to comply with their contractual obligation to close the transaction. The Court agreed to expedite the trial and set a trial date in July 2020.

Counsel for Forescout retained Compass Lexecon and Professor Daniel R. Fischel to evaluate the economic evidence and opine on the MAE issue. Professor Fischel filed several reports and was deposed in the case. He opined, among other things that Forescout had not experienced a substantial decline in financial and operating performance, consistent with the MAE definition in the merger agreement, that Forescout's performance was not disproportionately poor relative to its peers, and that Advent's expert's analyses were fundamentally flawed. Shortly before trial, the parties reached an agreement to move forward with the deal at a lower price of \$29 per share, a reduction of 12% from the initially agreed upon price and a premium of nearly 16% to Forescout's most recent closing stock price.

Compass Lexecon President Professor Daniel R. Fischel was retained by Wilson Sonsini Goodrich & Rosati, counsel for Forescout, to analyze the valuation effects of the alleged adverse events on Forescout's standalone value. Professor Fischel was assisted by a team that included Ed Grgeta, Constance Kelly, Quinn Johnson, Jessica Mandel, and others. We worked with Steven Guggenheim, Ignacio Salceda, Becky Epstein, and others of Wilson Sonsini.

### **Recapitalization of Air France**

We provided economic advice to Air France-KLM during the state aid investigation by the European Commission regarding a recapitalization of Air France by the French State. The recapitalization was made in the context of the COVID-19 crisis and its significant negative effects on the aviation sector. The aid was approved under the condition that Air France would make slots available at the congested Paris Orly airport.

Our team assessed geographic market delineation regarding the Paris airports and Air France-KLM's respective market positions in these airports based on, inter alia, the presence and proposed services offered by different airlines at the different Paris airports.

The CL team comprised of David Sevy, Miguel de la Mano, Urs Haegler, Thibaut de Bernard, and Alexandre Nouvel. We worked closely with Air France-KLM's legal advisors,

Jacques Derenne and Dimitris Vallindas of Sheppard Mullin, and Faustine Viala and Maxime de l'Estang of Willkie Farr and Gallagher.

### **TDF/ITAS Abuse of Dominance Investigation**

In January 2020, the French NCA concluded that the transaction in the French broadcasting sector by which TDF acquired ITAS, completed in October 2016 without prior clearance, did not constitute an abuse of dominant position (Decision 20-D-01 of January 16, 2020). The French NCA investigated the transaction following a complaint by Towercast considering that TDF hampered competition due to a significant strengthening of its position by means of this transaction. Towercast noted that TDF enjoyed dominance on the upstream and downstream wholesale markets for digital terrestrial television (DTT) broadcasting, and that ITAS was one of its last competitors in that market. Despite TDF's strong position, the French NCA concluded that the acquisition in itself could not constitute an infringement of Article 102 TFEU and that TDF did not demonstrate any abusive conduct either.

Compass Lexecon provided economic advice to TDF. We analyzed the extent to which the acquisition of ITAS resulted in a strengthening of the alleged dominant position in the provision of broadcasting services to DTT channels or bundles of channels. We also established that contrary to Towercast's claim, the transaction had not resulted in a price increase, thus ruling out that the transaction could have led to an elimination of competition in a substantial part of the market.

The CL team comprised David Sevy, Jérémiah Juts and Alexandre Nouvel. We worked closely with TDF's advisors, Hugues Calvet and Yelena Trifounovitch of Bredin Prat and Frédéric Salat-Baroux of Weil Gotshal & Manges LLP.

### **Valassis Communications, Inc. v. News America Marketing In-Store Services LLC, et al.**

Valassis Communications, Inc. sued News America Marketing In-Store Services LLC (NAM) for alleged monopolization of a market for third-party in-store promotions (ISP). ISP are signs and other materials used to advertise consumer packaged goods in supermarkets and other retail stores. Third-party ISP providers, including NAM and Valassis, bid for contracts with retailers that granted the right to sell and place ISP in the retailers. Valassis alleged that NAM drove Valassis out of the third-party ISP business through NAM's contracting practices, thereby monopolizing the alleged market.

At a July 2021 jury trial in the U.S. District Court for the Southern District of New York, Compass Lexecon Senior Managing Director Dennis Carlton testified on behalf of NAM regarding damages. Professor Carlton found that Valassis's damages expert greatly overstated damages by, among other things, failing to account properly for lawful competition for retailer contracts that would have increased Valassis's costs. Accounting for this error, Professor Carlton found that Valassis's estimated damages were zero. At the end of a two-week trial, the case reached a successful conclusion.

NAM was represented by Kenneth A. Gallo, William B. Michael, Jane B. O'Brien, and Brette Tannenbaum of Paul, Weiss, Rifkind, Wharton & Garrison LLP. Professor Carlton was supported by Dr. Joseph Goodman, Dr. Mary Li, and Dr. Bradley Reiff of the Compass Lexecon's Chicago office.

## **Anheuser-Busch InBev’s Acquisition of the Craft Brew Alliance**

In 2020, Anheuser-Busch InBev (AB) acquired the Craft Brew Alliance (CBA). CBA consists of several craft beers, including Kona, Redhook, Widmer Brothers, and Omission. Prior to the full acquisition, AB owned approximately 30% of CBA. The Department of Justice (DOJ) investigated the proposed acquisition, focusing on potential competitive effects in Hawaii where the Kona brand originated and has a substantial share of sales.

Compass Lexecon Senior Managing Director Dennis Carlton filed a number of reports and made two presentations to the DOJ, leading to a settlement in which AB/CBA divested Kona’s Hawaiian assets.

AB was represented by Steven C. Sunshine, Steven Albertson, and John R. Thornburgh II of Skadden, Arps, Slate, Meagher & Flom LLP, and Deborah A. Garza of Covington & Burling LLP. CBA was represented by Nelson O. Fitts and Emily E. Samra of Wachtell, Lipton, Rosen & Katz. Professor Carlton was supported by Zach Flynn, Bradley Reiff, Yoad Shefi, and Jonnie Tompkins of Compass Lexecon’s Chicago office.

