Chapter 4

AUSTRIA

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I OVERVIEW OF RECENT PRIVATE ANTITRUST LITIGATION ACTIVITY

Private antitrust litigation in Austria has substantially increased in recent years. To a large extent, such growth can be attributed to an increase of cartel court decisions imposing fines against cartel members based on intensified enforcement activity of the Austrian Federal Competition Authority (FCA) and the Austrian Federal Cartel Prosecutor (with the decision in the *Elevators and Escalators* cartel[2] being the show-starter). Based on such decisions finding violations of antitrust law, the Austrian Supreme Court (OGH) in several cases has affirmed the possibility of claims for damages for directly damaged parties[3] as well as for indirectly damaged parties,[4] including cases where damages were allegedly caused by cartel outsiders (umbrella pricing).[5]

In addition, Austrian private antitrust litigation has been the nucleus for landmark decisions of the Court of Justice of the European Union (CJEU), such as the *Kone* case[6] regarding antitrust damages claims based on umbrella pricing and the *Donau Chemie* case[7] concerning access to the file by possible private damages claimants.

Following these judgments, the Austrian Supreme Court in May 2018 asked the CJEU whether lenders that provided publicly subsidised funding to customers of the *Escalator* cartel (such as housing and building cooperatives) may claim damages (from increased loan and funding requirements) from the cartel members.[8] Therefore, although private antitrust litigation today plays a pivotal role in Austrian antitrust practice, and Austrian courts are also actively shaping the law on a European level (by referring such important questions to the CJEU), final decisions in major proceedings often experience substantial delay owing to numerous upfront disputes over procedural matters.

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2 OGH 8 October 2008, 16 Ok 5/08.

3 OGH 26 May 2014, 8 Ob 81/13i.

4 OGH 2 August 2012, 4 Ob 46/12m.

5 OGH 29 October 2014, 7 Ob 121/14s.

6 Judgment *Kone and Others v. ÖBB Infrastruktur AG*, C-557/12, ECLI:EU:C:2014:1317.

7 Judgment *Bundeswettbewerbsbehörde v. Donau Chemie and Others*, C-536/11, ECLI:EU:C:2013:366.

8 OGH 17 May 2018, 9 Ob 44/17m; the case is registered in the case register of the CJEU under C-435/18, *Otis et al v. Land Oberösterreich et al*.

II GENERAL INTRODUCTION TO THE LEGISLATIVE FRAMEWORK FOR PRIVATE ANTITRUST ENFORCEMENT

The Austrian Cartel and Competition Law Amendment Act 2017 (KaWeRÄG 2017) implementing the EU Damages Directive (Directive)[9] became effective on 1 May 2017. As the deadline for the implementation of the Directive expired on 26 December 2016, the provisions on the compensation of harm caused by infringements of antitrust law (Sections 37a to 37m Austrian Cartel Act (KartG) entered into force retroactively as of 27 December 2016 (apart from the provision in Section 37m concerning the imposition of fines).

The new substantive provisions apply to harm incurred after 26 December 2016; for all damages arising before this date, the old regime has to be applied.

The KaWeRÄG 2017 amends the KartG, the Austrian Competition Act and the Austrian Act on Improvement of Local Supplies and Conditions of Competition. The provisions in Sections 37a et seqq KartG introduced new rules for actions for private antitrust damages claims (PADCs). The ordinary civil courts are the competent courts for PADCs.

The rules prescribe a fault-based liability: thus, a claim for damages for antitrust infringements requires that an unlawful and culpable antitrust infringement caused the harm. Section 37i (2) KartG stipulates that decisions of the cartel court, the European Commission or the national competition authorities (NCAs) of other EU Member States establishing an infringement have a binding effect for the Austrian civil courts as regards illegality and culpability. Therefore, in a follow-on scenario, claimants only have to establish the damage incurred and a causal link between the infringement and such damage. However, in the case of a cartel (between competitors), a presumption of harm applies. This presumption is rebuttable, with the burden of proof resting with the infringer. As proving the occurrence of antitrust damages has been rather difficult for claimants in the past, the newly introduced presumption of harm should facilitate the enforcement of claims by parties who have suffered harm from a cartel. However, even with the new presumption, the quantum of damages still has to be established by the party claiming damages.

Section 37h KartG stipulates new rules on the limitation period for PADCs. PADCs are now time-barred five years after the injured party becomes aware of the damage and the identity of the infringer (the absolute period of limitation is 10 years after the occurrence of harm). The statute of limitation for PADC proceedings is suspended during pending proceedings before the cartel court, the European Commission or the NCAs of other EU Member States; investigations by the European Commission or NCAs into possible infringements of antitrust law; and settlement negotiations. In the case of proceedings before the cartel court, or proceedings or investigations by the European Commission or NCAs, the suspension of the statute of limitations ends one year after the decision on the proceedings has become legally binding or after the end of the investigation. Section 37g (4) KartG allows courts to suspend the proceedings for a maximum period of two years when it is likely that the parties will agree on a settlement. In the case of unsuccessful settlement negotiations, a claim has to be filed within a reasonable period of time (Section 37h (2) final sentence).

9 Directive 2014/104/EU on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, OJ 2014 L 349, p. 1.

III EXTRATERRITORIALITY

The application of the specific rules on PADCs in the KartG requires a domestic effect in Austria (effects doctrine).[10] If no such domestic effect can be established, a claimant may only base its PADC on general tort law rules.

As regards jurisdiction, a PADC can, *inter alia*, be brought before Austrian courts against:

a a defendant domiciled outside Austria if the harmful event caused by an antitrust infringement occurred or is expected to occur in Austria;[11]

b a defendant that is domiciled in Austria (with the potential to include the other cartel members as additional defendants in the same lawsuit[12]); or

c a defendant that is not domiciled in one of the Member States of the EEA if it holds assets in Austria.[13]

IV STANDING

Based on the decisions of the CJEU in *Courage v. Crehan*[14] and *Manfredi*,[15] anyone who has suffered damage from an infringement of Article 101 of the Treaty on the Functioning of the European Union (TFEU) is entitled to recoup his or her losses from the antitrust infringers. This case law also had a significant effect on PADCs solely based on an infringement of Austrian antitrust law.

To date, in cases of umbrella claims it has been held that under Austrian law (if EU law is not applicable), a claimant would not have standing against the antitrust infringers due to a lack of an adequate causal link between the infringement and the losses alleged by the claimant.[16] Following the CJEU's decision in *Kone*,[17] however, it remains to be seen whether the OGH will uphold this approach in domestic cases that are not also based on an infringement of EU competition law.

V THE PROCESS OF DISCOVERY

Effective rules on the disclosure of evidence were only introduced into Austrian law with the KaWeRÄG 2017. These new (procedural) rules apply to all PADCs in which the action

10 Section 24 (2) KartG; cf OGH 27 February 2006, 16 Ok 49/05; OGH 23 June 1997, 16 Ok 12/97.

11 Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ 2012, L 351/1, p. 1, Article 7 (2); see also judgment *Cartel Damage Claims (CDC) Hydrogen Peroxide SA v. Akzo Nobel and other*s, C-352/13, ECLI:EU:C:2015:335.

12 Ibid. Article 8 (1): 'provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.'

13 Section 99 Law on Court Jurisdiction (JN).

14 Judgment *Courage Ltd v. Bernard Crehan and Bernard Crehan v. Courage Ltd and Others*, C-453/99, ECLI:EU:C:2001:465.

15 Judgments *Vincenzo Manfredi v. Lloyd Adriatico Assicurazioni SpA* (C-295/04), *Antonio Cannito v. Fondiaria Sai SpA* (C-296/04) and *Nicolò Tricarico* (C-297/04) and *Pasqualina Murgolo (C-298/04) v. Assitalia SpA*, C-295/04, ECLI:EU:C:2006:461.

16 OGH 17 October 2012, 7 Ob 48/12b (ruling).

17 The OGH in this decision asked the trial court to establish the necessary facts with regard to umbrella pricing: OGH 7 Ob 121/14s.

initiating the proceedings is filed after 26 December 2016. Therefore, these new rules on the disclosure of evidence also apply to disputes over harm incurred prior to 26 December 2016 as long as only the proceedings are initiated after this date.

