Minutes
Spring Council Meeting
American Bar Association
Section of Antitrust Law

The JW Marriott Hotel - Boardroom
Washington, DC
April 5, 2016
2:04 p.m. – 5:00 p.m.

Chair Henry called the Council Meeting to order at 2:04 p.m.
She welcomed the following Officers, Council Members, staff members and guests:

Officers/Council Members
The following Council Members and Officers were present:


The following Council Members were not in attendance:

Sean Gates and Douglas C. Ross.

Governmental Representatives to the Council
William J. Baer (DOJ Representative), and Edith Ramirez (FTC Representative), and Victor J. Domen (National Association of Attorneys General Representative).
Judicial Representative Susan Y. Illston was not in attendance.

**Liaisons, other Presenters and Attendees**

Jesus Alvarado-Rivera, Juan Arteaga, Dr. Baskaran Balasingham, Macy Creighton, Timothy P. Gallivan, Jimmy Goodman, Ilene Gotts, Daniel Haar, Renata Hesse, August Horvath, Vandy Howell, Jason Hyatt, Ilunga Kalala, Scott A. Martin, Tina Miller, Scott P. Perlman, Angelo Russo, and April J. Tabor.

**Section Staff**

Deborah Morgan, Margret Stafford, and Joanne Travis.

The Section’s [Conflicts of Interest Policy](#) was provided to Council Members with the [agenda](#) for the meeting posted on the Leadership Portal. The [agenda](#) includes links to documents submitted for this meeting. The below minutes are not necessarily in the order of occurrence during the Council Meeting. Due to the limited availability of certain speakers and other schedule changes, Chair Henry re-ordered certain portions of the meeting. Where Officers submitted written reports, those reports were accepted by Council and those Officers relied on such written reports without any substantive modification, unless otherwise noted. In addition, where approximate figures were mentioned during the meeting and the relevant written report submitted before the meeting included precise figures, the more precise figures provided in the written report are generally included below. Finally, certain material from the written reports submitted for the meeting may be included the minutes where such inclusion assists the Section in maintaining an accurate record of the Section’s activities.

1. **Reports - Council Liaisons/Special Guests**
   
   **A. U.S. Department of Justice, Antitrust Division – Assistant Attorney General William Baer**

   He reviewed developments at the Antitrust Division since 2012 hiring freeze and noted that the Division is back on track. One of his goals is to communicate more
with staff. He then reviewed new developments since his last update to Council, including: the complaint against the ValueAct Capital entities (an activist investment firm that allegedly had purchased over $2.5 billion of Halliburton and Baker Hughes voting shares without complying with the HSR Act’s notification requirements), the Supreme Court’s denial of certiorari in the eBooks case, the DOJ suit to block the acquisition by Tribune Publishing Company (publisher of the Los Angeles Times) of the Orange County Register, the complaint against United related to not using slots at Newark Airport (where he noted that there was no longer an issue because the FAA had concluded that the slots were restraining competition and it no longer viewed the Newark Airport as a congested airport), ongoing Libor cases, the complaint alleging Chesapeake’s CEO had participated in a conspiracy, and the Division’s participation in a workshop on cartels hosted by the FTC. He observed that antitrust enforcement works best when it's perceived as nonpartisan. With respect to the Congressional oversight hearings, he commented that it was great to have Congress see antitrust enforcement as a matter of law enforcement. Most significantly he commented that parties have been coming to the Division with inadequate remedies and that some things are not fixable with respect to the joint ownership. He noted that Einer Elhauge had written on this subject (see Horizontal Shareholding As An Antitrust Violation (July 2015) and Horizontal Shareholding, 109 Harvard Law Review 1269 (2016)) and that joint ownership can be a drag on competition. Note: The Division’s 2016 Annual Spring Update was issued a few days after the report to Council.


For background, see FTC Chairwoman Releases 2015 Annual Highlights (issued April 6, 2016). FTC Chairwoman Edith Ramirez started off by noting the death of Tom Rosch and the changes in the composition of the FTC with the departure of
Julie Brill, following. She then reviewed the current activities the Federal Trade Commission.

