



**Asia-Pacific
Economic Cooperation**

2011/SOM1/CPLG/021

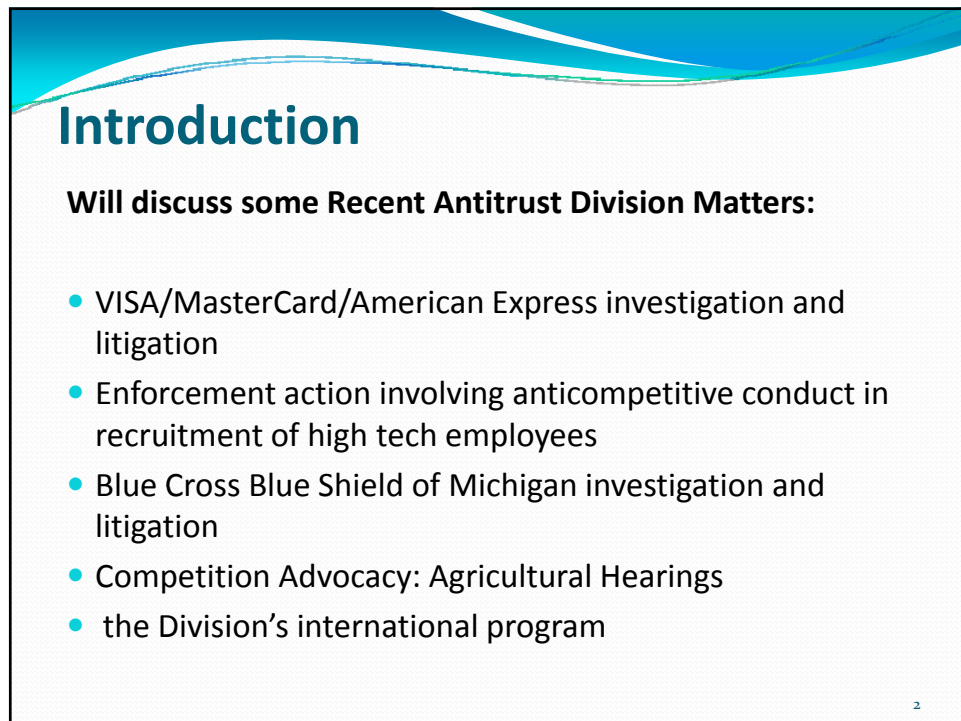
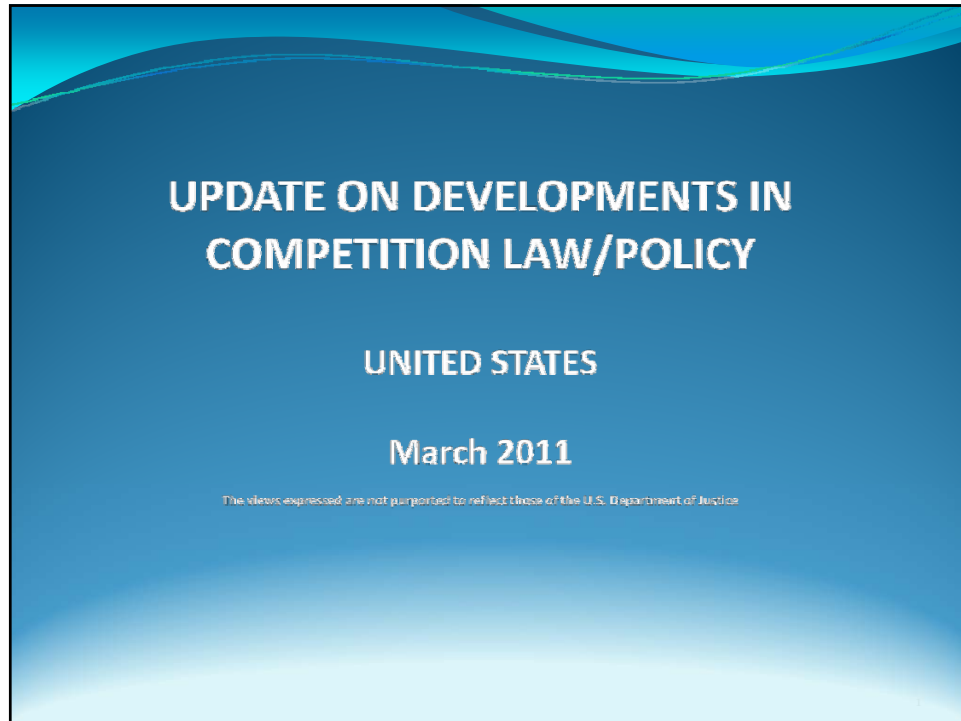
Agenda Item: 8

Update on Developments in Competition Law/Policy - United States

Purpose: Information
Submitted by: United States



**Competition Policy and Law Group Meeting
Washington, D.C., United States
7-8 March 2011**



Visa/MasterCard/American Express

- United States, joined by several states, filed a civil antitrust lawsuit against Visa, MasterCard and American Express in federal court in New York in October.
- Proposed settlements with Visa and MasterCard were also filed. American Express did not join proposed settlement; litigation against American Express is continuing.

