



One Firm WorldwideSM



ANTITRUST & COMPETITION LAW PRACTICE

Antitrust law began in America more than a century ago, and Jones Day has been one of the leaders in the field. Antitrust — or competition law, as it is generally referred to outside the United States — has now gone global, but Jones Day continues to be widely recognized as the home of one of the largest, most effective, and most experienced collection of antitrust and competition lawyers in the world.

Antitrust/competition law has emerged as a core legal discipline in modern business. Whether it is a merger or acquisition, a joint venture or strategic alliance, a B2B or other distribution strategy, a patent license, a technology development agreement, a class action or strategic litigation matter, or another regulatory problem that requires market analysis, antitrust and

competition lawyers are part of the team required to get the job done. Jones Day lawyers are experienced in all of those areas and more. We have dealt with the antitrust or competition agencies of more than 50 countries. We have litigated in every federal circuit in the United States, in the European Court of Justice and Court of First Instance, and in several other international fora. We have one of the most active mergers and acquisitions practices in the world, and we have represented clients in many of the most significant criminal and civil competition matters over the last several decades. Most importantly, we have an impressive record of contributing to the best possible resolution of the issues faced by our clients in virtually every sector of the economy — new and old.



Our Antitrust & Competition Law

Practice has been successful over the years because of our single-minded focus on understanding and achieving our clients' business objectives. Effective guidance can make the difference between capitalizing on strategic opportunities and letting those opportunities pass to business rivals.

Antitrust and competition law enforcement is always subject to changes in emphasis based on the regulatory philosophies of government enforcers, as well as economic conditions and judicial attitudes. Perhaps this volatility is inevitable in any regulatory regime in which the governing legal principles are as broad as the "rule of reason" or "abuse of a dominant position." Today, antitrust and competition policies are aggressively enforced around the world, and the enforcement regimes in the United States and Europe have been particularly active in recent years. Businesses face real risks in this environment. The risk of being wrong can mean the loss of an important strategic opportunity, significant financial exposure, or even criminal penalties for companies and their executives.

At the same time, the pace of modern business requires that firms compete aggressively, and aggressive business strategies often implicate the antitrust or competition laws. Effective guidance thus can make the difference between capitalizing on strategic opportunities and letting those opportunities pass to business rivals. In this environment, knowledge of substantive legal principles is a necessary, but not sufficient, precondition to effective advice. Today, the effective antitrust or competition policy lawyer must know not only the law and current enforcement policies, but also the process and the context, whether it is before one of the federal or state enforcement agencies in the United States, a U.S. federal or state court, the European Commission, or one of the growing number of national authorities around the world. In the increasingly global environment in which many of our clients operate, the requisite skill set also must include an integrated international capability.

THE JONES DAY ANTITRUST & COMPETITION LAW PRACTICE

More than 35 Jones Day partners practice exclusively in antitrust and competition law, and several times that number of lawyers — including lawyers in the Firm's disputes practices — have significant antitrust experience. Approximately half of these lawyers practice in the United States, and half in other jurisdictions around the world, covering most Jones Day locations. Four of our partners have chaired the Section of Antitrust Law of the American Bar Association. Roughly half of our antitrust/competition law partners are alumni of antitrust

agencies from around the world, including both federal and state agencies in the United States and the European Commission. We understand how the agencies work, and we know how to deal with them most effectively to accomplish our clients' objectives.

Many of our lawyers have significant experience in both government and private antitrust litigation. We have antitrust litigators in most of our offices around the world, enabling us to staff a litigation matter efficiently from one of a number of offices depending on the location of the court or the client or both. We can and do structure litigation teams that are tailored to the scope of the problem, utilizing the full range of skills available in the Firm.

OUR APPROACH

Our competition law practice has been successful over the years because of our single-minded focus on understanding and achieving our clients' business objectives. We have the experience, skills, and creativity necessary to achieve client business objectives in an increasingly complex — and sometimes entirely novel — competitive environment. Most of the time, we can achieve the optimum result, whether by concluding a transaction as originally proposed or by prevailing when disputes are necessary. Sometimes, we meet the client's objectives by achieving the critical strategic goal, or an acceptable result in litigation or arbitration that presented very difficult issues. Sometimes, we recommend a particular approach to a problem in order to minimize potential problems. And sometimes, we have to give the client advice it really does not want to hear. At all times, we focus on helping the client achieve the best possible outcome.

