



## Antitrust and Competition

Understanding global antitrust and competition rules is a necessary and prudent part of any successful business strategy in today's global economy. These laws are complex, but they govern a broad range of business conduct: interaction with competitors; obtaining and maintaining a dominant market position; forming supplier and customer arrangements; participation in trade associations; conduct in joint ventures and corporate mergers and acquisitions. Indeed, these laws have the potential to impact virtually every aspect of a company's business plan and activities in the marketplace.

Whether your company is large or small, if it is considering forming a business alliance, moving into a new market, taking a new tack with its competitors, implementing a new production, marketing or distribution strategy, or growing through corporate development, advice concerning the requirements of antitrust and competition laws is essential. The risks and consequences of non-compliance can be severe.

### CAPABILITES

#### Investigations

Our investigations experience is market leading and diverse. Our lawyers have represented companies in a full range of competition investigations and enforcement actions conducted by, for example, the US DOJ, US FTC, the European Commission, the UK Office of Fair Trading, UK Competition Commission, the Australian ACCC, the French Autorité de la Concurrence, the German Bundeskartellamt, the Austrian Kartellgericht, the Dutch ACM, the Spanish Competition Authority, and the Korean FTC.

#### Counselling

We counsel our clients on national and international competition and antitrust laws, unfair trade practices, prospective acquisitions, price discrimination issues, abuse of dominance and intellectual property issues.

#### Mergers and Acquisitions

### KEY CONTACTS

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### RELATED SERVICES

- Mergers and Acquisitions
- Merger Control
- Intellectual Property and Technology

### RELATED SECTORS

- Financial Services

We have a strong multi-jurisdictional merger practice that can seamlessly coordinate filings in jurisdictions worldwide.

We are able to help clients analyse any potential competition issues, coordinate multijurisdictional merger clearances, represent clients before regulatory agencies, analyse and negotiate potential remedies, deal with in-depth investigations and advise on merger litigation.

## Compliance Audits and Programs

Our experience is diverse and includes representing companies in a full range of competition matters. This diversity in expertise allows us to provide advice to our clients on all areas of competition compliance including auditing existing policies and procedures and enables us to provide clients with commercial and practical solutions. This includes with regards to the implementation of a compliance programme, the provision of training including on raids, or any changes to existing policies and procedures.

## Cartel Enforcement Defence

Criminal cartel enforcement is a top priority of competition Regulatory Authorities and cartel investigations, in particular those with international aspects, are on the rise.

Our team acts regularly for multinational clients and provides a globally coordinated approach in representing client before the regulators and in negotiating resolutions. The team has much experience in assisting client with leniency and amnesty applications and where necessary defends clients through litigation.

## Civil Litigation / Class Actions

Private litigation is fast becoming as important as public regulation as a means of enforcing competition law.

We have considerable experience in advising claimants and defendants in competition based litigation in a number of jurisdictions, and representing clients appealing regulator decisions to the European and domestic Courts.

## Criminal Antitrust Defence

Our team provides criminal defence to clients including in response to raids, managing disclosure, leniency negotiations with Regulators, defence of Criminal Litigation and in relation to Trials and Appeals.

## State Aid

We have a strong track record in State aid work, acting for funding bodies, recipients of aid and those who feel that their interests have been damaged by unlawful aid awarded to their competitors.

## EXPERIENCE

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- Acting for two pharmaceutical companies in separate 'pay for delay' pharmaceutical patent settlements in Europe.
- Represented Church & Dwight in the Church & Dwight v. Mayer Labs antitrust case and related FTC investigation. In granting our summary judgment motion, the California federal judge held that a C&D shelf share discount incentive rebate program involving Trojan condoms did not constitute anti-competitive monopoly behaviour. This is a significant win for the client, who has been engaged in hotly contested litigation for more than four years with competitor Mayer Laboratories. We also convinced the FTC to drop its three year investigation without a consent decree or any conditions and the FTC agreed to destroy all documents.
- Advised Etihad Airways in relation to their equity investment in Air Berlin which required both merger control and regulatory advice, as well as competition law advice in relation to commercial co-operation agreements between the two airlines.

