This alert is the first issue that we are publishing since Hogan & Hartson LLP combined with Lovells on 1 May 2010 to form Hogan Lovells. The combination includes over 130 antitrust and competition law attorneys and an unparalleled life sciences practice, and one of our key areas of focus continues to be competition issues affecting the life sciences sector.

The U.S. antitrust enforcement agencies are currently reviewing comments regarding the first major revision to the Horizontal Merger Guidelines since 1992. The first article in this alert explains how the proposed revisions offer more transparency into the agency merger review process; we focus in particular on the implications of the proposed revisions to the Guidelines for the review of pharmaceutical transactions. We also describe another important U.S. agency development — the FTC settlement agreement with Transitions Optical, Inc., addressing FTC allegations that Transitions had foreclosed competition by locking up key distribution channels for its rivals and potential competitors.

Our section on private litigation discusses two recurring issues involving brand/generic competition. The first involves a suggestion by a Second Circuit panel in the Cipro case involving so-called “reverse payments” that the case should be reviewed en banc to reconsider the Tamoxifen holding, which had set a very high bar for plaintiffs in seeking to challenge patent litigation settlements on antitrust grounds. We also review two opposite decisions reached the same day regarding allegations of sham litigation growing out of patent litigation. These decisions illustrate the crucial importance of the specific factual allegations and procedural history in assessing whether an infringement action can be considered objectively baseless.

The alert continues with a discussion of two recent European decisions addressing abuse of dominance claims. The first is the eagerly awaited decision by the General Court of the European Union generally upholding a 2005 decision of the European Commission finding that AstraZeneca had abused its dominant position by blocking or delaying generic versions of its drug Losec. We also discuss the decision by the French Competition Authority to deny Teva interim relief on a complaint based on allegations that Sanofi had failed to grant a patent license to Teva and had allegedly denigrated Teva’s generic product due to differences between the generic and brand name product. Finally, we discuss the European Commission's first report on
its monitoring of patent settlements, which was launched in the wake of the EU sector inquiry.

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