Mexico: Overview

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In Mexico, antitrust regulation and investigations as a whole have recently been growing, both in number and in importance. Mexican companies are becoming more aware of the importance of antitrust law, which helps secure free competition. Various markets previously controlled by one or two big companies are now subject to investigations and sanctions from Mexican antitrust authorities.

The Mexican Antitrust Act

The Mexican Antitrust Act (MAA) was published on 24 December 1992, based primarily on the negotiations and execution of the North American Free Trade Agreement (NAFTA). Mexico needed to make the necessary changes and additions to its internal legislation, mainly with regard to the defence and enforcement of fair trade and free competition, in order to ensure the entry in force and execution of the NAFTA.

Since its publication, the MAA has undergone important reforms, taking into consideration changes in the Mexican economy and the way the markets have developed. The most important reforms to the MAA took place in 2006 and 2011 which, among other things, increased the penalties for breaching antitrust provisions. These increased penalties create a significant impact on companies engaged in monopolistic activities, both in their businesses and in consumer perceptions.

While the MAA applies to most companies and markets, the Mexican Constitution provides certain important exceptions. Mexico does not consider strategic activities (satellite communications and railroads) and activities that are exclusively reserved to the state (postal services, telegraph and radiotelegraphy, petroleum and other hydrocarbons, basic petrochemicals, radioactive minerals and nuclear power generation, electricity, among others) to be monopolies. Additionally, the activities of labour unions created in accordance with Mexican law and authors' or artists' exclusive rights over their works or inventions are not considered monopolies under Mexican law.

The Mexican Antitrust Commission

The Mexican Antitrust Commission (the Commission) was created in 1993 as an independent agency of the Ministry of Economy with technical and operational autonomy and independence. It is responsible for preventing, investigating and sanctioning monopolies, monopolistic practices and unlawful mergers, with full autonomy to make its own decisions. Furthermore, the Commission also drafts and publishes guidelines and criteria regarding how to interpret, investigate, enforce and apply antitrust law.

However, the Commission may also issue, when it deems appropriate or upon request, binding opinions regarding fair trade to the government agencies with regard to adjustments to programmes and policies, rules, agreements or other dispositions, when they can have an adverse effect on free competition. When economic agents have questions or concerns regarding any antitrust issue, they may file a consultation before the Commission, which will deliver a non-binding opinion to the interested parties.

The Commission's main and most important body is the Antitrust Pleno, formed by five commissioners, appointed by the President of Mexico for a period of ten years each. The commissioners are not simultaneously elected, guaranteeing the autonomy and independence of the Pleno to the greatest extent. The Pleno's President is elected for a period of four years and is chosen among the commissioners of the Pleno by the President of Mexico. The commissioners are obliged to vote on all resolutions taken by the Pleno and cannot be excused unless under extraordinary circumstances. In such cases, the president of the Pleno shall have a casting vote over any decisions made by the Pleno.

The Commission also has an executive secretary, designated by the Pleno, who will be responsible for the operational and administrative coordination of the Commission. The executive secretary is also responsible for certifying most resolutions issued by the Pleno, including those derived from investigations and sanctions for breaching antitrust law. To maintain his or her independence from investigated markets, the executive secretary shall not be employed in any position by companies that have been subject to any proceedings or investigations by the Commission until one year after he or she completes or is removed from his or her duties within the Commission.

Monopolistic activities

The MAA divides monopolistic activities into two main groups: absolute monopolistic practices and relative monopolistic practices.

Absolute monopolistic practices

Absolute monopolistic practices are defined as any agreement between competitors with the goal of fixing prices, limiting or restricting the available product supply, dividing markets or agreeing on postures regarding public biddings. In order for these types of practices to be investigated and sanctioned, the Commission only needs to prove their existence, which means that they are per se illegal.

However, demonstrating the existence of absolute monopolistic practices can be an extremely difficult task for the Commission to prove in an investigation. In Mexico, the Commission or the plaintiffs need to obtain the necessary evidence to start an investigation or denounce monopolistic practices, in order for the Commission to have sufficient proof that companies are engaging in absolute monopolistic practices.

In order for the plaintiffs to provide this evidence, the information they will most likely refer to is, among others things:

- testimony from third parties that may be affected by the agreement;
- communications between the companies involved, including meetings, e-mails, faxes or phone calls; as well as
- the existence of behaviour that is unusual in the applicable market, which can only be explained by a possible agreement between competitors.

Therefore, Mexican courts have determined that there should be bonding or related evidence to conclude from signs and evidence that an absolute monopolistic practice has taken place. It follows that sufficient indirect evidence paired with general statements is suitable to determine certain facts or circumstances from the best available information regarding the actions of companies that have entered into agreements to carry out absolute monopolistic practices.

Price fixing may occur when one or more companies that are competitors within a given market are able to control their supply, creating a shortage of that product. In other words, a group of competitors set the applicable market's supply in such a way that the price of that product or service increases the profits gained by said competitors. In accordance with the MAA Regulations, indirect evidence of price fixing may come from: the sale prices offered by two or more competitors being significantly higher or lower than the prices of the same products elsewhere, unless it derives from taxes, transportation or distribution; or that two or more competitors set a range of prices, or adhere to the prices issued by a competitor or association.

The purpose of product restriction or limitation is to control a certain product or service supply or demand, thus causing an increase in prices. In most markets, product restriction or limitation can simply be affected by assigning the amount of goods or services competitors will provide or sell, letting the market itself decide the pricing on said product. Providing indirect evidence of this type of practice may require additional supply-and-demand studies of the product over time, taking into consideration previous distribution and sales from all competitors.

Market division takes place when competitors distribute, assign or impose segments of a current or potential market of goods and services, using their available customers, suppliers, schedules or locations. This type of practice takes place when competitors divide the market:

- by customers, when the involved companies agree not to seek or enter into similar agreements with any of the other companies' customers;
- by territory, when competitors agree to restrict the availability of their products or services to certain areas, cities or sections; or
- by products, when competitors agree not to engage in the production, sale or distribution of certain products sold or produced by their competitors.

The gathering of indirect evidence of this type of practice can be easier, and can be shown by demonstrating that the applicable market's mobility has remained unchanged during a certain period of time, when competitors have had realistic opportunities to expand but have decided not to, contrary to their own interest.

