

Antitrust and Competition

Overview

Antitrust and Competition law can touch every aspect of a firm's business. It goes far beyond traditional concerns about price fixing and mergers and acquisitions. Today, antitrust and competition law affects product distribution practices, procurement, employee recruitment and compensation, restrictive covenants, intellectual property licensing and many other aspects of a firm's operations.

Antitrust threats and opportunities

An antitrust attack is often a major life event for a business. Government antitrust investigations (from federal, state and foreign enforcement agencies) can disrupt a firm's operations and sideline its key executives. Civil and criminal charges can frequently have severe consequences for the firm and its participating executives; and private damage claims can reach into the billions of dollars. Antitrust and competition issues can thus present concerns that go to the heart of the business enterprise.

There is, however, a flip side. Just as antitrust and competition law can be a threat, it also provides opportunities. Sophisticated, well-counseled firms use antitrust offensively to protect their markets, open access to new ones and ensure that they are free to compete on a level playing field. Katten's Antitrust and Competition attorneys are adept at helping their clients avoid the legal risks and seize the opportunities presented by antitrust and competition laws.

Counseling: Navigating a shifting landscape

As regulatory priorities and business models continue to evolve, antitrust issues can arise from many directions. We understand how regulators look at competition issues — and how to keep client activities in the clear. Our team has the experience to counsel you in all antitrust-related areas, including:

- Relationships with competitors
- Pricing and price discrimination
- Product distribution
- Procurement
- HR — antitrust issues
- Tying
- Monopolization
- Group boycotts

- Mergers and acquisitions clearance
- Intellectual property licensing
- Government and private, civil and criminal investigations and litigation.

M&A: A proactive approach to business combinations

Perhaps no area presents a greater challenge to strategic mergers, acquisitions, joint ventures and other business combinations than antitrust and competition law. Katten positions domestic and cross-border deals for quick merger control clearance. Where deals raise serious competition concerns, Katten goes in with a client-tested game plan to minimize the length of the investigation and limit any relief that is required for clearance. We have obtained antitrust merger clearances for hundreds of transactions, both under the Hart-Scott Rodino Act and foreign merger control regimes.

When authorities do investigate, we defend your deals before the Department of Justice, Federal Trade Commission and state attorneys general. When overseas jurisdictions are involved, we work with a trusted network of foreign competition attorneys who are available immediately to represent around the world.

Litigation and investigations

Katten's Antitrust and Competition attorneys have decades of experience in handling major antitrust litigations and investigations that have both domestic and international ramifications. We have defended billion dollar antitrust class actions, and represented leading market players attacked by rivals. We have also represented antitrust plaintiffs. Our antitrust and competition attorneys also have extensive experience in representing subjects and targets in domestic and international antitrust investigations.

Industry knowledge reduces risk

Katten's industry experience yields commercial and practical insights that help keep your business on the right side of antitrust laws and ensure that you take full advantage of the protections those laws offer. We dig deep to learn how your business works, so that we can evaluate issues in a real-world context and provide solutions that are intensely practical and make business sense. We have significant experience in more than 60 industries, including health care, financial services, technology, consumer products, manufacturing industries, energy, entertainment, insurance, military and consumer electronics, media, paper and transportation services.

Our Experience

Mergers and acquisitions

- Represented aircraft entertainment system manufacturer as seller in sale of business to competitor. Deal was cleared by Federal Trade Commission after 60-day investigation. Deal also required merger clearance in Brazil and South Africa.
- Represented defense contractor as seller in sale of business to competitor. Deal was cleared after preliminary meetings with US Department of Justice and US Defense Department.
- Represented ImClone Corp. as seller in antitrust investigation of \$6 billion acquisition of pharmaceutical manufacturer.
- Represented community health care provider in two-year FTC investigation of the consummated merger of Saint Theresa and Victory Memorial hospitals in Waukegan, Illinois. Persuaded FTC not to sue to unwind merger and the Illinois Attorney General not to file suit.
- Represented software developer as purchaser in acquisition of software developer that held key patented technology for use in digital rights management systems. Obtained expedited merger clearance after simultaneous investigations by Department of Justice and European Commission's Merger Task Force.
- Represented buyer in acquisition of competitor to create one of the largest parking management systems in the United States with several thousand locations. Transaction was closed after seven month Department of Justice investigation and agreement requiring minimal divestitures.
- Represented health system in winning approval of transaction that consolidated two health providers following extensive US Department of Justice investigation.
- Represented one of the largest metallurgical coal producers in the United States in merger with direct competitor. The transaction closed with no government action after extended FTC review.

Litigation and investigations

- Represented international carbon brush manufacturer and individuals in grand jury investigation relating to allegations of involvement in international cartel.
 - Defended hospital in class action suit on behalf of almost 20,000 putative class members in the US District Court for the Northern District of Illinois. Alleged five Chicagoland hospitals conspired to depress the wages of registered nurses. Successfully defended against plaintiffs' request for class certification after a four-day hearing.
 - Represented foreign and domestic affiliates of a German entity in global price-fixing investigation.
 - Represented large copyright portfolio owner in state attorney general antitrust investigation.
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- Defended Speedo USA, the US distributor of the Speedo brand swimsuit, in a false advertising, Lanham Act, antitrust and unfair competition case brought by a competitor over the marketing and promotion of the Speedo LZR, the revolutionary competitive racing suit worn by more than 70% of the medalists at the 2008 Summer Olympics in Beijing. Plaintiff, Speedo's primary competitor in the sale of competitive racing swimsuits, sued in the US District Court for the Central District of California for false leading advertising, Lanham Act violations,

monopolization, exclusive dealing and other alleged torts. Plaintiff claimed that Speedo misrepresented the test results of swim time improvements achieved using the LZR Racer. Plaintiff also claimed that Speedo's sponsorship of USA Swimming—the national governing body for amateur swimming in the United States—and its head coach gave Speedo an unfair advantage in marketing its suits to elite swimmers and other swimmers who race. After a motion to dismiss, in which some of plaintiff's claims were dismissed, the parties engaged in extensive discovery. Following two motions for summary judgment, plaintiff's remaining claims were dismissed. Plaintiff did not appeal.

- Represented large class member in antitrust class action in the US District Court for the Eastern District of New York alleging price fixing of air cargo shipping services by the world's 30 largest air carriers.

Counseling

- Counseled dental benefits carrier in numerous antitrust issues, many of which pertain to territorial restraints and cooperative arrangements.
- Counseled enteral products company regarding distribution and discount arrangements.
- Provided antitrust advice to major municipal hospital system concerning strategic matters.
- Represented medical center in analyzing application of "own use" doctrine under NPIA to variety of potential pharmaceutical transfer arrangements.
- Provided antitrust compliance advice, including conducting clinical integration audits, to multiple health care provider networks.
- Provided antitrust advice to one of the ten largest daily newspapers in the United States concerning potential joint ventures and other matters.

Key Contacts



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Recognitions

Recognized or listed in the following:

- *Best Law Firms*
 - Antitrust Law
 - Chicago, 2014–2020
 - National, 2020
 - Litigation – Antitrust Law
 - Chicago, 2016–2020