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Visa/MasterCard/American Express

- Challenged conduct involves certain rules, policies and practices (“Merchant Restraints”) imposed by these three networks that impede merchants from promoting or encouraging the use of a competition credit or charge card with lower card acceptance fees.

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Visa/MasterCard/American Express

- **Under proposed settlement, MasterCard and Visa have agreed to rewrite their rules so that merchants will be permitted to:**
 - Offer consumers discounts, rebates or a free or discounted product or service if the consumer uses a particular credit card;
 - Express a preference for the use of a particular credit card;
 - Promote a particular credit card through posted information or other communications to consumers; and
 - Communicate to consumers the cost incurred by the merchant when a consumer uses a particular credit card.

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Visa/MasterCard/American Express

- Proposed settlements with Visa and MasterCard have been published for public comment, as required by U.S. law.
- American Express did not join the proposed settlement; that litigation is continuing.

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Competition for High Tech Employees

- Civil antitrust lawsuits, with companion proposed settlements, filed against several companies in both the high technology and digital animation industries, that prevent these companies from entering into agreements restraining employee recruitment.

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Competition for High Tech Employees

- The defendant companies each entered into one or more bilateral agreements. Pursuant to several of these agreements they agreed not to “cold call” any employee of the other parties to the agreement.
- Other such bilateral agreements had different terms, including, for example, one that included a provision imposing restraints in some situations on counter-offers.

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Competition for High Tech Employees

- These agreements eliminated a significant form of competition to attract highly skilled employees, to the detriment of these employees who were likely deprived of competitively important information and access to better job opportunities.

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Competition for High Tech Employees

- Proposed settlements, if accepted by the court, prohibit the companies from engaging in these anticompetitive “no solicitation” agreements for a period of five years.

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Blue Cross Blue Shield of Michigan

- The United States and the State of Michigan Attorney General filed a lawsuit in federal court in Detroit against Blue Cross Blue Shield of Michigan (Blue Cross) challenging certain provisions in its agreements with hospitals.
- Litigation in this case is continuing.

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Blue Cross Blue Shield of Michigan

- Complaint alleges that provisions of Blue Cross's agreement with hospitals raise hospital prices, prevent other insurers from entering the marketplace, and discourage hospital discounts. The challenged provisions are known as most-favored nation (MFN) clauses.
- MFNs at issue here are contractual clauses between Blue Cross and hospitals that limit the discounts these hospitals can offer to Blue Cross's competitors.

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Blue Cross Blue Shield of Michigan

- MFNs come in two general forms:
 - Agreements that require the hospital to charge some or all other commercial insurers *more* than the hospital charges Blue Cross, typically by a specified percentage differential. These are “MFN-plus” agreements.
 - Agreements requiring the hospital to charge other commercial health insurers at least as much as they charge Blue Cross. These are “equal-to MFN” agreements.

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Blue Cross Blue Shield

- Our complaint alleges that Blue Cross’s MFNs have likely increased prices for health insurance sold by Blue Cross and its competitors and prices for hospital services paid by insureds and self-insured employees.

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Competition Advocacy: Agriculture Hearings

- Department of Justice/Department of Agriculture workshops exploring competition and regulatory issues in the agriculture sector.
- Purpose was to allow officials of both agencies to listen and learn from industry participants.

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Competition Advocacy: Agriculture Hearings

- **Specific workshops focused on:**
 - Crop and hog farming;
 - Poultry industry;
 - Dairy industry;
 - Livestock sector; and
 - Margins along the supply chain from producers to consumers.

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Competition Advocacy

- As a result of these hearings:
 - Officials of both agencies listened and learned from industry participants.
 - A working group comprised of officials from both the Justice and Agriculture Departments established to maintain our focus on this important sector of the American economy.

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International Cooperation

- Intensified efforts with regard to international cooperation with respect to both the international dimensions of competition enforcement policy and the day-to-day consideration of international issues, initiated by AAG Christine Varney.
- Division cooperates closely with its counterparts on a wide range of cartel, merger and civil non-merger enforcement matters.
- Appointment of Rachel Brandenburger as Special Advisor, International in recognition of increased importance of collaborative efforts among competition agencies around the world.

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CONCLUSION

Thank you for your attention.