Finally, agreeing on public biddings takes place when competitors agree to participate with certain positions, or even refrain from participating in public biddings, which are likely to have the effect of guaranteeing that the bidding will be granted to a specific competitor. This type of practice can be difficult to identify when the public authority has agreed to help the competitors control the market. However, indirect evidence can be obtained when the bidding is always awarded to the same company or when certain competitors have biddings awarded to them in a clear rotation, as well as when the competitors bid at higher prices or conditions that cannot compete with those offered by a competitor.

Relative monopolistic practices

In accordance with the MAA, relative monopolistic practices are all actions, contracts, agreements, procedures or combinations of such with the purpose or effect of improperly displacing competitors from the market; substantially limiting their access to the market or establishing exclusive advantages in favour of one or more competitors. Unlike absolute monopolistic activities, it is commonplace that these practices are conducted in a vertical relationship (eg, between a producer and its distributor). However, relative monopolistic practices are subject to ascertaining that the company engaged in this type of activities has substantial power in the market and that the activities take place within the relevant market.

A company has substantial power in the market when it has the ability to raise prices, reduce or control the supply or otherwise restrict fair trade or free competition. In order for the Commission to ensure a company has substantial power in the market, it needs to consider:

- the company's participation in the market and if it has the ability or opportunity to fix prices or restrict supply by itself, without the possibility that competitors would counteract that ability or opportunity;
- the existence of entry barriers and the existence of elements that may alter those barriers;
- the existence and power of its competitors;
- the ability of the company and its competitors to access production and distribution sources; and
- the recent behaviour of the competitors that participate in the relevant market.

'Relevant market' is not defined in the MAA. However, Mexican courts have defined it as the geographical area in which similar products or services are available to offer and/or demand, considering both the available products or services and the geographical area in which they can be obtained. Therefore, in order for a relevant market to be defined there needs to be a set of goods or services identical or similar available to consumers in an area large enough for the consumer to be able to obtain said goods or services. In order for the Commission to establish a relevant market, it needs to take into consideration:

- the possibility of substituting the applicable goods or services with others;
- the difference in the distribution costs of the goods and other necessary costs (freight, insurance, restrictions, etc) compared with other territories and/or abroad;
- the costs and possibility that consumers have to search for the same or similar products in other markets; and
- the regulatory restrictions that federal, local or international authorities execute in order for consumers to have access to alternative supply sources.

The MAA states the following activities as relative monopolistic practices:

- the fixing of exclusive marketing or distribution rights;
- the imposition of conditions that a distributor must follow regarding the marketing or distribution of goods or services;
- tied sales;
- the refusal to sell, trade or provide goods or services normally offered to third parties;
- the agreement reached among several companies against a third party;
- boycotts;

- the granting of discounts or incentives with the requirement of not engaging in economic activities with a certain third party;
- cross subsidies;
- price discrimination; and
- the activities engaged in by competitors with the purpose of increasing costs, hindering the production process or reducing the demand for competitors.

In order for the Commission to determine if the relative monopolistic practices will be sanctioned, it analyses, among other things, the gains arising from such conduct.

Mergers

The MAA defines mergers as the acquisition or control operation by which companies, shares, stocks, trusts or assets in general between competitors, suppliers and/or customers are concentrated. The Commission investigates and, if applicable, sanctions mergers that may have the purpose of reducing, impairing or preventing fair trade of identical or similar goods or services.

Not all mergers must be filed and notified before the Commission prior to their execution. The MAA states that, in order to determine if a merger notice must be filed before the Commission, the participating companies must verify if the merger will have effects in Mexico; and if the merger surpasses the thresholds set forth in the MAA. If the merger exceeds any of the following thresholds, the companies involved must file a notice before the Commission:

- if the price of the transaction in Mexico (that is considering only the companies, subsidiaries, affiliates or assets located in Mexico which will be indirectly acquired by the acquiring company) exceeds approximately US$80 million;
- if the buyer, whether located in Mexico or abroad, will acquire at least 35 per cent of the assets or shares of a company or companies in Mexico whose assets or annual sales (those of the Mexican companies only) exceed approximately US$80 million; and/or
- if the assets or annual sales volumes of the buyer or seller, regardless of the country they are located, or both together, exceed approximately US$214 million and the transaction involves the purchase in Mexico of assets or capital greater than approximately US$37 million.

When a merger has effects in Mexico and any of the mentioned thresholds is surpassed, the participating companies are obligated to submit a merger notice to the Commission. However, in those transactions where it is clear that the effects produced will not have adverse effects in the relevant market, the merger notice can be presented in a simplified format, with the possibility for the Commission to request additional information before authorising the merger.

Proceedings

The monopolistic practices procedure seeks to protect free competition and fair trade. It is considered a public interest activity. Therefore, during the investigation process, all documentation and information filed by all interested parties (denounced parties, plaintiffs, third parties and authorities) is confidential and unavailable to anyone outside the Commission and its personnel. This has been greatly criticised by many, claiming that it damages the constitutional right to due process. However, no claims in this regard have been successful to those interested, strengthening the powers of investigation of the Commission.

The first stage of the procedure is the investigation and research stage, which has the purpose of gathering evidence in order to determine possible monopolistic activities. The evidence is gathered when the Commission requests information from all interested parties and documentation it considers necessary, by summoning people the Commission believes may hold information regarding the investigation and by conducting dawn raids with the purpose of obtaining additional information.

The investigation stage begins when the executive secretary issues an initiation agreement, of which an extract is published in the Official Federal Gazette, containing at least the probable violations or breaches of the MAA and the market in which the alleged monopolistic practices were executed, so that any person may assist in the investigation. This stage lasts for up to 120 working days, with the possibility of extending the period for up to four additional periods of 120 working days. In any case, when the investigation stage of the procedure ends, the Commission must either file a Probable Responsibility Notice, if the Commission determines the possible existence of monopolistic activities; or the closing of the monopolistic activities procedure, when the Commission concludes that, from the gathered evidence, it cannot determine that any monopolistic practices have been undertaken. Any of the aforementioned actions ends the investigation stage of the procedure. Only in the case when a Probable Responsibility Notice is issued does the second stage of the procedure begin, which is the trial stage.