## **Argentine Fishing Industry Dispute Arbitration**

Compass Lexecon Experts Sebastian Zuccon and Marcelo Schoeters were retained by Claimant to provide expert testimony in a commercial arbitration in the Argentine fishing industry. Compass Lexecon Experts assessed whether Respondents sold the shares of a major fishing company at a fair market value. The Claimant, formerly the company’s major shareholder, entered a financing agreement and Stock Option Agreement (“SOA”) with Respondents. Under the SOA, if the firm was sold to a third party, the Claimant was entitled to charge a commission of 30% of the selling price over a specific amount, already collected by Claimant within the framework of the previous transfer of shares to Respondents. A few months after the agreement, Respondents sold 100% of the company’s shares to a related party for a meager price of US\$ 0.6 million, not generating any commission to Claimant.

Compass Lexecon experts performed multiple analyses and determined fair market value at the date of the transaction was US\$ 30 million. Their studies show that the sale price did not represent the company’s fair market value. Based on Mr. Zuccon and Mr. Schoeters analysis and valuation, the ICC Tribunal ruled that the selling price was significantly lower than the fair market value, therefore granting damages to the Claimant.

Sebastian Zuccon and Marcelo Schoeters were supported by a team in Compass Lexecon’s Buenos Aires office that included Julieta Fridland, and Emiliano Zenarruza. Compass Lexecon worked closely with legal teams from Philippi, Prietocarrizosa, Ferrero Du & Uría Abogados and Fiorito, Murray & Díaz Cordero Abogados.

## **Report on Policy and Investment in the Mobile Telecoms Market**

A new report by three Compass Lexecon experts assesses how governments and regulators can facilitate the investment required to achieve widespread and timely 5G deployment in European mobile markets. The report highlights the material impact of merger and spectrum policies on investment and discusses how such policies can be adapted to better promote dynamic competition.

The authors first review the record on the effect of investment in mobile network capacity and technology on capacity, quality, and quality-adjusted prices, and discuss the potential gains resulting from investment in 5G. Then, they investigate how certain policies designed to achieve and maintain particular market structures can affect investment. In particular, they show that an overly strict merger policy can deter investment in markets where demand is highly uncertain and investments must be sunk prior to the resolution of such uncertainty. In such cases, mergers serve to mitigate expected losses if investments turn out unsuccessful. This result suggests mobile merger assessments should place less weight on short-term pricing effects and more weight on dynamic competition and particularly rivalry in investment.

Finally, our experts discuss the impact of spectrum policies. They argue that the adoption of perpetual, tradeable, spectrum licenses would improve predictability and reduce the risk of regulatory opportunism. In their opinion, authorities should also avoid imposing new conditions on operators except at the time of releasing new spectrum when the cost of the obligation can be taken into account by operators in valuing the spectrum.

The report ‘Mobile market structure: policy and investment’, written by expert economists Jorge Padilla, Paul Reynolds, and Joe Perkins (September 2021), was commissioned by Vodafone.

### **Anthem-Cigna Merger Litigation**

This multi-year litigation stemmed from the failure of the \$54 billion Anthem-Cigna merger in 2017. Anthem argued that Cigna breached its obligations under the merger agreement’s efforts covenants, which required the parties to try to close the merger and sought expectation damages of \$21.1 billion. Cigna argued that Anthem breached its obligation under the merger agreement’s regulatory efforts covenant which required the parties to take any and all actions necessary to avoid any legal impediment to the merger that a governmental entity might raise and sought expectation damages of \$14.7 billion. Cigna separately sought to recover a reverse termination fee in the amount of \$1.85 billion.

Following a 10-day trial in late February and early March 2019, Vice Chancellor J. Travis Laster ruled that Anthem proved that Cigna breached its obligations under the efforts covenants, opining that “[rather] than seeking to complete the Merger, Cigna sought to derail it.” However, the Vice Chancellor also ruled that Anthem failed to prove that Cigna’s breaches led to causally related damages, noting in his opinion that causation analysis is “difficult to conduct in such a complex and multi-faceted case.” Vice Chancellor Laster also ruled that Cigna failed to prove that Anthem breached its obligations under the regulatory efforts covenants, opining that “Anthem sought at all times to complete the Merger.” Lastly, Vice Chancellor Laster ruled that Anthem had validly terminated the merger agreement and was therefore not liable for the \$1.85 billion reverse termination fee.

Compass Lexecon and Professor Daniel R. Fischel were retained by counsel for Anthem to analyze the complex damage issues in the case. At trial, Professor Fischel testified about the economic harm suffered by Anthem resulting from the failure of the merger and responded to Cigna’s expert’s damages calculation. Professor Fischel was supported by a team in Compass Lexecon’s Chicago and Pasadena offices that included Rajiv Gokhale, Gerald Lumer, Constance Kelly, Kevin Hartt, Robin Stahl, Nabila Lotayef, James Tam, Shawn Chen, Eugenia Vinogradsky, and Yili Wang. Professor Fischel and Compass Lexecon worked closely with

attorneys at White & Case LLP, including Glenn M. Kurtz and Andrew W. Hammond, who successfully represented Anthem.

### **Turnitin/Ouriginal Merger**

Turnitin, an international provider of non-instructional educational software completed its acquisition of Ouriginal (incorporating Urkund and PlagScan). Both companies are active in the sale of anti-plagiarism software.

The completion of the transaction comes after the Australian Competition and Consumer Commission (“ACCC”) cleared the acquisition, concluding the ACCC’s 5 month-long investigation and follows unconditional approvals by the National Commission on Markets and Competition (“CNMC”) in Spain and the Competition Markets Authority (“CMA”) in the UK, as well as inquiries from other national authorities.

Compass Lexecon assisted the Parties throughout the merger review process before the CMA, CNMC, and the ACCC. The authorities assessed whether the transaction may result in a reduction in competition where the companies have high combined market shares and are particularly close competitors, with preliminary concerns over barriers to entry. They concluded, among other things, that recent entrants into the provision of anti-plagiarism software were likely capable of scaling and exerting a competitive constraint on the combined entity.

Compass Lexecon analyzed market shares and tender data, as well as switching patterns and barriers to entry and expansion to help the Parties address the authorities’ concerns over the potential effects of the transaction on competition.

The Compass Lexecon team led by Lorenzo Coppi included Angelos Stenimachitis with the assistance of Justice Yennie, Vicky Britton, and Pasi Mawalage. We worked with global counsel Juan Rodriguez and Suzanne Marton of Sullivan & Cromwell LLP, as well as with counsel from Uría Menéndez in Spain and King & Wood Mallesons in Australia.

Compass Lexecon has experience in providing economic expertise in some of the most high-profile multi-jurisdictional merger proceedings in the world. Our economists, based in the United States, Europe, Middle East, South America, and Asia-Pacific, work seamlessly together to provide cohesive economic analysis and support to the multiple teams of internal and external legal advisors involved in global transactions. Over the last ten years, Compass Lexecon has advised in over 100 jurisdictions and our experts’ language capabilities extend our market coverage even further.