Apart from these new rules on disclosure of evidence after a PADC has been filed, general Austrian civil procedural law does not allow for (pretrial) discovery as found in Anglo-American legal systems. Rather, each party has to substantiate the facts favourable to its legal position by putting forward evidence (e.g., witnesses, documents, court-appointed experts).

Under the new provisions on disclosure of evidence (Section 37j (2) KartG), a party may submit a reasoned request for disclosure of evidence to the court together with, or after having lodged, an action for damages. Apart from requesting the disclosure of (certain) pieces of evidence, a request for disclosure may also cover categories of evidence.

However, to avoid a US–style discovery and fishing expeditions, evidence and categories of evidence need to be defined by the party requesting the disclosure as precisely and as narrowly as possible, taking into account the facts and information reasonably available to it. The court then may order the disclosure of evidence by third parties or the opposing party. The court has to limit a disclosure order to a proportionate extent, taking into account the legitimate interests of all parties (including third parties) concerned. The interest of companies in avoiding actions for damages caused by infringements of antitrust law is not relevant for this assessment. The disclosure may also comprise evidence containing confidential information. The confidentiality of the information has to be taken into account by the court when assessing the proportionality of a disclosure request. If necessary, special arrangements to protect the confidentiality of such information have to be ordered (e.g., excluding the public from the proceeding, redacting confidential information from documents or restricting the right of access to evidence to a particular group of persons).

Moreover, the party being ordered to disclose evidence can request that certain pieces of evidence are only disclosed to the court by invoking a legal obligation of secrecy (e.g., legal professional privilege) or any other right to refuse to give evidence (Section 157 (1) Nos. 2 to 5 Austrian Criminal Procedure Act (StPO). The court then may decide, without consulting the parties, whether to require the disclosure of the evidence. A court decision ordering disclosure may be appealed immediately, while a negative decision may only be appealed together with an appeal against the final judgment.

A party to the proceedings may also apply for disclosure of documents contained in the files of competition authorities (the European Commission, NCAs). However, certain documents – namely information prepared for the proceedings before the competition authority, information prepared during the proceedings by the authority and submitted to the parties, and settlement submissions that were withdrawn – may only be disclosed once the competition authority has completed its proceedings (Section 37k (3) KartG). Leniency statements and settlement submissions are not themselves subject to disclosure (Section 37k (4) KartG).[18]

So far, no published case law exists that applies the new rules on disclosure of evidence. It can be expected that courts will face a number of exciting and difficult questions when

18 This provision (implementing Article 6 (6) of the Directive) will likely be subject to legal challenges, as arguably it conflicts with the CJEU's decision in *Donau Chemie*, which determined that a general exclusion without any balancing of interest is contrary to the principle of effectiveness. According to the principle of effectiveness, Member States shall ensure that all national rules and procedures relating to the exercise of

dealing with such a new instrument, previously unknown to the Austrian legal system. In particular, the proportionality test, required for the assessment of every disclosure request, will be quite challenging, as the relevant evidence subject to the disclosure request will normally (with the exception of cases specified in Section 37j (7) KartG) not be inspected by the court, which will then have to base its assessment solely on the assertions of the parties.

The new provisions on disclosure will probably also lead to a prolongation of PADC proceedings due to the following grounds: several rounds for disclosure can be made during the same PADC proceeding (i.e., a party will often only be able to fulfil the requirement of precisely and narrowly defining the relevant pieces of evidence after other documents have been disclosed to it); and defendants will also file requests for disclosure (especially to try to prove that an overcharge was passed on to the next level of the supply chain).

According to standing case law before the KaWeRÄG 2017 came into force, the Supreme Court acted exclusively as a legal instance, which was widely criticised as market definition is a question of fact, not law. Therefore, results of expert reports were verifiable only to a very limited extent by the Austrian Supreme Court. However, the new Section 49 (3) KartG provides that appeals may now also be based on the fact that the file reveals considerable reservations as to the correctness of decisive facts on which the cartel court based its decision. Furthermore, a recent decision of the Austrian Supreme Court sheds some light on the interpretation of this Section and draws parallels to case law regarding a quite similar provision in the Austrian Criminal Procedure Act (StPO).[19]

VI USE OF EXPERTS

According to Section 351 (1) of the Austrian Civil Procedure Code (ZPO), courts can appoint experts to collect evidence. Such court-appointed experts can have an important role in PADCs, in particular as regards establishing whether an alleged loss has occurred and as regards the calculation of the quantum of damages (see Section VIII for more detail).

Although courts have the capacity to estimate the quantum of damages (see Section VIII) themselves, they often are not willing to make such estimates but rather prefer to appoint court experts, such as economists, to calculate the quantum of damages.

To establish loss and to calculate the quantum of damages, as well as the causal link between an infringement and such damages, parties can also instruct private experts and try to introduce their findings as evidence in the court proceeding. In addition, parties may also try to call their private expert as an expert witness. However, private experts appointed by the parties do not substitute court-appointed experts, and courts may disregard the findings of a party-appointed expert simply by relying on the findings and opinion of a court-appointed expert. Private party experts' findings reports also do not have the same evidential value as reports of court-appointed experts (Section 292 ZPO).

claims of damages from infringements of Article 101 or Article 102 TFEU are designed and applied in such a way that they do not make it in practice impossible or excessively difficult to exercise the Union right to full compensation for harm caused by an infringement of Article 101 or Article 102 TFEU.

19 OGH 12 July 2018, 16 Ok 1/18k.

VII CLASS ACTIONS

Austrian law does not provide for class actions as found in Anglo-American legal systems (neither on an opt-in nor an opt-out basis). However, the number of mass proceedings has increased recently (although still comprising a much lower proportion when compared with other countries such as the US).[20] Recently, Austrian-style class actions have been brought before courts mainly by the VKI, the association for consumer protection, through individual consumers assigning their claims to the VKI, which then tries to combine these claims into a single court proceeding.[21] However, as the ZPO does not contain any specific provisions for class actions, courts have differed in their treatment, either treating them as separate single proceedings, by joinder of claimants, or having one test proceeding (while staying the other proceedings), which then serves similar to a precedent for the other claims.[22]

Despite the growing number of such Austrian-style class actions, courts remain reluctant to accept the pooling of claimant actions for damages; Austrian civil procedural rules are rather based on an individual examination of each claim brought before the court, and actions for damages are tried in various separate court proceedings.

To our knowledge, there is no published case law in Austria that examines the potential of an Austrian-style class action in PADC proceedings. However, the models that have been used for combining individual consumer claims could theoretically also serve as a process for pooling PADCs, and such a model appears to have been successfully applied in 2007 by the Austrian Federal Chamber of Employees in a PADC against a driving school in Graz that had participated in a cartel with other local driving schools.[23]

VIII CALCULATING DAMAGES

Under Austrian law, antitrust damages are limited to the actual loss suffered, which also includes lost profit plus statutory default interest[24] calculated from the date when the harm occurred. Thus, Austrian law does not allow a claim for punitive or treble damages, and also does not take into account possible fines imposed by competition authorities.

According to Austrian case law, antitrust damages are calculated by comparing the actual financial situation of the injured party after the infringement with the counterfactual hypothetical scenario without the damaging infringement.[25] Often, injured parties have

20 Kodek in Neumayer, *Beschleunigung von Zivil- und Strafverfahren*, 2014, p. 5.

21 Kodek, Haftung bei Kartellverstößen in WiR – Studiengesellschaft für Wirtschaft und Recht (eds), *Haftung im Wirtschaftsrecht* (2013), pp. 63, 77.

22 Kodek in Neumayer, p. 9.

23 See Ginner, *Erstes österreichisches Urteil zum Private Enforcement – Fahrschulkartell Graz*, ÖZK 2008, p. 110 et seq.

24 The applicable statutory default interest is 4 per cent (Section 1000 (1) General Civil Code (ABGB)), except for claims from contractual relationships between businesses, which is 9.2 per cent +/- base interest (Section 456 Austrian Business Code).