The trial stage begins with the issuance of the Probable Responsibility Notice, which contains, among other things, the monopolistic activities the defendant companies allegedly committed, the elements considered to draw said conclusion, and the request to notify the defendants to defend themselves and try to disprove the arguments and conclusions of the Commission by providing evidence and proof they consider necessary, within 30 working days after the notification. The necessary evidence must be included with the document in which the defendant companies answer the Probable Responsibility Notice, which may include all documents, information, expert opinions, testimonies and all other information that is relevant to the investigation and is presented in accordance with the applicable legislation. Once the evidence has been presented and admitted, the Commission can request the gathering and presentation of additional evidence in order to have a better understanding of the investigation. Once all evidence has been gathered and presented before the Commission, it shall provide a 10-day period in order for the parties to provide any final allegations with regard to the procedure. When the final allegations have been presented, the executive secretary shall deliver all information gathered to one of the five commissioners for his or her analysis, following an appointment order. The commissioner shall then be required to present a final resolution draft before the Pleno for its approval, rejection or modification. The Commission shall issue a final resolution within the following 40 working days.

However, since the reforms to the MAA of 2006 and 2011 entered into full force and effect, before the Commission issues its final resolution, any of the defendant companies may submit a document by which it agrees to suspend, remove, correct or discontinue the corresponding monopolistic practices, by requesting its inclusion in an immunity programme. This programme is a significant incentive for those companies involved in monopolistic practices. According to the MAA, companies or individuals which have participated in absolute monopolistic practices may reduce or avoid the imposition of sanctions, provided they denounce the illegal acts in question before the Commission and take the necessary steps to terminate

their participation in such activities. The first company or individual to submit to the immunity programme will have the corresponding sanctions reduced almost completely. The fine can be reduced by 50 per cent, 30 per cent or 20 per cent for the companies or individuals that subsequently submit to the immunity programme, in accordance with the chronological order in which the companies have submitted to the immunity programme and the elements of evidence they provide.

Against the Commission's final resolution, a reconsideration appeal may be filed before the Commission itself, which shall be resolved within 60 working days. Finally, against the resolution of the appeal, the affected party may file an amparo lawsuit, in order to claim that the affected party's constitutional rights were denied or violated during the proceedings, before the competent Federal Courts.

Enforcement and sanctions

Regarding antitrust legislation in Mexico, both the company and its employees that are either directly involved in any decision-making of the company or involved in any activities in breach of antitrust law can be held jointly responsible for any breach to the MAA. However, the penalties imposed on companies and individuals are different, both in amounts and in nature.

The sanctions for breaching the MAA or engaging in any monopolistic practices or prohibited mergers can be of both an administrative and a criminal nature, with the possibility of doubling any sanction in case of recidivism. Regarding companies that breach antitrust law, the MAA may order the correction or suppression of the monopolistic activity or prohibited merger and the imposition of fines that may go from 5 to 10 per cent of the company's income, depending on the action in breach of antitrust regulations, as follows:

- up to 5 per cent of the company's income if the merger is carried out without giving prior notice to the Commission, in the case that such notification is legally required;
- up to 8 per cent of the company's income if the company engages in any relative monopolistic activities, prohibited mergers or carries out mergers in violation of a previous order of the Commission; and
- up to 10 per cent of the company's income if the company engages in absolute monopolistic activities, breaches any preventive measures or breaches any conditions imposed regarding mergers.

With regard to individuals or employees directly involved in the defendant company's execution of monopolistic activities, the applicable fines, as stated in the MAA, are the following:

- Up to 180,000 times the daily minimum wage of the Federal District (a little under US$1 million) for anyone who helps, induces or participates in any monopolistic activities, prohibited mergers or other efficient market restrictions stated in the MAA.
- Up to 200,000 times the daily minimum wage in the Federal District (a little over US$1 million) for anyone who directly participates in any monopolistic activities or prohibited mergers while representing the defendant company.
- In addition, recent reforms to the Federal Criminal Code include felonies regarding breach of antitrust provisions. The penalty for those individuals directly involved in any absolute monopolistic activities is imprisonment for three to 10 years. However, the accusation of such a felony can only be filed by the Commission itself.

The Commission determines the aforementioned sanctions based on the seriousness of, and the damage caused by, the breach, the intention to carry out any prohibited actions and the participation of the company in the correspondent market, as well as the size of the applicable market and the duration of the monopolistic activities.

International cooperation

In accordance with the MAA and its Regulations, during the investigations by the Commission, the Commission is entitled to request information or evidence regarding monopolistic activities committed in Mexico from foreign government agencies, as an act of cooperation between government authorities, in order to ensure compliance

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Von Wobeser y Sierra was founded in 1986, with the purpose of providing integrated legal services to national and foreign clients. We are one of the leading law firms in Mexico and throughout the years we have established close professional and friendly relations with law firms in the main cities of Asia, Canada, Latin America, the European Union and the United States with whom we maintain an excellent rapport. Furthermore, the firm boasts similar relationships with other firms in the main cities of Mexico. The firm is currently composed of 45 lawyers. They are graduates from the most recognised universities in Mexico and on an international level. Our lawyers have also taken specialised legal studies at other renowned universities in the United States of America, Canada and some European Union countries dedicated to the full practice of the legal profession.

With close to 20 years of experience in the antitrust area, VWyS's antitrust/competition practice provides clients with competition strategies to match its clients' requirements. VWyS' antitrust/competition practice stands alone due to its unique balance between competition/antitrust aspects of corporate deals and our expertise in litigation matters before both the Mexican Antitrust Commission and the Mexican Courts. VWyS regularly advises clients in many different industries, as well as financial institutions in national and cross-border transactions and our experts are part of the team currently advising the Mexican Antitrust Commission in the drafting the Regulations of the new Mexican Antitrust Act.

with antitrust law in general. Furthermore, the Commission is specifically empowered to execute and negotiate all sorts of agreements and international treaties regarding antitrust and free competition.

Based on the fact that international trade has had a significant increase in the past decades, Mexico has executed a number of Free Trade Agreements with several countries (including the United States and Canada, Japan, Chile, the European Union and Israel) that include and recognise the importance of international cooperation and coordination amongst the competent authorities in order to ensure the effective enforcement of antitrust law between the free trade areas. In addition, Mexico has executed agreements with the United States and Canada, among others, that deepen cooperation to ensure the prevention and prohibition of monopolistic activities.

