

DOJ, FTC Insider Discusses Antitrust *on the* Global Stage

MCC INTERVIEW David P. Wales / Jones Day



MCC interviews David P. Wales, leader of the global Antitrust & Competition Law Practice of Jones Day. He can be reached at dpwales@jonesday.com.

MCC: You have the unusual distinction of having worked as a senior official in both U.S. antitrust enforcement agencies. How has that experience informed your representation of private clients?

Wales: I had the good fortune of spending time as a senior official in both the DOJ's Antitrust Division and, most recently, at the FTC, where I was responsible for overseeing the agency's competition enforcement program for all types of antitrust matters.

My takeaway from those experiences at the government is a valuable understanding of how the agencies work in terms of process, but more importantly, how regulators think and what resonates with them – what types of evidence and arguments make a difference. I also formed and have maintained good relationships with the people I worked with over the years, which allows me to provide clients not only with unique insights into how the agencies currently work and how best to interact with them, but also with open channels of communication to key agency personnel.

MCC: The antitrust practice you now head is among the world's deepest and most diverse. What makes Jones Day different?

Wales: Jones Day has one of the world's largest global antitrust practices, with more than 150 lawyers in 27 major business centers around the world. We are consistently ranked as one of the top antitrust practices in the U.S. and globally. We are known for be-

ing a “go to” practice for the most challenging antitrust matters – we have developed a reputation for assisting clients in completing many of the toughest deals, prevailing in some of the most contentious antitrust cases, and guiding companies through significant multijurisdictional antitrust investigations. A good number of our antitrust lawyers are former officials of antitrust enforcement agencies in the U.S., Europe and Asia, who, like myself, understand what it takes to advocate effectively before antitrust authorities.



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We are also known as a dynamic and growing group. While a number of established antitrust practices are struggling with transitioning leadership, we have continued to build the next generation of antitrust experts and hold our position as the “go to” antitrust practice around the globe.

We are also distinguished as being part of a tremendous institution. Jones Day has a unique culture which, despite its size, allows its lawyers to work together in ways that other firms don't and to focus on client service in a way that clients appreciate.

MCC: Can you talk more about the generational shift? Where do you see the antitrust group headed?

Wales: In today's legal environment, a number of firms are playing catch-up when it comes to transitioning to the next genera-

tion, and many have been more focused on short-term profitability. In contrast, Jones Day's focus in the antitrust practice for many years has been on growth and succession planning. That has been our business model – steady growth by bringing in prominent lateral hires and promoting from within. Our motto is you can never have too many good lawyers. In the past decade, we added nearly 30 antitrust partners and of counsel around the world, and we did that during a recession, when many firms were contracting. Our

next generation is already in place, and we have been very successful in taking market share from other law firms that simply cannot match our team.

MCC: Many firms claim to be “go to” destinations for clients with challenging transactions. Can you give some examples of your successful high-stakes representations?

Wales: If you look at our history and the types of matters

we are involved with today, you will see us working on some of the most difficult and truly “bet-the-company” antitrust matters. Just a few examples of the past merger matters include: AOL-Time Warner, Macy's-Federated and SiriusXM. More recently we also handled the American Airlines-US Airways merger on behalf of American. We're currently representing DirecTV in its merger with AT&T; Electrolux in its purchase of GE's appliance business; Reynolds American in its merger with Lorillard; and CommScope's acquisition of TE's fiber business, to name just a few more. Many of these deals involve our antitrust teams in the U.S., Asia, Europe and Latin America. On the litigation side, we've represented large companies in far-reaching cartel investigations, including the global auto parts matters, and related private litigation, and in bet-the-company monopolization and price-fixing actions.

MCC: Given the globalization of competition regulation and your front row seat at this trend, by virtue of your firm's global footprint, what advantages can Jones Day offer corporate counsel in obtaining multijurisdictional merger clearances?

Wales: As with many things, antitrust has gone global. The number of antitrust enforcement agencies has grown, and many longstanding authorities have become more aggressive, especially in Europe, China and other parts of Asia. Enforcers in the various regions are frequently working together. Managing multijurisdictional transactions in this environment requires having in place an experienced, integrated global antitrust team that understands the client's business objectives, and is able to efficiently coordinate and execute different aspects of the deal to ensure that the arguments and evidence put forth on the client's behalf are consistent across the board. Succeeding on a global stage requires that an antitrust practice offer the sophistication and experience to mount a globally coordinated response and a broad network of lawyers with a deep understanding of each local jurisdiction.