25 OGH 15 May 2012, 3 Ob 1/12m; see Csoklich, 185; *Reischauer in Rummel* (ed), ABGB 3rd edition (2007), Section 1293 ABGB Paragraph 2a; Karner in Koziol/P Bydlinksi/Bollenberger (eds), *ABGB*, 4th edition (2014), Section 1293, Paragraph 9.

difficulties establishing the counterfactual hypothetical scenario that establishes proof of their damage.[26]

Austrian law allows the courts to estimate the quantum of the damages if the liability has already been established and the injured party was able to establish that it has suffered damage due to an antitrust infringement (i.e., the injured party has to prove the 'first euro' of its damages).[27] However, for cartels between competitors, the new Section 37c (2) KartG contains a presumption that the cartel caused damage, thus already allowing an estimate if such presumption cannot be rebutted.[28]

While Austrian civil procedural rules regarding the reimbursement of procedural costs generally are based on the loser pays principle, attorneys' fees are only reimbursed on the basis of the (fixed) statutory fees for attorneys, which are largely dependent on the amount in dispute and not the actual amount of attorneys' fees incurred by a party (e.g., on the basis of hourly rates). As a rule of thumb, the statutory attorneys' fees are usually significantly lower than the actual attorneys' fees (if an attorney does not charge his or her client on the basis of statutory fees) for smaller matters (as regards the amount in dispute), whereas the statutory attorneys' fees for larger disputes (typically for an amount above €1 million) often exceed the actual attorneys' fees incurred based on applicable market rates. The award of costs also includes court fees, including parties' expenses for court-appointed experts.

IX PASS-ON DEFENCES

Section 37f KartG provides that generally the defendant has the burden of proof for passing-on. However, in the case of a PADC by an indirect purchaser, there is a presumption of passing-on of the damage if it has been established that an antitrust infringement by the infringer caused a price increase for the direct purchaser and the products or services sold to the indirect purchaser were subject to this antitrust infringement. The antitrust infringer can rebut this presumption by way of *prima facie* evidence. Even if a passing-on can be established, a claimant can still claim lost profits from the antitrust infringers.

To prevent overcompensation, the defendant is allowed to summon the respective third party (e.g., the direct or indirect purchaser) to join a proceeding involving passing-on. In such case, the findings concerning passing-on will be legally binding for the third party irrespective of whether it joins the proceedings (Section 37f (4) KartG).

X FOLLOW-ON LITIGATION

Owing to the binding effect of final decisions of the cartel court establishing an antitrust law infringement (see Section II) in Austria, PADCs are in almost all cases pursued in follow-on

26 For possible calculation methods see Csoklich, Ibid.; Abele/Kodek/Schäfer, *Zur Ermittlung der Schadenshöhe bei Kartellverstößen – Eine Integration juristischer und ökonomischer Überlegungen*, ÖZK 2008, p. 216; Kodek, Haftung im Wirtschaftsrecht (2013), pp. 63, 74.

27 In one case, the allegedly injured party was not able to establish that it had suffered damage in follow-on litigation from the *Escalator* cartel (due to a lack of contractual documentation) as it was only able to make estimates of the prices paid to the cartel members rather than establishing the actual prices paid (cf OGH 3 Ob 1/12m).

28 OGH 8 Ob 81/13i; see Kodek, footnote 26.

actions. However, other areas of private antitrust litigation (e.g., contractual disputes or disputes involving access to essential facilities or distribution systems) often are commenced on stand-alone claims.

XI PRIVILEGES

The professional secrecy obligation of attorneys plays an important role in Austria when it comes to (defence) attorneys being used to provide evidence. According to Section 9 (2) of the Austrian Code of Lawyers (RAO), attorneys admitted to the Austrian Bar are obliged to keep confidential information that is entrusted to them by a client or is obtained in their professional capacity if the confidential treatment of such information is in the interest of the client. The obligation applies before courts as well as in administrative proceedings. Moreover, Section 9 (3) RAO stipulates that the obligation may not be circumvented by actions of the courts or administrative authorities (e.g., by questioning assistants of the attorney or ordering the disclosure or seizure of the attorney's files). The obligation does not apply with respect to information or documents that are not attorney–client communication, but are rather just deposited with the attorney. Furthermore, the privilege does not apply to in-house counsel (as they are not admitted to the Austrian Bar).

In PADC proceedings, a person being ordered to disclose evidence can request that certain pieces of evidence are only disclosed to the court by invoking a legal obligation of secrecy (e.g., legal professional privilege) or any other right to refuse to give evidence (Section 157 (1) Nos. 2 to 5 StPO; see Section VIII for more detail). Additionally, an attorney may also refuse to give evidence as a witness if it violates confidentiality (Section 321 (1) No. 3 ZPO). However, clients have the right to release their attorneys from such obligation.

In FCA investigations, in particular as regards the seizure of documents during a dawn raid, attorney–client communications previously were not privileged if they were not in the hands of the attorney.[29] This has been heavily criticised in legal writing, as it deviates from the standard applicable in investigations of the European Commission and circumvents the obligation.[30] Based on a recent change to Section 157 (2) StPO, documents and information prepared for legal advice or defence may not be seized even if they are in the domain of a defendant or co-defendant in criminal proceedings.[31] It remains to be seen whether this general criminal law provision will also be held to be applicable in the case of dawn raids by the FCA.

XII SETTLEMENT PROCEDURES

Austrian law permits parties to settle private antitrust damages litigation both prior to starting legal proceedings and during an ongoing court proceeding. As one of the main advantages of a settlement (often) is its lack of publicity, there is limited public information available on how frequently settlements concerning PADCs occur (although there are a number of prominent

29 Metzler, 'The Tension Between Document Disclosure and Legal Privilege in International Commercial Arbitration – An Austrian Perspective' in Klausegger et al. (eds), *Austrian Yearbook on International Arbitration 2015*, pp. 231, 254.

30 Metzler, Ibid., 254 et seq. with further references.

31 However. the scope of this new provision is currently subject to several ongoing disputes in connection with the criminal investigations concerning alleged bid-rigging in the construction sector.

cases that it is publicly known were settled out of court). As out-of-court settlements may be subject to stamp duty in Austria, it is important to structure them in a tax-efficient manner while at the same time providing the parties with the necessary legal protection.

In addition to private antitrust settlements, settlements of public antitrust proceedings[32] currently play a very important role in Austria in particular in cases involving resale price maintenance. This makes it more difficult for private claimants to pursue PADCs against antitrust infringers, as only limited information about the details of an infringement becomes public in the fine decisions that are published by the cartel court on the basis of Section 37 (1) KartG.[33]

XIII ARBITRATION

As PADCs generally fall under the jurisdiction of the civil courts, they may alternatively be adjudicated in arbitration proceedings[34] provided that the parties mutually agree to such proceedings (Section 582 (1) ZPO). An arbitration agreement may be concluded for both contractual and non-contractual disputes (Section 581 (1) ZPO). Depending on the content of the arbitration agreement, the arbitration proceedings may be subject to national civil procedural rules or *ad hoc* rules, or administered under commonly used arbitration rules such as those of the ICC or the Vienna International Arbitral Centre. As Austrian law requires an arbitration agreement in writing, arbitration is rarely used for most follow-on PADCs and is confined to cases where the initial contract between the parties to the proceedings contains a (sufficiently broad) arbitration clause.

In cases where an effective arbitration agreement exists, Austrian courts have to reject a claim if the defendant does not engage in the court proceedings without contesting the court's jurisdiction (Section 584 (1) ZPO). If a dispute that is already subject to arbitration proceedings is subsequently initiated before civil courts, the claim in general will also be rejected (Section 584 (3) ZPO).

XIV INDEMNIFICATION AND CONTRIBUTION

According to Section 37e (1) KartG, the participants in an antitrust infringement are jointly and severally liable co-debtors for the losses culpably caused to injured parties (therefore, not requiring an intentional infringement and irrespective of whether the individual portion of the damages can be determined). The amount of contribution depends on the relative responsibility of the participant (e.g., market share, role in the infringement).

Section 37e (2) and (3) KartG contains specific provisions granting special protection from joint and several liability for immunity and leniency recipients (and redress for damage payments from immunity recipients) and small and medium-sized enterprises (SMEs), as well as for redress in the case of settlements (Section 37g).

32 For details see the FCA's Guidelines of Settlements: https://www.bwb.gv.at/fileadmin/user_upload/Downloads/standpunkte/BWB%20Standpunkt%20zu%20Settlements%20September%202014.pdf (last accessed on 18 December 2018).

