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Antitrust in Emerging and Developing Countries

Africa, Brazil, China, India, Mexico…

2nd edition

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Editors' Note

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On October 23, 2015, Concurrences Journal in partnership with New York University School of Law presented for the second time the conference, "Antitrust in Emerging and Developing Countries." Five panels of 24 prominent speakers representing 10 jurisdictions, two eminent keynote speakers and a closing conversation with an influential South African jurist explored the economic context and addressed the challenges and developments in competition law and policy in emerging and developing jurisdictions. Recognizing the coming of age of developing countries' competition law systems, the panelists (academics, enforcers and practicing lawyers) engaged in passionate debates about what this means in law, policy, and on-the ground reality for business, consumers, and the world.

The conference underscores the reality that, in this globalized business landscape, firms must have regard to the competition laws of emerging economies, including in particular China, India, Mexico, Brazil and South Africa, whether they are merging, collaborating with competitors, or designing distribution systems. Businesses are facing dedicated enforcers who are trying to make their markets work in the face of challenges posed by public and private power. The conference revealed that the challenges and therefore the responses are not always the same in the developed and developing world.

In this book, 20 prominent authors offer 13 contributions that tackle some of the most stimulating topics debated during this one-day event: **Susan Ning** discusses the enforcement of the Chinese Anti-Monopoly Law against state administrative monopolies; **Jonathan Orszag** lays out principles to guide governments from developing countries when intervening in the market and in network industries; **Kirti Gupta** provides an overview of the Indian experience in dealing with issues relating to FRAND patents; **Aditya Bhattacharjea** and **Fiyanshu Sindhwani** analyze the antitrust cases concerning pharmaceuticals in India; **Thomas K. Cheng** discusses the history of the pharmaceutical industry in China and suggests there may be future antitrust issues that the Chinese authorities will have to address; **Carlos Mena-Labarthe** uses the Mexican experience in enforcing competition law in the pharmaceutical sector to provide guidance to developing countries on how to implement effective competition policy in that sector; **George S. Cary**, **Elaine Ewing** and **Tara Tavernia** relay the concerns of the business community by arguing that the global proliferation of merger control regimes is imposing substantial and often unnecessary costs on businesses; **D.M. Davis** provides an illuminating discussion of South Africa's controversial public interest approach to merger review; **Samir Gandhi** lays out the history of merger control in India and interestingly suggests that it may be have been influenced by India's industrial policy; **J. Mark Gidley** and **Maxwell J. Hyman** intriguingly use insights from institutional economics to argue that one of the indirect benefits from the proliferation of antitrust based on international best practices is the distillation of due process norms in the legal institutions of developing countries, which ultimately leads to a stronger economy; **Francis Wang'ombe Kariuki** and **Simon Roberts** discuss the historical growth of the Competition Authority of Kenya and how it has contributed to Kenya's development goals; **Mariana Tavares de Araujo** analyzes how Brazil has incorporated international best practices to improve its competition law; and lastly, **Timothy T. Hughes**, **Russell W. Damtoft** and **Randolph W. Tritell** provide an historical overview of the US Federal Trade Commission's technical assistance program and highlight how it has contributed to the economic development of developing countries.

This volume guides readers through some of the most important and cutting-edge issues faced by developing countries in their application of antitrust.

The editors would like to give their sincere thanks to the 20 authors for their hours of labor dedicated to this unique collection of articles.

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Too Many Gatekeepers? The Costs of Globalized Merger Control

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Abstract

Over the last twenty years, an ever-growing number of jurisdictions have adopted merger control regimes. Although the global proliferation of merger control regimes has yielded some benefits, such as addressing competitive concerns in mergers with localized anticompetitive effects, it has also imposed substantial costs. These costs include, among others, at times significant delay in the ability to close a transaction and achieve anticipated efficiencies, the risk that an agency will improperly block a transaction or impose inefficient remedies, and the possibility that pro-competitive transactions will not be pursued in light of these concerns.

This article analyzes the costs and benefits of the global proliferation of merger control regimes and proposes steps that regulators can take to reduce the costs of globalized merger control without impairing their ability to address local competitive concerns.

One of the most striking changes in the antitrust world over the last two decades is the global proliferation of merger control regimes. Twenty years ago, companies seeking to merge could focus on the US agencies and the European Commission. Today, more than 100 countries have merger control regimes, with new jurisdictions joining the list each year. This expansion has yielded meaningful benefits—including the prevention of mergers with localized anticompetitive effects—but also has imposed significant costs that may well outweigh these benefits. Regulators and practitioners, however, can and should take steps to reduce these costs.

The global spread of merger control is widely heralded as a success. In a September 2015 speech, Margrethe Vestager, the European Commission's Commissioner for Competition, lauded the global proliferation of merger control as "good news . . . because many more people know that a competition watchdog will protect their interests if companies misbehave."[1] Certainly, there are many cases where the spread of merger control has protected consumers from local transactions generating local anticompetitive effects that might have gone unchecked 20 years earlier. For instance, in October 2015, Mexican authorities required that supermarket chain Soriana, in connection with its proposed merger with Comercial Mexicana, divest (or not acquire) grocery stores in 27 local markets in Mexico.[2] And in November 2015, Brazil's Council for Economic Defense ("CADE") conditionally cleared a transaction between two Brazilian dental products companies (Dabi Atlante and Gnatus), requiring divestiture of the Gnatus brand and the termination of exclusive distribution and service agreements.[3]

But, as we will discuss below, the global proliferation of merger control imposes real costs. In this respect, the global proliferation of merger control butts heads with another important trend of the last two decades—the shift away from the historical view that mergers are neutral at best and anticompetitive at worst. Today, there is widespread recognition that corporate transactions can have substantial pro-competitive benefits, including reductions in the marginal cost of production and the realization of research and development ("R&D") synergies. When the closing of a pro-competitive transaction is delayed while waiting for a dozen global clearances, so, of course, are its pro-competitive benefits.

In considering the costs of globalization, we draw a distinction between what we will term the "*internationalization*" of merger control and what we will term the "*globalization*" of merger control. The Soriana/Comercial Mexicana and Dabi Atlante/Gnatus cases exemplify internationalization—the phenomenon where the spread of global antitrust enforcement has allowed jurisdictions to prevent transactions that would otherwise cause local competitive harm.

"Globalization" is different. Globalization is the phenomenon whereby numerous agencies review the same global transaction and consider the same global effects. Rather than prevent anticompetitive transactions that would previously have proceeded unchecked, globalization layers additional bureaucracy, uncertainty, inefficiency, and costs onto transactions that were already being carefully reviewed and enforced, where appropriate. Rather than protect consumers, globalization effectively serves as a tax on major corporate transactions.