### **Tinder Valuation Dispute**

In this closely watched nationally publicized dispute and trial, the Plaintiffs, which included the founders and former executives of the dating app Tinder, agreed to settle their claims against Tinder’s parent company, Match Group, and Match Group’s former majority controlling shareholder, IAC Interactive Corp for \$441 million. The case involved a valuation dispute related to Tinder stock options granted to Plaintiffs in 2014. Plaintiffs claimed that Defendants undermined the option valuation process and cheated Tinder option holders of billions when their Tinder options were converted to Match options in July 2017 at a \$3 billion valuation. Plaintiffs claimed that Tinder was actually worth \$13.2 billion at the time, amounting to damages of approximately \$2 billion.

Compass Lexecon expert, Anindya Ghose (the Heinz Riehl Chair Professor at New York University's Stern School of Business), filed an expert report and provided deposition testimony concerning the economics of digital companies, mobile apps, and monetization of the digital economy. Using Tinder's growth and performance data over the years, Professor Ghose explained how Defendants' experts' opinions were flawed because they ignored Tinder's innovations, overstated the risks, and understated the growth prospects of Tinder at the time of the valuation. The claims were settled on the eve of Professor Ghose's trial testimony and closing arguments.

Plaintiffs were successfully represented by Orin Snyder, Laura Kathryn O'Boyle, Matt Benjamin, Connor S. Sullivan, and others at Gibson, Dunn & Crutcher LLP and Josh Dubin of Dubin Research & Consulting, Inc. Peter Clayburgh, Todd Kendall, James Tam, Mihir Gokhale, Neil Ries and others in Compass Lexecon's Chicago, New York, and Pasadena offices provided support to Professor Anindya Ghose and worked extensively with the Gibson Dunn team over the three-year litigation.

### **Chesapeake Energy Bankruptcy Litigation**

This litigation arose from Chesapeake Energy Corporation's (Chesapeake) Chapter 11 filing and subsequent plan of reorganization. Chesapeake was once the second-largest U.S. natural gas producer, but, following declines in oil and gas prices, in November 2019 Chesapeake announced concerns about its ability to continue as a going concern under its then-current debt load. In an effort to avoid bankruptcy and address going concern issues, Chesapeake executed two transactions in December 2019 (Restructuring Transactions) to consolidate assets and reduce total debt. The decline in oil and gas prices, however, accelerated with the onset of the COVID-19 pandemic and spot prices for crude oil briefly went negative on April 20, 2020, an unprecedented event. Chesapeake ultimately filed voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas on June 28, 2020.

A committee of unsecured creditors (Committee) asked the Court to reject Chesapeake's plan of reorganization. The Committee alleged, among other things, that the Restructuring Transactions improperly subordinated certain unsecured creditors' claims and saddled Chesapeake with debt for which they did not receive reasonably equivalent value and that Chesapeake was insolvent at the time of, or became insolvent as a result of, the Restructuring Transactions. The Committee sought a judgment against Franklin Advisers, Inc. and Franklin Resources, Inc. (Franklin) and others finding that the Restructuring Transactions constituted fraudulent transfers and sought to have such transfers avoided and recovered.

In January 2021, after a monthlong trial, Judge David R. Jones confirmed Chesapeake's Chapter 11 plan of reorganization allowing it to emerge from bankruptcy protection. Under the confirmed plan, Chesapeake will emerge from bankruptcy with about \$3 billion in new debt, a \$7 billion reduction in the company's debt load. The confirmed plan also includes a \$600 million new rights offering with parties, including Franklin, Chesapeake's largest stakeholder, who agreed to backstop the offering.

Compass Lexecon was retained by Franklin, through their counsel Akin Gump Strauss Hauer & Feld LLP to analyze the reasonably equivalent value and solvency issues raised by the Committee and provide support at deposition and trial. The Compass Lexecon team included

Daniel Fischel, Rajiv Gokhale, Quinn Johnson, Mike Keable, Constance Kelly, and Jessica Mandel. Compass Lexecon worked closely with attorneys at Akin Gump, including David M. Zensky and Abid Qureshi.

### **Thermo Fisher Scientific/PPD Merger**

Compass Lexecon provided economic advice and analysis in the \$17 billion global acquisition of PPD, Inc by Thermo Fisher Scientific Inc. PPD is a contract research organization and a lab service provider that supports pharmaceutical companies in the conduct of clinical trials. Thermo Fisher Scientific is a global provider of pharmaceutical contract development and manufacturing services and a global manufacturer and supplier of analytical, research, and bioprocessing products.

The merger required economic analysis across various products and jurisdictions. Compass Lexecon provided support for submissions in several jurisdictions, including those to competition authorities in the United States, the European Union, United Kingdom, Singapore, Brazil, Russia, Argentina, and South Korea, and conducted a detailed vertical arithmetic to analyze potential vertical foreclosure issues, which was critical to achieving clearance with the European Commission.

In November 2021, the Federal Trade Commission and in December 2021 the European Commission and the CMA unconditionally approved the transaction.

The Compass Lexecon team in the U.S. was led by Mary Coleman and Jonathan Bowater and included Rodrigo Montes, Josephine Xu, and Grace Nie. The EMEA team working on all other jurisdictions was led by Jorge Padilla, Lorenzo Coppi, and John Davies and included Antoine Gracia Victoria, Cecilia Nardini, Thibaut de Bernard, Mallika Arora, Alexandre Nouvel, William Lobo, Valentina Bianchi Vimercati, Rebecca Reichert, Richie Zhang, Adrien Damade, Krister Rasmussen, Ram Smaran Suresh Kumar, and Vicky Britton.

We worked closely with Debbie Feinstein, Axel Gutermuth, Matthew Shultz, John Holler, Charlotte Simphal, Louis van der Werff, Athanasia Gavala, and Ewa Kontkiewicz from Arnold & Porter and Simon Pritchard, Neil Hoolihan, and Aoife Monaghan at Linklaters.