33 This aspect has been criticised in legal writing: see Kodek, *Absprachen im Kartellverfahren*, ÖJZ 2014, 443, 450.

34 For further details, see Wilheim, *Die Vorteile der Abhandlung von Follow-on Ansprüchen in kollektiven Schiedsverfahren*, ÖZK 2014, p. 49.

In principle, immunity and leniency recipients are only liable for the damage caused towards their direct or indirect purchasers. Only in cases where other damaged parties are not entirely compensated by the other parties to the infringement will the immunity recipient also have to step in and compensate those damaged parties that are not the immunity recipient's direct or indirect purchasers.

SMEs having a market share of less than 5 per cent during the antitrust infringement period, and which would be in danger of losing their commercial viability and having their assets devaluated entirely, are also only liable for the damage caused towards their direct or indirect purchasers. This special protection of SMEs does not, however, apply to SMEs that organise an infringement or force other companies to participate in the infringement, or that are antitrust infringement reoffenders.

Where settlements between an injured party and one of the infringers are made, this infringer is in principle no longer liable for any claims of this injured party against any of the other parties to the infringement. Only in cases where the remaining claim of the injured party is not compensated by the other cartelists will the infringer who has concluded the settlement have to step in (such liability, however, can be contractually excluded, for example in a settlement agreement).

Redress for damages payments from other antitrust infringers is subject to the relative responsibility of the participant (see above). Redress from an immunity or leniency recipient is limited to the damage the immunity or leniency recipient caused to his or her direct and indirect purchasers.

XV FUTURE DEVELOPMENTS AND OUTLOOK

The general impression on the market is that the new rules for PADCs so far have not resulted in a big number of new cases. Based on how the Directive was implemented, one could have the impression that there is little interest in establishing Austria as an attractive forum for (private) antitrust damages proceedings, with the federal government's impact assessment even having assumed that the implementation of the Directive will not change the workload of the Austrian judiciary. It remains to be seen whether this assessment applies in practice, as the new provisions include some far-reaching changes as regards both substantive and procedural matters (e.g., regarding the new provisions governing the disclosure of evidence by the opposing party or by a third party). In addition, it is quite likely that Austrian courts will continue referring new legal questions in connection with PADCs to the CJEU for preliminary rulings.

Appendix 1

ABOUT THE AUTHORS

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Laura Ambrozie is a senior associate within the competition practice group of Popovici Nițu Stoica & Asociații. She is specialised in competition matters, including merger control, antitrust, unfair competition and trading policies. She also deals with M&A, corporate and commercial matters.

Ms Ambrozie holds a degree in law from the University of Bucharest, and is a member of the Bucharest Bar and the Romanian Bar Association.

CATARINA ANASTÁCIO

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Catarina Anastácio is a consultant with the SRS competition department and former president of the executive editorial board of the *Concorrência & Regulação* (competition and regulation) legal review. She was a lawyer at the Portuguese Competition Authority between 2003 and 2017 (having worked in, *inter alia*, the Restrictive Practices Department, the Studies Department and the Legal Department, as well as for the Cabinet of the President). Previously she was a lawyer at the Portuguese Central Bank and the Portuguese Securities Market Commission, as well as a member of the Cabinet of the Secretary of State of Finance and Treasury.

She has lectured in civil procedural law, contract and tort law and property law at the University of Lisbon Law School.

Catarina was directly involved in the Damages Actions Directive negotiations, as well as in drafting the legislative proposal for its transposition in Portugal. She has lectured on private enforcement issues to different audiences, including postgraduate students, lawyers and judges.

GONÇALO ANASTÁCIO

SRS Advogados

Gonçalo Anastácio is the partner in charge of the competition department at SRS and was previously a partner at Simmons & Simmons. His practice includes antitrust, merger control, state aid, compliance programmes and EU litigation. He joined the firm in 1998 after having worked in Genoa and Lisbon, and he studied at the Coimbra, Lisbon and Sorbonne (Paris I) universities.

In 2001, he was seconded to the EU and competition department of Simmons & Simmons in London, and in 2004 he was part of the first group of lawyers to be awarded the title of specialist in European and competition law by the Portuguese law society.

Gonçalo (as well as SRS) is ranked in the top band for competition law in Portugal by the leading international legal directories, and is the author and editor of a number of reference works on competition law.

ELSA ARBRANDT

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Elsa Arbrandt is a partner in the dispute resolution group of Cederquist, with 20 years of experience of arbitration and litigation. In addition to her experience as senior associate and senior legal consultant at the law firms of Roschier and Ashurst, Elsa Arbrandt has also been Head of Department at the Swedish Competition Authority.

She is a focused and analytical litigator, specialised in international arbitration and commercial litigation, with an emphasis on antitrust and international law aspects. Her background is the intersection of competition and intellectual property law, having conducted both contentious and non-contentious work within those areas. She has also advised several companies in relation to competition damage claims in various jurisdictions, and most recently acted as legal expert in relation to a large follow-on damages claim in the Netherlands against the participants in the European *Sodium Chlorate* cartel.

Elsa Arbrandt is ranked by both *Chambers and Partners Europe* (since 2013) and *The Legal 500* (since 2014) for EU and competition law with statements such as 'Elsa Arbrandt is widely renowned for her strength in competition issues and is praised by clients for her pragmatism and hands-on approach' and 'is a knowledgeable lawyer, with a good deal of common sense'.

Her areas of expertise are arbitration, litigation, commercial contracts, competition and international law.

MICHAEL BINETTI

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Michael Binetti is a litigator with a focus on competition law, commercial litigation and administrative law. A partner of Affleck Greene McMurtry LLP, he appears regularly in all levels of court in Ontario.

Michael represents clients who are targeted by the Competition Bureau and defends multinational corporations in Canadian class actions, often as part of larger, multi-jurisdictional class actions.

Michael was called to the Bar in Ontario in 2006 after articling with Affleck Greene McMurtry LLP. He graduated with a JD from the French common law section of the University of Ottawa, Canada. He obtained an honours bachelor of arts from Glendon College of York University in Toronto and was a visiting student at the Institut d'Études Politiques de Rennes in France.

TOM BRIDGES

Webb Henderson

Tom Bridges is a partner based in the Sydney office of Webb Henderson. Tom is a rising star in the Australian competition litigation and consumer law space, and has represented and advised both the Australian Competition and Consumer Commission and private clients in relation to competition and consumer law matters, including enforcement actions under Part IV of the Competition and Consumer Act (2010) (Cth) and the Australian Consumer Law.

CAROLINA DESTAILLEUR GOMES BATTISTELLA BUENO

Pinheiro Neto Advogados

Carolina Bueno graduated in law at São Paulo Law School of Fundação Getúlio Vargas, Brazil in 2017.

She speaks English and Portuguese.

NATALIA CALLEJAS AQUINO

Aguilar Castillo Love, SRL

Natalia Callejas Aquino is a partner in the Guatemala office of Aguilar Castillo Love and is admitted to practise in Guatemala. Natalia is a graduate of the Universidad Francisco Marroquín (lawyer and notary public, 2013) and a member of the Guatemalan Bar Association.

She has experience dealings with foreign direct investment and multinational clients, and advising clients in a variety of industries, taking part in a wide range of commercial and corporate transactions.

She is a founding member and the secretary of the board of directors of the Women in the Profession chapter in Guatemala – Transforma Abogadas en Guate – of the Vance Center. She is also the head of its pro bono committee.

FIONA CAMPBELL

Affleck Greene McMurtry LLP

Fiona Campbell is a member of the firm's competition group and represents clients who are targeted by the Competition Bureau as well as in multi-jurisdictional class actions.

JUAN CARLOS CASTILLO CHACÓN

Aguilar Castillo Love, SRL

Juan Carlos Castillo Chacón is a managing partner at Aguilar Castillo Love. Mr Castillo Chacón graduated with honours (*magna cum laude*) as an attorney and notary from Universidad Francisco Marroquín and has a master's degree in law from Harvard Law School, Cambridge, Massachusetts.

He has considerable experience in energy, financial and acquisition matters, and has participated in some of the biggest acquisitions in the history of Guatemala, such as, among many other projects, the process of disincorporation of generation assets from Empresa Eléctrica de Guatemala, SA from 1996 to 1998; the social capitalisation and sale of shares (80 per cent) from the same company in 2009; the acquisition of all the assets of Shell in

Central America in 2009; and a percentage of the entity Royal Forest Holding (RFH) and its subsidiaries in Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica in 2010.