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1 Margrethe Vestager, Comm'r, Eur. Comm'n, *Merger review: Building a global community of practice*, Presented at the ICN Merger Workshop (Sept. 24, 2015), https://ec.europa.eu/commission/2014-2019/vestager/announcements/merger-review-building-global-community-practice_en.

2 Press Release, COFECE, Condiciona COFECE concentración entre Soriana y Comercial Mexicana (Oct. 9, 2015), https://www.cofece.mx/cofece/index.php/prensa/historico-de-noticias/condiciona-cofece-concentracion-entre-soriana-y-comercial-mexicana.

3 Press Release, CADE, Cade aprova fusão da Dabi Atlante e Gnatus (Nov. 25, 2015), http://www.cade.gov.br/Default.aspx?4bfe0f1aeb21f73bcf7dce61fd5f.

To be fair, there is a fine line between internationalization and globalization. A global transaction may involve local markets and jurisdictions with unique competitive dynamics and isolated problems. For example, in 2013, several jurisdictions conditionally cleared Nestlé's acquisition of Pfizer's nutrition business. Among others, South Africa[4] and Australia[5] required Nestlé to license Pfizer's infant formula products to another company in order to maintain existing local competitive dynamics. In late 2013 and early 2014, the purchase of the Slovenian food retail chain Mercator by Agrokor, a Croatian food production and retail group, was reviewed by several European countries and ultimately cleared, subject to conditions in Serbia[6] and Croatia[7] to address local competitive concerns. And in the Holcim/Lafarge transaction, CADE[8] and the Competition Commission of India[9] required the divestiture of certain local plants in order to remedy potential competitive harm in specific regional markets.

In thinking about the proliferation of merger control, then, the challenge becomes ensuring that the desire to catch these few cases does not impose an undue burden on the dozens or hundreds of global transactions that do not pose unique competitive harms in a handful of jurisdictions.

Finding the appropriate balance is difficult because of the "lowest common denominator" problem posed by merger control. In most contexts, even in antitrust, globalized enforcement means parallel regimes with effects specific to each jurisdiction. For example, the global spread of cartel enforcement largely involves jurisdictions individually assessing conduct and imposing penalties without any spillover effect in other jurisdictions. But in the merger review context, a decision made by any given jurisdiction has repercussions in every other country.

Before discussing the costs imposed, it may be instructive to review some data regarding the extent of global merger control.

Broadly, the global proliferation of merger control means that major international transactions may require filings in a dozen or more jurisdictions. While not a complete list, recent examples of transactions requiring 10 or more filings include: GSK/Novartis (21 jurisdictions); Lafarge/Holcim (20); Microsoft/Nokia (17); TRW Automotive/ZF Friedrichshafen (14); Nestlé/Pfizer Nutrition (13); Medtronic/Covidien (13); Lenovo/IBM (13); DuPont/Mitsui/DKK (13); Continental/Veyance (11); Eaton/Cooper (10); and Baxter/Gambro (10). Even smaller transactions may require half a dozen filings. Recent examples include Coca-Cola's sale of its energy drink business to Monster, which required six filings; 3M's acquisition of Capital Safety, which also required six filings; Onex's acquisition of Kraussmaffei's companies, which required seven filings; and Platform Specialty Products' acquisition of Alent, which required nine filings.

4 Competition Trib. of S. Afr., Decision, Case No. 65/LM/Jun12 (015248) (Mar. 18, 2013), *available at* http://www.comptrib.co.za/assets/Uploads/65LMJun12-015248.pdf.

5 Press Release, Austl. Competition & Consumer Comm'n, ACCC to not oppose acquisition by Nestlé of Pfizer Nutrition (Nov. 22, 2012), https://www.accc.gov.au/media-release/accc-to-not-oppose-acquisition-by-nestl%C3%A9-of-pfizer-nutrition.

6 Comm'n for the Protection of Competition, Decision, No. 6/0-02-466/2013-199 (Dec. 25, 2013), *available at* http://www.kzk.org.rs/kzk/wp-content/uploads/2014/01/466-%D0%A5%D0%A5%D0%A5.pdf.

7 Press Release, Croatian Competition Agency, Agrokor-Mercator merger conditionally approved (Apr. 14, 2014), http://www.aztn.hr/en/agrokor-mercator-merger-conditionally-approved/.

8 Press Release, CADE, CADE approves with restrictions Holcim/Lafarge merger (Oct. 12, 2014), http://www.cade.gov.br/Default.aspx?81b445d42ce136fd0835065ffd44.

9 Competition Comm'n of India, Decision, No. C-2014/07/190 (Mar. 30, 2015), *available at*http://www.cci.gov.in/sites/default/files/C-2014-07-190_0.pdf.

Comparing the number of notifications filed in each jurisdiction reveals that certain jurisdictions are far more active than others. For example, in 2014, merging parties filed over 2,000 notifications in Russia,[10] around 1,000 notifications in Germany,[11] 781 notifications in the Ukraine,[12] 571 notifications in South Korea,[13] 423 notifications in Brazil,[14] 321 notifications in Austria,[15] 289 notifications in Japan,[16] 262 notifications in China,[17] 244 notifications in Canada,[18] 215 notifications in Turkey,[19] and 200 notifications in France.[20]

As you would expect, the number of filings reflects each jurisdiction's filing thresholds. Of the jurisdictions listed above, Ukraine offers an extreme example of low filing thresholds, requiring parties to file if their combined global assets or turnover exceeds €12 million, each party has at least €1 million in global assets or turnover, and at least one party has €1 million in Ukrainian assets or turnover.[21] While Germany requires the parties to have a combined global turnover of €500 million, the German-specific thresholds are quite low—one party must have €25 million in German turnover, and the second only needs to have €5 million in German turnover. Not surprisingly, these jurisdictions receive hundreds of filings per year. In contrast, France has rather high thresholds for French turnover, requiring each party to have at least €50 million in French turnover (in addition to €150 million in global turnover), and thus receives far fewer filings.

Notwithstanding these thousands of filings, the globalization of merger control has resulted in limited additional enforcement of global transactions. The instances where foreign-to-foreign transactions are subject to conditions or entirely blocked are few and far between. In France, 10 transactions were conditionally cleared in 2014, and none were foreign-to-foreign transactions.[22] In 2014, the German

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10 Alexander Viktorov, *Russia: Merger Control*, Getting the Deal Through (Sept. 8, 2015), https://gettingthedealthrough.com/area/20/jurisdiction/26/merger-control-russia/.

11 Evelyn Niitväli & Marc Reysen, *Germany: Merger Control*, Global Competition Rev. (n.d.), http://globalcompetitionreview.com/reviews/72/sections/249/chapters/2923/germany-merger-control/.

12 Sergey Denisenko & Denis Lysenko, *Ukraine: Merger Control*, Global Competition Rev. (n.d.), http://globalcompetitionreview.com/reviews/72/sections/270/chapters/2957/ukraine-merger-control/.

