



Dewey & LeBoeuf

Antitrust

# Antitrust

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For decades, Dewey & LeBoeuf lawyers have helped clients worldwide resolve their most complex antitrust problems. Our team includes more than 100 antitrust lawyers and provides client assistance on the full spectrum of antitrust services, including cartel matters, litigation, government investigations, mergers and acquisitions, counseling, matters involving the intersection of patent and antitrust law, state aid matters, commercial contracts and distribution issues, and representation before specialized administrative agencies. Our lawyers also advise on the application of competition law to business strategies, such as pricing, distribution and franchising, and devise and help implement compliance programs.

From our 26 offices in 15 countries, we have the ability to coordinate our clients' antitrust work anywhere in the world. We coordinate worldwide merger clearances, make leniency applications and provide antitrust advice, using our own offices and our network of local firms, and handle competition disputes before regulatory agencies and courts, particularly in the US and European Union (EU).

We are privileged to have our skills recognized by others, including:

- *Global Competition Review* – Recognized as one of the “**Global Elite**” – a ranking of the 20 leading global antitrust practices – in GCR’s annual “GCR 100” report (2012)
- *Chambers USA* – Recognized for Antitrust in New York and Washington, DC (2011)
- *Legal 500 US* – Recognized for Antitrust, Nationwide (2011)
- *US News / Best Lawyers* – Rated in Tier 1 for Antitrust Litigation by the publication’s “**Best Law Firms**” survey (2011)

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Our antitrust lawyers have extensive competition experience and a rich understanding of the many areas of antitrust practice. Our lawyers have previously held positions within the U.S. Department of Justice (DOJ), U.S. Federal Trade Commission (FTC), European Commission (EC) and in academia, and are frequent authors and speakers on important issues, developments and trends in antitrust and competition law. Among our ranks are a former Deputy Assistant Attorney General for Antitrust, a Director of Enforcement of the DOJ Antitrust Division and numerous former federal prosecutors. Pursuant to coveted invitations from the heads of the FTC and DOJ, our lawyers have participated as non-governmental advisors in the global enforcers' International Cartel Network each year since its inception 10 years ago, have chaired the International Task Force of the Antitrust Section of the ABA, and worked alongside agency personnel in various activities.

Our antitrust team is supported by one of the largest litigation departments in the US, as well as significant litigation practices in other countries, allowing us to instantly add litigators to handle complex mergers, investigations or lawsuits. When circumstances demand, we can call on over 300 litigation lawyers in our firm to handle any size assignment, anywhere in the world. This gives us the capability to handle the most complex matters, including multinational disputes. We appear in courts or tribunals around the world, and organize discovery simultaneously in multiple countries and languages.

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## Cartels

Our criminal cartel antitrust enforcement practice, composed of lawyers with decades of experience from our Antitrust and White Collar Criminal Defense and Investigations groups, is second to none. Large multi national corporations, closely held companies, and key executives have entrusted their defenses to our lawyers. We have taken advantage of leniency programs in the US, EU and other jurisdictions, but our lawyers have also vindicated through trial when necessary, securing one of the most recent “not guilty” verdicts for a corporation accused of an antitrust crime in the US.

Our lawyers have defended companies involved in international cartel investigations from the inception of the enforcers' push into this arena. We are now handling the defense of no less than a dozen major international cartel matters. These cases involve billions in alleged damages. Most of these cases involve potentially significant criminal fines and incarcerations, as well as investigations by competition authorities in multiple jurisdictions, including the US and EU. Many of these cases also involve direct and indirect-purchaser multi district litigation (MDL) class action litigations. Our clients include both corporations and individuals from the US, Asia and Europe.