- Energy and Natural Resources
- Hospitality and Leisure
- Insurance
- Life Sciences
- Media, Sport and Entertainment
- Industrials
- Technology

- Advised two of the largest companies in provision of secure electronic payment technologies a complex acquisition. This involved creating cooperation between a number of competition authorities.
- Building a global compliance function with particular emphasis on antitrust, anti-corruption, antimoney laundering, international trade regulation/OFAC, government relations, and privacy/data security for an international insurance and financial services company.
- Representing a global airline in the General Court against the European Commission's air cargo cartel decision, with simultaneous damages litigation in the UK and the Netherlands.
- Advising one of the world's largest freight forwarders in the context of a European Commission cartel investigation and a subsequent appeal to the General Courts. The team successfully secured a significant fine reduction for the client which was being investigated by anti-trust authorities, notably the European Commission and US Department of Justice, following global dawn raids across the industry in 2007.
- Acting for a global airline in complex class action cases currently pending in the US including in the Southern District of New York, Eastern District of New York and the Northern District of California District Courts. The Plaintiffs allege billions of US dollars in damages.
- Advising a Japanese manufacturer of electronic equipment, in multi-district class action antitrust litigation alleging violations of the Sherman Act and state laws in the optical disk drive industry.
- Acting for Pool Corporation and its subsidiaries in a multi-district litigation alleging violations of the antitrust laws in regard to the distribution of swimming pool products and supplies. The case is pending in the United States District Court for the Eastern District of Louisiana and is in the discovery stage.

## INSIGHTS

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### Publications

#### Commissioner Vestager's Mission Letter - The way ahead

13 September 2019

A second term for Commissioner Vestager - not a surprise at all. But a second term as Competition Commissioner - that was far from expected. However, it does not come as a total surprise. Anyone in the position of the Commission president would have been expected to rely on one of the most known, respected and sometimes feared Commission members in a time of turmoil and fundamental change.

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#### Antitrust Matters - May 2019

13 MAY 2019

#### ANTITRUST MATTERS SERIES

We are pleased to share with you a New Edition of our periodical global publication Antitrust Matters.

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#### Top franchise developments of 2018

11 APR 2019

DLA Piper IPT attorneys Barry Heller, John Hughes and Karen Marchiano recently conducted a webinar reviewing 2018's top franchise developments. Two stand out from the rest.

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#### Top of Mind: Litigation

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20 MAR 2019

In this issue, our coverage of 10 big topics businesses have been thinking about this quarter.

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### **Global Merger Control Handbook**

28 JAN 2019

With an increasing number of cross-border transactions taking place in today's fast-changing global environment, an understanding of, and compliance with, national and regional legislation and requirements are of vital importance.

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### **The era of more effective EU competition enforcement has begun**

17 DEC 2018

On 4 December 2018, the Council of the European Union adopted a Proposal for a new Directive designed to empower the competition authorities of the Member States (NCAs) to be more effective enforcers and to ensure the proper functioning of the internal market (ECN+).

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### **Global Anticorruption Newsletter**

5 DEC 2018

DLA Piper's *Global Anticorruption Newsletter* offers practical guidance on complying with international bribery laws.

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### **Antitrust Matters - July 2018**

24 JUL 2018

#### **ANTITRUST MATTERS SERIES**

We are pleased to share with you a New Edition of our periodical global publication Antitrust Matters.

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### **Increasing Level of EU Fines For Procedural Infringements in Mergers?**

25 APR 2018

The fines imposed by the European Commission (the Commission) for substantive breaches of competition law have been steadily increasing in recent years, culminating in the high fines imposed on Intel (€1.06bn), Google (€2.42bn) and the participants in the trucks cartel (totalling €3.8bn). However, the Commission is also increasingly enforcing procedural competition law rules, particularly in the context of the European Merger Regulation (the EUMR), imposing fines for breaches, the most recent example being the €124.5m fine on Altice for implementing its acquisition of PT Portugal before receiving merger clearance.

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### **DLA Piper South Africa**

13 DEC 2017

DLA Piper South Africa offers legal services to clients based in South Africa, Africa and internationally. Our services include Corporate/M&A, Capital Markets, Finance and Projects, Competition and Tax law.

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## **Antitrust Matters - November 2017**

23 NOV 2017

### **ANTITRUST MATTERS SERIES**

We are pleased to share with you a Special Edition of our periodical global publication Antitrust Matters.

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## **Big data may become big antitrust concern**

19 SEP 2017

Considering the antitrust implications of the collection and use of big data.

