

Antitrust and Competition

Skadden

Global businesses feel the growing impact of new competition laws and more sophisticated competition law enforcement around the world. Regardless of whether our clients' critical competition issues concern developed or emerging jurisdictions — or several jurisdictions at once — Skadden, Arps, Slate, Meagher & Flom LLP and affiliates (“Skadden”) provides timely, seamless assistance with their competition law challenges. Our Antitrust and Competition Group possesses the unique and proven ability to pilot the most sophisticated international competition investigations, merger reviews and litigations through the complexities of this new and shifting framework. Given that today's competition law enforcers increasingly coordinate, clients should expect the same from their counsel.

Skadden was selected by *The American Lawyer* as a finalist in its 2014 Litigation Department of the Year issue and named among *Law360's* Competition Groups of 2013. We were named the Antitrust Firm of the Year at the 2013 *Benchmark Litigation* Annual Awards. In 2012, the *Financial Times* ranked Skadden second in the country in its “US Innovative Lawyers” report, in which we were recognized for our representation of Sprint in successfully opposing AT&T's acquisition of T-Mobile, and Express Scripts in securing antitrust clearance in its acquisition of Medco. *Chambers USA*, *Legal 500* and *U.S. News — Best Lawyers* “Best Law Firms” recognize Skadden as one of the top-tier firms in the area of antitrust and competition. In addition, we rank among *Global Competition Review's* Global Elite in the *GCR 100*, the publication's guide to the world's leading competition law practices.

Our accomplishments on behalf of clients across industries include:

- obtaining timely clearance from antitrust merger control agencies around the globe, including in the U.S., the EU, Japan and China, for highly complex mergers, acquisitions and joint ventures;
- the successful defense of major clients in treble-damage U.S. class action litigation, monopolization claims and other government and private U.S. civil disputes;

- guiding companies through U.S. grand jury investigations and EU and EU Member State administrative investigations and court procedures for claims including cartel, price-fixing, dominance, parallel trade and vertical restraints issues;
- advising clients in connection with FTC investigations and administrative proceedings;
- coordinating strategies in leniency applications and cartel investigations in parallel actions by authorities around the world; and
- establishing and maintaining global antitrust compliance programs, including audits, dawn raid training, in-house counsel workshops and in-person and online compliance training.

To best assist clients, our Antitrust and Competition Group draws on the resources of Skadden's worldwide platform, which includes focused, integrated services in global mergers and acquisitions, government enforcement and white collar criminal investigations and litigation, trial-level and appellate litigation, and international arbitration. In the U.S., Skadden lawyers assist clients in hearings before the U.S. Congress and federal regulatory agencies, including those in health care, energy, transportation and communications as well as the Department of Defense.

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Mergers, Acquisitions and Joint Ventures

Global Scope of Services

Skadden antitrust and competition attorneys plan and execute regulatory filings for mergers, acquisitions and joint ventures in jurisdictions around the globe by marshalling the resources of our worldwide network of offices and working closely with experienced local counsel. This well-developed practice is fundamental to our successful completion of the most complex cross-border transactions (including non-solicited acquisitions).

Our services include:

- coordinating closely and continuously with clients and the M&A team to ensure that obtaining approvals is a primary objective of the overall transaction strategy;
- advising clients regarding the potential antitrust risks of proposed business combinations;
- helping clients structure transactions and draft transaction documents that address those risks; and
- obtaining timely antitrust approval from the Antitrust Division of the U.S. Department of Justice (DOJ), the Federal Trade Commission (FTC), the European Commission, national authorities of the EU Member States, the Ministry of Commerce of the People's Republic of China and other jurisdictions worldwide.

In the U.S., we handle all types of business combination matters before the DOJ, the FTC and U.S. state attorneys general, including:

- advising clients with respect to the requirements of and compliance with the Hart-Scott-Rodino (HSR) Antitrust Improvements Act of 1976;
- working proactively to minimize the time required for any investigation by the FTC, the DOJ or state attorneys general; and
- managing responses to DOJ and FTC requests for additional information, facilitating client compliance quickly, completely and cost effectively.
- In the EU, the assistance we provide to clients in notifications to the European Commission includes:
- advising clients on strategic issues in obtaining European Commission approval for all types of transaction structures, consistent with the transactions' timing demands;

- preparing the Form CO as efficiently as possible, in order to minimize the information-gathering burden for clients; and
- obtaining approval consistent with client expectations as to timing and result.