### **Honors, Publications, and Presentations**

- Manuel Abdala, Alan Rozenberg, and Ria Abichandani presented a seminar on “Renewable Energy & Government Opportunism – with focus on Europe and Asia,” on the DLA Piper Global Call (EMEA/Asia), April 2021. Dr. Abdala was also joined by Pablo López Zadicoff and Paola Gutiérrez in presenting a seminar on “Renewable Energy Investments in Mexico: Changes and Challenges Ahead,” on the DLA Piper Global Call (Americas), April 2021.
- Manuel Abdala and Pablo López Zadicoff also presented the seminar “Market for Renewable Energy in Mexico: Overview and Challenges Ahead,” at King & Spalding’s virtual symposium, March 2021; and the seminar on “Market for Renewable Energy in Mexico” at Freshfields Bruckhaus Deringer’s CLE credit course (Europe, U.S., and Latin America), October 2020.
- Amy Affelt was honored with the Special Libraries Association (SLA) Legal Community Thomson Reuters Outstanding Achievement Award 2021, which is bestowed upon an SLA

member who has demonstrated “significant contributions toward innovation and/or creative solutions to improved resources, programs, services, or operations for law library professionals and the clients they serve”. She was interviewed by the American Association of Law Libraries (AALL) regarding her views on the challenges of leadership during the COVID-19 pandemic, *AALL Spectrum Magazine*, January/February 2021.

- Affelt published *All That’s Not Fit To Print: Fake News and the Call to Action for Librarians and Information Professionals*, Emerald Publishing, May 2019, as well as “Supply Chain Disruption: What Is ‘The New Toilet Paper?’” *Information Today*, September 2021; “Avoiding a Public Health Hunger Games: The Role for Libraries,” *Information Today*, June 2021; “Parler Games,” *Information Today*, March 2021; “Stop, Look, and Listen: Helping Students Spot the Fakes,” *Computers In Libraries*, March 2021; “Local Isn’t What It Used To Be: Finding Community News in the Algorithmic Era,” *Online Searcher*, July/August 2020; “The Coronavirus Infodemic,” *Information Today*, July/August 2020; “No Takebacks,” *Information Today*, April 2020; “It’s Not What You Look At, It’s What You See: Data Visualization Tools Update,” *Information Today*, January/February 2020; “Creating and Curating Controversial Content,” *EContent*, Fall 2019; “Creating a Playbook To Combat Fake News,” *Online Searcher*, July/August 2019; and “Can Blockchain Combat Fake News?” *EContent*, Spring 2019. She presented at Computers In Libraries (CIL) Virtual Conference, March 2021, and Washington, D.C., March 2019; SLA Annual Conference, October 2020; CIL/IL Connect Conference, September 2020; and Internet Librarian Conference, Monterey, CA, October 2019.
- Luis Agosti and Boaz Moselle wrote the article “LNG Disputes Beyond Price Reviews,” in *OGEJ Journal*, May 2020. Mr. Agosti and Dr. Moselle also published the chapter “Natural gas price review arbitrations: issues in adopting hub indexation,” in *Gas and LNG Price Arbitrations: A Practical Handbook*, 2<sup>nd</sup> edition, March 2020.
- Enrique Andreu, Kirsten Edwards-Warren, Urs Haegler, Alyssa Lam, Miguel de la Mano, Jorge Padilla, Roy Rosenberg, Pekka Sääskilahti, David Sevy, and Nadine Watson made a submission in response to the European Commission’s market consultation on the 1997 notice on market definition. Their paper, “Comments for the European Commission’s evaluation of the 1997 Market Definition Notice,” was submitted to the European Commission in May 2020.
- Clifford Ang published the 2<sup>nd</sup> edition of his financial modeling textbook, *Analyzing Financial Data and Implementing Financial Models Using R* with Springer Publishing, June 2021. He provided expert analysis to *Law360* titled “How The Pandemic Is Changing Stock Volatility Calculations,” with Andrew Roper, September 2020; and “It’s Time For Valuation Experts To Let Go Of The Size Premium,” June 2020. Cliff coauthored “If an Investment Strategy Looks Too Good to Be True, Look Under the Hood,” with Merritt Lyon, in the CFA Institute’s *Enterprising Investor*, May 2020. He also published two articles in the *National Association of Certified Valuators and Analysts (NACVA) QuickRead*: “The Valuation Impact of Using the Wrong Leverage Ratio to Unlever Betas,” with Andrew Lin, April 2020; and “Terminal Values in DCFs and Runaway Valuations,” November 2019. In December 2020, Cliff conducted webinars at Business Valuation Resources on “The Absence of a Size Effect: Letting Go of the Size Premium” and “Side Effect of COVID-19: Beta Changes Impacting Business Valuations,” the latter with Andrew Roper.
- Jonathan Baker published *The Antitrust Paradigm: Restoring a Competitive Economy*, with Harvard University Press, May 2019. Professor Baker also wrote “Oligopoly Coordination, Economic Analysis, and the Prophylactic Role of Horizontal Merger Enforcement,” with

Joseph Farrell in the *University of Pennsylvania Law Review*, June 2020; “Five Principles for Vertical Merger Enforcement Policy,” with Nancy Rose, Steven Salop and Fiona Scott Morton for *Antitrust*, Summer 2019; and “Accommodating Competition: Harmonizing National Economic Commitments,” in *William & Mary Law Review*, March 2019.