13 Sanghoon Shin & Seong-Un Yun, *Korea: Merger Control*, Getting the Deal Through (Sept. 8, 2015), https://gettingthedealthrough.com/area/20/jurisdiction/35/merger-control-korea/.

14 CADE, Balanço do triênio da Lei 12.529/11 (May 2015), http://www.cade.gov.br/upload/Balan%C3%A7o%203%20anos%20nova%20lei-atualizado.pdf.

15 Sarah Fürlinger & Theodor Thanner, *Austria: Federal Competition Authority*, Global Competition Rev. (n.d.), http://globalcompetitionreview.com/reviews/72/sections/240/chapters/2901/austria-federal-competition-authority/.

16 Akinori Uesugi & Kaori Yamada, *Japan: Merger Control*, Getting the Deal Through (Sept. 8, 2015), https://gettingthedealthrough.com/area/20/jurisdiction/36/merger-control-japan/ (reporting data for fiscal year 2014, which covers the period from April 1, 2014 through March 31, 2015).

17 Press Release, Ministry of Commerce of the People's Republic of China ("MOFCOM"), 2014 Business Review XVIIII: Carry out Anti-monopoly Work According to Law and Maintain a Market with Fair Competition (Feb. 5, 2015), http://english.mofcom.gov.cn/article/zt_businessreview/news/201503/20150300912159.shtml.

18 John Pecman, *Canada: Competition Bureau*, Global Competition Rev. (n.d.), http://globalcompetitionreview.com/reviews/74/sections/276/chapters/2992/canada-competition-bureau/.

19 Gönenç Gürkaynak & Ayşe Güner, *Turkey: Merger Control*, Global Competition Rev. (n.d.), http://globalcompetitionreview.com/reviews/72/sections/269/chapters/2956/turkey-merger-control/.

20 Bruno Lasserre, *France: Competition* Authority, Global Competition Rev. (n.d.), http://globalcompetitionreview.com/reviews/72/sections/248/chapters/2914/france-competition-authority/.

21 Ukraine also has a share threshold that requires filing where the combined entity will have a 35% or greater share in a relevant market.

22 Autorité de la Concurrence, *Le Contrôle des Concentrations*, http://www.autoritedelaconcurrence.fr/user/tableaudcc.php?dt=2014.

authority blocked one transaction[23] and granted conditional clearance to a second;[24] both of these transactions were domestic. In Turkey, no transactions were blocked in 2014, and of the three transactions that were cleared conditionally, only one was a foreign-to-foreign transaction, involving two European companies, Bekaert and Pirelli.[25] In Brazil, from 2012 to May 2015, 20 transactions were conditionally approved or blocked, and only five were foreign-to-foreign, all of which were conditionally approved.[26] In two of these five cases (Munksjö/Ahlstrom and Mach/Syniverse), the remedies imposed by CADE duplicated those imposed by European authorities. In Munksjö/Ahlstrom, Ahlstrom was required to divest a plant in Germany that the European Commission also required it to divest.[27] In Mach/Syniverse, Mach was required to divest assets related to certain services provided in Europe that the European Commission also required it sell.[28] In a third case, Continental/Veyance, CADE's remedy included the divestiture of a plant in Mexico that the US Department of Justice ("DOJ") also required the parties to divest.[29] Similarly, in Medtronic/Covidien, the Canadian consent decree requiring global divestiture of a pipeline product was near verbatim to the consent decree required by the US Federal Trade Commission ("FTC").[30]

China's antitrust authority in charge of reviewing mergers, MOFCOM, offers a stark contrast to those jurisdictions that focus on domestic transactions. Since 2008, MOFCOM has imposed remedies upon or blocked 28 transactions—23 of which were foreign-to-foreign.[31] Rather than focus on local effects, MOFCOM seems inclined to use the antitrust process to influence global industrial policy and to do so in furtherance of protectionist aims. In several cases, MOFCOM has imposed remedies on global transactions that exceeded the scope of any remedies imposed by other regulators, and has done so without a solid economic rationale. In Gavilon/Marubeni, Glencore/Xstrata,[32] ThermoFisher/Life, and Merck/AZ Electronic, MOFCOM imposed behavioral remedies related to pricing and supply in China that seem aimed at ensuring that Chinese customers receive products on particularly favorable terms. MOFCOM has also required merging parties to license their patents in China on favorable terms, including in Merck/AZ Electronic and Microsoft/Nokia—transactions that were unconditionally cleared by other global

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23 Fed. Cartel Office, Decision, B3-135/13 (May 14, 2014), *available at* http://www.bundeskartellamt.de/SharedDocs/Entscheidung/DE/Entscheidungen/Fusionskontrolle/2014/B3-135-13.pdf?__blob=publicationFile&v=2.

24 Fed. Cartel Office, Decision, B6-98/13 (Apr. 25, 2014), *available at* http://www.bundeskartellamt.de/SharedDocs/Entscheidung/DE/Entscheidungen/Fusionskontrolle/2014/B6-98-13.pdf;jsessionid=CEB145CD6BF4344178A2F1CFAC5D0C0A.1_cid378?__blob=publicationFile&v=2.

25 Gönenç Gurkaynak, M. Hakan Özgökçen & Esen Ergül, *Turkey: An Overview on the Turkish Competition Board's Recent Phase II Decisions*, Mondaq, June 24, 2015, http://www.mondaq.com/turkey/x/406954/Trade+Regulation+Practices/An+Overview+On+The+Turkish+Competition+Boards+Recent+Phase+Ii+Decisions.

26 The enforcement of foreign-to-foreign transactions is rare in many other jurisdictions as well. *See, e.g.*, Denmark ("Only on rare occasions have remedies been necessary in foreign-to-foreign mergers,"); Israel ("To date, only in a few cases of foreign-to-foreign mergers have remedies been required."); Norway (since the current Competition Act came into effect in 2004, the Norwegian Competition Authority has intervened in 35 merger cases and only four involved foreign-to-foreign transactions). *See* Getting the Deal Through (John Davies ed., 2015), https://gettingthedealthrough.com/area/20/merger-control/.

27 Press Release, CADE, Cade celebra primeiros Acordos em Controle de Concentrações (May 22, 2013), http://www.cade.gov.br/Default.aspx?3ff20316ef25fb071320300256fe; Eur. Comm'n, Decision, Case M.6576 (May 24, 2013), *available at* http://ec.europa.eu/competition/mergers/cases/decisions/m6576_20130524_20600_4231067_EN.pdf.

28 Press Release, CADE, Cade celebra primeiros Acordos em Controle de Concentrações (May 22, 2013), http://www.cade.gov.br/Default.aspx?3ff20316ef25fb071320300256fe; Eur. Comm'n, Decision, Case M.6690 (May 29, 2013), *available at* http://ec.europa.eu/competition/mergers/cases/decisions/m6690_4017_2.pdf.

