

Antitrust / Competition





*At King & Spalding,
we know antitrust, and we
understand the implications
for our clients' businesses.*

Experience. Perspective. Judgment.

We combine deep knowledge and experience across all industries with a highly commercial approach to help our clients execute on strategic transactions, navigate challenging antitrust regulatory environments and find favorable paths through high-stakes investigations and disputes.

A hallmark of our Antitrust Practice is a dedication to partnering on all levels, both within the firm and with in-house counsel. We work to understand not just our clients' legal needs but also their business needs to provide comprehensive, creative and solution-oriented advice that is cost-effective and efficient.

FIRSTHAND AGENCY KNOWLEDGE

King & Spalding's antitrust team includes attorneys who have served in senior positions in U.S. antitrust enforcement agencies and have firsthand knowledge of how those agencies work.

Our antitrust lawyers include:

Former Deputy
Bureau Director and
Deputy Assistant
Director of the Federal
Trade Commission

Former Deputy
Assistant
Attorney General for
Criminal Enforcement
in the Department of
Justice's Antitrust
Division

Former FTC staff
lawyers in the
Mergers I
and Mergers IV
Divisions

Former DOJ
lead prosecutors

We regularly appear before the DOJ, FTC, state attorneys general and other key competition authorities, as well as before the European Commission.

Antitrust Advisors for Our Clients' Most Important Transactions

A key focus of our Antitrust Practice is advising clients and their boards across a wide range of industries on the antitrust risks of, and obtaining agency approvals for, national and international mergers, joint ventures, and other strategic alliances. Our clients include leading companies and private equity firms across a wide range of industries, including chemicals, consumer products, energy, financial services, and healthcare and pharmaceuticals, among others.

We have developed a proven “game plan” to analyze substantive antitrust issues and develop and implement strategy for achieving regulatory clearances and to evaluate implications of antitrust analysis for deal terms. We also have developed a cost-effective approach to Hart-Scott-Rodino and, if necessary, Second Request processes, and we work seamlessly with the King & Spalding M&A team to provide state-of-the-art advice on all facets of a transaction.

Our game plan has yielded major successes for our clients, including WestRock, Energizer, Ochsner Health System and many others. We regularly handle large, complex transactions for our clients, and we have never had a transaction successfully challenged by any enforcement agency or had a transaction abandoned due to an investigation or challenge.

REPRESENTATIVE MATTERS

- Successfully represented WestRock Company on antitrust issues associated with its proposed \$4.9 billion acquisition of fellow packaging and paper materials company KapStone Paper and Packaging Corp. The transaction was cleared by the Department of Justice Antitrust Division without divestitures at the end of 2018.

- Successfully represented Energizer Holdings, Inc., in the FTC's investigation into its acquisition of Spectrum Brands Holdings, Inc., which combines two leading battery product brands. The transaction was cleared by the FTC without a Second Request in 2018.
- Represented Ochsner Health System in the formation and operation of a joint venture with Slidell Memorial Hospital that consolidated Slidell's inpatient and outpatient service lines with an Ochsner community hospital's service lines operating in Slidell's service area. The transaction was the subject of FTC, DOJ and AG investigations in 2016 and 2017. A prior merger between Slidell and the Ochsner community hospital (then owned by Tenet) was abandoned in 2003 in the face of FTC opposition (DOJ and FTC highlighted this opposition in a later policy statement). We achieved clearance for the joint venture with no enforcement action.
- Successfully represented EndoChoice in a merger with competitor Boston Scientific, achieving FTC clearance without a Second Request.
- Represented Transocean Ltd. in connection with its \$2.7 billion acquisition of Ocean Rig UDW, Inc., in the offshore oil and gas drilling sector, and successfully obtained antitrust clearances in several jurisdictions around the world.
- Represented LS Power in obtaining antitrust clearances for various acquisitions of electric power-generating assets from several independent power producers around the U.S., and provided continued antitrust advice on subsequent potential transactions.
- Represented Mirant Corporation in its merger with RRI Energy, which created one of the largest independent power producers in the U.S., in an extensive DOJ Second Request investigation, which DOJ ultimately closed without further action and without filing suit to enjoin the merger.