We also understand that clients value and deserve good service: listening carefully to what the client is trying to accomplish, being accessible and available, and being cost-effective. We pride ourselves on our service mentality as an important part of our job description. We take great care to use our resources wisely; we assemble teams as necessary to meet client needs most efficiently. And we use a growing array of non-lawyers (including industry analysts, graphic specialists, and document processors) and technology enhancements to deliver the best service at the lowest possible cost.

In sum, our experience in solving antitrust and competition law problems is broad and deep. The adjectives we like to hear used to describe us are “practical,” “result-oriented,” and “effective.”

OUR EXPERIENCE

Jones Day lawyers have represented companies in some of the largest, most complex, and most visible antitrust/competition law matters in recent years. The AOL/Time Warner, CBS/Viacom, and Procter & Gamble/Clairel mergers; the Vitamin Cartel prosecution (the largest cartel case in history, with hundreds of follow-on civil litigation matters and many investigations by governments around the world); successful efforts in preventing both the U.S. Federal Trade Commission and U.S. Department of Justice from obtaining preliminary injunctions that would have blocked the consummation of particular transactions; successful representations of clients, both as plaintiffs and defendants, in private antitrust litigation and arbitration; and the successful representation of major clients before the European Commission and other global competitors or regulatory agencies. In these and other matters, Jones Day lawyers have actively participated in the full range of antitrust and competition law issues.

Mergers and Acquisitions. Jones Day has one of the most active transactional practices in the world and has been involved in some of the most significant mergers and other transactions in recent years. Within recent years, for example, Jones Day has played a leading role in the largest media and Internet transactions. These have included representations of **America Online** in its acquisition of Netscape, its strategic alliance with Sun Microsystems, and its combination with Time Warner; and **CBS** in its combination with Viacom. Other recent representations include **XM Satellite Radio** in its merger with Sirius Satellite Radio; **Chevron** in its acquisition of Unocal; **Procter & Gamble** in its acquisition of Clairel; **American Greetings**, the nation's second largest seller of greeting cards, in its acquisition of Gibson Greetings; **TV Guide** in its combination with Gemstar; **BFGoodrich** in its acquisition of Coltec Industries; **TRW** in its acquisition of Lucas-Varity; **TOTAL** in its acquisitions of PetroFina and Elf Aquitaine; and **British Telecom** in a variety of transactions, including its global joint venture with AT&T.



Jones Day Antitrust/Competition lawyers have represented companies in some of the largest, most complex, and most visible antitrust matters in recent years.

- The AOL/Time Warner and CBS/Viacom mergers
- The Vitamin Cartel matters (investigations and prosecutions by multiple enforcement agencies around the world, and hundreds of follow-on private damages actions in several different jurisdictions)
- The acquisitions of PetroFina and Elf Aquitaine by TOTAL
- Successful representations of clients, both as plaintiffs and defendants, in private antitrust litigation

A representative sample that illustrates the breadth of Jones Day's practice in this area includes (in addition to those already mentioned):

- **Alcan Aluminum Corporation's** acquisition of part of ARCO's aluminum sheet capacity
- **Allied Waste Industries** in numerous acquisitions in waste management and hauling businesses
- **Bayer Corporation** in numerous acquisitions, dispositions, and joint ventures
- **BFGoodrich's** tire manufacturing joint venture with Uniroyal
- **CBS's** acquisitions of Infinity Broadcasting and American Radio Corporation, and its merger with **Westinghouse**
- **Central and South West Corporation** in its acquisition by American Electric Power
- **Clear Channel Communications, Inc.** in its acquisition of AMFM, Inc.
- **Ernst & Whinney** and **Arthur Young's** merger, and the sale of Ernst & Young's consulting business to Cap Gemini
- **Federated's** acquisition of a number of major department store chains, including Macy's
- **General Motors** in its manufacturing joint venture with Toyota
- **Gillette** in its acquisition of Wilkinson Sword's shaving business
- **Halliburton's** acquisition of Dresser Industries
- **La Poste Française** in numerous transactions, including an international alliance with FedEx
- **Marathon Oil Company** in several refinery, pipeline, and distribution acquisitions, and its acquisition by USX
- **Maybelline** in the sale of its cosmetics company to L'Oréal
- **NACCO's** acquisitions of Hyster's fork-lift truck business and Hamilton Beach's kitchen appliance businesses
- **Nextel** in various acquisitions, dispositions, and joint ventures in the telecommunications business
- **PepsiCo** and **General Mills** in their European snack foods joint venture
- **Procter & Gamble's** acquisition of Tambrands
- **Reliant Energy** (formerly **NorAm**) in various energy-related acquisitions and dispositions, including its acquisition by Houston Industries
- **Renault S.A.'s** investment in Nissan
- **Sutter Health** in various acquisitions in the health care industry
- **Tele-Communications, Inc.'s** acquisition of numerous assets in the cable and related telecommunications businesses, and its acquisition by AT&T