29 CADE, Decision, Proceeding No. 08700.004185/2014-50 (Jan. 29, 2015), *available at* http://sei.cade.gov.br/sei/institucional/pesquisa/documento_consulta_externa.php?a6_-38uSff0w6rlBdBW1VVbWwwvmOW7xmF6zCMe31m3573IKEOhklTV5V-ygvN_CoXd99Ef5asXC2rXTNHyGDg; DOJ, Decision, Case 1:14-cv-02087 (Mar. 30, 2015), *available at* http://www.justice.gov/file/492816/download.

30 Can. Competition Trib., Decision, Case CT-2014-008 (Nov. 26, 2014), *available at* http://www.ct-tc.gc.ca/CMFiles/CT-2014-008_Registered%20Consent%20Agreement_2_38_11-26-2014_7467.pdf; FTC, Decision, Case No. 1410187 (Jan. 21, 2015), https://www.ftc.gov/system/files/documents/cases/150121medtroniccovidiendo.pdf.

31 MOFCOM, Announcements, http://fldj.mofcom.gov.cn/article/ztxx/?.

32 MOFCOM also required the parties to divest a copper mine in Peru and ultimately approved its sale to a Chinese buyer.

authorities. Finally, while less clearly protectionist, MOFCOM's remedies in Western Digital/HGST and Samsung/Seagate, which required the hard disk drive companies to hold separate and independently operate their existing and acquired businesses, prevented the full realization of the pro-competitive benefits of those transactions.

I. What are the costs of globalization?

At its worst, globalization can prevent or destroy pro-competitive transactions. A single jurisdiction can destroy the pro-competitive benefits of a deal by blocking the transaction entirely or imposing a remedy that prevents the realization of the transaction's anticipated efficiencies, like some of the MOFCOM examples discussed above.

Improperly blocked transactions and inefficient remedies are, fortunately, uncommon. Far more common is the scenario where additional reviews dramatically extend the timeline of the antitrust review of a transaction, resulting in significant delay in its closing. This too is a serious concern. Delay in a single jurisdiction can delay the realization of substantial efficiencies globally. Moreover, the extent of such delays is likely greater than is immediately apparent because merging parties (and authorities) are influenced by the known timing of other jurisdictions. For instance, if a transaction requires a full-form filing with MOFCOM, all involved understand that there will be a four- to seven-month (or longer) review process in China, which can reduce the incentive to move things along more quickly in the United States and elsewhere.

Such delay imposes real costs. Since the 1970s, when the US Hart-Scott-Rodino Antitrust Improvements Act was passed, economic knowledge about the effects of corporate transactions has exploded.[33] While there was once skepticism that mergers could generate significant efficiencies, more recent economic work has concluded that mergers often reduce costs and increase efficiency, resulting in increased innovation, greater output, and lower prices.

It is now widely recognized that corporate transactions are often a pro-competitive improvement on the pre-transaction status quo.[34]

Mergers can also lead to reduced costs of production and/or distribution by allowing parties to shift manufacturing from higher-cost assets to lower-cost assets, or by optimizing distribution networks to reduce transportation costs.[35] And mergers that increase the parties' scale (production volume) and/or scope (range of products produced) can also lead to lower costs.[36]

Mergers can also generate important R&D efficiencies. Indeed, there are several ways in which mergers can enhance innovation. For example, where the merging parties have complementary R&D assets,

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33 Notably, the 1982 Merger Guidelines were highly skeptical that efficiencies should even be considered in merger analysis, restricting their consideration to "extraordinary cases." U.S. Dep't of Justice, Merger Guidelines (1982), *reprinted in* 4 Trade Reg. Rep. (CCH) ¶ 13,102.

34 *See, e.g.*, William J. Kolasky & Andrew R. Dick, *The Merger Guidelines and the Integration of Efficiencies into Antitrust Review of Horizontal Mergers*, 71 Antitrust L.J. 207, 240 (2003) (describing how "the US courts and antitrust agencies have made substantial progress . . . in learning how to integrate efficiencies into their evaluation of potentially anticompetitive mergers").

35 *See, e.g.*, Joseph Farrell & Carl Shapiro, *Scale Economies and Synergies in Horizontal Merger Analysis*, 68 Antitrust L.J. 685, 695 (2001) (noting that mergers may generate "re-optimization" by optimizing distribution networks and production across facilities).

36 *See, e.g.*, Kolasky & Dick, *supra* note 34, at 244, 246 (2003).

innovation may accelerate when they are combined post-transaction.[37] More broadly, mergers can increase the incentive to innovate because a larger firm can benefit from spreading new innovations across a larger base of sales.[38] Moreover, any merger-generated increase in innovation can spur competitors to innovate themselves to keep up with the merging parties, further benefitting customers and consumers.[39]

Mergers and acquisitions are also part of another means to efficiency: a robust market for corporate control. Corporate transactions allow investors to identify poorly managed companies and bid to take them over. Post-takeover, underperforming management can be improved or replaced, allowing the company to operate more efficiently to the benefit of shareholders and customers.[40] Even the threat of a potential takeover drives efficiency within corporations; if managers underperform, they may be replaced by new ownership.[41]

A delay in closing is, by definition, a delay in the realization of these efficiencies and benefits. Where these efficiencies are significant, a delay in their realization can have a serious detrimental effect on consumers. Such delays are particularly concerning in high-technology industries, where markets evolve rapidly. A delay of even a few months in realizing R&D synergies can prevent merging parties from keeping pace with industry change and put them permanently behind competitors.

Moreover, it is widely recognized that the pendency of a corporate transaction has a negative impact on the companies' operations. This concern is particularly acute at the target where, given gun-jumping concerns and interim operating covenants, there can be paralysis in terms of corporate decision-making. Even if the target is contractually able to make major changes to its business, it may be unwilling to do so while its acquisition is pending. At the same time, at either company, there is also a risk that the company takes action that is in its best interest as an independent company but that is inefficient for the combined company. Once again, the stakes are higher in high-tech industries, where a few months of paralysis or delay can mean falling far behind in R&D. More generally, there is significant uncertainty for customers, suppliers, and employees, all of whom may be tempted to jump ship during the pendency of a transaction. Finally, across industries, delay also imposes basic financial costs: the need to secure additional or more expensive financing or pay additional interest.