In all transactions, we coordinate global notification and approval requirements, working with local Skadden offices and a global network of external counsel, selected exclusively for their antitrust merger control experience and capabilities in their home jurisdictions. Subject to the clients' preferences, we take a highly centralized approach to rest-of-world notifications, minimizing the information-gathering burden on the client and avoiding redundant data requests and inconsistent use of antitrust merits arguments.

We also assist with the antitrust considerations applicable to due diligence review (information exchanges) and planning for pre- and post-closing integration of the combined companies' global operations. Our advice regarding potential transaction structures is designed to minimize the demands and substantive risks of competition and foreign investment notifications.

In addition to mergers and acquisitions, we counsel clients regarding the unique challenges presented by the application of global antitrust and competition laws to potential joint ventures, minority investments and other strategic collaborations.

Related Regulatory Matters

A wide variety of businesses retain Skadden in connection with competition issues that arise in connection with regulatory matters. We handle the antitrust aspects of rule-making proceedings and mergers and acquisitions that fall within the jurisdiction of agencies such as the Office of the Comptroller of the Currency, the Federal Reserve Board, the Securities and Exchange Commission, the U.S. Department of Transportation, the Federal Communications Commission, the Federal Energy Regulatory Commission and state insurance departments. In the EU, we regularly counsel clients on a variety of issues, including state aid and public procurement.

Related Litigation

When litigation connected to mergers and other transactions becomes unavoidable, Skadden's Antitrust and Competition Group advises on disputes globally and in the U.S., managing cases before the federal courts and at the FTC, as well as in the EU General Court and Court of Justice.

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Litigation/Controversy

Skadden has an extensive practice defending clients in private litigation, as well as those accused of criminal violations of antitrust and competition laws. Attorneys across offices coordinate closely on multijurisdictional investigations and representing clients in all phases of grand jury matters, as well as in trials, sentencings and appeals.

We have extensive counseling, litigation and jury trial experience in a broad variety of civil and criminal disputes, including treble-damage class action litigation, monopolization claims, price-fixing allegations, Racketeer Influenced and Corrupt Organizations Act (RICO) claims and other matters.

A significant part of Skadden's U.S. antitrust litigation experience includes a dedicated sports law practice. Our attorneys have served as lead trial counsel to a number of sports leagues, including the National Football League, the National Basketball Association, the National Hockey League, the PGA Tour and the Arena Football League, in a variety of litigations and dispute resolutions involving antitrust claims.

Government Investigations

We routinely advise clients on matters involving investigations before various government agencies. In the EU, we advise clients on Article 101 and Article 102 issues and defend clients against increasingly vigorous enforcement actions brought by the European Commission and, if necessary, in appeals of European Commission decisions concerning these issues to the European courts. We also assist clients with investigations by the DOJ and FTC into alleged violations of the Sherman and Clayton antitrust acts and Section 5 of the FTC Act.

In the context of growing coordination between global antitrust authorities in the field of cartel investigations, Skadden has built a sophisticated practice assisting clients in building integrated strategies to face such investigations. Parallel investigations by authorities in diverse jurisdictions such as the U.S., Canada, the EU, South Africa, South Korea, Japan and Australia require

carefully conceived global strategies to address often important differences in procedural requirements and policy priorities, including:

- requirements for leniency applications;
- document production, confidentiality and privilege;
- jurisdictions with and without criminal sanctions for cartel behavior; and
- third-party access to evidence produced in other jurisdictions, both in litigation and administrative proceedings.

Counseling

Skadden's practice also includes counseling and regulatory advice in the U.S. and EU on matters including review of distribution agreements, intellectual property licenses (*e.g.*, patents, know-how, trademarks and copyrights) and other strategic arrangements. We also help clients design, implement and monitor global antitrust audit and compliance programs. Our services in this area include preparing the program; educating client personnel via in-person and interactive teleconference presentations; and conducting audits (surprise or announced) in consultation with clients' internal counsel.

Our Team

Our attorneys have been at the forefront of emerging trends and developments in the antitrust and competition arena and have been recognized for their leadership. In addition to *Chambers Global* and *Chambers USA*, numerous publications have named our group members to top antitrust lawyer lists, including *Global Counsel*, *Global Competition Review*, *The Best Lawyers in America*, *Legal 500* and *Who's Who Legal*.

Our attorneys have authored hundreds of articles and publications on competition issues, including what is considered the leading treatise on HSR law, *Acquisitions Under the Hart-Scott-Rodino Antitrust Improvements Act*, Third Edition; the American Bar Association's *Premier Notification Practice Manual*; regular columns for the *New York Law Journal*; and frequent articles for the *Antitrust Law Journal*. We often lecture before the Practising Law Institute and other professional organizations, and our group hosts leadership seminars on developments in global competition law.