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## **A new test for Mexico's structural changes: antitrust reform – key points in one chart**

16 JUN 2014

This entirely new framework should be carefully analyzed by investors in structuring their Mexico-related M&A transactions and managing their existing operations

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## **Events**

### **Previous**

#### **Current Issues in Competition**

3 June 2019

Tel Aviv-Yafo

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#### **Antitrust aspects of big data and algorithms**

23 JAN 2018

Webinar

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## **NEWS**

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## Frank Ryan discusses the trade war with Yahoo Finance

9 Sep 2019

**Highlight:** “Where we are right now is in a political phase in this debate, and... we need to get to a practical phase,” says @DLA\_Piper’s Frank Ryan on the trade war. “The sooner we get stability for major multinationals in China regarding IP protection, the better off we’ll be.” [pic.twitter.com/u0y kzF8m89](https://pic.twitter.com/u0y kzF8m89)

— Yahoo Finance (@YahooFinance) September 9, 2019

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## DLA Piper advises Tirona on the acquisition of a stake in CashCape

5 September 2019

DLA Piper has advised Tirona Ltd. on the acquisition of a 25 percent stake in the fintech app CashCape.

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## DLA Piper advises BASF in connection with partial divestiture of European polyamide business

14 August 2019

DLA Piper has advised DAX company BASF on the acquisition of Solvay’s integrated global polyamide business. A corresponding agreement was signed by both companies in September 2017. Following the approval of the transaction by the European Commission in January 2019, which was granted subject to certain conditions including the divestment of polyamide production sites in Europe to a third party, the parties have now reached an agreement on such divestment to Domo Chemicals.

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## DLA Piper advises Allianz Real Estate on the acquisition of EDGE Hafencity in Hamburg

2 August 2019

DLA Piper has advised Allianz Real Estate on its acquisition of the office property EDGE Hafencity as part of an off-market forward deal. EDGE HafenCity Hamburg will be a 15-storey building with a total lettable area of approximately 22,500 sqm.

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## DLA Piper advises Rolls-Royce on acquisition of Siemens' eAircraft business

21 June 2019

DLA Piper has advised Rolls-Royce plc on the acquisition of Siemens' electric and hybrid-electric aerospace propulsion activities, eAircraft. The acquisition will accelerate the delivery of Rolls-Royce's electrification strategy and boost its ambition to play a major role in the "third era" of aviation. The completion of the transaction is expected in late 2019, following a period of employee consultation.

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## DLA Piper announces partnership promotions for 2019

1 APR 2019

DLA Piper is proud to announce that 77 lawyers have been promoted to its partnership. The promotions are effective as of April 1, 2019 in the United States and May 1, 2019 for EMEA and Asia Pacific. The promotions were made across many of the firm's practice areas in 43 different offices throughout 20 countries.

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## DLA Piper hosts leading business and diplomacy conference

14 MAR 2019

DLA Piper's London office has hosted the Annual Conference of the International Diplomatic and Business Exchange (IBDE).

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### **DLA Piper's GTGA team named Sanctions Law Firm of the year 2018**

27 JUL 2018

DLA Piper's Global Trade and Government Affairs (GTGA) team has been named Sanctions Law Firm of the year, Europe, at this year's WorldECR Awards.

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### **\$name**

12 Apr 2018

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### **DLA Piper announces partnership promotions for 2018**

3 APR 2018

DLA Piper is proud to announce that 62 lawyers have been promoted to its partnership. The promotions are effective as of 1 April 2018 in the United States and 1 May 2018 for EMEA and Asia Pacific. The promotions were made across many of the firm's practice areas in 42 different offices throughout 20 countries.

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### **DLA Piper advises Timor-Leste on historic maritime treaty**

6 MAR 2018

DLA Piper has been advising the Government of Timor-Leste, for more than four years, on its historic maritime treaty with the Australian Government, signed today at the United Nations Headquarters in New York, following the successful outcome of a compulsory conciliation process.

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### **Six months until GDPR: companies still reporting low levels of preparedness**

15 Nov 2017

For the over 200 organisations responding to DLA Piper's Data Privacy Scorebox online survey tool since the start of the year, the average alignment score with all key international data privacy principles was 31.5%, as against an 38.3% average score for respondents in the 2016 calendar year.

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### **\$name**

18 Oct 2017

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## **In Norway**

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Our lawyers have extensive experience in these areas and may guide our clients efficiently through the regulatory framework. We are on top of the latest national and international legislative developments and case law. We also have in depth understanding of the EEA Agreement and several of our lawyers have work experience from the EFTA bodies, the Secretariat and the EFTA Surveillance Authority.

## PUBLIC PROCUREMENT

Norway has an extensive public economy and the Norwegian official agencies and departments are important participants in many markets.