She reviewed litigating the proposed Staples/Office Depot merger, hospital merger challenges (proposed merger of Advocate/NorthShore in Chicago, Cabell Huntington Hospital/St. Marys Medical in Huntington, WV, and The Penn State Hersey Medical Center/PinnacleHealth System in Harrisburg, PA), and the suit against Endo Pharmaceuticals (no authorized generics as consideration). With respect to advocacy, she noted the FTC comment in connection with tele-medical services that licensed out of state doctors should be treated in the same manner as in state doctors. For international activities, she mentioned the ICN Second Decade Project, a scheduled meeting with Chinese enforcement officials, and the next ICN meeting scheduled for Singapore. For the commission’s consumer protection work, she noted the actions against VW, DeVry University and Lord & Taylor native advertising complaint and settlement, the FTC complaint against ASUSTeK for a computer router security flaw, FTC’s review of compliance with Payment Card Industry Data Security Standards and conflicts of interest, and the upcoming PrivacyCon where the goal is to spur original research in connection with consumer privacy and data security issues.

C. ABA Board of Governors Report – Jimmy Goodman, Liaison from the ABA Board of Governors

He noted that the Section is known for its good work. He mentioned that the ABA has been faced with the disappearance of hundreds of lawyers and that there has been governance reorganization. The Law Students Division had a $600,000 shortfall. A general review is under way.

D. Multistate Antitrust Task Force/NAAG Report – Report by Chair Victor J. Domen
Vic Domen provided an update on the activities of state enforcement officials. He stated the NAAG Antitrust Task Force holds a meeting of State enforcers on the Tuesday before the spring meeting and this year that meeting was attended by 37 state enforcers. He noted the continued focus on healthcare and consideration of the impact *NC Dental*. He noted that 21 states were on the reverse payments (non-cash) amicus brief, the muni-bond settlement, statement of Interest filed opposing the release of claims that have no value, and California settlement on pirated software. With respect to healthcare, States remain active in merger reviews and in the area of pharmaceuticals reverse payments remain an area of interest. A key area of concern relates to the implications of *NC Dental* and whether issues will be resolved through legislation or executive action (currently under review in at least 25 states) or through litigation (17 states are in litigation). He noted that he didn't believe that legislation will provide all of the answers and that it is more likely that there will be additional litigation. He expressed appreciation to the Section for the SEPEG program grants (State Enforcer Participation Enhancement Grants). In response to a question from Kevin O’Connor about how could the Section increase the involvement by state consumer protection enforcement officials, he noted that many states have separate practice areas for the antitrust enforcement officials and the consumer protection enforcement officials, and that Trish Connors has responsibility for both areas. In response to another question from Kevin O’Connor, he noted that State AGs were actively working investigations with the Antitrust Division and that state AG know the local markets. As an example, in the Sysco Foods case, his office handled interviews in Memphis.

E. Young Lawyers Division Report – Jesus M. Alvarado-Rivera (Written report)

F. Law Student Division Report – Jason Hyatt (Written report)
2. Officer Reports/Updates
   A. Chair Report – Roxann Henry
      • **Recent Activities.** Chair Henry reviewed the recent activities. She noted the fantastic attendance by Asian Companies and the private bar at the 11th *International Cartels Workshop* and commended the work of ABA Conference Co-Chairs: Jarrett Arp and Donald Klawiter.
      • **OCED Presentation.** She noted the upcoming OECD meeting where the Section has been asked to make a presentation on the Section’s *Foreign Investment and Antitrust Interface Task Force Report*.
      • **LAMP Project Funding Request.** Chair Henry reviewed the request from the ABA’s Standing Committee on Legal Assistance for Military Personnel to contribute to the Lamp Project and noted that the Section had previously contributed. **It was moved, seconded and APPROVED by voice acclaim:** Resolved: that a contribution by the Section contribute $10,000 to the Lamp Project in the amount of $10,000 be APPROVED.
      • **RCM Responsibilities.** Chair Henry reminded Council members of their responsibilities as Responsible Council Members. At the Midwinter Council Meeting, she requested each RCM to report to Council at the Spring Council Meeting on the use of Connect by the Committees for which they are the Responsible Council Member. Due to time constraints, the reports were deferred.
      • **Spring Meeting Issues.** She noted that additional work was placed on the Spring Meeting Co-Chairs Paul Friedman and Peggy Ward and Section staff in addressing numerous issues relating to the Spring Meeting such as obtaining speaker releases and ensuring that CLE materials were submitted.
      • **Other Issues.** She noted a proposed ABA Policy under consideration that would require that programs include a specified percentage of diverse presenters.
B. Chair-Elect Report – William MacLeod