- Jonathan Baker gave the keynote speech, “National Champions, National Competitiveness, and Antitrust: From the US in the 1980s to Europe Today,” during the Icelandic Competition Authority’s webinar on Protectionism and Anti-trust Enforcement, June 2020.
- Dennis Beling participated in a panel discussion on vertical restraints and vertical mergers at the China Institute of International Antitrust and Investment and UN Conference on Trade and Development’s Fourth Annual Antitrust Symposium, Beijing, November 2019.
- Hendrik Bessembinder published “Chinese and Global ADRs: The US Investor Experience,” with Te-Feng Chen, Goeun Choi and K. C. John Wei in *Financial Analysts Journal*, September 2021; “Wealth Creation in the US Public Stock Markets 1926–2019,” in *The Journal of Investing*, April 2021; “A Survey of the Microstructure of Fixed-Income Markets,” written with Chester Spatt and Kumar Venkataraman, in *Journal of Financial and Quantitative Analysis*, February 2020; and “Liquidity Provision Contracts and Market Quality: Evidence from the New York Stock Exchange,” with Jia Hao and Kuncheng Zheng in *The Review of Financial Studies*, January 2020.
- Dennis Carlton received the 2020 Best *Economic Inquiry* Article Award for “Antitrust Treatment of Nonprofits: Should Hospitals Receive Special Care?” published July 2020 with coauthors Cory Capps and Guy David. The paper extends the rationale used to provide nonprofit hospitals with favorable tax treatment to determine if different antitrust standards should also be applied to these institutions. Carlton’s article, “Vertical Most-Favored-Nation Restraints and Credit Card No-Surcharge Rules,” written with Ralph Winter in the May 2018 edition of *The Journal of Law & Economics*, won a 2019 Antitrust Writing Award. Carlton also gave the keynote address on “Merger retrospectives” at the 32<sup>nd</sup> Annual Workshop of the Competition Law & Policy Institute of New Zealand, August 2021.
- Carla Chavich was featured on the Hot Tubbing Experts panel during the inaugural New York Arbitration Week, launched by New York International Arbitration Center and the New York Branch of the Chartered Institute of Arbitrators, November 2019. She also participated in the Damages panel of the 2<sup>nd</sup> ICC Colombia Arbitration Day, Bogotá, May 2019.
- Ruxandra Ciupagea and Boaz Moselle contributed to *The Investment Treaty Arbitration Review*, 4<sup>th</sup> edition, May 2019, with their chapter “Principles of Damages for Violations other than Expropriation”.
- George Clemens wrote the Expert Opinion “Leading by Example: Could denying leniency to ringleaders create trust among cartel members?” with Holger Rau, September 2019.
- Fernando Coloma Ríos presented “Mergers in Differentiated Products Markets and Multiproduct Firms: Acquisition of Nutrabien by Ideal,” at the APEC Seminar on Merger Analysis, Santiago, Chile, March 2019.
- Daniele Condorelli and Jorge Padilla published “Harnessing Platform Envelopment in the Digital World,” in the *Journal of Competition Law and Economics*, June 2020.
- Justin Coombs, John Davies, and Rameet Sangha published “The new regime for digital competition in Europe – who is the gatekeeper?” in *Financier Worldwide*, March 2021.

Coombs, Davies, and Sangha were joined by Jorge Padilla in discussing the European Commission's new competition tool with *Financier Worldwide*, January 2021.

- John Davies and Jorge Padilla wrote the Expert Opinion “Excessive intervention? Should competition authorities take on excessive pricing cases in markets with no barriers to entry?” July 2019. Additionally, Davies provided an economist’s perspective on abusive prices in the fourth installment of Concurrences’ Quarantine Webinar Series, “Antitrust: Price-fixing, excessive prices, crisis cartel,” April 2020. The webinar was organized by Concurrences with 50% of proceeds going to Doctors Without Borders.
- Miguel de la Mano, Valérie Meunier, Angelos Stenimachitis, and Zsolt Hegyesi published “The Digital Markets Act: Back to the ‘Form-Based’ Future?”, May 2021, commissioned by Google in response to the publication of the European Commission’s Digital Markets Act proposal.
- Miguel de la Mano and Jorge Padilla wrote the Expert Opinion “The Pros and Cons of Big Tech Banking,” July 2019. Dr. de la Mano also wrote “Estimating the Pass-On Effect in Antitrust Damage Cases: Relative Strengths and Weaknesses of the ‘Comparator’ Method vs. the ‘Pass-On Rate’ Method,” with Christopher Milde, April 2019. Dr. de la Mano and Guillaume Duquesne, with Karthik Balisagar, wrote “Blockchain, fintech and competition: Is blockchain the next coordination device in the banking sector?” for *Concurrences Review*, February 2019.
- In August 2019, *Financier Worldwide* moderated a discussion between Miguel de la Mano, Thilo Klein, Frédéric Palomino, and David Sevy on the effective use of expert witnesses in competition disputes.
- Gustavo De Marco spoke at the International Association of Young Lawyers’ Half-Year Conference during a session titled “Future evidence – Proving your case in the 2020s,” Miami, November 2019.
- Bret Dickey presented his paper, “Pharmaceutical Product Hopping: Is There a Role for Antitrust Scrutiny?” which was cowritten with Daniel Rubinfeld and Kun Huang, to the ABA’s Pricing Conduct and Health Care and Pharmaceuticals Committees, February 2020.
- Neil Dryden, Jorge Padilla, and Helder Vasconcelos wrote “On the Competitive Effects of Single-Homing: The Case of Hybrid Marketplaces,” in *CPI Antitrust Chronicle*, February 2021. Dryden and Joe Perkins commented on the UK Competition and Markets Authority’s November 2020 draft revised merger assessment guidelines, January 2021. Additionally, Dryden, Jorge Padilla, and Sergey Khodjamirian published “The Simple Economics of Hybrid Marketplaces,” in *Competition*, Fall 2020.
- Antón Garcia participated in a discussion on antitrust and competition challenges in the energy and utilities sector, which was hosted by *Financier Worldwide*, August 2020.
- Richard Gilbert published *Innovation Matters: Competition Policy for the High-Technology Economy*, with The MIT Press, July 2020.
- Ed Grgeta published “Analyzing Country Risk Premium in ICSID Awards,” with Mark Berberian and Jeffrey Cohen in *TDM Journal*, February 2020; “In All Probability: An Economic Reading of Damages Under *Factory at Chorzów*,” with Jeffrey Cohen and Federico Temerlin in *ICSID Review: Foreign Investment Law Journal*, Fall 2019; and “3 Aspects of Value Preservation For Restructuring Cos.,” with Ran Wei and Gaurav Jetley in *Law360*, January 2019.