Outlook and challenges

Antitrust law is becoming a significant issue in Mexico in the past few years. Both companies and consumers are becoming more aware of the importance of antitrust law and of the Commission, which helps analyse and secure fair trade and free competition in Mexico. Furthermore, Mexican authorities are currently drafting new Regulations to the MAA, as well as several guidelines regarding how monopolistic practices will be detected, determined, analysed and sanctioned. These recent activities are proof that the Mexican government is working hard to ensure that monopolistic activities are investigated and sanctioned. Mexico has made consistent efforts with respect to antitrust investigation, prevention and enforcement. However, the necessary means and information to ensure that free global competition and fair trade are being respected throughout the country are still lacking.

Robert G Abrams
Baker Hostetler

Bob Abrams is the chair of Baker Hostetler's antitrust group–a group with great depth and strength in the litigation and trial of antitrust cases, including class actions. The antitrust group also has significant experience in mergers and acquisitions and its partners have been point persons in dealing with the Department of Justice and the Federal Trade Commission on antitrust aspects of clearing transactions.

Mr Abrams is a Fellow of the American College of Trial Lawyers and has more than 30 years of trial experience in cases involving antitrust, patents, trade secrets, dealer terminations, contract disputes, tortious interference and environmental issues. In recent years, Mr Abrams has been lead counsel in lengthy jury trials focusing on, among other claims, antitrust, patent misappropriation and conversion and copyright infringement. He was also co-counsel in a class action involving substantial and complex contract issues that was tried and then retried to a jury. Over his career, Mr Abrams was counsel in one of the largest FTC proceedings ever filed and was lead counsel in numerous other bench and jury trials and in governmental investigations initiated by DoJ, EPA and the California Air Resources Board.

In the appellate area, Mr Abrams has argued in most of the US Courts of Appeal, presenting cases involving distribution and other business practices, the Alien Torts Claims Act and constitutional law issues.

Kevin Ackhurst
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Kevin Ackhurst is a partner in the business law group at Norton Rose Canada, and advises Canadian and international clients on all aspects of Canada's competition and foreign investment laws. He analyses the competitive implications of mergers and acquisitions, joint ventures and strategic alliances, advises on civil and criminal competition law matters, develops competition law compliance programmes and advises on the review of foreign investments under the Investment Canada Act.

Mr Ackhurst has significant experience in cross-border and multi-jurisdictional transactions, and has advised clients in a wide range of industries, including automotive, aerospace, consumer products, film, video, publishing and recorded music, financial services, mining, oil and gas, and telecommunications. He has acted as Canadian counsel for clients such as Nortel Networks Limited, Barrick Gold Corporation, Porter Airlines, Warner Chilcott plc, Sanofi Pasteur, Nexen Inc, Ciba Holding AG, General Motors of Canada Limited, Dubai Aerospace Enterprise (DAE) Ltd, The Procter & Gamble Company, Time Warner, Bank of Montreal, Inco Limited, Fording Canadian Coal Trust, and Canadian Natural Resources Limited.

From 2002 to 2003, Mr Ackhurst was seconded to the International Affairs Division of the Canadian Competition Bureau. One of his primary responsibilities was to provide support to the chair of the steering group of the International Competition Network (ICN). His other responsibilities included preparing ministerial briefing notes, undertaking international benchmarking studies, and participating in inter-departmental meetings on the interplay between trade and competition law.

Mr Ackhurst was called to the bar in Ontario in 1999.

Shylah R Alfonso
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Shylah R Alfonso is a partner in the commercial litigation group. She focuses her practice on antitrust and consumer protection counselling and litigation, intellectual property litigation, antitrust clearance for mergers and acquisitions, class action and complex commercial litigation. She has represented clients on a variety of antitrust matters, such as litigation matters in front of the Federal Trade Commission, as well as bringing and defending antitrust claims in state and federal courts. She also provides counselling and training to companies on the antitrust aspects of joint ventures, pricing, distribution agreements, IP licensing and acquisitions, trade association participation, involvement in standard-setting organisations, and other transactions or trade activities. Shylah works with clients involved in various industries, including telecommunications, semiconductor, computer software, retail and the internet. Representative clients have included TriQuint Semiconductor, Intel, REI and Costco.

Jaime Arosemena Coronel
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Mr Arosemena graduated as an attorney from the Universidad Católica Santiago de Guayaquil in 2003, and later obtained his LLM degree in intellectual property, commerce and technology at the Franklin Pierce Law Center in Concord, New Hampshire, United States.

Mr Arosemena is in charge of the intellectual property department at Coronel & Pérez. His practice areas include consultancy in matters of protection of copyrights, trademarks and patents, as well as intellectual property management. He also advises clients in the areas of general civil and commercial law.

Before joining Coronel & Pérez, Mr Arosemena worked as adviser to the governor of the Guayas Province, from 2000 to 2001. From 2006 to 2007, he worked as an international intern at Fulbright & Jaworski LLP in Houston, Texas.

Practice areas include intellectual property (trademarks, patents, copyrights, trade secrets); unfair competition; corporate law; arbitration; and litigation.

He speaks Spanish and English.

Anthony F Baldanza
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Tony Baldanza is chair of Fasken Martineau's antitrust/competition and marketing law group and a partner of the firm. He practises business law, with a focus on competition law and foreign investment law.

Tony provides advice and representation in relation to mergers, criminal matters including cartels, and restrictive trade practices. In his merger practice, Tony has handled merger transactions in a wide range of industries, and regularly assists clients in clearing such transactions through: the Canadian Competition Bureau pursuant to the Competition Act; the Investment Review Division of Industry Canada and Cultural Sector Investment Review pursuant to the Investment Canada Act; Transport Canada pursuant to the Canada Transportation Act; and, along with counsel in other jurisdictions, the competition law/antitrust authorities of other jurisdictions.

Tony serves as chair of the Foreign Investment Review Committee of the Canadian Bar Association's section on Competition Law and is a past chair of the section's Mergers Committee. He also serves as vice chair of the Competition Policy Committee of the Canadian Chamber of Commerce. Tony is a frequent speaker at professional seminars and conferences on a wide range of competition law and foreign investment law topics, including conferences sponsored by the ABA, the CBA, the Association of Corporate Counsel, the Ontario Bar Association, the BC Bar Association, Federated Press and Insight. His articles have been published by these organisations and by various other publications including *Canadian Business Law Reports, Global Competition Review, Metropolitan Corporate Counsel, Mergers and Acquisitions in Canada* and *CCH Commercial Times*. He has also co-authored the 'Competition Law' chapter in *Doing Business In Canada* and a chapter on mergers in *Fundamentals of Canadian Competition Law*.