- Chair-Elect MacLeod noted the Consumer Protection Conference in Atlanta, Georgia will present an opportunity to swim with the sharks at Atlanta Aquarium. Other programs for the 2016 – 2017 year include the Antitrust Masters Course (chaired by Kathryn M. Fenton and Nicholas A. Widnell), the Fall Forum (chaired by Kathleen Foote and Bernard A. Nigro Jr.), and the Antitrust in the Americas (Mexico City, Mexico). He also mentioned plans to recognize outstanding efforts by Section members.
- He outlined plans for the Post Annual Meeting in Ojai, California and the Midwinter Meeting in Miami and the leadership selection process.

C. Immediate Past Chair Report – Howard Feller

- Immediate Past Chair Feller provided a schedule interviews of international enforcement officials and encouraged Council members to attend these fireside chats.

D. Vice Chair Report – Jonathan Jacobson

- **Long Range Planning.** Vice Chair Jacobson presented the Report of the Long Range Planning Committee. The Committee focused on a narrow set of issues with the potential of making the Section stronger: 1) How to ensure that optimizing content delivery to our members continues to be a Section priority; 2) How to encourage greater participation by academics in the Section; 3) What is, and what should be, the role of consumer protection in the Section; 4) How best to ensure that the Section remains in the forefront of foreign investment issues; 5) Whether the Section should utilize additional reserve funds to encourage greater ethnic diversity within the Section. Vice Chair Jacobson noted the creation of the content delivery committee approved at the Midwinter Meeting, the recommendation to create a new committee for academics, the deep dive review of consumer protection, the importance of
the Section staying in the forefront of foreign investment issues and the proposed establishment of two new diversity fellowships.

- **Diversity Fellowships.** With respect to item 5, the Report outlines the establishment of two new fellowships: Fellowship for Diverse Law Students and Fellowship for Diverse Experienced Practitioners, developing and administering those fellowships, including developing application materials, applicant qualifications (including defining objective criteria for each), and other project coordination. There should be a particular focus on enhancing our ethnic diversity, with efforts as well to target women, LGBTQ practitioners, and the disabled. The goal of the fellowships is to increase participation by diverse Section members in Section activities with a specific focus on including participation in Section leadership and conferences. **It was moved, seconded and APPROVED by voice acclaim:** Resolved: that the Section hereby establishes a Fellowship for Diverse Law Students and a Fellowship for Diverse Experienced Practitioners, and the Membership and Diversity committee is tasked with responsibility for developing the details and administration of the fellowships, and for working with the Advisory Board on Section Reserves to develop specific details to be presented for Council approval.

E. **Committee Officer Report** – Deborah Garza

- **Committee Activities Chart.**

- **Committee Operations.** Officer Garza reported on the activities of Committee Operations and the work of the Co-Chairs.

**Committee Reports**

- **Agriculture and Food Committee Report** – Co-Chair August Horvath and Co-Chair Vandy Howell
  
  - The committee submitted a written report. The Committee has 232 members, an increase of 44 new members since last year, surpassing the
Committee’s long range plan. Committee leaders reached out to people who they knew were interesting in food and ag issues in September of 2015 and Jamie Pizzirusso and Adrian Fontecilla headed an Ag & Food membership campaign on behalf of the leadership in March 2016. The Committee membership is diverse along many dimensions and represents all aspects of the agriculture antitrust bar. Committee programs have included academics, government practitioners and private practitioners. Members and panelists represent both producers and agribusiness companies and we have a number of members from the legal departments of the various industry participants. The agriculture and food industries include different laws governing competition (e.g. Capper Volstead), a large web of regulatory oversight (e.g., FDA, USDA, United States Senate Committee on Agriculture, Nutrition, and Forestry, state agencies), and rapid technological change (e.g. organics, GMOs, changes in food processing). Two newsletters have been issued for this ABA year, the first focused on alcohol distribution and challenges to state distribution laws and the second focused on the current regulatory and legal issues happening in regard to legalizing marijuana at the state level.

- The Committee has three Spring Meeting programs: Marijuana, Twenty Three States and Counting, Technology, Big Data and Juries: What Persuades?, and Taming The Beast - Corporate Counsel Speak.