- Urs Haegler and Georges Siotis wrote the Expert Opinion “State aid in response to COVID-19 and implications for competition,” July 2020.
- Eric Henson gave statements to the U.S. Equal Employment Opportunity Commission, *Commission Hearing on the Civil Rights Implications of the COVID-19 Pandemic*, April 2021; the U.S. Secretary of the Treasury, with Joseph Kalt, Randall Akee, and Miriam Jorgensen, *Allocation of Covid-19 Response Funds to American Indian Nations*, April 2020; and the U.S. House of Representatives, *Hearing on Tribal Energy Resources: Reducing Barriers to Opportunity*, July 2018. Henson is a peer reviewer for the *Journal of Human Rights* at the John F. Kennedy School of Government at Harvard University.
- Eric Henson and Joseph Kalt published the following policy briefs with the Harvard Project on American Indian Economic Development: *Recommendations for Allocation and Administration of American Rescue Plan Act Funding for American Indian Tribal Governments*, April 2021; *Federal COVID-19 Response Funding for Tribal Governments: Lessons from the CARES Act*, July 2020; *Emerging Stronger than Before: Guidelines for the Federal Role in American Indian and Alaska Native Tribes’ Recovery from the COVID-19 Pandemic*, July 2020; *Proposal for a Fair and Feasible Formula for the Allocation of CARES Act Covid-19 Relief Funds to American Indian and Alaska Native Tribal Governments*, May 2020; *The Need for a Significant Allocation of Covid-19 Response Funds to American Indian Nations*, May 2020; and *Dissecting the U.S. Treasury Department’s Round 1 Allocations of CARES Act Covid-19 Relief Funding for Tribal Governments*, May 2020.
- Kun Huang and Elizabeth Xiao-Ru Wang published “Convergence or Divergence: How Does China Analyse Innovation Concerns in Merger Review?” with Rachel Brandenburger in the *Journal of Antitrust Enforcement*, September 2021. Dr. Huang and Dr. Wang joined Todd Kendall, Jason Wu, and Sophie Yang in writing “Antitrust Enforcement in China: Merger Review and the Role of Economic Analysis,” in *Competition Law & Policy Debate*, March 2020. Dr. Huang, Bret Dickey, and Daniel Rubinfeld also published “Pharmaceutical Product Hopping: Is There a Role for Antitrust Scrutiny?” in the American Bar Association’s *Antitrust Law Journal*, 2019.
- Mark Israel and Dennis Carlton published “Effects of the 2010 Horizontal Merger Guidelines on Merger Review: Based on Ten Years of Practical Experience,” in *Review of Industrial Organization*, February 2021. Dr. Israel and Dr. Carlton were joined by Allan Shampine in writing “Lessons from AT&T/Time Warner,” published in *CPI Antitrust Chronicle*, July 2019. Dr. Israel also wrote, with Dr. Shampine, Georgi Giozov and Nauman Ilias, “Vertical Integration in Multichannel Television Markets: Revisiting Regional Sports Networks Using Updated Data,” in *The Criterion Journal of Innovation*, March 2019; and “Are You Pushing Too Hard? Lower Negotiated Input Prices as a Merger Efficiency,” with Thomas Stemwedel and Ka Hei Tse in ABA’s *Antitrust Law Journal*, 2019. Dr. Israel was a panelist for the ABA’s Section of Antitrust Law’s committee program, “Nuts & Bolts of Presenting Economic Evidence to the Agencies: Common Pitfalls and Best Practices,” October 2019. He also gave the keynote speech at Dechert LLP’s Annual Antitrust Spring Seminar, Philadelphia, March 2019.
- Sean Iyer presented on “The *Humira* Decision and Reverse Payments After *Actavis*,” to the ABA Antitrust Section IP Committee, March 2021.
- Michael Katz published “Multisided Platforms, Big Data, and a Little Antitrust Policy,” in the *Review of Industrial Organization*, June 2019; “*Ohio v. American Express*: Assessing the

- Threat to Antitrust Enforcement,” in *CPI Antitrust Chronicle*, June 2019; and “Platform economics and antitrust enforcement: A little knowledge is a dangerous thing,” in the *Journal of Economics & Management Strategy*, Spring 2019.
- Bryan Keating presented on “Establishing the existence of a class by surveys and statistics,” at the 3<sup>rd</sup> International Conference on Class Actions, Haifa, Israel, March 2019.
  - Thilo Klein spoke about the GWB Digitization Act on Taylor Wessing’s Competition Cast podcast, February 2020.
  - Ron Laschever published “The Credit Card Debt Puzzle and Noncognitive Ability,” with Hwan-sik Choi in the *Review of Finance*, October 2018.
  - Darin Lee was invited to present on the topic “Consolidation in the U.S. Airline Industry: Myths vs Facts,” at ABA’s Air & Space Law Update Conference, Washington, D.C., February 2020.
  - Kenneth Lehn published “Corporate governance and corporate agility,” in the *Journal of Corporate Finance*, February 2021.
  - Pablo López Zadicoff spoke on the topic “Charting Recent Changes in Damages,” at the 6<sup>th</sup> Annual Harvard International Arbitration Conference, February 2020.
  - Colleen Loughlin coauthored a paper with Nobel Laureate James Heckman, “Athletes Greatly Benefit from Participation in Sports at the College and Secondary Level”. It is a working paper currently available from the National Bureau of Economic Research, July 2021. Dr. Loughlin also coauthored an article with James Heckman and Gregory Curtner titled “Ending amateurism would be disastrous for student-athletes,” which appeared in *The Hill*, March 2021. In addition, Dr. Loughlin was interviewed by Mike Johnson for the BBC World Business Report on pay-for-play and college sports for a segment airing July 4, 2021.
  - Niall MacMenamin wrote “Cigar Association of America et al. v. United States Food and Drug Administration et al.,” with Rene Befurt and Genna Liu for the Food and Drug Law Institute’s Top Food and Drug Cases, 2020 & Cases to Watch, 2021. MacMenamin also contributed “Evaluating Section 230 Liability in the Sharing Economy,” with Diego Focanti, Andrew Myers, Michael Williams, Haimin Zhang, and Janos Zsiros to *Law360*, September 2019. MacMenamin presented on “Best Practices in Evaluating Section 230 Liability in the Sharing Economy,” with Diego Focanti and Michael Williams during a live webcast hosted by The Knowledge Group, January 2020.
  - Aren Megerdichian published “Economic Analysis of Optimal Sample Size in Legal Proceedings,” in the *International Journal of Statistics and Probability*, July 2019, presenting an economic model that shows how a court’s disutility for relatively larger margins of error, among other inputs, can be an important factor in the determination of optimal sample size by a party that is presenting statistical evidence in a legal proceeding.
  - Rashid Muhamedrahimov and Andrew Tuffin wrote the Expert Opinion “Analysing EC merger decisions: How well has the European Commission’s merger process balanced accuracy and speed?” April 2021, in which they provide some preliminary insight into how the EC merger review process is working based on analysis of a unique dataset of EC merger decisions built by Compass Lexecon’s Data Science team.
  - Miguel Nakhle provided an overview of historical gas price decoupling and arbitration for the 31<sup>st</sup> Annual ITA Workshop and Annual Meeting, Plano, TX, June 2019.