Tony is listed in a wide range of reports and surveys as one of Canada's leading competition law lawyers. These publications include *Chambers Global: The World's Leading Lawyers*; *The International Who's Who of Business Lawyers*; *Practical Law Company Cross-border Handbooks – Competition Handbook*; *Global Counsel Competition Law Handbook*; and *The Legal Media Group Guide to the World's Leading Competition and Antitrust Lawyers*.

Oliver Borgers
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Oliver Borgers is a partner in McCarthy Tétrault's national competition/antitrust law and foreign investment group in Toronto. He is a specialist in foreign investment merger review issues arising under such statutes as the Investment Canada Act, and has extensive dealings with the Ministry of Industry and Canadian Heritage on investment matters.

He also has extensive experience in providing strategic advice to major national and international companies on all aspects of Canadian competition law, including merger control, pre-merger notifications and clearances, various marketing and pricing practices, market restrictions, exclusive dealing, and a host of other compliance, civil and criminal issues that arise out of antitrust law.

Mr Borgers is globally recognised as a leading competition lawyer in the most recent editions of *Chambers Global: The World's Leading Lawyers, The International Who's Who of Business Lawyers* and *The International Who's Who of Competition Lawyers and Economists, PLC Which Lawyer, Competition Law Handbook* (Practical Law Company), Legal Media Group's *Guide to the World's Leading Competition and Antitrust Lawyers, The Best Lawyers in Canada – Competition/Antitrust* and the *Canadian Legal Lexpert Directory* (a guide to the leading law firms and lawyers in Canada).

Mr Borgers received an LLM from the University of Toronto in 1988, an LLB from the University of Ottawa in 1986, and a BA in Philosophy from the University of Toronto in 1983. He was called to the Ontario Bar in 1988, and to the England and Wales Bar in 1995. He speaks English, French and German, as well as some Spanish.

Fernando Carreño
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Fernando Carreño has been a partner of Von Wobeser y Sierra since 2009. He graduated cum laude from the Escuela Libre de Derecho, where he obtained his law degree and obtained his master's degree from Northwestern University School of Law. Mr Carreño worked as visiting attorney at Arent Fox LLP in Washington DC. He was head professor of alternative dispute resolutions at the Universidad Iberoamericana in Mexico City. Currently Mr Carreño is the head of the antitrust practice at Von Wobeser y Sierra. He provides antitrust advice in both competition/antitrust aspects of corporate deals as well as litigation matters before the Mexican Antitrust Commission and the Mexican courts. Mr Carreño regularly advises clients in many different industries, including the aerospace, telecommunications, energy, health-care and technology sectors, as well as financial institutions in national and cross-border transactions. He also engages in mergers and acquisitions and financial transactions. Mr Carreño is fluent in Spanish and English.

Gregory J Commins Jr
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Gregory Commins is an established trial lawyer and has successfully represented clients in complex litigation, in multi-week trials and on appeal in both state and federal courts across the country.

Mr Commins focuses on complex litigation matters involving antitrust class action litigation; intellectual property disputes such as trade secret misappropriation, copyright infringement and patent infringement claims; product liability class actions; environmental claims; and other commercial issues such as breach of contract, fraud and tortious interference claims. Most recently, he was counsel in

two five-week jury trials involving successful prosecution of breach of contract and trade secret misappropriation and claims involving proper ownership and inventorship of fuel injector patents, as well as a four-week jury trial involving copyright infringement, trade secret misappropriation and breach of contract claims. Mr Commins also has defended companies investigated by federal and state regulatory agencies and provided antitrust and environmental counseling to his clients.

Mr Commins has been named a 2012 Washington, DC, 'Super Lawyer' in the area of antitrust litigation.

Mr Commins is a member of the American Bar Association and has done pro bono work for the Archdiocesan Legal Network. In January 2012, Mr Commins presented a CLE programme to The Cleveland Intellectual Property law Association (CIPLA) entitled, 'The Intersection of Antitrust and Intellectual Property: Basic Principles, Standard Setting Organizations and Patent Pools'.

Laura F Cooper
Fasken Martineau DuMoulin LLP

Laura Cooper is a partner of Fasken Martineau. She is engaged in the practice of commercial litigation with particular emphasis on class actions. Laura serves as vice chair of the litigation department of Fasken Martineau. She is co-chair of the firm's class actions practice group and a member of the firm's antitrust/competition and marketing practice group. Laura has represented clients in a variety of class actions involving antitrust, securities, product liability and employment matters. In particular, Laura has extensive experience in class actions involving international and cross-border cartels. She currently acts on cartel class actions with respect to LCD, CRT, SRAM and flash memory, hydrogen peroxide and filters.

Arturo Eduardo Díaz
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Partner of the firm, Arturo Eduardo Díaz holds a law degree and postgraduate degree from Externado de Colombia University; an LLM (with merit) from London Metropolitan University; and the Dip CII from the Chartered Insurance Institute of England. He was the legal and risk director for the Sodexo Alliance Group in Colombia and is a member of the board for several Colombian companies.

He has participated in several negotiations involving the termination of distributorship agreements between upscale clients with local and foreign law firms from Europe and the US, and has been invited as a visiting professor to the Externado de Colombia University. His expertise involves commercial law, competition and antitrust law, as well as international contracts, insurance and reinsurance, and international banking law.

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Huy Do is a partner of Fasken Martineau. Huy practises antitrust/competition and foreign investment law, having been seconded to the Competition Bureau in 2002. He has extensive experience dealing with the merger notification and review processes under the Competition Act and the Investment Canada Act, as well as the civil and criminal provisions of the Competition Act.

Huy has provided competition law advice in respect of numerous mergers, as well as in respect of reviewable practices and criminal matters under the Competition Act. He also contributed in the preparation of a report to the commissioner of competition on amending the conspiracy section (s45) of the Competition Act. In addition, during his time at the Competition Bureau, Huy was involved in the investigations and prosecutions of hard-core cartels and other anti-competitive conduct under the criminal provisions of the Competition Act.

