

## **Antitrust and Competition Representative Matters - Counseling**

### **Mergers and Acquisitions**

K&L Gates guides mergers and acquisitions from their inception through reviews by the U.S. Federal Trade Commission, the Antitrust Division of the U.S. Department of Justice, state attorneys general, and various federal and state regulatory agencies. Our lawyers possess thorough knowledge of the pre-merger notification requirements of jurisdictions throughout the Americas and Europe, and have decades of experience working with the U.S. enforcement agencies in merger matters. Through our offices in London and the U.S., we work closely with foreign counsel (outside of the U.K.) in obtaining overseas merger clearances, whether in front of the European Commission, the competition authorities of the Member States, or the Canadian Competition Bureau.

In addition to securing approval for our clients' acquisitions, we regularly assist competitors of merging companies to persuade the antitrust authorities to challenge the mergers or require divestitures as a condition to merger approval.

Recent matters include analyzing and securing approval for significant transactions involving the following industries:

- Airlines
- Automation Systems
- Automotive Components
- Banks
- Cement Manufacturing
- Chemicals
- Distribution of Lubricants
- Electric Power Generation, Transmission and Marketing
- Home Appliances
- Hospitals
- Medical Equipment
- Newspapers
- Pharmaceuticals
- Power Tools and Accessories
- Railroad Components and Peripherals
- Roofing Materials
- Security Systems
- Steel Manufacturing
- Telecommunications Equipment
- Waste Services
- Water Treatment Equipment and Services

Among other matters, K&L Gates lawyers have assisted clients with the following:

- successfully concluding a preliminary administrative investigation into the acquisition of a financially distressed steel company by one of its largest competitors despite opposition by creditors bidding to maintain the distressed company as an independent entity
- obtaining the investigating enforcement agency's approval for a large specialty metals producer to acquire a substantial domestic competitor in a transaction yielding significant efficiencies
- antitrust advice to a parent company in connection with the sale of the multi-national operations of a manufacturing and services subsidiary to a private investment fund, including assistance in identifying foreign countries where competition filings would be necessary and the coordination of domestic filings and international filings in the EU and Canada
- obtaining clearance for multibillion dollar cross-border acquisition of major automation systems producers by a competitor
- negotiating the successful closure of DOJ, FTC, and State AG investigations of acquisitions in the pharmaceutical, ocean carriage, carpet backing and waste management industries
- successfully defending the merger of the first- and third-largest waste management companies in the country

In addition, we have:

- successfully negotiated a favorable FTC consent decree with no mandatory divestitures in order to resolve competitor challenges to an acquisition by the world's largest Electronic Design Automation (EDA) software maker
- assisted a client in persuading the FTC to impose substantial conduct remedies in connection with the acquisition of one competitor by another
- assisted in the sale of a leading web-conferencing services firm to the world's largest software maker, subject to the terms of a prior U.S. DOJ consent decree
- assisted in the acquisition by a newly formed, venture capital-backed acquirer of divested life sciences assets as part of an FTC consent order in a large pharmaceuticals merger
- guided the successful clearance of substantive antitrust reviews by U.S. and multiple European jurisdictions for acquisitions in a number of high-technology industries, including:
  - Biotechnology (anti-AIDS vaccines, anti-flu vaccines, immunotherapy antigens)
  - e-Commerce (online auctions)
  - Electric power generation and marketing
  - Life Sciences (drug discovery tools, reagents)
  - Medical Devices (intra-coronary stents and diagnostic ultrasound imaging)

- Semiconductors (graphics chips, system-on-a-chip technology)
- Software (operating systems, enterprise applications, database tools)
- Telecommunications (gigabit Ethernet network interface cards)

### **Intellectual Property**

The ownership, use, protection, and licensing of intellectual property is often a source of conflict between participants in an industry, particularly when blocking patents, license restrictions or denials, and other forms of exclusion come into play. Antitrust claims and counterclaims are sources both of opportunity and consternation for companies faced with intellectual property issues. We have years of experience as primary counsel to some of the leading holders of intellectual property in the world. K&L Gates has represented and counseled clients on numerous intellectual property/antitrust issues and our lawyers are steeped in the law and policies that govern the intersection of intellectual property and antitrust. For example, K&L Gates Antitrust and Competition lawyers have:

- provided antitrust counseling to a medical research institute on a joint venture and teaming arrangement for the exploitation of vaccine technology and the licensing of that technology
- provided antitrust advice to a Mid-Atlantic manufacturer of industrial machinery on licensing arrangements, joint research and development arrangements, and joint ventures with similar companies located in the Far East and Europe
- counseled a major heavy metal producer on the antitrust issues surrounding the licensing of its coke oven technology and trade secrets
- provided antitrust counseling to a worldwide manufacturer of wastewater treatment equipment in connection with the formation of a joint venture for the exploitation of technology
- provided counseling on a patent abuse monopolization claim on behalf of a manufacturer of components for a consumer product

### **Trade Associations and Standard Setting**

We have advised industry participants in standard setting with respect to reasonable and non-discriminatory licensing terms for contributed intellectual property, and have formed multiple nonprofit industry standards bodies in the telecommunications and software industries. We have served as regular outside counsel to trade associations and regularly attended association general and board meetings to ensure antitrust compliance.