As US and other antitrust authorities have continued to increase the resources devoted to price-fixing and international cartel investigations, and intergovernmental cooperation has grown in the form of information sharing, coordinated investigations and extradition, criminal antitrust enforcement has become increasingly globalized. Our firm has extensive experience in

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“[Dewey & LeBoeuf] is well placed to handle the full range of antitrust and trade regulation matters, including litigation and government investigations . . . [and] is currently making a particular name for itself in international cartel work.” *Chambers USA* (2011)

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## Antitrust (cont'd)

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international antitrust issues and a worldwide network of professionals and resources that enable us to resolve the most sophisticated and extensive criminal antitrust matters and their collateral consequences.

Representative matters recently handled by our lawyers include:

- Confidential investigations by every regional office and the National Criminal Enforcement Section of the DOJ, as well as investigations conducted by the EC, EU member states, Canada, Brazil, Mexico, Korea, Japan, Australia and New Zealand.
- Representation of various defendants, including Panasonic, Uralkali, Tosoh Corporation, Trelleborg Industries, and Bertelsmann, in MDL class actions and related litigation involving cathode ray tubes, refrigerator compressors, optical disk drives, potash, aspartame, marine hoses and digital music downloads.
- Defense of APAC-Missouri, Inc. against US criminal charges, resulting in a “not guilty” verdict.
- Defense of a Swiss energy company in a cartel investigation by the Italian antitrust authority.



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## Antitrust Litigation

Antitrust agencies in the US, EU and around the world have grown more vigilant and are more committed than ever to aggressive enforcement. Private antitrust litigation in the US, United Kingdom (UK) and an array of other jurisdictions regularly follows government inquiries. Tactical antitrust litigation between competitors or with suppliers has become a business tool. Wherever our clients are located, we help them resolve or exploit competition law issues.

Our lawyers have decades of experience representing major corporations headquartered across the globe, as well as executives. We handle the most complex litigation, often coordinating defenses across jurisdictions with simultaneous government investigations and private litigation. Our civil antitrust litigation experience ranges from government court litigation, to agency administrative proceedings, to private civil litigation, including multidistrict litigation and class action claims. Our private antitrust litigation experience spans both the defensive and offensive interests of our clients, as separate claims and as adjunct to other claims, including in intellectual property and contract disputes, *qui tam* litigation, and claims grounded in torts, Foreign Corrupt Practices Act, False Claims Act, securities laws, RICO, unfair practices, and distribution and franchising laws.

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“Dewey & LeBoeuf LLP has demonstrated the capability to deal with multiple cases across a broad practice covering cartels and related private litigation, conduct cases, Robinson-Patman Act price discrimination cases, antitrust enforcement and patent rights, and standard-setting cases.”  
*Legal 500* (2011)

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Representative litigation matters handled by our lawyers, apart from cartel litigation, include:

- Representation of Matsushita in a seminal antitrust case that later made its way to the Supreme Court—*Matsushita Elec. Indus. Co v. Zenith Radio Corp.*—involving allegations of a conspiracy to fix prices for television sets. This case raised the standard for surviving summary judgment when a plaintiff alleges a horizontal agreement in violation of the antitrust laws.
- Representation of Tom Brady and nine other professional football players in perhaps the most high-profile sports litigation in history—*Brady v. National Football League*—an antitrust lawsuit filed against the National Football League (NFL) and NFL teams challenging the legality of the NFL's lockout imposed on all NFL players. A court-ordered mediation ultimately led to a settlement, an end to the NFL lockout, and a new system of rules for the NFL player market on terms very favorable to NFL players.
- Representation of American Airlines in several disputes with the two major Global Distribution Systems (GDSs) in the US—Sabre and Travelport—as well as in connection with a civil investigation launched by the DOJ Antitrust Division focused on the anticompetitive business practices of the GDSs
- Defense of Panasonic Avionics and Matsushita Electric Industrial Co. against predatory-pricing suit alleging that our clients tried to monopolize the market for commercial airline in-flight entertainment systems. The district court granted our motion for summary judgment, and the plaintiffs subsequently filed, then withdrew, a notice of appeal to the Ninth Circuit.
- Defense of Qtel, the leading telecom provider in Qatar and a major global investor, securing the dismissal of two multi-billion-dollar consumer class action lawsuits in Indonesian courts. The defendants included the second largest mobile service provider in Indonesia, Indosat, in which Qtel held a majority stake, and an upstream shareholder in which Qtel also held a majority stake.