Huy has served as a non-governmental adviser to the International Competition Network. He is ranked in *Chambers Global 2010 – Guide to the World's Leading Lawyers*, in the competition/antitrust section, as well as the 2010 *PLC Which Lawyer?* handbook as a leading lawyer in Canada in competition/antitrust.

Bruno de Luca Drago
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Mr Drago earned his law degree from Faculdade de Direito da Pontifícia Universidade Católica de São Paulo, his LLM in competition law from King's College London, and is currently studying for a PhD at Faculdade de Direito da Universidade de São Paulo. Mr Drago was an intern at the British Institute of International and Comparative Law in London (2005) and worked for two years at Howrey LLP, in both Brussels and Washington, DC (2005–2007). He is currently a director of IBRAC and a member of the Brazilian Bar Association (antitrust division) and the American Bar Association (antitrust division).

Leonardo Maniglia Duarte
Veirano Advogados

Leonardo is a senior associate specialised in competition and regulatory law. He provides legal advice and risk assessment in these areas in relation to contracts, business practices, mergers and other forms of economic concentration. Leonardo also represents local and foreign clients before the competition and regulatory authorities in merger notifications, challenges to merger notifications and

in investigations of anti-competitive practices and regulatory issues. He also represents clients in litigation cases involving competition and regulatory law before Brazilian courts.

Leonardo holds an LLM degree in comparative law, with concentration in antitrust law and merger and acquisitions from the University of Miami (School of Law, Coral Gables-FL, United States); and a degree specialising in competition law and regulatory law by the University of Lisbon (Lisbon, Portugal). From August 2008 to September 2009, Leonardo was a foreign associate at the European Competition and Regulatory Law Department of an international law firm in Lisbon, Portugal. During this period, Leonardo provided legal advice and represented clients before the Portuguese Competition Authority and the Directorate General for Competition of the European Commission in several cases involving competition and regulatory law.

Leonardo is an International Law Associate of the American Bar Association, a member of the Antitrust Law Section of the American Bar Association, a member of the Competition Law Section of the Brazilian Bar Association, and a member of the Portuguese Bar Association.

Danyll W Foix
Baker Hostetler

Danyll Foix represents clients in a variety of commercial disputes in state and federal courts. His litigation experience ranges from investigations of potential claims to post-trial appeals.

Mr Foix focuses on antitrust litigation and investigations and class action cases. He represents clients in private antitrust litigation and, he has represented individuals and companies in government antitrust investigations. In the class action area, Mr Foix has represented individuals and businesses in complex and multidistrict class actions involving antitrust, fraud, discrimination and consumer protection claims. He has the distinction of representing both plaintiffs and defendants to class actions, providing insight concerning his adversaries and helping formulate strategies for his clients.

Susan E Foster
Perkins Coie LLP

Susan E Foster is the firm-wide chair of the Perkins Coie antitrust, consumer protection and unfair competition practice and has almost 25 years of experience counselling and litigating antitrust, unfair competition and intellectual property matters with the Federal Trade Commission, the Department of Justice, state attorneys' general foreign competition authorities and private parties. She routinely represents clients in merger clearance, conspiracy, monopolisation, price discrimination, patent infringement, false advertising, trade secret, trade association, joint venture, distribution and licensing matters across a range of industries including aeronautics, computer software, semiconductor, medical equipment, food processing and general retail, manufacturing and entertainment.

Eduardo Molan Gaban
Machado Associados Advogados e Consultores

Eduardo Molan Gaban is a partner at Machado Associados, heading their antitrust/competition and international trade areas. He has a PhD in law from Pontifícia Universidade Católica de São Paulo (PUC/SP) and from New York University (Visiting Fulbright Fellow), and an LLM and Bachelor of Law from PUC/SP. He is a Professor of Law on postgraduate programmes. As well as having written many articles in his fields of expertise, he is a frequent speaker at conferences and seminars in Brazil and has authored *Antitrust Law in Brazil* (Wolters Kluwer, 2012); *Direito Antitruste* ('Antitrust Law') (Saraiva, 2012), winner of the 2008 Economic Culture Best Legal Book Award, now in its third edition; *Regulação do Setor Postal* ('Postal Services Regulation') (Saraiva, 2012); and *Estudos de Direito Econômico e Economia da Concorrencia* ('Studies on Economic Law and Competition Economics') (Jurua, 2009). Working as a lawyer and a consultant in Brazil for more than 12 years, he worked at CADE (2003–2004) and actively participated in relevant cases, such as in challenging the merger between Sadia and Perdigão (approved by CADE in July 2011, under heavy restrictions) on behalf of Marfrig Alimentos SA, as well as representing the parties in the mergers between Banco Itaú and Unibanco SA and ABN Amro Real/Banco Santander Hispano/RBS/Fortis. He has also worked in the main cartel investigations, both in the administrative and judicial spheres, many of them still ongoing in Brazil (for instance, in the civil construction industry (cement and concrete), orange juice, building maintenance, electrical substation, oil liquefied gas, among others). Eduardo has been recognised as a leading lawyer in his fields of practice by several national and international publications.

Lívia Gândara
Veirano Advogados

Lívia is an associate in the antitrust and competition and litigation groups of Veirano Advogados. Her experience in competition and antitrust law encompasses representation of clients in procedures involving anti-competitive practices, merger notifications and legal advice on general issues related to competition law, including advice in relation to day-to-day business practices, risk assessment of specific mergers, contracts and commercial practices, and preparation of compliance programmes, among others.

Denis Gascon
Norton Rose Canada LLP

Denis Gascon is a partner in the business law group at Norton Rose Canada and head of the antitrust, competition and regulatory practice in Canada. His areas of expertise are competition law and international trade. He represents Canadian and foreign-based clients before the Canadian Competition Bureau and the Competition Tribunal in merger transactions reviewed by the commissioner of competition. He also regularly advises domestic and international clients with respect to their distribution and pricing practices and assists them in criminal investigation (including cartels) under the Competition Act.