- **TRW** in various acquisitions and dispositions
- **Ultramar Diamond Shamrock** in its acquisition by Valero and
- **The Williams Companies** in a variety of transactions

We also have one of the most active pre-merger notification filing practices in the world.

Government Investigations and Litigation. Occasionally, an enforcement agency sues to enjoin a proposed transaction, and Jones Day has marshaled the resources to try the preliminary injunction, on a fast-track schedule, knowing that the success of the transaction often depends on the outcome of the motion. Within the past several years, for example, Jones Day lawyers have tried to successful conclusions governmental lawsuits filed against our clients **Tenet Healthcare** and **Sutter Health** to enjoin hospital mergers in Missouri and California. We also represented **Cardinal Health** in a successful FTC challenge to two mergers involving four of the nation's largest drug wholesalers. We successfully represented **Nextel** in an action to vacate a consent decree that had limited its purchases of telecommunications licenses. We represented **Gillette** in a challenge to its acquisition of certain assets of Wilkinson Sword. We represented **Delaware North** in its challenge to the acquisition of SkyChef by American Airlines, which resulted in the eventual acquisition of SkyChef by Delaware North.

Jones Day has also represented clients in significant government investigations and litigation filed outside of the merger context. For example, we represented **Trans World Airlines** in an action filed by the Department of Justice challenging ticket pricing practices in the airline industry. We represented the **New York State Beer Wholesalers Association** in an action filed by the New York State Attorney General challenging the use of exclusive territories in the beer industry, obtaining a dismissal prior to trial. We represented **America Online** in various aspects of the Microsoft monopolization litigation brought by the Department of Justice, and before the European Commission. We represented **Hillenbrand Industries** in an extended monopolization investigation by the Department of Justice into its hospital equipment marketing practices. In Europe, we represented **Esat Telecom**, an Irish company, before the European Court of Justice in

Luxembourg, against the European Commission in connection with a decision on refusal to supply. We represented **Canal Satélite Digital** before the Spanish Supreme Court and the European Court of Justice regarding EU law issues in the digital TV sector. We also represented **Unión de Pequeños Agricultores** before the European Court of Justice in an annulment action against the EC olive oil regulation.

Private Litigation — Class Actions. Jones Day has one of the most active practices in the United States in the defense of class action lawsuits filed not only in federal court, but also in numerous state courts around the country, as plaintiffs' counsel increasingly turn to state indirect purchaser laws. We currently represent **Aventis** (the former **Rhône-Poulenc**) in a large number of class actions alleging a conspiracy to fix the price of animal vitamins, **RJ Reynolds** in numerous class actions alleging a conspiracy to fix cigarette prices, and **Bayer** in class actions alleging antitrust claims relating to settlement of patent litigation involving Cipro. Other examples include our representations of **Alcan Aluminum Corporation** in a class action alleging a conspiracy to suppress the production of primary aluminum; the **American Board of Emergency Medicine** in a class action alleging a conspiracy to deny board certification to emergency room physicians not qualified to take the required examination; **Bausch & Lomb** in a class action and suits by state attorneys general alleging a conspiracy to suppress the distribution of contact lenses; a **Cigna** subsidiary in a class action alleging a conspiracy to fix the prices of psychiatric services; **Federated Department Stores** in class actions alleging conspiracies to fix the prices of cosmetics/fragrances and women's shoes; a **Fuji** subsidiary in a class action alleging a conspiracy to fix the prices of medical x-ray film; **Obron** in a class action alleging a conspiracy to fix the prices of bronze powders; **Sandoz** in class actions alleging a conspiracy to deny discounts to retail pharmacies; **Sherwin-Williams** in class actions alleging conspiracies to fix the prices of automotive refinishing paint; and **Trans World Airlines** in a class action alleging price fixing in the airline industry.