Corporate executives, of course, recognize these issues and factor them in when deciding whether to pursue a corporate transaction (and what price to offer or accept). Essentially, these risks function as a tax on otherwise pro-competitive corporate transactions. In extreme cases, this tax may deter companies from pursuing transactions altogether. As Daniel Cooperman, former General Counsel of Oracle, explained, "[w]hether delay results from procedural overload or duplication, or from the sincere regulatory pursuit of an aggressive but unverifiable theory of competition, the additional time spent in the regulatory process may be the largest and most important transactions cost of all—and the one that thwarts the most potentially

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37 *See, e.g.*, Gary L. Roberts & Steven C. Salop, *Efficiencies in Dynamic Merger Analysis*, 19(4) World Competition L. & Econ. Rev. 5, at 8 (1996).

38 *See, e.g.*, *id*.

39 *See, e.g.*, *id*. ("Mergers can also lead to diffusion of cost savings over time through the broader process of inducing competitive innovation. Competitive pressure may spur rival firms to increase their independent investments in order to keep up with the newly merged entity.").

40 *See, e.g.*, Henry Manne, *Mergers and the Market for Corporate Control*, 73 J. Pol. Econ. 110, 113 (1965) ("As an existing company is poorly managed—in the sense of not making as great a return for the shareholders as could be accomplished under other feasible managements—the market price of the shares declines relative to the shares of other companies in the same industry or relative to the market as a whole . . . the lower the stock price, relative to what it could be with more efficient management, the more attractive the take-over becomes to those who believe that they can manage the company more efficiently.").

41 *See e.g.*, *id*.; Lucian Arye Bebchuk, *Why Firms Adopt Antitakeover Arrangements*, 152 U. Pa. L. Rev. 713, 720 (2003).

procompetitive transactions."[42] These considerations also may be a factor when sellers are evaluating which buyer to sell to—sellers may make decisions based in part on filing requirements and their resulting implications for deal timing, rather than best strategic fit or best return to shareholders.

Even where transactions are not deterred or unduly delayed, the expansive regulatory process results in substantial administrative costs that should not be ignored. Preparation of filings is costly and time-consuming. Merging parties must retain counsel in individual filing jurisdictions and, in most cases, must collect substantial information about the business in each jurisdiction. Often, particularly in smaller jurisdictions or jurisdictions where the parties are minimally active, the required information simply does not exist in the ordinary course of business. Companies do not invest in the competitive intelligence needed to track product level shares in jurisdictions where they have tens of thousands of dollars in sales, yet many jurisdictions ask for exactly this information. The cost of gathering this information is particularly high because the people best positioned to collect it are typically businesspeople in the overlap product areas, who must be diverted from the important work of integration planning, which is critical to the success of a merger. (The fact that this information does not exist and must be estimated in many cases also raises the question of how useful this information is to the authorities.)

Several jurisdictions also have significant filing fees. For example, the Common Market for Eastern and Southern Africa ("COMESA") requires a filing fee of up to US$200,000 (down, in response to international outcry, from US$500,000); in the UK, filing fees can be as much as £160,000; and in Germany, filing fees can be as much as €100,000 for significant cases. Such fees function as yet another tax on pro-competitive transactions and create a perverse incentive for jurisdictions to lower their thresholds and increase the number of transactions reviewed, regardless of whether there is any real risk to competition.

This system does not serve consumers well, and this tax on global transactions can be reduced without jeopardizing them. But developing a system that can identify and resolve local problems without imposing undue burden and delay on global transactions will require significant international coordination that goes well beyond the formal and informal cooperation that many authorities undertake today.[43] Moreover, successfully reducing this tax will require acknowledging that having a dozen decision-makers review the same transaction simply cannot be efficient and, worse, has the potential to seriously undermine economic efficiency and consumer welfare.

Unfortunately, there may be little appetite within any particular jurisdiction to move toward a coordinated regime: regulators face a perverse incentive from collecting filing fees, regulators and practitioners depend on filings for their livelihood, and the culture of the international competition community rewards activism over passivity.

It is time for the international competition community to consider whether, notwithstanding its worthy goals, the globalization of merger enforcement has gone too far. We sketch out below proposed initial steps that individual regulators can take to reduce the costs of global merger control without interfering with their ability to step in when a transaction is truly anticompetitive. While insufficient to remedy all

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42 Daniel Cooperman, Senior Vice President, Gen. Counsel & Sec'y, Oracle Corp., Testimony before the Antitrust Modernization Commission, at 1 (Nov. 8, 2005), http://govinfo.library.unt.edu/amc/commission_hearings/pdf/Statement_Cooperman.pdf.

43 There is no doubt that extensive cooperation among agencies is a reality of the antitrust world today. For example, the DOJ reports that it worked with other enforcers in 40% of its merger challenges over the last five years. *See* Bill Baer, Assistant Attorney Gen., Dep't of Justice, *Cooperation, Convergence, and the Challenges Ahead in Competition Enforcement*, Remarks at the Ninth Annual Global Antitrust Enforcement Symposium (Sept. 29, 2015), http://www.justice.gov/opa/speech/assistant-attorney-general-bill-baer-delivers-remarks-ninth-annual-global-antitrust. And the European Commission reports that it worked with agencies outside the EU in 58% of its complex merger investigations. *See* Eur. Comm'n, Report on Competition Policy 2014 at 17 (2015), http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0247&from=EN.

of the problems we have identified, we hope that these measures can serve as first steps toward realizing the goals of antitrust laws: enhancing efficiency, promoting economic growth, and benefitting consumers.

1. *Establish clear and thoughtful thresholds.* A simple first step towards getting merger control under control is for individual jurisdictions to take a hard look at their filing thresholds.[44]

To start, thresholds must be clear. Though this seems obvious, in some jurisdictions, companies cannot readily determine whether a filing is required. Market share thresholds in jurisdictions such as Spain, Portugal, and Taiwan require the parties to determine an antitrust relevant market and then estimate their own shares within that jurisdiction. And other jurisdictions have components of their thresholds that are far from clear—e.g., assessing the value of the "Mexican portion of the transaction" is a component of the Mexican filing threshold.

Thresholds must also require that a transaction have a clear nexus to the filing jurisdiction. To this end, we would prescribe a focus on the target's revenues or assets, requiring filings only where the target has more than *de minimis* turnover and/or assets in the jurisdiction. While there may be some exceptions, it is quite uncommon that a transaction will lead to competitive harm in a jurisdiction where a target has no or minimal presence. Yet many jurisdictions require filings where the target has a *de minimis*—or less—presence in the jurisdiction. In several countries, including Macedonia, a filing may be required even where one party has *no sales* in the country. Many more countries have thresholds that can be satisfied by only a *de minimis* local presence (e.g., Slovenia, which requires only €1 million in local target turnover, and Ukraine, which requires just €1 million in local turnover or assets by either party).[45]

2. *Create a "fast track" mechanism allowing for quick clearance.* While not eliminating the costs of notification, creating a "fast-track" process where parties can be confident that transactions that do not raise competitive concerns will be cleared quickly, eliminates some of the uncertainty and related problems associated with the merger control process. (Of course, this depends on having a fair, economically sound review process with no non-competition issues distorting the process.)