A Go-To Firm for Global Antitrust Investigations

Our lawyers have played substantial roles defending clients in nearly every major global cartel investigation in the past decade, including Diesel, Ocean Shipping, Auto Parts, Foreign Exchange Currency, LIBOR, TFT-LCD, Municipal Bonds, and Air Cargo. Investigations in connection with many of these matters were and are being conducted by various global jurisdictions, including Brazil, Canada, the EC, Japan, Korea, the UK and the U.S.

Our antitrust group works seamlessly with the lawyers in our white-collar criminal defense practice, known as the Special Matters group. The Special Matters group was recently voted as one of the top practices in the U.S. in the Law360 “Practice Groups of the Year” awards. Over 100 King & Spalding professionals bring prior government experience, including the recently added former Acting Attorney General Sally Yates, as well as former U.S. attorneys and former assistant U.S. attorneys, and former SEC enforcement heads. We have handled investigations before 73 of the 93 U.S. Attorneys’ Offices in the U.S. and every litigating division of the Justice Department.

Drawing on our extensive enforcement backgrounds and private practice experience, we effectively guide clients through all phases of these investigations, including simultaneously seeking and prioritizing leniency agreements in multiple global jurisdictions, as well as through search warrants, subpoenas, “dawn raids,” “drop-in” interviews of corporate employees, immunity and plea negotiations, and, where necessary, trial.

REPRESENTATIVE MATTERS

- Representing a major global energy company as the amnesty applicant in a DOJ bid-rigging and market manipulation investigation.
- Representing Porsche AG and Porsche Cars North America, Inc., in an antitrust cartel matter in which multiple class action complaints have been filed in various U.S. federal courts alleging that Porsche and other German auto manufacturers (including Daimler, BMW, Volkswagen and Audi) have engaged in a long-running antitrust conspiracy regarding technological advancements, features and costs.
- Representing Porsche AG and Porsche Cars North America, Inc., in the FTC’s recent investigation of false advertising of clean diesel emissions.
- Representing an international auto parts manufacturer and several senior executives from various auto parts companies in a multijurisdictional cartel investigation and related civil proceedings.
- Serving as lead counsel to a global financial institution in investigations being conducted by numerous domestic and foreign regulatory authorities involving currency exchange rates and parallel antitrust litigation alleging that foreign currency dealers conspired to manipulate benchmark currency exchange rates and bid-ask spreads shown to clients.

Winning Litigation

Our antitrust litigation experience includes substantial civil consumer class actions, sensitive (and often simultaneous) civil and criminal government investigations, and strategic litigation among competitors involving distribution, marketing, pricing, advertising and other business practices.

Our antitrust litigation team includes some of the top antitrust trial attorneys in the U.S., as well as a deep bench of trial lawyers who try complex “bet the company” cases throughout the U.S., including 12 members and two past presidents of the American College of Trial Lawyers.

REPRESENTATIVE MATTERS

- Served as lead counsel for InterContinental Hotels Group in a consolidated MDL proceeding alleging federal and state antitrust violations relating to online booking of hotel rooms (In re: On-Line Travel Company (OTC)/ Hotel Booking Antitrust Litigation). Prevailed on motion to dismiss and recognized by Global Competition Review as co-litigator of the week. Learn more at <http://globalcompetitionreview.com/article/1058981/litigators-of-the-week-jeffrey-cashdan-and-thomas-barnett>.
- Served as co-lead counsel for The Coca-Cola Company in an action filed in New York by its chief rival, PepsiCo, Inc., alleging monopolization and attempted monopolization of the purported market for fountain syrup distributed by certain independent food service distributors.
- Served as lead counsel for Progressive Casualty Insurance Corp. (and related affiliates) in dozens of antitrust actions and a RICO class action consolidated in an MDL proceeding in Orlando, Fla., alleging a conspiracy among insurance companies related to labor rates for automobile repairs.