- Daniel O'Brien published "The Competitive Effects of Common Ownership: Theory, Applications, and Mis-Applications," in *CPI Antitrust Chronicle*, May 2019. He took part in a roundtable and was a panelist on "New Perspectives for Vertical Merger Analysis: Challenges in the Application of Remedies and Use of Quantitative Methods," at the Brazilian Institute for Competition, Consumer and International Trade's 25<sup>th</sup> International Seminar on Competition Policy, Campinas, Brazil, November 2019. Dr. O'Brien also gave a keynote speech, "Price Discrimination Policy in Intermediate Markets," at the Bergen Center for Competition Law and Economics' 5<sup>th</sup> annual conference on competition policy, April 2019.
- Johannes Odenkirchen published "An experiment on partial cross-ownership in oligopolistic markets," with Volker Benndorf in the *International Journal of Industrial Organization*, September 2021. The article provides novel theoretical predictions about the impact of partial cross-ownership between direct competitors on prices, demonstrating potential harms for consumers and implications for competition policy.
- Jonathan Orszag gave a keynote speech at the Investment Education Symposium 2019, held in conjunction with the Louisiana Trustee Education Council, New Orleans, February 2019.
- Jorge Padilla's article "Antitrust Analysis Involving Intellectual Property and Standards: Implications from Economics," written with Douglas Ginsburg and Koren Wong-Ervin in *Harvard Journal of Law & Technology*, Fall 2019, won a 2019 Antitrust Writing Award.
- Jorge Padilla published the 3<sup>rd</sup> edition of his book, *Law and Economics of Article 102 TFEU*, coauthored with Robert O'Donoghue of Brick Court Chambers, Hart Publishing, August 2020, which examines the legal and economic principles that underpin the application of Article 102 TFEU to the behavior of dominant firms. Dr. Padilla also wrote a number of articles, including: "The Value of Standard Essential Patents and the Level of Licensing," with Bowman Heiden and Ruud Peters in *AIPLA Quarterly Journal*, March 2021; "Balancing Incentives to Innovate in Upstream Wireless Technology Markets with Exit Concerns in Midstream Component Product Markets," with Koren Wong-Ervin in *Douglas H. Ginsburg: An Antitrust Professor on the Bench*, Liber Amicorum, Vol. II, December 2020, which considers the merits of recent complaints about the common practice in technology industries of licensing patents to manufacturers of consumer devices (as opposed to midstream component manufacturers), and of calculating compensation by using the entire value of an end device as the royalty base; "A Keynesian antitrust response to the COVID-19 crisis," in the *Journal of Antitrust Enforcement*, July 2020; "Competition policy and the Covid-19 opportunity," with Nicolas Petit in *Concurrences*, April 2020; "BigTech 'Banks', Financial Stability and Regulation," in *Financial Stability Review*, Spring 2020; and the Expert Opinion "Patent errors: Setting straight some common misconceptions about the economics of patents, licensing and technical standards," with Koren Wong-Ervin, January 2020.
- Jorge Padilla was interviewed alongside Jacques Crémer on "How to make competition policy fit for the digital age?," *Concurrences*, May 2020. The interviewees addressed, among other topics, reforms the European Commission should undertake as part of its new Digital Strategy to improve competition policy. Dr. Padilla also participated in a discussion on defense and damages in antitrust litigation, hosted by *Financier Worldwide*, April 2020.
- Frédéric Palomino and Guillaume Duquesne wrote the Expert Opinion "A new paradigm for damage claim valuation?" June 2020.

- Andy Parkinson participated in a Q&A with *Financier Worldwide*, August 2021, joining lawyers from Baker Botts, Hogan Lovells, and Latham & Watkins LLP in providing a UK and EU perspective on recent developments in vertical merger enforcement.
- Salvatore Piccolo, Jorge Padilla, and Nadine Watson published “The Simple Economics of Wholesale Price-Parity Agreements: The Case of the Airline Tickets Distribution Industry,” in the *Journal of Competition Law & Economics*, June 2021. Piccolo also published “Does direct connect benefit travellers?” with Dr. Padilla in *Economics Letters*, March 2020; and “Organized Crime, Violence and Politics,” with Alberto Alesina and Paolo Pinotti in *Review of Economic Studies*, March 2019.
- Salvatore Piccolo, Patricia Lorenzo, Guillaume Duquesne, Kadambari Prasad, and Paul Reynolds discussed competition and antitrust issues in digital markets with *Financier Worldwide*, August 2021.
- Kadambari (Kadu) Prasad chaired Compass Lexecon’s 15<sup>th</sup> Annual UK Competition Policy Forum, which brought together a distinguished group of senior competition law practitioners, economists, academics, and regulators to discuss topical matters at the intersection of competition law and economics, March 2021.
- Alejandro Requejo, Jorge Padilla, and Patricia Lorenzo wrote “Consumer Preferences for Personal Data Protection in Social Networks: A Choice Modelling Exercise,” October 2020, in which they assessed and quantified German social network users’ willingness to accept the use of personal data in exchange for better targeted advertisement.
- Paul Reynolds and Alejandro Lombardi wrote “When are departures from a market-based approach to spectrum licensing warranted?” as part of a Vodafone public policy paper titled *An Industrial 5G Spectrum Policy for Europe*, November 2019.
- Alan Rozenberg spoke at the ICC Young Arbitrators Forum seminar “Experts versus Expertise: The added value of experts over in-house expertise,” Amsterdam, November 2019.
- Daniel Rubinfeld published *Democratic Federalism: The Economics, Politics, and Law of Federal Governance* with Robert Inman, Princeton University Press, June 2020. Professor Rubinfeld also wrote “Merger policy for developing countries: Is there a special role for the BRICS countries?” in *Concurrent Review*, May 2020; “Common Ownership and Coordinated Effects,” with Edward Rock in ABA’s *Antitrust Law Journal*, 2020; “Data Standardization,” with Michal Gal in *New York University Law Review*, October 2019; and “Some Thoughts on Cartel Sanctions,” with Margaret Guerin-Calvert, Keith Hylton, Gregory Werden, Koren Wong-Ervin and Terry Calvani in the *Antitrust Source*, June 2019.
- Pekka Sääskilahti and Jorge Padilla published “Revisiting the Bizarre SEP Level of Licensing Antitrust Controversy,” in the *Journal of European Competition Law & Practice*, June 2021. Sääskilahti also published “Prospect Theory, Fairness, and the Escalation of Conflict at a Negotiation Impasse,” with Topi Miettinen and Olli Ropponen in *The Scandinavian Journal of Economics*, October 2020.
- Rameet Sangha published “Qualcomm/NXP: A Textbook Conglomerate Merger?” with Mat Hughes and Ben Forbes in *The International Comparative Legal Guide to: Merger Control 2019*, 15<sup>th</sup> edition. Sangha was a panelist on the topic of “Abuse, dominance and pricing: lessons for life sciences” at CDR Life Sciences Litigation Symposium, London, June 2019.
- Matt Schmitt published “The Competitive Implications of Private Label Mergers,” with Loren Smith in ABA’s *Antitrust Law Journal*, 2021; “Employer Consolidation and Wages: Evidence

from Hospitals,” with Elena Prager in *American Economic Review*, February 2021; and “Who cares about a label? The effect of pediatric labeling changes on prescription drug utilization,” with Christopher Ody in the *International Journal of Health Economics & Management*, December 2019.