- **Competition Torts Committee Report** – Vice Chair Angelo Russo (for Co-Chairs Nicholas Grimmer and Matthew Kent)
  - The committee submitted a [written report](#).
  - Following the name change from Business Torts and Civil RICO, the Committee has worked to rebrand and has prepared an innovative [YouTube video](#) as part of that effort. The Committee Membership has grown from 266 members in February 2015 to 283 members. In addition,
to working to grow its general membership, the Committee is also working
to target diverse members in three areas: (1) plaintiff/enforcers; (2) international; and (3) minority/women attorneys.

- The Committee has two Spring Meeting programs: (1) Private Jury Trials: Reality or Reality TV; and (2) Rules of Conflicts: Considerations for Antitrust Practitioners. For the remainder of the 2015-2016 year, there are a number of pre-planned programs, including: (1) Health Care & RICO; (2) ACPERA/RICO Update; and (3) “Debate: Should Employer-Employee Non-Compete Agreements Be Unlawful?

- **Trade, Sports, and Professional Associations Committee Report** – Vice Chair Creighton Macy (for Chair Ryan Tisch)
  - The committee submitted a [written report](#).
  - The Committee has 375 members, or about 6% more than last year.
  - The Committee has been active on Connect. Since October, the Committee has had six separate lunchtime committee programs, around one a month. For the Spring Meeting, the Committee is sponsoring: *Play Ball: What Rules are Reasonable*, a panel focused on the array of cases involving the NCAA. Post-Spring Meeting programming is already taking shape at the same busy pace, with programs planned for May and June.

- **Consumer Protection Officer Report** – Thomas Zych
  - Officer Zych submitted a [written report](#).
  - Consumer Protection Officer Zych noted an upcoming proposal for a deskbook for in-house counsel, the upcoming Consumer Protection Committee’s Member get a member initiative, participation in drafting comments and outreach to international attorneys (particularly with respect to privacy) and academics. The second edition of *Consumer Protection Law Developments* is available for purchase in the bookstore and the *Claims Substantiation Handbook* is nearing completion.
G. Delegates Report by Douglas Ross and Gary Zanfagna.

- Delegates Ross and Zanfagna reported on ongoing activities.

H. Finance Officer Report – Kevin O’Connor

- Finance Officer O’Connor submitted a written report.

- Operating Report. The Section’s revenues and expenses appear to be on track as compared to the budget and the previous year.

- Investments. As of March 21, 2016, the value of the Section’s long term investment funds was $11,419,583.97, of which 62.8% was in equities and the balance in bond funds. The Section also had $436,523.24 in short term money market account as of March 16, 2016. The total value of long term and short term investment funds was $11,856,107.21.

- FY2017 Reserves Projects. Officer O’Connor presented the Renewal Projects and New Projects. There was considerable discussion over the Best Practices for Antitrust Procedures Proposal. Chair Henry, Former Chair Feller, and International Officer Gleklen raised questions as to whether this type of research would be undertaken in absence of funding from the Section. After further discussion, Chair Elect Macleod moved to table consideration of the Best Practices for Antitrust Procedures Proposal, the motion was seconded and Council tabled consideration of the Best Practices for Antitrust Procedures Proposal. Thereafter, it was moved, seconded and APPROVED by voice acclaim: Resolved: that the FY2017 Reserves Projects proposed by Officer O’Connor (except for the Best Practices for Antitrust Procedures Proposal for which consideration had been tabled) be APPROVED.

- Reserves Spending Limit. Officer O’Connor reviewed the Section’s policies on Section Reserves and the limitations on the use of unrestricted reserves to fund special projects not included in the operating budget. In January of 2003,
the Section adopted policies that limit the amount of money that the Council is authorized to appropriate from Section Reserves each fiscal year to fund special projects not included in the operating budget. Officer O’Connor’s report provides the following, along with the determination of maximum amount the Council is authorized to appropriate from Section Reserves during FY 2016-2017 under the current policies:

I. POLICIES GOVERNING SECTION RESERVES
   A. Requirement to Maintain Specified Amount of Section Reserves
      "At the time the annual budget is prepared for the next Section year, Section Reserves should be no less than 2 times the amount required to meet the shortfall if projected revenues in that budget declined by 33% and projected expenses increased by 25%.”
   B. Limitation on Spending in Any One Fiscal Year
      No more than 10% of the unrestricted reserves can be spent during any one fiscal year.