In 2000, he was part of the group that presented an analysis of the bill of the Banking and Financial Groups Law as an adviser to the Guatemalan Bank Association.

In 2006, he founded the law firm Aguilar Castillo Love, as a result of a merger between two acknowledged firms in Costa Rica and Guatemala.

RICK CORNELISSEN

Houthoff

Rick Cornelissen is counsel with Houthoff. He specialises in competition litigation and commercial litigation, with a particular focus on cartel damages claims, claims for access to distribution networks and disputes regarding contract terminations. Rick Cornelissen also has extensive experience in advising, negotiating and litigating on a wide variety of other matters regarding distribution, agency and e-commerce (with a focus on automotive and other high-end consumer goods). He is a lecturer of several courses and the author of several publications on the subject of competition litigation. Rick is a member of the Dutch Associations for Competition Law, European Law and Distribution Franchise and Agency Law.

ANDONI DE LA LLOSA GALLARZA

Redi Litigation

Andoni de la Llosa Gallarza is a founding partner of Redi Litigation. Before that, he worked in the litigation and arbitration department of other renowned law firms in Spain such as Baker & McKenzie, Garrigues, Uría and Pérez-Llorca. These firms allowed me to gain experience in all areas of civil, corporate and criminal law litigation, both before the courts and arbitration tribunals.

In addition, my expertise in damages claims arising out of antitrust infringements allows me to give lectures in different forums (e.g., the Barcelona Bar Association, the University of Deusto) and to contribute to several press and specialised publications.

MIGUEL DEL PINO

Marval, O'Farrell & Mairal

Miguel del Pino joined Marval, O'Farrell & Mairal in 1998 and has been a partner since 2008. His area of specialisation is centred on competition and mergers and acquisitions. His professional work focuses on advising clients and representing them before the antitrust authorities on matters relating to pre-merger control, cartel investigations, anticompetitive investigations and general market investigations. Mr del Pino has also dealt with mergers, acquisitions and joint venture transactions, advising buyers and sellers on the transfer of shares or assets in Argentina. He has been very active in advising foreign clients on setting up businesses in Argentina and compliance with local regulations.

He has published several works related to his area of expertise, and has participated as a panellist and moderator in different conferences related to his area of expertise. He is an assistant professor of competition law on the postgraduate courses in business and economics law at the Universidad Católica. He graduated as a lawyer from the Universidad

de Buenos Aires in 1994, and in 1997 obtained a master's degree in law from the University of Pennsylvania (Philadelphia).

SANTIAGO DEL RIO

Marval, O'Farrell & Mairal

Santiago del Rio is a partner of Marval, O'Farrell & Mairal. He joined the firm in 2006 and has been involved in competition issues ever since. He regularly provides advice to companies regarding merger control regulations in Argentina over a wide range of markets, and also provides counsel to companies that either undergo antitrust investigations or decide to initiate them during Antitrust Commission investigations, and regarding the challenge of decisions before the appellate courts and the Supreme Court of Justice.

Between 2010 and 2011 he was seconded to the Spanish firm Uría Menéndez, where he dealt with both European Union and Spanish competition matters in the firm's Brussels and Madrid offices. He participated in Phase I and II merger control proceedings, anticompetitive investigations under Sections 101 and 102 of the TFEU, as well as appeals before the European Court of Justice.

He graduated with honours in 2005 from the Universidad del Salvador, and holds a postgraduate diploma in economics for competition law from King's College London.

NAOMI DEMPSEY

Houthoff

Naomi Dempsey is counsel with Houthoff. She specialises in corporate litigation, with particular emphasis on private litigation of competition claims, employment law and litigation before the Dutch Supreme Court. Naomi was admitted to The Hague Bar in 2005 after obtaining her law degree at Leiden University in 2003 and a *magister juris* degree at Oxford University in 2004.

BERNT ELSNER

CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH

Bernt Elsner leads the Austrian team for EU competition law, public procurement law and public law. He is head of the global CMS practice group for public procurement, and a member of the managing team of the global CMS practice group for competition and EU. Bernt studied law at the University of Vienna and business administration at the Economic University of Vienna. He was a law clerk at the Austrian Constitutional Court and has over 20 years of experience as an attorney in Vienna and Brussels. Bernt has authored numerous books and articles. He is a well-known expert with specific experience of cross-border merger control matters, anticompetitive behaviour in tender procedures, and antitrust damage and antitrust compliance.

EYTAN EPSTEIN

M Firon & Co

Eytan Epstein is a senior partner at M Firon & Co. Mr Epstein has repeatedly been listed in *The International Who's Who of Competition Lawyers*, and has also been elected by leading

research organisations, such as *Chambers and Partners* and *The Legal 500*, as one of the leading competition law practitioners in Israel.

Mr Epstein received his law degree from the Faculty of Law at Tel Aviv University (1984) and, after being admitted to the Israel Bar in 1985, he worked in DG IV (competition) in Brussels. He established the law firm in 1989. He has served as a lecturer and assistant professor at the Tel Aviv University Law School, and teaches EC competition and international trade law at the Tel Aviv Business College.

He served as a member of the government committee for the preparation of Israel towards the European Union (1992) and the foreign trade committees of the Israel Industrialists' Association, the Israel CPA Association and the Israel Chambers of Commerce. Mr Epstein is a member of the International Bar Association (IBA) and served until recently as co-chair of the international sales committee. In 2008, he was a member of a special taskforce formed by the IBA to comment on the draft Non-Horizontal Merger Guidelines issued by the European Commission. He is the representative of the Israeli Bar to the IBA, serves as acting chair of the Israeli Bar's antitrust committee and chairs the Israel Bar Annual Conference. Mr Epstein is also the Israeli Bar's representative to the Knesset (the Israeli parliament) with respect to all economic and antitrust issues.

Mr Epstein practises corporate, commercial and trade law, and specialises in antitrust law. He has extensive experience dealing with competition issues before the Israeli Antitrust Authority, and represents Israeli and foreign clients engaged in the airline, telecommunications, energy, credit card, insurance, computer, pharmaceuticals, retail and other industries. He advises frequently on international M&A filings in Israel and collaborates with the leading antitrust international law firms.

Mr Epstein has published numerous articles on antitrust and the legal environment of Israel's foreign trade. *Inter alia*, he is the author of the chapters on Israel in the *Oceana Digest of Commercial Laws of the World* (Kluwer Law, 2000) and *Warranties and Disclaimers* (Kluwer Law and the IBA, 2002).

H ERCÜMENT ERDEM

Erdem & Erdem Law Office

Prof Dr H Ercüment Erdem is the founder and senior partner of Erdem & Erdem. He has more than 30 years' experience in international commercial law, competition and antitrust law, mergers and acquisitions, privatisations, corporate finance and arbitration. He serves international and national clients in a variety of industries including energy, construction, finance, retail, real estate, aerospace, healthcare and insurance.

He has collaborated for many years with the ICC, and has actively participated in several ICC task forces, drafting model contracts for international business (e.g., agency, distribution, confidentiality, mergers and acquisitions, occasional intermediaries, Incoterms). He is the co-chair of the ICC Commission on Commercial Law and Practice, a member of the ICC Incoterms Experts Group, a council member of the ICC Institute of World Business Law and a member of the ICC International Court of Arbitration.

He has acted as chair and sole or party-appointed arbitrator in many international and national arbitrations under different rules. He is a member of the ICC Turkish National Committee Arbitration, the Istanbul Arbitration Centre (ISTAC) and the Association Suisse de l'Arbitrage (ASA).

According to *The Legal 500*, he 'is very experienced in cartel investigations, distribution and licensing agreements, alleged abusive conduct and state aid'.

SHANI GALANT-FRANKFURT

M Firon & Co

Shani Galant-Frankfurt is an advocate at M Firon & Co and part of the antitrust and regulatory affairs department.

Ms Galant-Frankfurt advises on both civil and criminal antitrust cases. Her practice includes, among others, notifications of mergers, advising clients and providing legal opinions in respect of all aspects of competition and antitrust law.

Ms Galant-Frankfurt received her law degree (LLB) with honours from Interdisciplinary Center Hertzliya (IDC) in 2014 and her master of laws (LLM) with highest honours from IDC in 2017.

