

Antitrust

Polsinelli's nationally recognized Antitrust team partners with clients to provide industry-specific advice and practical solutions to complex issues that our clients encounter on a daily basis. Our multidisciplinary practice has depth and experience representing clients in a broad range of federal and state antitrust matters including but not limited to compliance and risk management, civil and criminal antitrust investigations, group purchasing organizations, joint ventures, mergers and acquisitions, price discrimination, resale price maintenance and standard setting. Because antitrust compliance is critical to our clients' businesses, we work closely with our colleagues and clients to develop a robust, holistic strategy aligned with and in support of their goals and objectives.

Antitrust Audits, Compliance Training and Risk Management Strategies

- Our team conducts custom-designed, robust antitrust audits of business operations to identify risks, prevent potential violations and proactively address issues before they surface in an investigation or litigation.
- We develop comprehensive antitrust compliance policies and trainings that reflect best practices that align with our clients' enterprise risk management strategies.

Antitrust Counseling

- Our team partners with clients to provide advice on complex business operations issues that executives face while executing strategic initiatives.
- We advise clients on day-to-day issues ranging from benchmarking, consumer protection, environmental, social and governance (ESG) matters, intellectual property, joint purchasing, pricing strategies and standard setting.

Litigation and Government Investigations

- Polsinelli has successfully represented companies in antitrust trials and appeals in class actions, high-stakes litigation and multidistrict litigation.
- We represent clients who have been served a civil investigative demand under the antitrust and consumer protection laws by the Federal Trade Commission (FTC), the Antitrust Division of the United States Department of Justice (DOJ) and state attorneys general. We also represent clients in criminal antitrust matters.

Mergers and Acquisitions

- We work with clients through all phases of their transaction to minimize and manage their antitrust risk profile during initial strategic considerations, contract formation, negotiation of terms, exchanges of competitively-sensitive information, all aspects of reporting obligations under the Hart-Scott-Rodino Act (HSR) and the related merger review process, pre-closing operations closing and post-closing policies and protocols.

- Our antitrust attorneys have represented clients in significant merger investigations involving multibillion-dollar transactions. We have responded to numerous Second Requests, prepared and presented facts and economic expert testimony to antitrust enforcers and courts, and where necessary, negotiated consent decrees, including divestitures, allowing deals to move to the closing table.

Matters

Our attorneys have successfully represented clients in a wide range of industries, including athletics, pharmaceuticals, chemicals, health care, food and beverage, construction, retail and manufacturing, agriculture, and trade and professional organizations. Representative experience includes:

- Successfully defended a national association of high school sports and a national association of collegiate sports against an antitrust claim by a baseball bat manufacturer, alleging that rules governing Bat-Ball Coefficient of Restitution restrained trade in the non-wood bat market. The United States Court of Appeals for the Fifth Circuit unanimously affirmed the dismissal of the antitrust claims, reaffirming our client's role in setting rules for high school competition.
- In two separate matters, defended major athletic conferences in antitrust class actions filed against a national collegiate sports association and other major athletic conferences, alleging that the association's rules limiting compensation for student-athletes violated the Sherman Act.
- Successfully defended two athletic conferences in a class action filed alleging antitrust and intellectual property claims against TV broadcasters and certain Division I college athletic conferences.
- Successfully defended a client in a "product-hopping" antitrust claim on behalf of a branded pharmaceutical company on a motion for summary judgment, which was the first defense-side product-hopping victory at this level of litigation.
- Successfully defended class action by nurses, alleging that an association of hospitals and individual hospitals conspired to fix nurses' salaries in violation of federal and state antitrust laws.
- Successfully defended government merger investigations and litigation, including as lead counsel for the acquiring hospital system in the Washington AG's lawsuit seeking to enjoin and unwind two completed physician practice acquisitions (summary judgment for defendants on one acquisition; case settled with no physician divestitures).
- Successful representation of a hospital as trial witness for the FTC in its successful challenge to a physician practice acquisition (acquisition enjoined on the FTC's motion).
- Successfully defended multiple pharmaceutical companies in FTC investigations, including allegations of anticompetitive acquisitions, conduct aimed at preserving branded pharmaceutical market position against generics, and excessive pricing.
- Successfully defended a client in a DOJ antitrust investigation involving alleged price signaling; investigation closed without action.
- Secured clearance for numerous significant acquisitions of hospitals and physician groups by in-market competitors.
- Secured clearance for a significant divestiture transaction in the beer industry following a DOJ Second Request and an investigation into the proposed divestiture.
- Secured clearance for complex intellectual property licensing transactions on behalf of a global pharmaceutical company.
- Successful representation of a client involving allegations of no-poach agreements within the context of a significant acquisition.
- Successful strategic and legal counseling for clients ranging from emerging entities to Fortune 500 corporations on key distribution, group purchasing, pricing, price discrimination and resale price maintenance issues.
- Ongoing representation as outside antitrust counsel to prominent and prestige retailers.
- Ongoing representation as outside antitrust counsel to numerous trade and professional organizations.