Private Litigation — Strategic Issues. Jones Day has litigated a number of strategic antitrust cases in the United States, representing either the plaintiff challenging a competitor's conduct or the defendant in a challenge to a claim filed by



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a competitor, customer, or supplier. On the plaintiff's side, we represented **PepsiCo** in its challenge to Coca-Cola's practice of refusing to deal with distributors that handle Pepsi Cola products. We also represented **Re/Max** in a lawsuit seeking damages resulting from a conspiracy by the dominant real estate firms in northeast Ohio. We represented **Hospital Corporation of America** in claims of conspiracy and monopolization against several competing hospitals and an insurance company, obtaining a multimillion-dollar verdict. We represented **The Alderwoods Group, Inc.** in its successful antitrust challenge to a hostile takeover announced by its largest competitor. In Europe, we have represented a number of communications companies (such as **British Telecom, WorldCom, KPN, Scoot, and Versatel**) in actions claiming discriminatory pricing and abuse of dominant position against Belgacom before the Court of Appeals and the Commercial Court in Brussels.

On the defense side, we have represented companies in a variety of antitrust challenges, including the **Airline Reporting Corporation** in a claim of conspiracy among its member airlines to fix the terms of doing business with travel agents; **Hachette** in a boycott and monopolization lawsuit; **TRW** in a lawsuit alleging a conspiracy to divide markets and monopolize the credit information services industry; a **Tele-Communications, Inc.** subsidiary against a competitor's complaint that our client conspired with a governmental agency to deny the competitor a necessary business license; and **Union Pacific Resources** in a lawsuit challenging its conduct in the natural gas processing business in East Texas. Occasionally, lawsuits to enjoin transactions come from competitors as well as enforcement agencies, and Jones Day has been ready on those occasions as well. For example, we represented **BFGoodrich** in an action brought by two of its competitors to challenge its merger with Coltec Industries.

Jones Day has a major Intellectual Property Practice around the world, and our antitrust/competition law lawyers are asked to handle the competition issues that can arise in the course of patent enforcement litigation. We have represented companies such as **Bayer, Eastman Chemical Company, Texas Instruments, and TRW** in antitrust counterclaims filed in response to those companies' patent or trademark enforcement efforts.

Jones Day also has a leading antitrust practice in the health care area. The Firm has been involved in provider mergers, acquisitions, and joint ventures in every region of the U.S. We also have a large counseling practice and have represented clients in numerous governmental investigations. In litigation matters, we represented **Marshfield Clinic** against allegations of antitrust conspiracy and monopolization, obtaining reversal of a substantial jury verdict and summary judgment in a subsequent proceeding. We represented the **Nebraska Heart Institute** in obtaining the reversal of a jury award and the complete dismissal of the case on appeal, and we successfully defended **California Pacific Medical Center** and its parent, **Sutter Health**, in a lawsuit challenging an exclusive managed care contract.

Not all U.S. antitrust claims arise under the Sherman Act. Despite its background as a small business enterprises statute that sometimes conflicts with the pro-competitive purposes of the antitrust laws, the Robinson-Patman Act continues to be enforced today, and we have substantial experience in litigating claims under that statute. For example, we represented **Federal Mogul Corporation** in a claim by a former supplier that our client's alleged demand for an access payment by its supplier violated the antibrokerage provisions of Section 2(c) of the Act, obtaining a dismissal of the claim that was affirmed by the Sixth Circuit. We also represented **JBL** in a secondary line claim filed by a distributor, obtaining a dismissal of the lawsuit in the Eleventh Circuit based on the enforceability of an arbitration clause in the parties' contract. Further, we represented **White Consolidated** in a secondary line claim filed by a former distributor, and **International Multifoods** in a price discrimination claim brought by a bakery based on claimed discrimination in the mode of grain transportation.

Antitrust/Competition Law Counseling. We provide ongoing counseling services to a number of substantial organizations, including the following: **Airline Reporting Corporation, American Greetings, American Tower Corporation, Apple, Baxter International, Bayer AG and Bayer Corporation, Boehringer Ingelheim, Cardinal Health, CBS, Chevron, Cigna, Experian, GenCorp, Georgia Gulf, Goodrich, GSM Association, Liberty Media Corporation, Macy's, MasterCard, NACCO Industries, Procter & Gamble, sanofi-aventis, SAP, Scott Fetzer, SES Global, J.M. Smucker Company, Sprint Nextel, Sutter Health, Time Warner, Timken, and TRW.**

ADDITIONAL INFORMATION

For additional information regarding our Antitrust & Competition Law Practice, please contact your principal Firm representative or one of the lawyers listed in this publication. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

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