Public sector procurement constitutes a substantial part of the annual turnover for a large portion of our clients. Therefore a correct understanding of the legal framework in the field of public procurement is of essence. The fact that this legal framework is in constant change, makes it both challenging and expensive to ensure a correct application and enforcement. One must therefore have the necessary overview in order to identify the possibilities, the pitfalls and the possible mistakes which have occurred or may occur.

Our assistance to contracting authorities may for example cover:

- on-going legal advice, knowledge sharing including seminars on different levels
- planning, execution of and quality checks of tenders and tender documentation.
- Assessment of the most suitable procurement strategy, including contract forms and negotiations.
- Establish templates, checklists and procurement-routines.
- Formulate contract documents, qualifications and the award-criteria.
- Assistance in negotiations, including assessment of tenders.
- Assessment on legal issues which may arise, such as exclusion, use of different competition forms, annulments etc.
- Handling of complaints
- Legal disputes, including interlocutory injunctions and lawsuits.

Assistance to tenderers may for example cover:

- on-going consultation, knowledge sharing including seminars tailored to different business areas
- Assistance in the tender-process, including:
  - Assessment of the contract documentation, the conditions, risks and assistance with questions to the contracting authority
  - Prepare or/and quality check of the tender
  - Assessment on possibilities and risks by taking reservations and in making derogations
- Assistance in the competition phase, including negotiations
- Assessment on legal issues such as exclusion from participation, use of different competition forms, annulments, etc.
- Assistance in complaints processes
- Legal disputes, including interlocutory injunctions and lawsuits.

## EU/EEA AND COMPETITION LAW

EU is Norway's most important trade partner and the EEA Agreement is the largest and most extensive international legally binding agreement Norway has ever entered into. Our knowledge of the EEA Agreement, the Internal Market, and the Four Freedoms, including what limitations and possibilities the EEA Agreement entails is thus of great importance for your business. Through our understanding of the EEA Agreement we may secure legal rights and win contracts as well as point out errors and/or lacking conformity with the Norwegian government's administration implementation of EEA relevant acts into domestic legal order and in general with EEA regulatory requirements.

Further, the state aid and competition rules are a very important part of the EEA Agreement. Many of our lawyers, with a background from the EFTA bodies, have hands on work experience with both State Aid and Competition law both from the public and private perspective. Thus, we understand the possibilities and limitations of the system and how it affects you.

In the area of competition law we regularly assist both national and international clients in order to clarify, and – if necessary – to



avoid agreements entered into with price-, market-sharing and unlawful cooperation clauses. We assist on R&D agreements, specialisation agreements, project- and public procurement cooperation, distribution-, agent- and franchise- agreements. We regularly evaluate the legality of exclusive agreements, rebate structures, volume (off-take) commitments and other clauses with potential anti-competitive effect. Our services also entail a dialogue and clarification of cases with the relevant Competition Authorities; the Norwegian Competition Authority, the EFTA Surveillance Authority (ESA) and the EU Commission. For us in DLA Piper it is just as natural – and obvious – to work alongside/against the EU Commission and ESA as it is to work with the Norwegian Competition Authority.

We assist clients to understand their possibilities and limitation if they have a high market share – dominant position – in one or more market(s). Further we assist with the development of competition compliance manuals and also assist on dawn-raids and other investigations/sector enquiries, hereunder also evaluations and assistance in relation to leniency applications and in private investigations.

An important part of our competition practise is related to transactions, that is mergers (including joint ventures) and acquisitions that take place in Norway. In 2014 the thresholds for notifications were increased, but the Norwegian Competition Authority is still competent to review transactions and impose a duty to notify the transaction even if the thresholds are not reached. A thorough risk assessment is thus still important for our clients, hereunder an early identification of potential problems and corrective measures. Our team has extensive experience from complex, demanding and high profiled competition matters both in the EU and Norway.

Our role is to resolve the challenges that arise in an objective, discreet, neutral and pragmatic manner.

Furthermore, we also assist in the clearance of merger notifications and regulatory issues towards sector authorities such as the Norwegian Competition Authority, Post- and Telecom Directorate, and the Media Authority. In addition we provide regulatory assistance vis-à-vis other supervisory authorities such as the national Civil Aviation Authority, Medicine Agency and other relevant public bodies and departments with regard to legislative- and regulatory exemptions, conditions, concessions and licenses.

Our Regulatory service is “seamless” and our team is a part of a greater EMEA-team. Our cooperation within Scandinavia and the Brussels office is particularly strong.