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- Representation of Ashland Inc. against a preliminary injunction motion to stop the US\$300 million sale of its Electronic Chemicals Division. The allegations included breach of contract and tortious interference. The Delaware Chancery Court ruled in Ashland's favor from the bench to allow the sale to proceed after full, expedited discovery.
- Representation of National Football League players, securing a jury verdict striking down free-agency restrictions. This victory led to the Reggie White class action, which resulted in the current free agency/salary cap system in the NFL.
- Defense of Creative Artists Agency in antitrust lawsuit alleging that several booking agencies, including CAA and concert promoters, conspired to exclude the plaintiffs from the market. The court granted our motion for summary judgment, which was later unanimously affirmed by the Second Circuit.
- Representation of the NFL Players Association and the National Basketball Players (NBA) Players Association, joined by the players associations of Major League Baseball and the National Hockey League, in submitting an amicus brief to the U.S. Supreme Court in *American Needle, Inc., v. National Football League, et al.* The *American Needle* case directly involves licensing of NFL team logos for clothing, but also at stake was whether large swaths of the activities of NFL teams will be insulated from antitrust review. The Supreme Court found in favor of our clients' interests in a major 9-0 victory in June 2010.
- Representation of British Telecom in connection with litigation against various telecommunication operators for the redress of damages arising from the infringement of antitrust rules.
- Defense of Bain Capital before Italian administrative courts in connection with a challenge by a competitor of an authorization of a concentration by the Italian antitrust authority.



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## Mergers and Acquisitions

We routinely handle all aspects of the antitrust clearance process, from international filings on multi-billion-dollar mergers, to third-party complaints, to facilitating the purchase of assets to be divested. On most transactions, our lawyers handle every aspect of the competition law issues on the transaction, including not only the competition issues connected with regulatory clearances but also antitrust advice for integration planning and antitrust risk allocation.

Our lawyers provide clients with a strategic advantage in the form of decades of practical experience, solid agency knowledge and mutual respect, and good judgment applied to the unique facts of each matter. We recognize the importance of understanding the client's objectives.

When international filings are required, they need to speak with a single voice as the agencies in different jurisdictions cooperate more closely and more routinely. Our lawyers have appeared before many of these competition agencies and, along with our network of local firms, we effectively coordinate consistent worldwide positions for our clients. Whether remedies are needed or not, this coordination combined with understanding the client's objectives has yielded serious benefits.

Representative matters handled by our lawyers include:

- Representation of MetLife in its US\$16 billion purchase of the American Life Insurance Company from AIG, as well as its US\$12 billion purchase of Travelers from Citigroup.
- Representation of Arch Coal in connection with its acquisition of Triton, resulting in the first court win in over a decade against a FTC merger challenge to create the largest US coal mine.
- Representation of complainants in the thwarted AT&T US\$39 billion proposal to purchase T-Mobile.