• **Increase in Reserves Spending Limit.** Council discussed changing the existing 10% limitation to a 15% limitation. **It was moved, seconded and APPROVED by voice acclaim: Resolved: that the Limitation on Spending in Any One Fiscal Year be revised to replace the reference to “10%” with “15%” and the revised sentence provides: “No more than 15% of the unrestricted reserves can be spent during any one fiscal year.” No other changes were made.

• **International Scholar-in-Residence Recipient Report – Dr. Baskaran Balasingham**
   o He was awarded a PhD from the Dickson Poon School of Law, King's College London. He graduated from King's College London with a masters in
competition law (2010). Afterwards he completed a traineeship in the cartels division of DG Competition (European Commission).

During his research visit as an ABA Antitrust Section Scholar in Residence at Georgetown University Law Center, Baskaran is exploring the US approach to retail-Most-Favored Nation (MFN) clauses, in particular whether those clauses should fall under the per se rule or the rule of reason. He is currently working on a research project dealing with the competitive effects of retail-MFN clauses under EU and UK competition law and US antitrust law.

I. **International Officer Report – Jonathan Gleklen**

- Officer Gleklen noted that in light of the comments from Council on the draft comments addressing intellectual property, he was organizing teleconference and that any interested Council was invited to participate. He outlined the work underway in preparing proposed comments and provided a general outline on when proposed comments would be provided for Council review.

J. **Program Officer Report – Brian Henry**

- Program Officer Henry submitted a written report. The report review the Section programs conducted this ABA year, the programs planned for the remainder of the 2015-2016 ABA year as well as programs planned for the 2016-2017 ABA year and for the 2017-2018 ABA year.

- Program Officer Henry noted that it looked as though the Section was headed for another record year for the number of registrants for the Spring Meeting.

K. **Publications Officer Report – Bernard A. Nigro Jr.**

- Officer Nigro submitted a written report.
• With respect to the Civil Jury Instructions Handbook, Officer Nigro noted that he would come back to Council after Council review was completed. He noted that the structure of the Rule of Reason Handbook was being reworked and that a revised proposal will be submitted for approval by Council.

• Standing Committee on Publishing Oversight (SCOPO) Update

  
  o She noted that the Spring issue of Antitrust Magazine was just published, Donald Trump’s Major Antitrust Encounters, by Robert Skitol in the April issue of the Antitrust Source, provided an outlook on upcoming issues, noted the relative frequency that the Antitrust Law Journal has been cited in Federal antitrust cases, and that the symposiums issues of the Antitrust Law Journal have been some of its best issues.

L. Secretary and Communications Officer Report – Anthony Chavez

• Officer Chavez submitted a written report.

• Officer Chavez reviewed the progress made in encouraging the use of Connect by committees instead of listservs along with certain inherent limitations with the current configuration of the system and in using committees as the primary means of delivering content generated by those committees. Committees often overlap in terms of subject matter and Members are presented with an unfortunate dilemma with respect to receiving content prepared by the Section's Committees. Unless a member joins every Committee (with the risk of receiving duplicative communications), there is a risk that interesting communications will be missed (see Recommendations of the Long Range Planning Committee Report presented in March 2013 discussed in his report for the 2015 PAM Council Meeting). He noted that until the Section figures out a high tech solution, he intends to coordinate a monthly post on the Open Forum with a roundup of recent newsletters and other
interesting content posted on Connect as well as continuing to encourage Committees to create newsletters with separate links to each article.

- **Approval of Midwinter Council Meeting Minutes.** It was moved, seconded and APPROVED by voice acclaim: Resolved: It was moved, seconded and APPROVED by voice acclaim: Resolved: That the Midwinter Council Meeting Minutes be APPROVED.

- **Summary of Action Items Taken by Council between the Midwinter Council Meeting and the Spring Council Meeting.** Officer Chavez’s Report for the Spring Council Meeting included a summary of all action items taken by Council between the Midwinter Council Meeting and March 30, 2016. Officer Chavez moved to include an updated summary, with the addition of any relevant updates on the date that comments were submitted and insertion of links to the submitted comments, in the Minutes of the Spring Council Meeting. It was moved, seconded and APPROVED by voice acclaim: Resolved: That such Summary of Action Items Taken by Council between the Midwinter Council Meeting and the Spring Council Meeting be included in the Minutes of the Spring Council Meeting.