- Served as lead counsel for Kemira Chemicals, Inc., in an MDL proceeding in Newark, N.J., alleging conspiracy to fix prices in the sale of liquid aluminum sulfate.
- Served as lead counsel for InterContinental Hotels Group in multiple antitrust actions pending throughout the country alleging a conspiracy among hotel chains to eliminate interbrand competition for keyword internet searches used by customers when booking hotel rooms online.
- Represented UCB S.A. and UCB, Inc., in federal and state actions, both class and nonclass, filed throughout the country alleging a global cartel in the sale of vitamins.
- Achieved a complete dismissal with no monetary settlement for Rouses Point Pharmaceuticals in an MDL proceeding in Pennsylvania federal court alleging that more than 20 pharmaceutical companies engaged in a conspiracy to fix the prices of various generic drugs. Our client was dismissed prior to discovery and prior to the court's decision on motions to dismiss.
- Represented *Warren General Hospital v. Amgen, Inc.*, 643 F.3d 77 (antitrust class action seeking billions of dollars in damages from client Amgen; 12(b)(6) dismissal affirmed by the Third Circuit).

“Broad antitrust practice, with significant activity representing clients such as pharmaceutical and leisure companies in both state and federal litigation at trial and appellate level.”

CHAMBERS USA

Industry Experts

We work with clients across all major industries, including life sciences and healthcare, automotive, consumer products, energy, financial services, and several others.

INDUSTRY SNAPSHOTS

LIFE SCIENCES AND HEALTHCARE

We advise a broad range of healthcare clients—health systems, hospitals, hospital networks, physician practices, physician networks, physician hospital networks, third-party administrators, pharmacy benefit managers, medical software companies and payors – on a wide range of antitrust issues, including transactions; managed care contract negotiations and terminations; messenger model networks; financial and clinical integration of physician groups; and claims by competitors, payors or the government.

We also advise life sciences clients, including global pharmaceutical companies, on potential transactions and pricing and distribution issues, and defend them in litigation and investigations.

In addition to routinely providing in-house counsel with antitrust compliance and training programs, our antitrust lawyers also collaborate with our leading healthcare practice and life sciences practice groups, leveraging those groups' comprehensive understanding of the products and markets involved.

ENERGY

Our antitrust lawyers possess deep experience in energy matters, having represented many of the top oil and gas producers and marketers in the country, as well as major electric power companies in a wide range of antitrust matters. We also advise gas and electric power-trading clients on antitrust compliance and market manipulation issues.

AUTOMOTIVE

We have a unique strength in our expertise regarding antitrust and consumer protection issues in the automotive sector, having represented automotive manufacturers and manufacturers of various automotive parts in several regulatory investigations in the U.S. and abroad.

RETAIL AND CONSUMER PRODUCTS

Our antitrust team has particularly deep experience representing clients in the retail and consumer products industries. We regularly represent leading companies in achieving clearance for complex, global transactions and defend them in bet-the-company investigations and litigation.

FINANCIAL SERVICES

Our antitrust lawyers have been heavily involved in representing financial institutions and their employees in some of the most significant investigations and disputes affecting the financial services industry over the past decade, including foreign exchange currency, LIBOR and municipal bonds.

*Recognized as
a leading
international firm
in Antitrust:
Cartel*

CHAMBERS GLOBAL

Global Solutions

Our antitrust lawyers have handled transactions and investigations involving dozens of jurisdictions around the world.

- Argentina
- Australia
- Austria
- Belgium
- Brazil
- Canada
- China
- Colombia
- The European Commission (Brussels)
- Finland
- France
- Germany
- Greece
- India
- Ireland
- Israel
- Kazakhstan
- Mexico
- Netherlands
- New Zealand
- Poland
- Portugal
- Romania
- Russia
- Slovenia
- Spain
- South Africa
- Turkey
- Ukraine
- United Kingdom
- United States
- Venezuela

ABU DHABI
ATLANTA
AUSTIN
CHARLOTTE
CHICAGO
DUBAI
FRANKFURT
GENEVA
HOUSTON
LONDON
LOS ANGELES
MOSCOW
NEW YORK
PARIS
RIYADH
SAN FRANCISCO
SILICON VALLEY
SINGAPORE
TOKYO
WASHINGTON, D.C.

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