SIBO GAO

King & Wood Mallesons

Sibo Gao joined King & Wood Mallesons in 2013 and is an associate in the firm's antitrust and competition group in Beijing. She specialises in antitrust and anti-unfair competition law. Ms Gao's practice focuses on antitrust investigation, antitrust litigation and merger filing. She has advised clients on various antitrust-related issues, including assisting clients in coping with antitrust investigations and advising clients on seeking leniency treatment and on antitrust compliance matters. In addition, she has represented many multinational companies, as well as large domestic companies, in merger control proceedings before MOFCOM.

MARCOS PAJOLLA GARRIDO

Pinheiro Neto Advogados

Marcos Pajolla Garrido graduated in law at the Faculdade de Direito da Universidade de São Paulo, Brazil in 2007.

He specialised in competition law at the São Paulo Law School of Fundação Getúlio Vargas, Brazil in 2009.

He has an LLM degree in corporate and commercial law from the London School of Economics and Political Science, 2015.

He was a foreign associate at Bredin Prat, Brussels, in 2016.

He speaks English and Portuguese.

RAHUL GOEL

Cyril Amarchand Mangaldas

Rahul Goel is a partner at Cyril Amarchand Mangaldas. With over 17 years of experience, his practice focuses on competition and technology, media and telecommunication (TMT) laws.

Rahul advises clients on all issues relating to competition law including behavioural and enforcement matters (cartels, bid rigging, anticompetitive agreements, dominance) and merger control provisions. He also advises and assists companies and stakeholders in competition law compliance, audits and training.

He assists and represents clients before the Supreme Court of India, high courts (writ jurisdiction), Competition Appellate Tribunal and Competition Commission of India (CCI). He also advises and assists companies in auditing their existing agreements and practices, and forming compliance programmes and procedures in accordance with competition law.

Rahul has worked on some of the key competition cases in India and has been instrumental in developing competition law jurisprudence. Among many other things, he successfully obtained the landmark order on relevant turnover from COMPAT, and got the same confirmed by the Supreme Court of India (in May 2017); the first order from the CCI granting cross-examination in the *Chemists & Druggists* case; and an order from the High Court of Delhi stating that the CCI is required to establish jurisdiction prior to initiating an investigation. He also represented the Informant Builders Association of India in the historic *Cement* cartel case involving 13 cement companies.

Rahul holds the distinction of being nominated, twice, as a finalist at the most prestigious *Global Competition Review* annual awards at Washington, DC in 2013 (for obtaining the landmark order in the *Cement* cartel matter) and 2014 (for obtaining an order on relevant turnover).

MIHAELA ION

Popovici Nițu Stoica & Asociații

Mihaela Ion is a partner at Popovici Nițu Stoica & Asociații and head of the competition practice group. Her area of expertise covers in particular antitrust litigation, unfair trade practices, consumer law, merger control proceedings and state aid. She also assists clients in structuring and implementing compliance programmes, providing regular training as external legal counsel on all relevant aspects of competition law. *Chambers Europe* reported Ms Ion as having 'great expertise in antitrust investigations and wider competition law'. Ms Ion holds a degree from 'Lucian Blaga' University of Sibiu and is a member of the Romanian Bar Association. She also holds a master's degree in European and international business, competition and regulatory law from Freie Universität Berlin, a master's degree in competition from the Bucharest Academy for Economic Studies, and a master's degree in international relations and European integration from the Romanian Diplomatic Institute.

MERT KARAMUSTAFAOĞLU

Erdem & Erdem Law Office

Mert Karamustafaoğlu, a competition and compliance expert at Erdem & Erdem, specifically focuses on competition compliance programmes, mergers and acquisitions, joint ventures, commitment implementation, privatisations, investigations within the scope of competition law and competition law practices in the energy sector.

He worked at the Turkish Competition Authority for 15 years. He was the Chief Competition Expert with the Authority. Throughout this period, he actively took part in all kinds of competition investigations conducted with regard to competition violations in privatisations of the electricity, fuel oil, natural gas, mining, pharmaceutical, cement, ceramic and cinema sectors, and in public tenders. Moreover, Mert Karamustafaoğlu has frequently taken part in law-making processes and educational activities conducted within the body of the Competition Authority. He has also attended the preparation processes of the secondary legislation on competition law, in-service training and certificated internship programmes in this regard.

Mert Karamustafaoğlu received his master's degree in law from the Freie Universitaet of Berlin in 2010, and is currently pursuing his postgraduate programme on energy and competition law. Additionally, he is part of the publication board of the *Energy Law Journal*

that is published by the Energy Law Research Institute, and he is also member of the management board of the Institute.

ALBERT KNIGGE

Houthoff

Albert Knigge has comprehensive experience in complex, multiparty cross-border disputes. He acts as a defence counsel for corporate and financial institutions with a particular focus on class action litigation and mass claim settlements and in follow-on civil litigation. He heads a team of experienced competition litigation lawyers at Houthoff. He is admitted to the Bar as a Supreme Court litigator. He is the author of several publications, primarily on the subject of procedural law and tort law, and a board member of the Dutch Association for Procedural Law. He is recommended in *Chambers Europe* and *Chambers Global*. 'Sources say: "He is just one of the best litigators I have ever worked with. He has an extraordinary range of capabilities, his appreciation for the nuances of litigation has been incredibly helpful and he has been a great resource for us."' (*Chambers Europe*, 2016, dispute resolution) and 'He acts on cross-border disputes with great experience as defence counsel to a number of financial institutions and international corporates.' (*Chambers Global* and *Chambers Europe*, 2017, dispute resolution).

OLGA LADROWSKA

Slaughter and May

Olga Ladrowska is an associate in the dispute resolution group. She has experience advising clients on a wide range of contentious commercial matters, with a particular focus on competition litigation. Olga has acted on complex multi-jurisdictional follow-on cases, including before the Court of Appeal.

FREDRIK LINDBLOM

Advokatfirman Cederquist KB

Fredrik Lindblom is a partner in Cederquist's EU, competition and procurement group. Starting out in Brussels with two international law firms and the European Commission, Fredrik has continued during the past 18 years to work in Stockholm on competition law aspects of cross-border transactions and multinational companies' antitrust compliance.

Over the years, Fredrik has conducted over 100 merger notifications in more than 20 jurisdictions worldwide, and he is recognised as a very business-oriented counsellor. In addition, he has advised both national and international manufacturers on their distribution setups to avoid competition law pitfalls. He has also advised several companies in relation to competition damage claims in various jurisdictions, and most recently acted as legal expert in relation to a large follow-on damages claim in the Netherlands against the participants in the European *Sodium Chlorate* cartel.

Fredrik Lindblom is ranked by *Chambers* (since 2008), *The Legal 500* and *GCR 100*, with comments such as 'Clients describe Fredrik Lindblom as an "excellent" lawyer. He is particularly noted for his experience with M&A, vertical restraint and anti-dumping matters' and 'Fredrik Lindblom is described by sources as "very skilled" and "a pleasure to deal with" both because of his personal character and because of the high quality of his work'.

MAZOR MATZKEVICH

M Firon & Co

Mazor Matzkevich is a partner at M Firon & Co, heading the competition, antitrust and regulatory affairs department.

Ms Matzkevich's practice focuses on all aspects of antitrust including litigation in administrative and criminal cases, merger notifications and the Concentration Law and Food Law.

Ms Matzkevich joined the Israel Antitrust Authority in 1998, and between 1999 and 2002 led the Authority's Criminal Division. Ms Matzkevich supervised the Authority's prosecutors and represented the Authority at the district courts and the Supreme Court, leading the key criminal cases of the Authority, including the first case in which prison sentences were imposed on cartel members.

In addition, Ms Matzkevich was responsible for the Authority's regulatory activity in sectors such as professional organisations, water and the environment.

In 2003, after being admitted to the New York State Bar, Ms Matzkevich joined the Federal Trade Commission (FTC) as a staff attorney. During her six-year tenure, Ms Matzkevich practised both antitrust and consumer protection law, and was the lead counsel or co-counsel of merger and non-merger cases involving various industries, including high-tech, retail, pharmaceuticals, agro-chemistry, energy, hospitals and food.