In order for a fast-track process to work, several conditions must be met: First, the form itself must not be so onerous that just completing it will require weeks of effort. Second, there must be a firm timeline that begins when a filing is submitted—meaning no "pre-consultation" period like those in the EU, China, Romania, and the Ukraine. And finally, the review period must be short—ideally, 30 days or less. The timeline should be the rule, not a guideline, as even where clearances are in practice granted quickly (as is often, but not always, the case in Brazil), the prospect of a protracted review process leads to uncertainty even where no competitive concerns are ultimately identified.

3. *Focus on local transactions.* Where multi-national deals are reported in individual jurisdictions, regulators should recognize that most global deals need not be enforced in each and every jurisdic-

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44 We would also propose ensuring that the agency determining the thresholds is independent from the agency that receives the fees so as to reduce the incentive to set low thresholds in order to collect additional filing fees.

45 When we prescribe a focus on the "target," we mean the business that is actually being acquired. Certain jurisdictions, including Brazil and, in some transactions, South Korea, look at *target group* turnover rather than *target* turnover. As a result, transactions involving minimal (or no) sales in those jurisdictions may still need to be notified. In February 2015, for example, the global acquisition of semiconductor manufacturer Lantiq Holdco S.A.R.L. by Intel Corporation required notification in Brazil—where the target had negligible Brazilian sales and accounted for less than 1% of the Brazilian market—because the target group's turnover, including sales by companies who had a common controlling shareholder and the companies in which they had an interest of 20% or more, exceeded the Brazilian turnover thresholds. *See* CADE, Merger Case No. 08700.000486/2015-95.

tion. Instead, in cases where the relevant markets are global and the required divestitures are not local, jurisdictions should coordinate with and defer to other jurisdictions imposing remedies (particularly those most directly affected, which often will be the EU and United States) rather than impose a "me too" consent decree, as Canada required in Medtronic/Covidien and Brazil required in Munksjö/Ahlstrom and Mach/Syniverse.

4. *Pursue (at least) "soft convergence."* A standardized merger filing that multiple jurisdictions could accept—perhaps requiring basic corporate information, market shares, top customers globally and in each triggered jurisdiction, and the 4(c)/(d)-type documents required in the United States and by the European Commission—should replace the hodgepodge of forms required by the multitude of jurisdictions.[46] The aim would be a "soft," voluntary convergence that could evolve further, while increasing efficiency and certainty for companies in the meantime.

We are, of course, quick to recognize that the United States is not immune to many of the criticisms raised above. The US filing thresholds pick up a tremendous number of transactions that raise no competitive issues. In fiscal year 2014, only about 3% of notified transactions (51 of 1,618) reviewed by the US competition authorities received a Second Request,[47] and only 33 transactions were ultimately challenged or cleared with a remedy.[48] And over 80% of requests for early termination were granted.[49] Clearly, a significant number of US merger filings involve transactions that raise no competitive concerns, and it is worth considering how the United States could revise its rules to eliminate many of these filings and the accompanying filing fees (as high as US$280,000) and delay. (It seems to us that optimizing the notification requirements based on real-world experience would be a worthy project for the FTC's economists.)

One possibility would be to exempt transactions where there is objectively no overlap between the merging entities, e.g., no horizontal overlap at the six-digit NAICS code level. While this would not capture vertical transactions, the competition concerns they raise are typically addressed with conduct remedies that can be implemented post-closing. To the extent that some small number of transactions that raise horizontal concerns (e.g., potential competition transactions) were not captured, the US agencies would still have jurisdiction to investigate and even sue to block those transactions, just as they can do today with transactions that fall below the filing threshold.

Relatedly, it is also worth considering whether the US thresholds should be raised further than the typical annual adjustment for inflation (a mechanism we would urge other agencies to adopt), especially given the agencies' continued ability to enforce transactions valued below the threshold. This approach would be consistent with FTC and DOJ practice, where investigations are heavily weighted toward high-dollar value transactions. In fiscal year 2014, transactions valued over US$1 billion constituted just 14% of total transactions notified in the United States, but represented 49% of Second Requests issued.[50] In contrast, transactions valued below US$200 million constituted 40.8% of transactions notified, but represented just 11.8% of Second Requests issued.[51]

46 For those in the United States, this could be viewed as akin to the "Common Application" completed by college applicants.

47 Fed. Trade Comm'n & Dep't of Justice, Hart-Scott-Rodino Annual Report: Fiscal Year 2014 30, *available at* https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-bureau-competition-department-justice-antitrust-division-hart-scott-rodino.s.c.18a-hart-scott-rodino-antitrust-improvements-act-1976/150813hsr_report.pdf.

48 *Id*. at 2. This figure includes challenges to transactions that were below the notification threshold.

49 *Id*. at 22 (noting that early termination was granted in 1,020 transactions of 1,618 transactions in which a Second Request could have been issued; early termination was only requested in 1,274 of those transactions).

50 *Id*. at 30.

51 *Id*.

Another shortcoming of the current US model is that both state and federal agencies can enforce transactions. Like their global counterparts, "me too" consent decrees with state attorneys general in cases that have been enforced by the FTC or DOJ add little protective value, but add sometimes significant administrative cost and potential for delay. For example, in 2009, the FTC investigated the acquisition of Morton International by K+S Aktiengesellschaft in response to concerns that the proposed transaction would harm competition in the market for bulk road salt in Maine and Connecticut. The FTC ultimately required divestitures in those states.[52] The Connecticut Attorney General conducted a parallel investigation, which was resolved by an agreement to divest the same set of assets—and pay US$40,000 toward the costs of the state investigation.[53] In the 2015 Safeway/Albertsons case, the FTC required the divestiture of 168 grocery stores in eight states.[54] State attorneys general in Nevada, Washington, and California each required a subset of the FTC divestitures.[55] Safeway was required to pay attorneys' fees and costs to the state agencies.[56] Though the mechanisms for practical implementation might be challenging, we would strongly support reforming the US system such that state attorneys general only have jurisdiction over mergers with purely intrastate effects.

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We should note that there are some encouraging signs that the international community is aware of and responding to these concerns. For example, effective January 1, 2014, the European Commission implemented measures aimed at simplifying the EU merger regime, including by, among other things, expanding the scope of transactions that can be reviewed under the Commission's simplified procedure, reducing the amount of information required in the notification form (particularly under the simplified procedure), and making it easier for companies to seek a referral to or from a member state.[57] MOFCOM introduced a simplified process in February 2014 for cases with combined market shares below 15%. In the first year that MOFCOM's simplified process was in place, simple cases were reviewed in an average of 29 days after MOFCOM accepted the filing, though the pre-acceptance review period still takes several weeks and introduces significant uncertainty.[58] More recently, MOFCOM has introduced additional reforms aimed at continuing to streamline the merger review process.[59] While there is reason to be skeptical about these proposals, the response to international concern is encouraging.