**Membership and Diversity Committee ("MAD") Report.** Co-Chairs April Tabor and Scott Perlman.

- The Membership and Diversity Committee submitted a written report.

- Section membership has increased, due to a tripling of law student members. There has been a decline in attorney members. The Section has a total of 8,495 members, consisting of 5,623 attorneys, 1,314 associate members, and 1,558 student members.

- Co-Chairs Tabor and Perlman reviewed upcoming networking events (West Coast in June, Miami CP event in early July), the Mentorship program (100 participants versus 50 for last year), the Ambassador Pilot Program (applications being accepted), coordination of membership
recruitment/retention efforts with substantive committees (call on March 8, 2016, additional calls planned in May and July), Pathways to Leadership Program at the Spring Meeting, “Why Antitrust/Why Consumer Protection?” event at George Washington University Law School, and plans to interview Women in Leadership.

- With respect to The Grapevine’s May 13, 2016 Breakfast with the Chief Economists (Nancy L. Rose, Deputy Assistant Attorney General for Economics, Antitrust Division, U.S. Department of Justice and Ginger Jin, Director, Bureau of Economics, Federal Trade Commission), the Section will not be a co-sponsor as indicated in MAD’s written report.

- Chair Henry noted that MAD needs to identify plaintiff bar groups and Vice Chair Jacobson noted that MAD has additional assignments with respect to helping attract academics and the diversity fellowships discussed in the Report of the Long Range Planning Committee.

- MAD’s written report included a proposed Diversity Strategic Plan that was originally provided to Council in January before the Midwinter Council Meeting.

- It was moved, seconded and APPROVED by voice acclaim: Resolved: that the proposed Diversity Strategic Plan be APPROVED.

3. Content Delivery & Technology Investment Task Force – Report by Task Force Chair Scott Martin

   A. He reported on the ongoing work of the Task Force and that with the establishment of the new content delivery Committee, the focus will be on implementation. With respect to Connect, he noted that the new ABA contract with Higher Logic could allow the Section to leverage the relationship to obtain additional assistance. He also noted that 22 eBooks were currently available.

4. Section Director Report – Joanne Travis.

   - Section Director Travis submitted a written report.
Chair Henry adjourned the Council meeting at 5:00 p.m.
Actions taken by Council between the Midwinter Council Meeting and the Spring Council Meeting

International Comments

Comments of the American Bar Association Section of Antitrust Law and Section of International Law on the European Commission's Public Consultation on Empowering the National Competition Authorities to be More Effective Enforcers

- Submitted for review and approval by Council on January 16, 2016 by International Officer Jonathan Gleklen.
- Voting via electronic mail before the close of business on January 22, 2016.
- Approved by Council on January 22, 2016 “with such non-substantive changes as the International Officer, in consultation with the Chair, deems reasonable and appropriate.”
  - There were no votes in opposition to the proposed comments.
- Upon approval by Council, the proposed Comments were submitted and cleared in accordance with the ABA Blanket Authority Procedure.
- Final Comments were submitted on February 12, 2016.
- The comments were drafted by Rachel Brandenburger, Emilio Varanini, Jennifer Driscoll-Chippendale, Christina Hummer, Daniel Bitten, and Frank Montag, and supervised by Tad Lipsky for the ITF.

Comments of the American Bar Association Section of Antitrust Law and Section of International Law on the Korean Fair Trade Commission’s November 23, 2015 Draft Leniency Policy for Undertakings Engaged in Cartel Conduct

- Submitted for review and approval by Council on January 20, 2016 by International Officer Jonathan Gleklen.
- Voting via electronic mail before the close of business on January 24, 2016.
- Approved by Council on January 24, 2016 “with such non-substantive changes as the International Officer, in consultation with the Chair, deems reasonable and appropriate.”
  - There were no votes in opposition to the proposed comments.
• Upon approval by Council, the proposed Comments were submitted and cleared in accordance with the ABA Expedited Blanket Authority Procedure.
• Final Comments were submitted on January 28, 2016.
• The comment was drafted by Bob Connolly, Guy Pinsonnault, and Gary Spratling from the ICTF. Rob Kwinter led for the ITF.