Ms Matzkevich was part of the FTC's litigation team in the *North Texas Specialty Physicians* and *Whole Foods/Wild Oats* cases. She also took part in the *Intel* investigation.

In 2010, Ms Matzkevich joined the law firm of Epstein Chomsky, Osnat and Co as a partner, until its merger with M Firon in 2016.

Ms Matzkevich has authored several professional publications, including the Israeli chapter in *Merger Control* (2011, 2014 and 2017; JF Francois Bellis and P Elliot, Van Bael & Bellis).

Ms Matzkevich was elected one of the 100 leading women worldwide in competition law by the *Global Competition Review* in 2016, and was recognised as a 'Competition Future Leader Partner' by *Who's Who Legal 2017*.

NATALIA MIKOŁAJCZYK

Linklaters C Wiśniewski i Wspólnicy

Natalia Mikołajczyk is an associate at Linklaters specialising in infrastructure and energy projects, as well as international dispute resolution. Prior to joining Linklaters, she practised in a small claimant' antitrust boutique law firm in London. Natalia graduated from the Faculty of Law and Administration at the University of Warsaw and obtained her LLM degree from the University of California, Berkeley, School of Law.

SUSAN NING

King & Wood Mallesons

Susan Ning joined King & Wood Mallesons in 1995. She is a senior partner and head of the commercial and regulatory group. Her practice includes merger control filings, antitrust investigations, compliance and antitrust litigation. Since 2003, she, together with her team, has undertaken hundreds of antitrust merger control filings on behalf of clients, mostly consisting of multinational corporations. Susan has also assisted a number of clients on

confidential investigations of cartel conduct, resale price maintenance and abuse of market dominance. Meanwhile, Susan has furnished legal advice to a number of clients regarding establishing and improving their antitrust and competition compliance systems and conducting internal audits.

Ms Ning was also one of the first Chinese lawyers to practise international trade and investment law. She has been widely recognised for her international trade and investment work, which covers a wide range of issues, including anti-dumping, safeguards, countervailing and WTO dispute settlements. In 2008, Ms Ning led the firm's Olympics legal counsel team: the firm was chosen as the sole Chinese legal counsel to the Beijing Organising Committee of the Games of the XXIX Olympiad. As head of the team, Ms Ning provided a wide range of legal advice.

Susan also practises in the areas of cybersecurity and data compliance, with publications in a number of journals such as the *Journal of Cyber Affairs*. Susan's practice areas cover, *inter alia*, self-assessment of network security, responding to network security checks initiated by authorities, data compliance training, due diligence of data transaction or exchange, and compliance of cross-border data transmission. Susan has assisted companies in sectors such as IT (including emerging blockchain technology), transportation, online payments, consumer goods, finance (including digital currency) and the internet of vehicles in dealing with network security and data compliance issues.

CHRISTOPHER LOUIE D OCAMPO

Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)

Christopher Louie D Ocampo is a senior associate in ACCRALAW's litigation and dispute resolution department. Mr Ocampo's practice involves, among others, criminal, commercial and antitrust ligation and advice. Currently, Mr Ocampo is part of the firm's team representing the Philippines' largest telecommunications entity in the first case under the Competition Act involving a 69.1 billion Philippine peso joint acquisition.

Mr Ocampo obtained his *Juris Doctor* from the University of the Philippines in 2012 where he received the Dean's Medal for Academic Excellence. In 2018, he obtained his master's degree in law and finance from the University of Oxford.

THOMAS OSTER

Bird & Bird AARPI

Thomas is a partner in Bird & Bird's competition and EU practice, based in Paris.

His practice covers both contentious and non-contentious national and European competition law.

Thomas has substantial experience of advising on cartel investigations and assisting companies in preparing leniency applications before the European Commission and the French Competition Authority. He helps to develop and implement competition compliance programmes, and provides assistance in notifications of transactions to the European Commission under the EC Merger Regulation and to the French Competition Authority. He also assists clients in relation to antitrust damages actions.

Thomas' experience of competition law covers different angles, having worked in practice and in house, and having done an internship at the French Competition Authority. Prior to joining Bird & Bird, he worked for 14 years in the Paris office of a major global law firm.

Thomas regularly participates in seminars and conferences, and is the author of several articles on competition law. He is a member of the association of competition law practitioners (APDC) and of the French association for the study of competition law (AFEC).

CHUL PAK

Wilson Sonsini Goodrich & Rosati

Chul Pak is a partner in Wilson Sonsini Goodrich & Rosati's antitrust practice, where he focuses on antitrust litigation, mergers and counselling. Chul defends clients in class actions, individual lawsuits and complex multi-district antitrust litigations across the United States. His litigation matters include representing manufacturers, services companies and technology firms in monopolisation, tying, exclusive dealing, price fixing, patent misuse and conspiracy claims. Chul also counsels companies in mergers and non-merger investigations before the FTC, the DOJ and numerous state attorneys general. Prior to joining Wilson Sonsini, Chul served as the assistant director of the Mergers IV Division at the FTC. In that role, Chul supervised a 25-attorney team responsible for investigating mergers and acquisitions across a wide spectrum of industries, including consumer goods (food and beverages), retail stores (supermarkets, department stores and other retail venues), cable and related media entertainment, and hospitals. Chul has also represented the FTC in numerous high-profile trials in federal court and the FTC's internal administrative adjudication tribunal.

KATE PENG

King & Wood Mallesons

Kate Peng joined King & Wood Mallesons in 2004 and is a partner of the antitrust team in the firm's Beijing office. She specialises in antitrust, competition and intellectual property law. Ms Peng is one of the very few antitrust attorneys who have extensive experience in contentious antitrust matters. She has been focusing on antitrust investigations and litigation since she joined KWM's antitrust team as a partner in early 2012. Representing various types of clients, including multinationals, state-owned companies and government agencies in dozens of antitrust investigations and litigations enables her to provide valuable insight and guidance to clients throughout proceedings. Ms Peng is also one of the very few antitrust attorneys who have a strong intellectual property background: she began practising intellectual property law, both contentious and non-contentious, in 2006. Ms Peng's distinct specialisation in the overlap between intellectual property abuse and antitrust issues, and her unique knowledge of contentious and non-contentious matters, make her a preferred choice for clients when they encounter complicated antitrust issues and issues involving intellectual property.

ALBERT POCH TORT

Redi Litigation

Albert Poch Tort founded Redi Litigation after having worked at other renowned law firms in Spain where he became a business and antitrust litigation specialist before the civil and criminal courts of justice.

He also has extensive experience in national and international arbitrations, having intervened in arbitrations of the International Chamber of Commerce (ICC) and the Civil and Mercantile Court of Arbitration (CIMA), among others.

From 2015 to date, he has been listed by *Best Lawyers* for his insolvency and reorganisation law and litigation work.

His working languages are Catalan, Spanish, English, French and Italian.

WOJCIECH PODLASIN

Linklaters C Wiśniewski i Wspólnicy

Wojciech Podlasin is a senior associate in Linklaters' Warsaw competition practice. He specialises in antitrust, merger control and state aid cases and gained extensive practical experience as a member of Linklaters' Warsaw and Beijing competition teams. Wojciech has a broad sector expertise, including IT, energy, financial services and chemicals. He is the co-author of a leading commentary on the part of the Polish Competition Act concerning merger control. Wojciech read law at the University of Warsaw and the London School of Economics, and finance at the Warsaw School of Economics.

PATRICIA-ANN T PRODIGALIDAD

Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)

Patricia-Ann T Prodigalidad is a senior partner in ACCRALAW's litigation and dispute resolution department. Ms Prodigalidad focuses on commercial, securities and antitrust litigation as well as arbitration. She advises clients on various matters including debt and asset recovery, corporate rehabilitation, AML and competition law. She is an accredited arbitrator and adjudicator.

Ms Prodigalidad obtained her bachelor of laws degree from the University of the Philippines, *cum laude*, graduating class salutatorian. She then topped (ranked first in) the 1996 Philippine Bar examinations. In 2004, she obtained her master's degree in law from Harvard Law School.

CAMILLA SANGER

Slaughter and May

Camilla Sanger is a partner in the dispute resolution group. Camilla's practice includes handling complex commercial disputes of a varied nature, often involving multiple jurisdictions, with particular expertise in competition litigation and regulatory investigations. Camilla has acted on a large number of high profile follow-on and standalone damages cases, including before the Court of Appeal. Camilla is recognised in *Who's Who Legal Competition – Future Leaders* and has been named a 'Next Generation Lawyer' in both commercial litigation and competition litigation in *The Legal 500 UK*. She is frequently asked to speak at panel events on private enforcement issues.