He has experience in a wide variety of industries, such as transportation, pulp and paper, steel, telecommunications, book publishing, media and entertainment, agricultural products, financial services, real estate, food services, grocery, building products, newspaper distribution, home hardware and consumer products. In recent years, he acted as Canadian counsel in several major transactions involving clients such as AbitibiBowater, ArcelorMittal, Rock-Tenn Company, Sanofi-aventis, Suncor Energy, Quebecor Media, Domtar, Bourse de Montréal, Westco Group, RONA, Metro and Archer Daniels Midland. Mr Gascon has also appeared before the Canadian courts and agencies on dumping, trade remedy, safeguards and tariff relief matters. Over the past 20 years, he has been lead counsel in Canada for the ArcelorMittal group and its predecessors in numerous anti-dumping disputes.

Mr Gascon is recognised as one of Canada's leading competition law and international trade law practitioners in the Canadian Legal Lexpert Directory and in Best Lawyers in Canada, as well as in various international publications such as Chambers' Global, Global Competition Review, Legal Media Group, Global Counsel 3000 and Practical Law Company's Competition Law Handbook. He was called to the Quebec Bar in 1989.

Ray V Hartwell III
Hunton & Williams LLP

Ray Hartwell is a vice chair of the competition practice group in the Washington, DC, office of Hunton & Williams LLP. He has over 30 years' experience in antitrust and competition-related investigations, litigation and counselling, and has represented more than 50 corporations and executives in connection with criminal antitrust and international cartel investigations and related issues of amnesty and leniency in the United States, Canada and Europe. His practice also includes antitrust and related class action and similar litigation, merger filings and review in the United States and abroad, and corporate compliance programmes and internal investigations.

Mr Hartwell currently serves as a member of the Council of the ABA Section of Antitrust Law. He is also a member of the steering committee for the 2012 International Cartel Workshop, has served as co-chair of the Cartel and Criminal Practice Committee and is a member of the International Cartel Task Force. He is listed in *The International Who's Who of Competition Lawyers*, *Benchmark Litigation* (National Antitrust Litigation Star), *Best Lawyers in America* and *Guide to the World's Leading Competition and Antitrust Lawyers*.

Mr Hartwell graduated summa cum laude from Washington & Lee University School of Law, where he was editor-in-chief of the *Washington & Lee Law Review* and was elected to the Order of the Coif and Omicron Delta Kappa. He managed his firm's Brussels office from 1992 to 1994. Before attending law school, Mr Hartwell served in the US Navy where he was the anti-submarine warfare and nuclear weapons officer on a guided missile destroyer.

Jennifer Hefler
Borden Ladner Gervais LLP

Jennifer Hefler is an associate in BLG's Toronto office and specialises in competition and antitrust law. Ms Hefler's practice emphasises complex and multi-jurisdictional antitrust class action proceedings. She has acted for clients in many major national cartel cases, including those involving auto parts, retail gasoline, airline cargo services, polyurethane foam and various other manufacturing and retail sectors. Ms Hefler regularly speaks and writes on issues in competition law and plays a leadership role in competition and antitrust policy through professional bodies such as the Canadian Bar Association.

Donald Houston
McCarthy Tétrault LLP

Donald Houston is a partner in McCarthy Tétrault's competition law group in Toronto.

His competition law and litigation practice includes defending criminal prosecutions, Competition Tribunal proceedings and private actions, including class actions. He has frequently represented the Commissioner of Competition. Mr Houston counsels clients on mergers and other business practices.

He also has a significant cartel and merger practice, both domestic and international. His recent merger mandates include BCE/CTV, BFI/Waste Services, Suncor/Petro-Canada, Avaya/Nortel and Akzo/ICI. His recent cartel/class action mandates include polyurethane foam, chocolate products, construction glass, automotive products, computer chips and chemical products. Mr Houston has unsurpassed experience litigating Competition Tribunal cases in Canada. He has lectured and been published extensively. His publications include *Competition Law*, with J Pratt, in *Intellectual Property Disputes, Resolutions and Remedies* (Thomson/Carswell, 2002); *Jurisdictional Issues in International Cartel Cases: A Canadian Perspective*, with J Pratt; and *Litigating Conspiracy* (Irwin Law, 2006). He is vice chair of the CBA National Competition Law Section Executive.

Adam Kalbfleisch
Bennett Jones LLP

Adam Kalbfleisch's practice encompasses a wide range of competition and foreign investment review matters. Adam, who is recognised by clients in *Chambers Global: The World's Leading Lawyers for Business* as a 'patient, detailed, and responsive' lawyer, regularly advises both domestic and foreign clients engaged in mergers, joint ventures and other forms of strategic alliances in connection with the notification and clearance provisions of the Competition Act and the Investment Canada Act.

Adam advises clients in connection with conspiracy and other criminal provisions of the Competition Act, as well as on potentially anti-competitive business practices, including abuse of dominance, exclusive dealing and refusal to deal matters. He also provides advice concerning corporate competition law compliance programmes, product regulation and marketing/advertising law matters.

Adam is an active member of the Canadian Bar Association and the American Bar Association, and is a current vice chair of the Reviewable Matters Unilateral Conduct Committee of the National Competition Law section of the Canadian Bar Association. He is also a member of the Canadian Chamber of Commerce Competition Law and Policy Task Force and a board member of the Icelandic Canadian Chamber of Commerce.

Christine Laciak
Freshfields Bruckhaus Deringer US LLP

Christine is an associate in the antitrust group in the Freshfields Washington, DC, office. She counsels clients on merger control, civil non-merger litigation, cartels and antitrust compliance matters. Christine has significant experience related to the CFIUS review of notifications submitted under Exon–Florio in connection with acquisitions of US businesses by foreign purchasers.

Her recent matters include advising a Hong Kong-based private equity firm on the CFIUS review of a proposed acquisition of a US technology firm; advising a regional Chinese government-owned firm on the CFIUS review of a proposed joint venture with a US technology firm; advising Rhône Capital on the CFIUS review of the sale of its portfolio company Almatis to Dubai International Capital; advising Gaz de France on the CFIUS review of its merger with Suez; and advising P&O Steamship Co on the CFIUS review of its acquisition by Dubai Ports World.

Christine received her JD from the University of Chicago and her BA from the Catholic University of America graduating Phi Beta Kappa.

Juliano Souza de Albuquerque Maranhão
Sampaio Ferraz Advogados

Juliano Souza de Albuquerque Maranhão is founding partner of Sampaio Ferraz Advogados, a highly renowned Brazilian boutique law firm specialised in economic law, in particular antitrust, trade defence and regulatory law.

