

## ANTITRUST AND COMPETITION NEWSLETTER

WINTER 2010

### Client Case Studies

#### Favorable FTC Settlement for Whole Foods in Wild Oats Merger



Orrick recently obtained a highly favorable settlement for Whole Foods to end the Federal Trade Commission's challenge to Whole Foods' consummated merger with Wild Oats. In early 2008, a U.S. district court refused to block the merger in a case brought by the FTC. In August 2008, the FTC obtained a reversal of that decision, allowing it to attempt to make its case in federal court, and then began its own administrative investigation. Whole Foods launched a counteroffensive to the FTC's investigation, including: (1) suing the FTC, claiming violations of Whole Foods' equal protection rights and fundamental due process; (2) persuading members of the Senate and House to send letters to the FTC regarding procedural fairness, dual standards of justice and due process raised by the FTC's treatment of Whole Foods; and (3) a media campaign, resulting in favorable press in *The Wall Street Journal*, *The New York Times* and other publications. On March 7, 2009, Whole Foods and the FTC reached a settlement. Orrick's team included partners **Garret Rasmussen**, **Joshua Galper**, **Adam Goldberg**, senior associate **Antony Kim** and associates **John Pitts** and **Jonathan Drenfeld**.

#### Decisive Appellate Victory in Antitrust Conspiracy Case



In 2009, Orrick defeated the Missouri Public Service Commission in a suit in which the Commission sued 23 energy companies, including Orrick clients Aquila, Inc. and Aquila Merchant Services, Inc. (now Kansas City Power and Light), based on allegations that the defendants conspired to force local gas distribution companies to pay artificially inflated prices. The court relied on a motion prepared by Orrick to dismiss the entire action as to all defendants, on the ground the Commission lacked standing to sue based on assignments from private businesses. On December 8, 2009, the Missouri Court of Appeals affirmed the trial court's decision. The Los Angeles-based Orrick team was led by partner **William Molinski**, assisted by senior associates **Khai LeQuang** and **Frank Rorie** and managing associate **Dimitrios Korovilas**.

#### Unanimous Jury Verdict in Vertical Price-Fixing Antitrust Case

In 2009, Orrick won a unanimous defense jury verdict in an antitrust case brought under California's Cartwright Act (California's analogue to the federal Sherman Act). In *The Consortium Group v. Equifax*, Consortium, previously a reseller of Equifax credit reports, alleged that Equifax terminated its relationship as part of a conspiracy to fix prices of credit reports in certain markets. At trial, Orrick's lawyers demonstrated that Equifax acted unilaterally in terminating Consortium and had clear business reasons for doing so. The Orrick team included Los Angeles partner **William Molinski**, senior associate **Frank Rorie**, managing associate **Melanie Phillips** and associate **Geoffrey Moss**.



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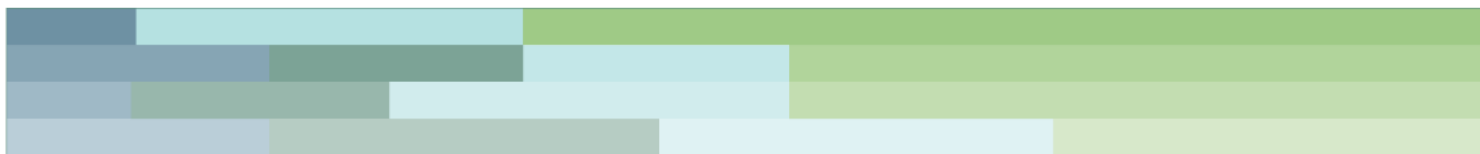
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### Favorable Ninth Circuit Decision in Monopolization Case

The Ninth Circuit recently affirmed a district court judgment in favor of Orrick's client, Masimo Corporation. The case concerned competition in the market for pulse oximetry equipment—noninvasive devices that measure oxygen saturation levels in the blood. After Masimo entered the market with superior new technology, Tyco Healthcare Group LP (now Covidien) entered into a series of overlapping contracts with group purchasing organizations and individual hospitals that provided the hospitals lower pricing in return for commitments to purchase almost all of their pulse oximetry equipment from Tyco. The Ninth Circuit affirmed the court's ruling in Masimo's favor and its award of \$14.5 million before trebling. The Orrick team was composed of San Francisco's senior litigation counsel **M. Laurence Popofsky**, partner **Scott Westrich** and managing associate **Deborah Croyle**.

### French Competition Authority Approves Two Major Acquisitions



In 2009, Orrick's Paris office secured approval from the French Competition Authority for two back-to-back industrial cleaning and facilities management acquisitions for industry leader Groupe TFN. Groupe TFN sought to acquire two smaller players operating within the industrial cleaning and facilities management markets that held the number 5 and 6 positions in the market. The merger would have made the combined TFN/VPNM entity the number 2 competitor in the market. The French Competition Authority authorized the mergers after the Orrick team established that there were enough players within the industry such that the merger would not hinder competition or augment unfair practices. This transaction was one of the first cases presented before the new French Competition Authority. The Orrick team included Paris corporate partner **Philippe Rinciaux**, Paris global finance partner **George Rigo** and Paris corporate associate **Lise Damelet Grilli**.

### Orrick Hölters & Elsing Advises Europe's Largest Kitchen Manufacturer in Strategic Acquisition

Orrick recently advised Europe's largest kitchen manufacturer, Nobilia, in the strategic acquisition of 30% of the shares of France's FBD Group (currently operating under the name the Arthur Bonnet Group), the franchise sales network of the leading Italian kitchen manufacturer Snaidero. The transaction was subject to a merger control clearance condition. Clearance was obtained in all affected jurisdictions (Germany, Austria and France). The Orrick team was led by Düsseldorf partner **Oliver Duys** and included Frankfurt partner **Andrés Martin-Ehlers**, Paris partners **Alfred Fink** and **Philippe Rinciaux**, Milan partner **Anna Spanò**, as well as Düsseldorf associate **Ulrich Klockenbrink**, Frankfurt associate **Sebastian Strohmayr** and Paris associates **Benoit Zagdoun**, **Nicolas Leveque**, **Gentien Hoang** and **Pierre Storck**.



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## Orrick Helps Baidu, Inc. Win China's First Monopolization Case



In 2009, Orrick assisted Baidu, Inc., the largest Chinese Internet search engine company, in the first case to be accepted by the Beijing First Intermediate People's Court since the Chinese Anti-Monopoly Law took effect on August 1, 2008. Tangshan Renren Information Services Co. ("Renren") alleged that Baidu had "monopolized the Chinese search engine market" and had "blacklisted" a Renren subsidiary after it moved to a lower-tier advertising arrangement with Baidu. Orrick's team of U.S. and China intellectual property and antitrust lawyers successfully advised Baidu as a result of the team's experience in U.S. and EU antitrust law as well as their knowledge of China's Anti-Monopoly Law, which was gained by serving on China's Ministry of Commerce (MOFCOM) special legal advisory committee. The team included antitrust and competition partner **Edward "Ted" Henneberry**, Beijing intellectual property partner **Xiang Wang, Ph.D.**, Washington, D.C. managing associate **Richard Rinkema**, Beijing managing associate **Shelley Zhang** and intellectual property associates **Yali Hu** and **Carol Yan**.

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