- Marcelo Schoeters presented on the topic “How do experts assess damages?” at the Peruvian Institute of Arbitration’s (IPA) Arbitration Week, August 2020. He also presented on “The Expert Report and Testimony in a Hearing,” at IPA’s XIII Congreso Internacional De Arbitraje, Lima, Peru, April 2019.
- David Sevy coauthored the chapter “International Report,” with Christophe Lemaire in *Competition Law Analysis of Price and Non-price Discrimination & Abusive IP Based Legal Proceedings*, March 2021, the 8<sup>th</sup> edition of the LIDC Contributions on Antitrust Law, Intellectual Property and Unfair Competition book series, which compiles reports presented by practitioners and academics at the League’s Annual Congress. Dr. Sevy also published “Trends in merger control,” in *Financier Worldwide*, February 2021. Additionally, Dr. Sevy, Jorge Padilla, Lorenzo Coppi, Rameet Sangha, and Urs Haegler participated in a discussion on managing antitrust risks during COVID-19, hosted by *Financier Worldwide*, August 2020.
- Allan Shampine published “A Legal Practitioner’s Guide to Event Studies,” in the *Antitrust Source*, December 2019.
- Shiva Shekhar wrote “Superstar exclusivity in two-sided markets,” with Elias Carroni and Leonardo Madio, January 2021. Shekhar also wrote the Expert Opinion “Competition between ad-funded digital platforms: Could merging platforms harm consumers, even if they offer free services?” December 2020.
- Ethan Singer was named to Global Competition Review’s 40 Under 40 list of top young antitrust lawyers, May 2020. Dr. Singer and Jan Brueckner published “Pricing by international airline alliances: A retrospective study,” in *Economics of Transportation*, December 2019.
- Georges Siotis provided an economist’s perspective on the European Commission’s 2020 Temporary Framework in the third installment of Concurrences’ Quarantine Webinar Series, “State aid in the COVID-19 context,” April 2020. The webinar was organized by Concurrences with 50% of proceeds going to Doctors Without Borders.
- Pablo Spiller was named a permanent member of the National Academy of Economics, Uruguay, 2021. Additionally, Dr. Spiller published “Political contestability and public contracting,” with Marian Moszoro in the *Journal of Public Economic Theory*, October 2019.
- Maria Stoyadinova authored “Towards Inclusive Competition Analyses: The Questions We Overlook” for the April 2021 edition of *CPI Antitrust Chronicle*. Ms. Stoyadinova also participated in a CPI panel on Inclusive Competition in July 2021. She organized and moderated a panel discussion in May 2021 called “Why Antitrust? Economist Careers in a Dynamic Field” at the Antitrust Section of the ABA. The panel focused on introducing antitrust economist careers to economics students and young economists interested in a career in the antitrust field.
- Stefano Trento and Jorge Padilla wrote “No barbarians at the gate? The relatively slow progress of Big Techs in EU and US retail banking,” in *Concurrences*, November 2019, which identified various factors that may have hindered Big Tech’s entry into retail banking in Western countries.
- Andria van der Merwe authored “Cryptocurrencies and Other Digital Asset Investments,” in *The Palgrave Handbook of FinTech and Blockchain*, Palgrave MacMillan, Spring 2021.

Dr. van der Merwe also provided an expert analysis to *Law360* titled “Bitcoin Fraud Class Action Shows Crypto Litigation Hurdles,” February 2020.

- Ran Wei and Ed Grgeta wrote “Examining The Evidence On VIX Manipulation,” with Ging Cee Ng and Brendan Perry in *Law360*, May 2019.
- David Weiskopf was named a Kautz-Uible Economics Institute Fellow at the Lindner College of Business, University of Cincinnati. Dr. Weiskopf and Mary Coleman published “Non-Self-Enforcing Remedies and the Recent Modification to the Ticketmaster/Live Nation Merger Consent Decree,” in *CPI Antitrust Chronicle*, April 2020. Dr. Weiskopf also wrote the LexisNexis Practice Note, “Economic Analysis in Horizontal Merger Reviews,” December 2018.
- Dr. Weiskopf participated as a panelist for “Local Markets Issues in Merger Review,” an ABA Section of Antitrust Law, Transportation and Energy Industries Committee seminar, November 2018. In addition, he organized and moderated the “Merger Remedies” panel at the 45<sup>th</sup> Annual Conference on International Antitrust Law & Policy’s Antitrust Economics Workshop at Fordham Competition Law Institute, September 2018.
- Robert Willig, Kenneth Elzinga, and Benjamin Klein, along with 20 other prominent industry leaders, provided a *Joint Submission of Antitrust Economists, Legal Scholars, and Practitioners to the House Judiciary Committee on the State of Antitrust Law and Implications for Protecting Competition in Digital Markets*, May 2020.
- Dr. Willig contributed the chapter “Economic Foundations for 21st Century Freight Rail Rate Regulation,” written with John Mayo, to *U.S. Freight Rail Economics and Policy: Are We on the Right Track?*, Routledge, April 2019. Dr. Willig also moderated two panels: “What are the New Economics of Market Power?” at the Griswold Center’s Fall Symposium, “Has the U.S. Economy Become Less Competitive?” Princeton, NJ, September 2019; and “Pricing Issues in Pharma,” at The Global Antitrust Economics Conference, New York, May 2019.
- Jason Jianjun Wu presented on “Another Year Overshadowed by the US Trade War? A Preview of China's Antitrust Enforcement in 2020,” at the American Bar Association, 2020. Dr. Wu also spoke on the topic of “Mergers in the Digital Economy,” at the HKU-Lingnan-Florida Platform Competition Conference, Hong Kong, June 2019.
- Sebastian Zuccon and Alejandro Lombardi published “El análisis de casos de precios excesivos: Reflexiones en base a jurisprudencia reciente,” in *Revista El Dial*, November 2019.