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- Representation of Nestlé in obtaining FTC clearances, including its US\$40 billion sale of Alcon stock to Novartis in a two-step process, as well as its acquisitions of Gerber (US\$5.5 billion), Novartis Medical Nutrition Business (US\$2.5 billion), Dreyer's Ice Cream (US\$2.8 billion), and Ralston Purina (US\$11 billion).
- Representation of EDS in the US and 16 different jurisdictions in connection with its US\$14 billion reverse merger into Hewlett-Packard in 2008.
- Representation of Amer Sports, which already owned Atomic Skis, in its acquisition of Salomon Skis, despite a complicated EU procedure involving a referral from member states to the EC.
- Representation of Apax Partners Worldwide in connection with its acquisition of Confarma and its subsidiary Farmafactoring.
- Representation of Sirap-Gema (subsidiary of Italmobiliare Group) in connection with its acquisition of Amprica and its international subsidiaries.
- Representation of Panasonic in connection with its US\$6 billion acquisition of Sanyo.
- Representation of Amoco in connection with US\$110 billion acquisition by BP.
- Representation of both Exxon and Mobil in connection with their US\$83 billion merger.
- Representation of McDonnell Douglas in connection with its US\$14 billion acquisition by Boeing.
- Representation of Pepsi Cola in connection with its US\$13.4 billion acquisition of Quaker Oats.
- Representation of CEDC, the leading Vodka producer in Russia and Central and Eastern Europe, in connection with its acquisition of Russian Alcohol Group.

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- Representation of Anheuser-Busch in connection with InBev's US\$52 billion acquisition of the company.
- Representation of Galderma Pharma SA in connection with its US\$1.0 billion and US\$1.12 billion cash tender offer to acquire all of the outstanding shares of Q-Med AB, as well as its US\$420 million cash tender offer acquisition of CollaGenex.
- Representation of Whirlpool in connection with its US\$1.7 billion acquisition of Maytag, without remedies, despite an extensive antitrust investigation.
- Representation of Verizon in obtaining DOJ clearance of its US\$8.4 billion acquisition of MCI.
- Representation of Bertelsmann AG in its US\$2.1 billion divestiture of BMG Music Publishing Group to Vivendi SA on an expedited basis, creating the world's largest music publishing company.
- Representation of BMG Music Club in its acquisition of Colombia House.
- Representation of H.J. Heinz Company in connection with its US\$800 million acquisition of HP Foods from Group Danone, including the Lea & Perrins brand of Worcestershire sauce.
- Representation of NeighborCare in the US\$1.8 billion hostile takeover by Omnicare.

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## Government Investigations

Aggressive government competition law enforcement has brought government investigations based on a broad range of conduct apart from traditional “hard-core” cartels and mergers and acquisitions. Our lawyers have fought on the cutting edge of these developments in areas including standard setting, patent settlements, marketing and distribution practices, joint ventures and alliances.

Representative matters handled by our lawyers include:

- Representation of Monsanto before both the DOJ and state agencies in connection with a high-profile Section 2 investigation of potential monopolization of the seeds and traits industry.
- Defense of Geneva Pharmaceuticals (now Sandoz Inc.) in FTC and state attorney general investigations, as well as nationwide direct and indirect purchaser class actions, arising from claims that a so-called “reverse payment” settlement of a patent infringement suit with an innovator company violated antitrust laws.
- Representation of Moby, a cruise line company, in phase II investigation of a concentration in Italy, the only phase II investigation opened by the Italian antitrust authority in 2011.
- Representation of Tiscali in connection with litigation against Telecom Italia for the redress of antitrust damages arising from the infringement of telecom regulations.

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## Counseling

An ounce of antitrust prevention is worth millions in litigation costs. We help our clients avoid those costs with counseling for every area of antitrust risk. This includes intellectual property issues; exclusive dealing, tying and monopolization practices; relationships with suppliers, distributors, competitors, trade associations and industry groups; the formation and operation of joint ventures; and merger planning.

With antitrust agencies around the world focusing on compliance training, our practical experience enables us to provide customized on-site antitrust training, special CLE antitrust seminars, compliance programs, audits, antitrust manuals and guidelines, and computer training materials. We can also provide compliance program review and advice on restructuring to comport with the most recent enforcer guidelines and expectations.

We have significant experience advising on the application of the competition laws, and we have undertaken a number of in-depth competition law compliance program reviews on behalf of clients in a range of industries. Competition law counseling relating to commercial practices and various transactions and distribution and supply chain arrangements has protected client interests as well as revealed potential claims. Examples of recent experience include defending a well-known publicly listed company against allegations of abuse in seven European countries, as well as reviewing and amending exclusive distribution agreements across the EU as part of a comprehensive compliance program.