VANDANA SHROFF

Cyril Amarchand Mangaldas

Vandana Shroff is a partner at Cyril Amarchand Mangaldas. She has over 28 years of wide-ranging experience in general corporate matters and specific expertise in private equity.

She has extensive experience in corporate and competition law and has been advising both domestic and international clients on all aspects of their activities, including mergers, acquisitions, restructuring, foreign investment and commercial agreements.

She has acted for several foreign and domestic private equity funds and venture capitalists, both in public and private investments, and has handled all aspects, including due diligence, regulatory filings, open offers and other compliance issues. Her clientele includes blue-chip private equity funds across a range of geographies.

PAUL SLUIJTER

Houthoff

Paul Sluijter is counsel in Houthoff's corporate and commercial litigation practice group. His particular field of expertise is private international law. Paul focuses on complex cross-border disputes, including several cartel damages proceedings, class actions and shareholder liability litigation. Paul graduated and obtained his PhD in civil procedure law from Tilburg University before joining Houthoff in 2012.

JONATHAN SPEED

Bird & Bird LLP

Jonathan Speed is a partner in Bird & Bird's international dispute resolution group, based in London. He has extensive experience of domestic and international commercial litigation acting for multinational companies, public sector clients and individuals. He has particular expertise in disputes in the technology and communications and automotive sectors, and is regularly involved in disputes relating to the private enforcement of competition law.

WILLIAM TURTLE

Slaughter and May

William Turtle is a partner in the competition group. He has extensive experience in a wide range of competition and regulatory matters, including global investigations, merger control and antitrust. On the contentious side, he has advised on a range of multi-jurisdictional standalone and follow-on damages actions as well as on appeals before the European courts. William is recognised as a leading competition lawyer by *Who's Who Legal Competition*.

CANDICE UPFOLD

Norton Rose Fulbright South Africa Inc

Candice Upfold is a senior associate in the antitrust and competition team in Johannesburg, South Africa. She has extensive experience providing competition law opinions and obtaining merger clearances from the competition authorities within South Africa, other sub-Saharan African jurisdictions and COMESA. She has assisted with several large mergers in the industrial and manufacturing, insurance and mining sectors.

Candice also has experience in cartel investigations, including applications for corporate leniency, dawn raids and settlement negotiations.

Candice also advises clients in proceedings before sectoral regulators such as the National Energy Regulator of South Africa (NERSA) and the International Trade Administration Commission (ITAC).

Candice has provided a comparative analysis of the European Merger Regulation in an exclusive chapter in the 2014 *International Economic Law and African Development* guide.

The chapter deals with the jurisdiction of the COMESA Competition Commission for merger transactions.

She also presented a paper at the Seventh Annual Conference on Competition Law, Economics & Policy comparing the approach taken by COMESA and the European Union to jurisdiction over mergers and thresholds, and is a contributor of articles on competition law and related issues to legal journals, including the *Competition Policy International Antitrust Chronicle*, the *Global Antitrust Compliance Handbook* and *The Merger Control Review*.

Candice joined the practice as a candidate attorney in January 2010, and holds both an LLB and LLM degree in business law from the University of KwaZulu-Natal. She also holds an LLM degree in international law with a focus on international trade law from the University of the Witwatersrand, Johannesburg.

DAVID VAILLANCOURT

Affleck Greene McMurtry LLP

David Vaillancourt is a partner of Affleck Greene McMurtry LLP and a member of the firm's competition group. David represents clients who are targeted by the Competition Bureau as well as in multi-jurisdictional class actions. He has acted as trial and appellate counsel before all levels of provincial court, the Competition Tribunal and the Federal Court of Appeal.

WEYER VERLOREN VAN THEMAAT

Houthoff

Weyer VerLoren van Themaat has been assisting international clients for over 25 years in complex cases relating to merger control and cartel defence litigation, and leads Houthoff's competition practice group. He was resident partner at Houthoff's Brussels office from 1997 to 2005, after which he returned to Amsterdam. Weyer was chair of Lex Mundi's antitrust competition and trade group from 2014 to 2016, and is a non-governmental adviser to the ICN on behalf of the Dutch Authority for Consumers and Markets (ACM). He publishes and speaks regularly on competition law-related subjects. Weyer is (highly) recommended in, *inter alia*, *Chambers Europe*, *The Legal 500*, *Who's Who Legal* and *Best Lawyers*. He is 'praised by his clients for his expertise in cartel cases and excellent litigation skills'.

DANIEL P WEICK

Wilson Sonsini Goodrich & Rosati

Daniel P Weick is an associate in the New York office of Wilson Sonsini Goodrich & Rosati and a member of the firm's antitrust practice. Dan has extensive experience in civil antitrust litigation, having represented plaintiffs and defendants in all phases of the litigation process, from pre-complaint investigations and negotiations through trial, appeal and judgment enforcement proceedings. He also has represented clients before multiple government agencies, including the US DOJ, the US State Department, the FTC, various state attorneys general, and the US Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights, among other agencies. Dan is a graduate of the New York University School of Law, where he won the Betty Bock Prize in Competition Policy. During law school, he served as a student advocate in the NYU Supreme Court Litigation Clinic, where he contributed to multiple briefs before the US Supreme Court. Dan currently serves as vice-chair of the American Bar Association Section of Antitrust Law's Economics Committee.

PETER WILLIS

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Peter Willis is a partner in Bird & Bird's competition and EU law practice group, based in the firm's London office. He provides no-nonsense advice on the application of EU and national competition and regulatory rules.

He has particular expertise in the area of competition litigation, and in particular follow-on damages claims. He also provides feasibility and defensive advice on follow-on litigation to potential claimants and defendants. Recent experience includes what is thought to have been the first follow-on damages claim in the Scottish courts; advising UK Power Networks on its follow-on damages claim against members of the *Gas Insulated Switchgear* cartel; advising Polar Air Cargo LLC, a contribution defendant, in the *Emerald v. BA* damages proceedings in the High Court following the *Air Cargo* cartel decision of the European Commission; advising TomTom on its claim against Samsung for damages resulting from losses caused by the global *LCD* cartel; and advising Beko and Arçelik in their damages claim against members of the *CRT* cartel.

MARLENE WIMMER-NISTELBERGER

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Marlene Wimmer-Nistelberger has been an associate at CMS Reich-Rohrwig Hainz in Vienna since 2014. Her main areas of expertise include EU state aid law, competition law as well as public law. She holds a master's degree in law from the University of Vienna. Furthermore, she is a Master of Laws in international business law with distinction of Queen Mary Law Faculty of the University of London, where she was marked best in her specialism. She passed the Austrian Bar exam with distinction in 2018.

DIETER ZANDLER

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Dieter Zandler is a partner at CMS Reich-Rohrwig Hainz in Vienna. He specialises in European and Austrian antitrust law, representing international and Austrian clients especially in cartel (fine), antitrust damage, antitrust compliance, merger control and abuse of dominance proceedings before national competition authorities and courts and the European Commission and EU courts. He has over 10 years of experience as a lawyer, holds a doctorate from the University of Salzburg and is a Master of Laws, Central European University in Budapest. Prior to joining CMS, he clerked at the Austrian cartel court, and he has been an intern with two well-known international law firms in Vienna. In 2011, he was seconded to the CMS EU law office in Brussels.

CRISTIANNE SACCAB ZARZUR

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Cristianne Saccab Zarzur graduated in law from the Universidade Presbiteriana Mackenzie, Brazil in 1995.

She specialised in law and the fundamentals of the economy for lawyers at the Fundação Getúlio Vargas – Escola de Administração de Empresas de São Paulo, Brazil in 2002.

She was a foreign associate at Howrey Simon Arnold and White LLP from 2000 to 2001.

She is a permanent board member of the Brazilian Institute of Competition and Consumer Relations, having previously been its president (from 2014 to 2015), vice president (from 2012 to 2013), director of legal affairs (from 2010 to 2011) and a counsellor (from 2006 to 2009).

She speaks English, Italian and Portuguese.

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