### **Antitrust Compliance Programs and Audits**

The first step in handling an antitrust investigation or lawsuit is avoiding it altogether. Our lawyers regularly design and implement antitrust compliance programs for all manner of clientele. We minimize antitrust risk by counseling on how to avoid common pitfalls. We train employees on proper conduct for representation before customers and competitors. Our antitrust lawyers are skilled internal antitrust auditors—many have prior experience as criminal and civil government antitrust investigators. The firm has also analyzed director overlaps to ensure

compliance with Section 8 of the Clayton Act. We have conducted regular antitrust audits for clients in the following industries:

- Consumer Food Products
- Data Storage
- Electric Power
- Health and Beauty Aids
- Hotels
- Internet Retailing
- Lifting and Materials Handling Devices
- Oil Refining
- Petroleum Product
- Railroads
- Semiconductors
- Software
- Steel Manufacturing
- Trade Associations
- Waste Services

### **Pricing Advice**

The firm has extensive experience in helping companies structure their distribution and resale systems to minimize exposure to suit under the federal Robinson-Patman Act and similar state statutes prohibiting price discrimination. We advise clients on the establishment of pricing policies that permit the client to respond to competition, maximize long-term profitability, and minimize the risks that often attend pricing decisions. Whether a client's goal is to implement a National Accounts Program, reward valuable distributors, or take other action that may result in a claim, K&L Gates can help. For example, we have:

- assisted an international computer peripherals manufacturer in implementing its National Accounts Program and Reseller Partnership Program
- represent multi-billion dollar companies with one- and two-step distribution networks in all aspects of Robinson-Patman Act compliance

### **Structuring Relationships (including Joint Ventures and Strategic Alliances)**

Cooperative ventures among industry participants often enable them to compete more efficiently and to provide new or improved products and services. K&L Gates lawyers have years of experience in helping clients minimize the risk of antitrust violations when structuring relationships such as joint ventures and strategic alliances. For example, we have:

- developed antitrust guidelines for a joint manufacturing and sales/distributions ventures in the steel industry
- helped structure joint distribution ventures in the pre-printed advertising industry
- assisted in structuring a foreign joint production venture in the automobile engine components industry
- advised regarding a joint operating venture in the newspaper industry;

- assisted railroad equipment industries in structuring intellectual property pools and standard-setting
- guided waste industry client in establishing joint venture for provision of recycling services
- assisted clients in multiple industries to establish joint purchasing cooperatives
- assisted a client in setting up industry-wide information sharing on best safety practices
- assisted a client in reorganizing a recently deregulated large power plant joint venture

### **Distribution and customer relationships**

K&L Gates routinely advises clients regarding the establishment of efficient and effective relationships with suppliers and customers, while avoiding unnecessary risks associated with exclusive dealing, tying, price discrimination, boycotts, monopolization and other restraints of trade. For example, we have

- negotiated exclusive transportation arrangements in compliance with the Sherman and Clayton Acts
- reviewed technology joint ventures and strategic alliances for compliance with antitrust rules
- advised a national food manufacturer regarding the antitrust implications of slotting, reclamation allowances, and other practices in the retail grocery industry
- structured and restructured product distribution systems while minimizing antitrust risk
- developed territorial and multi-product sales programs while avoiding tying problems
- counseled clients on recognition policies for product supplies
- obtained favorable DOJ business review letters regarding sales and distribution arrangements

### **Franchisor-Franchisee Relations**

The firm's lawyers advise clients in numerous jurisdictions on franchising issues, including termination of franchisees, dealers and distributors, purchase of franchisee rights, and territorial allocation plans. We have advised franchisors, franchisees, manufacturers, dealers and distributors on a wide variety of issues including acquisitions and disclosure, registration and relationship issues. In addition, we have assisted in the acquisition of a multi-location, multi-regional franchisee's operations to avoid franchise agreement restrictions on transfer; advised in the establishment of a multi-region, multi-location fast food franchise network; and structured the buyout of a franchisor by a franchisee group.

### **Consumer Protection & Unfair Competition**

The Federal Trade Commission, the Department of Transportation, State Attorneys General, private consumers and businesses constantly test the boundaries of what companies can do and say when marketing their products or making claims about their efficacy. K&L Gates has extensive experience in helping to craft advertising and marketing statements, campaigns, and strategies in order to avoid an FTC inquiry or private action under Section 43(a) of the Lanham Act. When private or government inquiries or complaints do occur, our litigators have the experience to address them. Representative experiences in addressing Consumer Protection & Unfair Competition issues include:

- designed Made in USA compliance program for Fortune 500 office products manufacturer
- designed rules for online commerce through client web site
- assisted international computer peripherals manufacturer in design and rollout of rules governing customer access to supply of aftermarket products
- designed and implemented FTC and congressional challenge to client competitor web site misrepresentations
- represented clients in FTC and DOT investigations of website display and content