Comments of the American Bar Association Section of Antitrust Law and Section of International Law on CADE's Draft Guidelines for its Antitrust Leniency Program

• Submitted for review and approval by Council on January 20, 2016 by International Officer Jonathan Gleklen.
• Chair Henry proposed noting that there is a serious concern that the written confession that CADE currently expects would likely be subject to mandatory disclosure in follow-on U.S. private damage lawsuits.
• A majority of Council voted to approve the proposed comments with that change.
• Voting via electronic mail before the close of business on January 25, 2016.
• Approved by Council on January 25, 2016 “with such non-substantive changes as the International Officer, in consultation with the Chair, deems reasonable and appropriate.”
  o There were no votes in opposition to the proposed comments.
• Upon approval by Council, the proposed Comments were submitted and cleared in accordance with the ABA Blanket Authority Procedure.
• Final Comments were submitted on February 1, 2016.
• The comments were drafted by Jen Driscoll and Barbara Rosenberg on behalf of the ITF and Mariana Tavares on behalf of the ITF, under the supervision of Randy Tritell and Tad Lipsky of the ITF and Gary Spratling and Jim Mutchnik of the ICTF.
Joint Comments of the American Bar Association Section of Antitrust Law, Section of Intellectual Property, and Section of International Law on the Anti-Monopoly Guideline on Intellectual Property Abuse (Draft for Comments)

- Submitted for review and approval by Council on January 26, 2016 by International Officer Jonathan Gleklen.
  - Background: On October 8, 2015 Council Approved the October 15, 2016 submission of Joint Response of the American Bar Association Section of Antitrust Law, Section of Intellectual Property Law, Section of International Law, and Section of Science & Technology Law to the NDRC Questionnaire on IP Misuse Antitrust Guidelines.
  - Vice Chair Jacobson and Council Member Gates expressed concerns over parts of the draft and a revised draft was circulated for review and approval.
  - Voting via electronic mail before the close of business on January 28, 2016.
  - The revised comments were approved by Council on January 28, 2016 “with such non-substantive changes as the International Officer, in consultation with the Chair, deems reasonable and appropriate.”
    - Council member Gates voted to oppose and Council Member Musgrove abstained. One other council member did not respond.
  - Upon approval by Council, the proposed Comments were submitted and cleared in accordance with the ABA Blanket Authority Expedited Procedure.
  - Final Comments were submitted on February 4, 2016.
  - The Section's drafting work on the Comments was led by Dina Kallay, Logan Breed, and Rob Davis with input from IP Committee co-chair Hartmut Schneider. The ITF leads were Koren-Wong-Ervin, Steve Harris, and Tad Lipsky.

Joint Comments of the American Bar Association Section of Antitrust Law and Section of International Law on New Zealand’s Targeted Review of the Commerce Act 1986

- Submitted for review and approval by Council on January 25, 2016 by International Officer Jonathan Gleklen.
Proposed revisions were suggested during the review process.
Voting via electronic mail before the close of business on January 28, 2016.
The comments as edited were approved by Council on January 28, 2016 “with such non-
substantive changes as the International Officer, in consultation with the Chair, deems
reasonable and appropriate.”
  - There was one vote in opposition due to the suggestion that the New Zealand
    Commerce Commission be empowered to conduct market studies.
Upon approval by Council, the proposed Comments were submitted and cleared in
accordance with the ABA Expedited Blanket Authority Procedure.
Final Comments were submitted on February 17, 2016.
The comments were drafted by Scott Sher, Byron Tuyay, Ross Fisher, Meg Guerin-Calvert,
and Jennifer Marsh. Andy Gavil (who has written on competition law in New Zealand)
also provided input. Lisl Dunlop and Tad Lipsky led the work for the ITF.

Comments of the American Bar Association’s Sections of Antitrust Law and International Law
Regarding the National Development and Reform Commission’s February 3, 2016 Draft
Guidelines for Applying Leniency Program to Horizontal Monopoly Agreements (Chinese)
Submitted for review and approval by Council on February 23, 2016 by International
Officer Jonathan Gleklen.
Voting via electronic mail.
The comments were approved by Council on February 26, 2016 “with such non-
substantive changes as the International Officer, in consultation with the Chair, deems
reasonable and appropriate.”
  - The comments provide that the proposed Leniency Program could be made more
effective by removing the exclusion of eligibility for undertakings that were
organizers of a horizontal monopoly agreement. Two members of Council voted
against approval on the grounds that “amnesty should be denied presumptively
to ringleaders, including ‘organizers.’”
• Upon approval by Council, the proposed Comments were submitted and cleared in accordance with the ABA Blanket Authority Procedure.