Professor of Law at the University of São Paulo, Juliano SA Maranhão graduated from the University of São Paulo (1998) where he later completed his PhD in law (2004). He also holds post-doctorate degrees from the Pontifical Catholic University of São Paulo and Utrecht University (Netherlands). He was also a visiting scholar at the Universities of Miami (United States), Leipzig (Germany) and Maastricht (Netherlands).

Gathering 12 years of professional experience in antitrust and competition law, Juliano SA Maranhão was partner of Magalhães, Ferraz e Nery, with a distinguished role in many notable cases of CADE.

Jointly with Tercio Sampaio Ferraz, Juliano SA Maranhão has been heading the antitrust team of Sampaio Ferraz Advogados for two years, leading high-profile cases before CADE.

Former adviser to CADE's presidency (1997-1998), Juliano SA Maranhão has authored many papers on legal logic and argumentation, competition and regulatory law.

Juliano SA Maranhão is member of the Brazilian Bar and is fluent in English, French, German, Italian and Portuguese.

Paul J Martin
Fasken Martineau DuMoulin LLP

Paul Martin is a senior partner in the Toronto office of Fasken Martineau and practises in the area of litigation and dispute resolution. He is one of Canada's leading class action defence counsel and is co-chair of the firm's class actions practice group. Paul's practice includes competition litigation with an emphasis on cartels and other criminal matters. In the cartel area, his representative matters have included well-known proceedings concerning vitamins, rubber chemicals, hydrogen peroxide, filters, air cargo, air passenger, packaged ice, high fructose corn syrup and carbon collectors. He is a frequent lecturer at continuing legal education programmes, particularly in areas relating to competition law, class proceedings and cross-border litigation.

Maria Clara de Azevedo Morgulis
Sampaio Ferraz Advogados

Maria Clara Morgulis is a lawyer at Sampaio Ferraz Advogados, a highly renowned Brazilian boutique law firm specialised in economic law; in particular, antitrust, trade defence and regulatory law.

Maria Clara Morgulis graduated from the School of Law of the University of São Paulo (USP). She is currently completing a Master in business economics at the São Paulo School of Economics of

Fundação Getulio Vargas (EESP-FGV).

Maria Clara Morgulis is a member of the Brazilian Bar and is fluent in English and Portuguese.

Douglas C New
Fasken Martineau DuMoulin LLP

Douglas New, former chair of the firm's antitrust/competition and marketing law group, carries on an active business law practice with special focus on advising clients, both domestic and foreign, with respect to pre-merger regulatory approvals under Canadian legislation, including the Investment Canada Act and the Competition Act. Douglas also regularly advises manufacturers, importers, distributors and retailers with respect to competition and marketing/advertising law issues in Canada.

Douglas served with Canada's Foreign Investment Review Agency (now the Investment Review Division of Industry Canada) in the position of special advisor (legal) to the deputy commissioner. He has written articles on Canada's foreign investment and competition laws for numerous Canadian and international publications and participated as a contributing author to the publications *Foreign Investment Review Law In Canada* (Butterworths) and *Doing Business in Canada* (Matthew Bender). He has also served as chair and lecturer on panels in Canada and abroad, speaking on Canadian foreign investment and competition law issues.

Douglas was called to the degree of barrister-at-law by the Law Society of Upper Canada and enrolled as a solicitor of the Supreme Court of Ontario in 1976. He is listed in *Chambers Global – The World's Leading Lawyers for Business 2010*.

During his tenure with Fasken Martineau, he has served on numerous firm committees including as chair of the Business Development Committee. He currently serves as co-chair of the firm's Diversity and Inclusiveness Committee.

José Palomar
Von Wobeser y Sierra, SC

José Palomar is a senior associate at Von Wobeser y Sierra. He graduated with honours from the Universidad Nacional Autónoma de México, where he obtained his law degree. He also obtained a speciality in international arbitration from the International Chamber of Commerce and the Escuela Libre de Derecho. He has wide experience in antitrust law, and also engages in mergers and acquisitions and financial transactions. Mr Palomar is fluent in Spanish and English.

Bruno L Peixoto
Araújo e Policastro Advogados

Bruno L Peixoto is a partner and chair of the antitrust and competition practice area at Araújo e Policastro Advogados. He has distinguished experience in complex and multifaceted antitrust litigation in Brazil. In addition to representing leading companies in investigations concerning cartelisation and unilateral conducts before CADE, he has played a major role in shaping the application and interpretation of Brazilian antitrust law in state and federal courts. Representing corporate clients, he has successfully conducted the first private antitrust actions for damages in Brazil, including the first collective actions. In 2012, he obtained the first decision awarding cartel damages in the country. Bruno has also obtained cease-and-desist orders and injunctive relief for leading companies in administrative proceedings and civil actions involving coordinated and unilateral conducts.

Bruno earned his Master of Laws degree from the University of Chicago and was an attorney at the Antitrust Division of the Ministry of Justice. A lecturer in international seminars and meetings, Bruno has published academic studies in American law journals and served as vice chair of the International Antitrust Law Committee of the American Bar Association, Section of International Law.

Bruno also regularly represents clients in merger control proceedings before CADE and advises on complex cross-border transactions, assessing both competitive effects and merger-specific efficiencies. He has worked in transactions in a variety of industries, from mining and steel to retail and technology. He has also coordinated multijurisdictional filings in South and Central America.

Djordje Petkoski
Hunton & Williams LLP

Djordje Petkoski is an associate in the competition practice group at Hunton & Williams LLP in Washington, DC. His practice includes antitrust litigation, counselling and representation of corporations and individuals in government investigations. Mr Petkoski has conducted internal investigations relating to potential criminal violations of antitrust and competition laws, US international trade laws, environmental laws and obstruction of justice conduct. He has also represented corporate and individual clients in related Department of Justice criminal investigations and parallel civil litigation. He has extensive experience in plea negotiations in matters involving a variety of industries, including electronics, automobile parts and consumer products. Mr Petkoski has also represented plaintiffs and defendants in multi-district and other complex litigation involving antitrust, RICO, Lanham Act and other claims.

Mr Petkoski regularly works with clients to design and implement compliance programmes and incorporate compliance into corporate strategy. He has written extensively on compliance and antitrust issues. He has also taught classes on compliance and antitrust at the Wharton Business School, including executive education