But there is still work to be done. Though the economic paradigm has shifted to acknowledge that corporate transactions can in fact be pro-competitive, and though many agencies have recognized this in

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52 Fed. Trade Comm'n, Decision and Order, No. C-4273 (Nov. 13, 2009), *available at* https://www.ftc.gov/sites/default/files/documents/cases/2009/11/091113mortonsaltdo.pdf.

53 Press Release, Conn. Office of the Attorney Gen., Attorney General Announces Agreement Preserving Competition in Connecticut's Deicing Road Salt Market (Nov. 20, 2009), http://www.ct.gov/ag/cwp/view.asp?A=2341&Q=451152.

54 Fed. Trade Comm'n, Decision and Order, No. C-4504 (July 2, 2015), *available at* http://www.ftc.gov/system/files/documents/cases/150702cerberusdo.pdf.

55 Press Release, Safeway, Albertsons and Safeway Receive U.S. FTC Clearance for Proposed Merger (Jan. 27, 2015), http://investor.safeway.com/phoenix.zhtml?c=64607&p=irol-newsArticle_pf&ID=2010943.

56 *See Washington v. Cerberus Institutional Partners V., L.P.*, 2:15-cv-00147-JCC (W.D. Wash. Jan. 30, 2015), Consent Decree (awarding US$28,000 in attorneys' fees and costs); *Nevada v. Cerberus Institutional Partners V., L.P.*, 2:15-cv-00176-JAD-NJK (D. Nev. Feb. 3, 2015) (awarding US$90,000 in attorneys' fees and costs).

57 Press Release, Eur. Comm'n, Mergers: Commission cuts red tape for businesses (Dec. 5, 2013), ec.europa.eu/rapid/press-release_IP-13-1214_en.pdf.

58 Cleary Gottlieb Steen & Hamilton LLP, Asian Competition Quarterly Report: January – March 2015 at 1 (2015), http://www.cgsh.com/files/Publication/f4e5265f-253d-422c-a966-1b234abe9d3b/Presentation/PublicationAttachment/84297c26-73c1-4a00-8a3c-1b7c16ebab67/Asian_Competition_Report_1Q_2015.pdf.

59 Melissa Lipman, *Chinese Merger Reviews May Move Faster After Changes*, Law360, Sept. 18, 2015, http://www.law360.com/articles/703033/chinese-merger-reviews-may-move-faster-after-changes.

their substantive standards, regulators have been slow to reflect this paradigm shift in their procedural requirements. Further work is needed to encourage regulators, particularly those in emerging jurisdictions, to recognize that their role of preserving and promoting competition means not only preventing anticompetitive transactions but also facilitating prompt clearance of the many transactions that affirmatively benefit consumers.

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Timothy T. Hughes has been an attorney with the US Federal Trade Commission for 30 years. During the past 14 years he has served as Legal Counsel for International Technical Assistance. In that capacity, he has lived for extended periods in Indonesia, Romania and Vietnam providing training and counseling to the competition authorities of Southeast Europe and Southeast Asia, and has twice participated as a teacher-panelist at the OECD's annual Vienna training seminar for the competition authorities of Eastern Europe and the former Soviet Union. He has drafted training materials used by FTC attorneys in their technical assistance programs around the world, and has himself conducted short-term training missions throughout Southeast Europe, the Middle East, Latin America, and Southeast Asia. Prior to returning to the FTC in 2001, he practiced competition law in the private sector as a partner in the international law firm of Steel, Hector & Davis, headquartered in Miami, Florida, with offices in Brazil, the Dominican Republic, and Venezuela. While there he provided antitrust legal counsel to numerous multinational corporations doing business in Latin America, started the annual Latin American Competition & Trade Policy Roundtable, and served as the private sector representative to the Fair Competition Advisory Committee to the nations of the Caribbean Community and Common Market. He received his JD degree in 1976 from Northwestern University, Chicago, Illinois and completed his undergraduate studies in history and philosophy at Fordham University, New York.

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Francis Wang'ombe Kariuki was appointed Director–General of the Competition Authority of Kenya on 9th January, 2013. His main interests are in competition regulation and also the economics of institutional development. In addition, he has been focusing on the impact of budget constraints on competition agencies' investigative process and human resource policy. He is also well known for his advocacy initiatives, nationally and internationally, geared towards entrenching competition in various sectors of the economy and boosting regional trade. Kariuki is a founding member and the current Chairman of the African Competition Forum—"A Network of African Competition Authorities which seeks to promote the adoption of Competition principles in the implementation of national and regional economic policies of African countries." He is a holder of a Master's of Science in Economic Regulation and Competition from City University- London; Bachelor in Economics & Business Studies from Kenyatta University; and various certificates in strategic leadership and corporate governance.

Carlos Mena-Labarthe was appointed Chief Prosecutor (*Autoridad Investigadora*) at the Federal Economic Competition Commission of Mexico in October 2014 for a four year term. He has worked for the Mexican competition authority since 2007. He was previously the Head of the Planning, Institutional Relations, and International Affairs Unit where he coordinated the efforts to create the first Strategic Plan and the first Annual Plan of the authority and represented it before Congress for the discussions of a new law in 2014. He was the Director of Cartels and Interstate Commerce from 2007 to 2008 and from 2008 to September 2013, he was the Director General of the Cartel Investigations Division. Mr. Mena has extensive experience in the fields of regulation and competition law. Prior to joining the Mexican competition authority, he worked for national and international law firms in their competition law practice. He was an International Fellow of the US Federal Trade Commission. He has also received training in investigations and the management of enforcement agencies at the European Commission (DG Comp), the Canadian Competition Bureau, and the Australian Competition and Consumer Commission. He has written for numerous publications and is the editor and co-author of five books on competition law, regulation, and public policy. Mr. Mena holds a Master's Degree in Business Law with honors from the Attorney Bar Association in Madrid, Spain; a Master's Degree in Regulation from the London School of Economics and Political Science with distinction for the best overall performance; and a Degree in Law with first-class honors from Instituto Tecnológico Autónomo de México.

Susan Ning joined King & Wood Mallesons in 1995. She is a senior partner and leads the International Trade and Antitrust & Competition Group. Since 2003 she has focused on two main areas: securing MOFCOM merger clearance for clients and advising on Anti-Monopoly Law compliance issues. During this time she has undertaken more than 150 antitrust merger control filings on behalf of blue-chip clients, which mostly consist of multinational corporations. Prior to the enactment of the AML in 2008, Ning took an active role in assisting and consulting with the Chinese Government on the drafting of the law. Since the enactment of the AML, she continues to be actively involved in drafting regulations and guidelines accompanying the AML. Through these consultations (and through her prior work with the Chinese Government on World Trade Organization issues), Ning built and maintained a close working relationship with the antitrust authorities in China.

