

us do it. Hausfeld's cocounsel, William Isaacson of Boies Schiller, says, "We prosecute companies from all of our major allies. Why would [the government] give China a walk?" (A spokesperson for the antitrust division declined to comment.)

The vitamin C litigation came on the heels of a massive government and private effort in the late 1990s to bust up cartels of Swiss, German, Canadian, and Japanese companies that manufactured a variety of vitamins. The initial

as those companies grew to take over the market, they set production limits and price floors that artificially raised prices to U.S. consumers. John Connor, a professor emeritus of agricultural economics at Purdue University who has tracked cartel cases since the early 1990s, says the vitamin C case marked a turning point for the Chinese companies that have traditionally shied away from such tactics. "Chinese firms have been the friends of American consumers

declined to comment or did not respond to our calls.) In an unprecedented move, the Chinese Ministry of Commerce appeared in the case as an amicus, and its lawyers at Sidley Austin argued that the manufacturers were compelled to follow a "government mandated price and output control regime." Although Cogan found that the ministry did "encourage" the cartel, he wrote that it did "not establish that Chinese law 'required' defendants to follow their anti-competitive predilections."

Even though the plaintiffs have reached their first settlement, James Southwick of Susman Godfrey, another co-lead counsel for the direct purchasers, says he's less surprised than his colleagues that the government has remained on the sidelines in the case, given the limited resources of the antitrust division. "The antitrust laws recognize there's a limit to the government's ability to do it all," Southwick says. Since the beginning of the vitamin C case, the division has actively pursued more lucrative price-fixing cases against foreign manufacturers in the dynamic random access memory (DRAM) and flat-panel LCD industries. According to the Justice Department, DRAM prosecutions have resulted in more than \$700 million in criminal fines against companies in Germany, South Korea, and Japan, and the LCD cases have netted nearly \$900 million in fines against companies from

## "WE PROSECUTE COMPANIES FROM ALL OF OUR MAJOR ALLIES."

WHY WOULD [THE GOVERNMENT] GIVE CHINA A WALK?" says

William Isaacson of Boies, Schiller & Flexner.

round of vitamin litigation, often regarded as a high point in antitrust enforcement for Justice, netted more than \$875 million in criminal fines. The Justice Department labeled the vitamin cartel "the most pervasive and harmful criminal antitrust conspiracy ever uncovered by the [antitrust] division."

The international vitamin C cartel was the first of those initial price-fixing conspiracies to fail, in part because competitors from China grew to dominate the market. By 2001, Chinese firms produced more than 60 percent of the world's supply of vitamin C. The plaintiffs in the case against the Chinese companies allege that

for a long time, and it's distressing to see this potential reversal of the role," he says.

Plaintiffs in the vitamin C case crossed a major hurdle last September, when Judge Brian Cogan rejected the companies' summary judgment argument that Chinese regulations forced them to act as a cartel. Aland is represented by Orrick, Herrington & Sutcliffe in the litigation. The remaining defendants, Hebei Welcome Pharmaceutical Co., Northeast Pharmaceutical Group, and Weisheng Pharmaceutical Co., are represented by Baker & McKenzie; Greenberg Traurig; and Zelle, Hofmann, Voelbel & Mason, respectively. (Defense counsel either

## A FRIENDLY BREAKUP

*Hughes Hubbard and Lusk, Stern & Eisler push the reset button on their merger.*

AS THELEN REID BROWN RAYSMAN & STEINER AND Dewey & LeBoeuf have demonstrated, law firm mergers and acquisitions can be tricky—and potentially fatal. However, not all Am Law 200 dissolutions play out so publicly—or so rancorously. In April, New York-based Hughes Hubbard & Reed and Lusk, Stern & Eisler quietly parted ways with a minimum of animus. When Hughes Hubbard acquired eight-lawyer Lusk Stern in September 2008, the marriage seemed like a good fit. Hughes Hubbard had just landed the Lehman Brothers bankruptcy, and its 12-lawyer department needed reinforcements. Nineteen-year-old Lusk Stern fit the bill. "Lusk, Stern & Eisler routinely goes toe-to-toe with the big players in major U.S. and cross-border insolvencies," said Hughes Hubbard managing partner Chuck Scherer in a statement at the time of the acquisition. "Now they'll have a larger, deeper platform to do it from. And we'll have

an expanded restructuring practice when the time is clearly right." So why are they separating now?

According to name partner Michael Lusk, he and partners Richard Stern and Nathan Eisler wanted to get back to their roots. "We were never big-firm people," he says. "And we missed the flexibility and control and lack of conflicts of interest that come from working in a small firm." Candace Beinecke, chair of Hughes Hubbard, agrees that the split simply boiled down to size. "It was clear they preferred their old situation. We understood that completely and look forward to continuing to work with them on a number of significant matters," says Beinecke. The three name partners of Lusk Stern departed along with two Hughes Hubbard associates. Patrick Gartland, a former Lusk Stern counsel who became partner after the acquisition, will remain with Hughes Hubbard.