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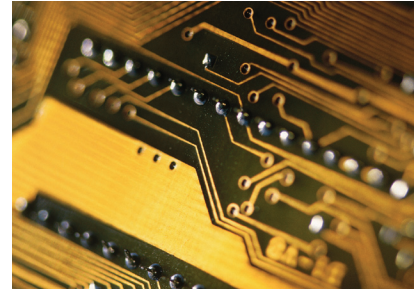
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## Patents and Antitrust

Many patent infringement actions also involve antitrust claims, because a patent is a monopoly. Our lawyers have handled a wide range of antitrust matters related to intellectual property rights for clients, including in the monoclonal antibody, auto motive, computer, defense, entertainment, medical device, pharmaceutical and publishing industries.

Representative matters handled by our lawyers include:

- Defense of Panasonic Corporation in antitrust and intellectual property lawsuit filed by Samsung Electronics Co. Ltd. in the Northern District Court of California alleging that Panasonic, SanDisk, Toshiba, and their patent pool administrator, SD-3C, conspired to manipulate the standard setting and patenting process for SD Card technology in order to monopolize the market. In successive rulings, the court dismissed Samsung's claims of patent misuse, federal antitrust violations and California unfair competition violations. The most recent decision dismissed the case in its entirety with prejudice on statute of limitations grounds such that it would be very difficult for any other licensee to challenge the SD Card patent pool or its related licensing practices on antitrust grounds.
- Defense of Schering Plough against claims that a so-called "reverse payment" settlement of a patent infringement suit with an innovator company violated antitrust laws, leading to a landmark decision in the Eleventh Circuit.
- Defense of a successor of VISX in the FTC investigation of the PillerPoint Partnership regarding Lasik eye surgery.



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## State Aid

Our firm has extensive experience in advising both private and governmental entities in connection with state aid clearances, analyzing state aid aspects of proposed projects and responding to alleged breaches of state aid rules. We are currently involved in some of the leading cases at both European and national levels. We represent clients in cases before the EC, as well as the European community courts and national courts in relation to the provision and recovery of state aid.

## Commercial Contracts and Distribution

We advise on the competition law aspects of commercial contracts, including joint venture agreements, intellectual property rights transfers, distribution agreements, franchising and sales agreements, and long-term supply agreements in a wide range of industries. Our lawyers also advise on competition law risks of pricing structures, particularly bonus and rebate schemes. Many agreements are potentially covered by a particular block exemption in the EU. In such cases, we assist our clients in defining the relevant markets and we advise on what changes are advisable to ensure compliance.

## Antitrust at Specialized Administrative Agencies

Some industries, such as insurance, finance, telecommunications and energy, have federal or state agencies that have their own competition standards. Sometimes they are similar to antitrust law—and sometimes not. When they are not, the problems need to be analyzed or handled differently. Lawyers in our Antitrust Group have worked in these specialized areas for years and know exactly what to do.

# About Dewey & LeBoeuf

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Dewey & LeBoeuf is a leading global law firm providing our diverse client base with national and cross-border solutions to all of their legal requirements. We have also earned a reputation for our deep firm-wide experience in numerous sectors, including energy, financial services, insurance and technology.

With more than 1,100 lawyers in 26 offices spanning major financial markets around the world, we are one of the largest law firms in New York City and one of the largest US firms located in London.

As a firm that frequently advises our clients on assignments that span multiple practice areas and jurisdictions, we have well-established strengths in the emerging markets. Over a third of our lawyers are based outside of the US in exciting areas of growth, including China, Russia, Kazakhstan, the United Arab Emirates, Qatar, Saudi Arabia and South Africa. This is complemented by our well-established network of offices across Asia, Europe and the US.

For more information, please visit [dl.com](http://dl.com).

## Dewey & LeBoeuf LLP

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