• Final comments were submitted on March 15, 2016.

• The drafting group was led by Niall Lynch of the Section's International Cartel Task Force; other SAL drafters included Stu Chemtob, Bob Connolly, and Eva Cole, with helpful research support from the ITF’s YLR, Sarah Bartels. Yee Wah Chin coordinated the SIL contribution to the draft.

Joint Comments of the American Bar Association Section of Antitrust Law and Section of International Law on the National Development and Reform Commission’s Draft Guidelines for Undertakings’ Commitments in Anti-Monopoly Cases

• Submitted for review and approval by Council on February 25, 2016 by International Officer Jonathan Gleklen.

• Voting via electronic mail.

• The comments were approved by Council on February 28, 2016 “with such non-substantive changes as the International Officer, in consultation with the Chair, deems reasonable and appropriate.”
  
  o There were no votes in opposition.

• Upon approval by Council, the proposed Comments were submitted and cleared in accordance with the ABA Blanket Authority Procedure.

• Final Comments were submitted on March 14, 2016.

• The primary SAL drafters were Jay Modrall and Emilio Varanini.

Comments of the American Bar Association Sections of Antitrust Law and International Law on the Draft Anti-Unfair Competition Law of the People’s Republic of China (in Chinese and English)

• Submitted for review and approval by Council on March 17, 2016 by International Officer Jonathan Gleklen.
Following suggestions made by Council member Wellford during the Council’s review, a revised draft was circulated by Officer Gleklen to Council on March 18, 2016. There were no votes in opposition to the revised draft.

Voting via electronic mail.

The comments were approved by Council on March 21, 2016 “with such non-substantive changes as the International Officer, in consultation with the Chair, deems reasonable and appropriate.”

Upon approval by Council, the proposed Comments were submitted and cleared in accordance with the ABA Expedited Blanket Authority Policy.

Final Comments were submitted on March 24, 2016.

The ITF leaders on the project were Emilio Varanini, Amy Mudge, and Steve Harris, as well as the ITF’s YLR, Sarah Bartels. Drafters from the Section were Julie Soloway (International Committee) and Scott Sher and Thu Vu Hoang (Unilateral Conduct Committee). Yee Wah Chin and drafters from SIL also made a significant contribution to the draft.

Publications

Approval of the publication of Consumer Protection Law Developments, Second Edition

February 13, 2016 motion by Bernard A. Nigro Jr, Publications Officer, with the consent of the Chair, to approve the publication of Consumer Protection Law Developments, Second Edition and to take such vote by electronic mail.

Voting occurred by electronic mail.


There were no votes in opposition.

Special thanks go to Christine Sommer and Daniel Savrin, who served as the editorial chairs and oversaw the entire publication effort. They were assisted by an exceptionally capable editorial board comprising Christopher Cole, Aryeh Freidman, Gregory Fortsch, Megan Gray, David Mallen, Shelia Millar, Gonzalo Mon, Katrina Robson, and Erv Switzer.
Approval of the publication of 2015 Annual Review of Antitrust Law Developments

- February 16, 2016 motion by Bernard A. Nigro Jr, Publications Officer, with the consent of the Chair, to approve the publication of 2015 Annual Review of Antitrust Law Developments and to take such vote by electronic mail.
- Voting occurred by electronic mail.
- Publication Approved by Council on February 17, 2016.
  o There were no votes in opposition.
- Special thanks go to Steven Bradbury and Valarie Williams, who served as the Editorial Board Co-Chairs and oversaw the entire publication effort. They were assisted by an Editorial Board that included David J. Ernst, Shimica D. Gaskins, Robert A. Milne, Jeffrey H. Perry, Jennifer S. Roach, Peter J. Schwingler.

Approval of Publications Proposal for the International Criminal Cartel Handbook (First Edition)

- Background
  o The Project Leaders are Adam Hemlock and John Terzaken.
  o The planned schedule includes submission of final drafts to Council reviewers in December 2016, submission to Council for approval in April 2017, and publication in May 2017.
- Publications Officer Nigro, with the consent of the Chair, moved to approve the Publications Proposal, with possible additional changes to the outline, identified contributors, and schedule consistent with existing processes and procedures and with the Publications Officer keeping Council informed of significant changes consistent with existing processes and procedures.
- Voting occurred by electronic mail.
- There were no votes in opposition.