Separating involved more than just figuring out who would

leave. "We discussed with every client for whom we worked together what arrangements best served their needs," says Beinecke. "We didn't view the clients as something that we could give and take." According to Lusk, Hughes Hubbard management came up with a list of the matters Lusk and his partners had worked on, and the firms mutually agreed upon which clients Lusk's team would take with them. "Once our clients signed release letters, [Hughes Hubbard] immediately transferred their files to us," Lusk says. (Both firms declined to provide details on how they untangled their finances.) Additionally, the firms decided that on some matters, it made sense to continue working together. The two firms are still working together on approximately six to 10 cases, and in May they secured a dismissal for their joint client, M&T Bank Corporation, from a mortgage-backed securities suit brought by CIGNA Insurance North America Inc.

The reestablishment of Lusk Stern after merging with another firm is a rarity in the law firm world, though there have been exceptions. In 1986 Greensboro, North Carolina-based Smith Moore Smith Schell



South Korea, Taiwan, and Japan as of this March.

Professor Connor is also less alarmed by the government's absence than Isaacson and Hausfeld. He says that federal prosecutors tend to target companies with significant U.S. assets in price-fixing cases, and none of the Chinese defendants fit that description. According to Connor, only about half of all antitrust cases that end in a settlement involve government action. For example, in the initial vitamin cartel prosecutions, the U.S. government only filed criminal charges against the manufacturers of eight of the 16 vitamins where some sort of settlement was reached. (The others involved foreign government enforcement actions abroad or private litigants pursuing civil cases in the United States and Canada.) Another possible deterrent for the Justice Department, he adds, is that federal prosecutors face the extra burden of having to prove a criminal case beyond a reasonable doubt rather than the lower civil standard of a preponderance of the evidence that private lawyers face.

Hausfeld, for his part, has one other possible explanation for the government's inaction: "One of the explanations might be that the government felt that Bill's firm, my firm, and Jim's firm could adequately deal with this issue," he says. "Other than that, you have to ask the government."

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**STEADY ON** U.S. law firm mergers and acquisitions are holding steady at prerecession levels, according to recent data from Altman Weil MERGERline. In the first quarter of the year, there were 14 firm mergers and acquisitions completed, on par with the average number for each of the last six quarters. Am Law 100 and Second Hundred firms accounted for nearly half of the activity in Q1. Among the new combinations was the March merger between Atlanta-based McKenna Long & Aldridge and San Diego-based Luce Forward Hamilton & Scripps, which created a firm with more than 550 lawyers. Some deals resulted in new office locations for Am Law firms, such as K&L Gates's acquisition of Marini Salsi Picciau in Milan, and Littler Mendelson's acquisition of Memphis-based boutique Kiesewetter Wise Kaplan Prather.

—Mary Ellen Egan

& Hunter merged with Charlotte-based Helms Mulliss & Johnston, creating Smith Helms Mulliss & Moore. The union lasted until 2002, when the firms split back into their predecessor entities, albeit with slightly different names: Smith Moore and Helms Mulliss & Wicker. And when WolfBlock dissolved in 2009, one of the firms it had acquired six years earlier, Roseland, New Jersey-based Brach, Eichler, Rosenberg, Silver, Bernstein, Hammer & Gladstone, resurrected itself as Brach Eichler.

"It's unusual for everyone to decide to stick together and [for each firm to] decide that they're better off on their own," says Jon Lindsey, managing partner at recruiting firm Major, Lindsey & Africa. "Mergers are usually good for some partners and not others, so [lawyers] often decide to go their separate ways," he adds. Ward Bower of consulting firm Altman Weil likens the undoing of a merger akin to trying to unscramble eggs. "Almost all mergers lead to some kind of partner attrition, usually in the first year or two," says Bower. "Splitting into former entities is highly unusual." And to do it so amicably? That's almost unfathomable.

—Victor Li

#### AM LAW 200 MERGERS & ACQUISITIONS, FIRST QUARTER 2012

#### EFFECTIVE

McKenna Long & Aldridge Atlanta	MERGED	Luce Forward Hamilton & Script San Diego	March 1
Littler Mendelson San Francisco	ACQUIRED	Kiesewetter Wise Kaplan Prather Memphis	January 19
Jackson Lewis White Plains, NY	ACQUIRED	Simandl & Prentice Milwaukee	January 19
WombleCarlyle Winston-Salem	ACQUIRED	Hall & Bowers Columbia, SC	January 31
Baker Donelson Memphis	ACQUIRED	Drucker Rutledge & Smith Houston	February 1
K&L Gates Pittsburgh	ACQUIRED	Marini Salsi Picciau Milan	February 2

Source: MERGERline™ (Altman Weil Inc.)