We work hard to recruit and retain the very best antitrust lawyers in every major commercial center around the world. We have a significant presence in Brussels, Düsseldorf, Frankfurt, London, Madrid, Milan, Paris and elsewhere in Europe. In Asia, we have a large antitrust team in China (with lawyers in Hong Kong, Beijing and Shanghai) and Japan (Tokyo). In Australia, our Sydney antitrust lawyers have local antitrust expertise in both Australia and New Zealand. In addition, in the few places where we don't have Jones Day lawyers we have in place well-established relationships with local counsel with whom we work to handle competition filings as needed.

Jones Day's vast worldwide network of antitrust experts and prior experience with enforcement agencies in the U.S., Asia and Europe are important advantages for our clients and key to our ability to help them achieve their business objectives.

MCC: Speaking of China, what do you hear from practitioners there about the use of antitrust laws to crack down on Western companies?

Wales: We certainly have seen very active antitrust enforcement in China, both on the merger and conduct sides. As with other active enforcement jurisdictions, it is critical to have lawyers

in China who know the enforcement agencies and have the experience of working on the most complex and challenging matters. Peter Wang, who oversees Jones Day's competition practice in China, is known as one of the foremost experts in his field. He has an excellent team in China, including several senior lawyers with government experience. We don't think any other antitrust practice in China has the depth and breadth of our team.

MCC: The Supreme Court doesn't take many antitrust cases, but of those it has taken, Jones Day has argued several. Can you talk about that?

Wales: We have been at the center of some of the most significant Supreme Court matters, including *American Needle v. National Football League*, and, most recently, *North Carolina Board of Dental Examiners v. FTC*. That's a reflection of both our reputation as a "go to" antitrust firm and our unique culture that allows lawyers from different practice areas to work together to provide a level of service and expertise that firms with more siloed practices struggle to achieve. The teams we assemble for these matters pair lawyers from our leading appellate practice with antitrust lawyers who have the substantive expertise. Together, they make for quite a formidable team.

MCC: Can you talk briefly about the firm's work on cartel prosecutions and other litigation and government investigation matters?

Wales: We have the same reputation when it comes to litigated matters and have been involved in almost all major cartel investigations brought by the antitrust enforcers, including those involving auto parts, financial services, power cables, marine hose, air cargo, packaged ice, paper and forestry products, vitamins, chemicals and other industries. We have represented clients such as Deutsche Bank, automotive parts supplier Yazaki, Parker Hannifin, Bayer, Total and others in litigation in the U.S. and elsewhere brought after antitrust investigations, and have successfully handled general monopolization and price-fixing cases for the likes of Adobe and Cardinal Health.

MCC: How would you characterize U.S. agencies' current stance on merger review? Are there any trends we should be aware of?

Wales: There's no question that the current atmosphere at both the FTC and the DOJ is very pro-enforcement. The Obama administration has put in place leaders at both agencies who are very willing to litigate and have brought a number of major cases. The Sysco-U.S. Foods antitrust suit brought by the FTC is a good example. The DOJ's litigation against ratings-and-reviews software firm BazaarVoice is another. This doesn't mean that tough deals can't get done or tough matters can't be won – it just means that the agencies are willing to litigate tougher cases, and they will no doubt continue to win some and lose some.

MCC: Any predictions on what changes we might see as the Obama administration winds down? And looking beyond, what sorts of policy shifts can we hope for (or fear) from the next administration?

Wales: The Obama administration still has the better part of two years to go, and I think you will see the agencies bring some big cases to secure and enhance their legacy. Looking forward, the level of enforcement will depend on whether we have a Democrat- or Republican-appointed leadership at the agencies. That said, the personality of the leadership can also make a big difference. A big concern going forward will continue to be the delay and expense involved in responding to an antitrust investigation. The agencies have access to much more information than ever before, and the business community would benefit from the agencies taking a more measured and prudent approach when demanding or collecting materials.

MCC: Please give us some closing thoughts on why experience as a government insider is so valuable in helping clients overcome antitrust hurdles.

Wales: There is a great advantage to having inside knowledge as to how the agencies operate. You get the unique perspective of seeing what works best and what doesn't work so well, in terms of advocacy before the agency. You also get to know the career staff and how the process works at both the FTC and DOJ. All of these things help you to be a better advocate and get good results for your clients, which is the only way we measure our success.