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Thomas N. Dahdoun

Editor's Column
Heather S. Tewksbury

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Editor's Note

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Recent Developments in Unfair Competition –
From groundbreaking legal issues to blockbuster trials.

This issue of *Competition* not only provides a survey of developments in Antitrust and Unfair Competition law from the past year, but also focuses on discrete issues arising out of the blockbuster trials and litigation of 2014.

Starting the issue off is a comprehensive discussion by **Tom Greene** and **Tom Papageorge** on several key developments in California substantive law and federal and state procedural law relating to competition issues. The Section's Chair, **Tom Dahdouh**, follows up with a focused discussion on finding the best test to evaluate exclusionary conduct under Section 2 of the Sherman Act. Also, **Cheryl Johnson** and **Kathleen Tuttle** reprise the keynote address given at the premier West Coast antitrust event, the Golden State Antitrust Institute, by the **Honorable Kathryn Mickle Werdegar**, Justice of the California Supreme Court.

Last year's GSI also offered a series of roundtable discussions on the groundbreaking verdicts and legal issues of 2014. This issue reprises those roundtables and also provides a focused discussion on key substantive legal issues arising out of that litigation.

- In 2012, Bazaarvoice, a leading provider of product ratings and review software and services, finalized its acquisition of its rival, PowerReviews. The U.S. Department of Justice opened an investigation into that acquisition, which eventually led to a three week trial before Northern District Judge William H. Orrick, and a victory for the government. **Karen Silverman**, Managing Partner of Latham & Watkins San Francisco office, moderates a discussion between **Peter Huston**, lead trial counsel for the government, **Boris Feldman**, co-lead trial counsel for defendant Bazaarvoice, and **Arthur Burke**, a litigation partner with Davis Polk.
 - In a companion article, **Gregory Werden**, Senior Economic Counsel in the Antitrust Division of the U.S. Department of Justice, discusses the use of customer testimony on future anticompetitive effects in Clayton Act merger trials.
- Also in 2012, St. Luke's Health System acquired Saltzer Medical Group. After a four week trial in district court in Idaho, Judge Lynn Winmill, held that the acquisition violated the Clayton Act and other state laws. **Paul Riehle**, partner and practice group co-chair at Sedgwick and Vice Chair of GSI, moderates a panel discussion with the FTC's lead trial lawyer, **Thomas Greene**, and lead defense counsel, **Jack Bierig**.
 - Relatedly, **Ari Bassar**, weighs in with an article on the vitality of the divestiture remedy ordered by the court and the potential burden the merging parties bear to proffer evidence of the pro-competitive effects of the challenged transaction.

- Observers at GSI also experienced a lively discussion about litigation surrounding the antitrust exemption in the Major League Baseball matter. This issue offers opposing viewpoints in two exceptional articles:
 - **John Cooper** and **Racheal Turner** argue that the federal courts, including the Supreme Court, must defer to Congress's determination in the Curt Flood Act that baseball should generally continue to be exempt from the antitrust laws, and explains that only Congress can change the exemption.
 - **Phil Gregory** and **Don Polden** offer a different view. Their article discusses several reasons why the Supreme Court can and should abrogate the exemption and clearly define the scope of the nation's competition policies and antitrust laws on the business of baseball.

- A new and fascinating panel discussion at last year's GSI related to privacy and the question of whether enforcement agencies and private litigation can ensure online information will remain safe and private. **Niall Lynch**, partner at Latham & Watkins, moderated a discussion between **Laura Berger**, an attorney in the Division of Privacy and Identity Protection at the FTC, **Adam Miller**, supervising Deputy Attorney General for the Privacy Enforcement and Protection Unit of the California Attorney General's office, **Ara Jabaghourian**, partner at Cotchett, Pitre & McCarthy, and **Jim Snell**, partner at Perkins Coie.
 - In a companion article, **Matthew George**, explores some of the key claims and legal issues that have emerged in recent lawsuits brought over consumer privacy issues.
 - **Joseph Tiffany**, **Connie Wolfe**, and **Allen Briskin**, discuss recent treatment by Californian courts of the California Confidentiality of Medication Information Act.
 - In an article that analyzes traditional litigation behind data breaches and public enforcement, **Evan Wooten** explores what states and the federal government have done in response to high profile data breaches and important developments in the case law.

The issue concludes with a discussion by **Stephen McIntyre** and past Section Chair, **Ken O'Rourke**, on the issue of the statute of limitations and the continuing violations doctrine. The authors argue that the exception to the Clayton Act's Statute of Limitations swallows the rule.