Jonathan Orszag is a Senior Managing Director and member of the Executive Committee of Compass Lexecon, LLC, an economic consulting firm. As a consultant, Orszag has conducted economic and financial analysis on a wide range of complex issues in antitrust, regulatory, policy, and litigation matters for corporations and public-sector entities. These engagements have involved a wide array of mergers and other economic matters in various markets, such as the sports, media, telecommunications, financial services, and high-tech industries. He has testified before the United States Congress, US and international courts, the European Court of First Instance, and US and international regulatory authorities on competition and economic policy issues. In 2004, Orszag was named by the Global Competition Review as the youngest member of "the world's 40 brightest young antitrust lawyers and economists" in its "40 under 40" survey. In 2006, the Global Competition Review named Orszag as one of the world's "Best Young Competition Economists." Since 2007, Orszag has been named one of the foremost competition economists in The International Who's Who of Competition Economists. Prior to entering the private sector, Orszag served as the Assistant to the US Secretary of Commerce and Director of the Office of Policy and Strategic Planning. In this capacity, Orszag was the Secretary of Commerce's chief policy adviser and was responsible for coordinating the development and implementation of policy initiatives, from telecommunications issues to international trade issues. Previously, Orszag served as an economic policy advisor on President Clinton's National Economic Council. In 1999, the Corporation for Enterprise Development awarded Orszag its leadership award for "forging innovative public policies to expand economic opportunity in America."

Simon Roberts is Professor of Economics at the University of Johannesburg and Executive Director of the Centre for Competition, Regulation and Economic Development (CCRED). Roberts was Chief Economist and Manager of the Policy & Research Division at the Competition Commission of South Africa from November 2006 to December 2012. Prior to this appointment he was Associate Professor in Economics at the University of the Witwatersrand. At Wits he also directed the Corporate Strategy and Industrial Development research program, and previously held positions as Lecturer and Senior Lecturer. This followed positions as: Lecturer in Development Economics, University of East Anglia, UK; Senior Research Officer, Bank of Botswana; and, Lecturer in Economics, University College Cork, Ireland. He holds a PhD from University of London (Birkbeck College), MA from University of East Anglia, and BA (Hons) from Oxford University. He has been an adviser to competition authorities in a number of countries including Kenya.

Fiyanshu Sindhwani is a research scholar at the Department of Economics at the Delhi School of Economics, University of Delhi, India, where she is writing her PhD thesis under the guidance of Professor Aditya Bhattacharjea, with whom she has co-authored on "Competition Issues in the Indian Pharmaceutical Industry" for CUTS International. She has served as an Assistant Professor of Economics in Lakshmi Bai College, University of Delhi. She worked as a Consultant with Indian Council for Research on International Economic Relations for a project on pharmaceutical regulations in India. She was an intern at The Energy and Resource Institute, India at their Resources, Economic Regulation and Global Security Division. She holds a Masters Degree in Economics from the Jawahar Lal Nehru University, New Delhi, India.

Mariana Tavares de Araujo is a senior partner at Levy & Salomão Advogados, where she practices in the areas of Antitrust, Regulation & Infrastructure, and Product Liability. Prior to joining Levy & Salomão Advogados, Araujo worked with the Brazilian Government for nine years, four of which she served as head of the government agency in charge of antitrust enforcement and consumer protection policy. Araujo worked with international antitrust authorities throughout the world and served in leadership positions in key international competition organizations, such as chairing with the US Department of Justice the cartels sub-group of the International Competition Network ("ICN") (from 2004 to 2007). She also represented the Brazilian Government in meetings of the Organisation for Economic Co-operation and Development's Committee on Competition and of the United Nations Conference on Trade and Development. Araujo provides counseling in competition-related matters for the World Bank and served as a non-governmental advisor to the ICN. She is a member of the International Bar Association and of the American Bar Association's Section of Antitrust Law. She currently co-chairs the IBA Working Group on International

Cartels and is a member of the ABA International Cartel Task Force. She is also a Law Professor at the Graduate Program of Fundação Getúlio Vargas-RJ. Global Competition Review named her on its list of the "Top 100 Women in Antitrust" and Latin Lawyer included her among the "Inspiring Women in the Legal Profession." Who's Who Legal, Chambers Latin America, and Legal 500 listed her among the world's leading competition lawyers and she has been nominated by the members of the Latin American Corporate Counsel Association for inclusion in its list "LACCA Approved" (for 2013, 2014, and 2015).

Tara Tavernia is an associate based in the Washington, DC. office. Her practice focuses on antitrust and enforcement matters. Tavernia joined the firm in 2012. Her recent transactional highlights include Medtronic/Covidien, Platform Specialty Products/Alent, and 3M/Capital Safety Group, and she represented Keurig Green Mountain in successfully defeating a preliminary injunction seeking to block the launch of Keurig's 2.0 coffee brewer. She received a JD degree, with honors, in 2012 from the University of Chicago Law School and received her undergraduate degree, *magna cum laude* in English and with distinction in all subjects, from Cornell University in 2009.

Randolph Tritell is the Director of the Federal Trade Commission's Office of International Affairs. He is responsible for coordinating the FTC's international antitrust, consumer protection, and technical assistance policies and the FTC's involvement in cases that raise international issues. He represents the FTC in multilateral fora including the International Competition Network, in which he serves on the Steering Group, and the Organisation for Economic Co-operation and Development's Competition Committee. Tritell is also responsible for the FTC's negotiation and implementation of bilateral international cooperation agreements and competition and consumer protection provisions of US free trade agreements. Prior to joining the FTC in 1998, Tritell was a partner with the New York-based law firm of Weil, Gotshal & Manges LLP. Following six years in the firm's New York office, in 1992 he opened the firm's Brussels office where he practiced European Community and international competition law. Tritell began his career at the FTC serving as a staff attorney in the Bureau of Consumer Protection, Assistant to the Bureau of Consumer Protection Director, Timothy Muris, Attorney Advisor to Commissioner Terry Calvani, and Executive Assistant to the Chairman. Tritell obtained his law degree in 1977 from the University of Pennsylvania Law School, where he was an Editor of the *University of Pennsylvania Law Review*. He is a 1974 Phi Beta Kappa graduate of the State University of New York at Stony Brook. Tritell is active in the American Bar Association's Section of Antitrust Law, in which he co-chairs the International Task Force and serves on the Advisory Board of the Oxford Journal of Antitrust Enforcement and of the Fordham Corporate Law Institute. He is a frequent lecturer and author on international antitrust issues.

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