



## 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

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#### 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, UK Competition and Markets Authority, 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

#### Nathan Bush

Partner  
Singapore  
T: +65 6512 6065  
nathan.bush@dlapiper.com

#### Léon Korsten

Partner  
Amsterdam  
T: +31 (0) 20 5419 873  
leon.korsten@dlapiper.com

#### Lisa Tenorio-Kutzkey

Partner  
San Francisco  
T: +1 415 836 2525  
ltk@dlapiper.com

### RELATED SERVICES

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

### RELATED SECTORS

- Financial Services
- Energy and Natural Resources
- Hospitality and Leisure
- Insurance
- Life Sciences
- Media, Sport and Entertainment

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

- Industrials
- Technology

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.
- 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

#### Key amendments to Canada's *Competition Act*

1 July 2022

On June 23, 2022, the Canadian government passed legislation amending the *Competition Act*. The key changes relate to: maximum fines and penalties; wage-fixing and no-poaching agreements between employers; drip pricing; evidence gathering; and merger review.

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#### Antitrust Matters – April 2022

28 April 2022

### ANTITRUST MATTERS

Dear Reader,

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#### Focus on the energy sector

29 March 2022

### UNDERSTANDING THE UK NATIONAL SECURITY & INVESTMENT REGIME PODCAST

What is the impact of the regime on the energy sector? Sarah Smith is joined by competition partner, Sam Szlezinger, and DLA Piper's energy sector specialist, Andreas Gunst, to analyse which activities are likely to be caught.

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#### Aiscension: an AI tool to ensure effective risk management by detecting anti-competitive practice

24 February 2022

Anti-competitive activity has been rife in companies for centuries and there are many who like to take the ostrich approach and bury their head in the sand. However, it is known that this approach to risk management is ineffective should the regulators come looking,

and with fines of up to 10% of global turnover, it is a big risk to take.

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### Focus on the public sector

22 February 2022

#### [UNDERSTANDING THE UK NATIONAL SECURITY & INVESTMENT REGIME PODCAST](#)

What is the impact on the public sector? Sarah Smith talks to Richard Bonnar, a partner in the Intellectual Property and Technology team, and Martin Strom, a senior associate in the competition team to discuss the impact on the sector, including the "Critical Suppliers to Government" and "Suppliers to the Emergency Services" sectors.

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### Focus on the transport sector

8 February 2022

#### [UNDERSTANDING THE UK NATIONAL SECURITY & INVESTMENT REGIME PODCAST](#)

In this episode, Sarah Smith is joined by Richard Jenkinson and global chair of DLA Piper's Infrastructure, Construction and Transport sector, Martin Nelson-Jones. They discuss the impact of the regime on the transport sector in relation to ports and harbours, as well as airports and air traffic control.

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### Focus on the technology sector

25 January 2022

#### [UNDERSTANDING THE UK NATIONAL SECURITY & INVESTMENT REGIME PODCAST](#)

What is the impact of the regime on the technology sector? Sarah Smith is joined by competition partner, Alexandra Kamerling, and DLA Piper's tech sector specialist, Kit Burden, to analyse which activities are likely to be caught with a focus on AI and computer hardware.

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### Focus on the industrials sector

18 January 2022

#### [UNDERSTANDING THE UK NATIONAL SECURITY & INVESTMENT REGIME PODCAST](#)

In the third episode of the series we turn our focus to specific sectors. Sarah Smith and Matt Evans are joined by DLA Piper's defence sector specialist, Maria Pereira to discuss the impact of the regime on the industrials sector, specifically in relation to the defence, military and dual-use, advanced materials and satellite and space sectors.

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### A legal overview

4 January 2022

#### [UNDERSTANDING THE UK NATIONAL SECURITY & INVESTMENT REGIME PODCAST](#)

In episode 2 of our podcast series we discuss the legal context of the regime: how it will operate and the implications for businesses. In particular, the legislation - which comes into force today, 4 January - has wide reaching implications for M&A involving businesses or

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assets connected with the UK.

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## What's driving the new National Security and Investment Regime

12 December 2021

### [UNDERSTANDING THE UK NATIONAL SECURITY & INVESTMENT REGIME PODCAST](#)

Episode 1 of our new Podcast series discusses what is driving the new National Security and Investment Regime. What is the political context for the new regime? Who and what is driving the pressure to strengthen investment screening both in the UK and internationally? Sarah Smith, Partner in DLA Piper's Competition practice is joined by Lord Gavin Barwell, Strategic Advisor and former Chief of Staff to Teresa May and Paul Hardy, Head of UK Government Affairs at DLA Piper to discuss the context of the new regime.

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## Antitrust Matters – September 2021

7 September 2021

### [ANTITRUST MATTERS](#)

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

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## Competition and sustainability: the need for further guidance on legitimate cooperation

7 September 2021

### [ANTITRUST MATTERS](#)

Climate change is one of the most important priorities facing the international community. The increased focus on environmental concerns has incentivized companies to pursue sustainability initiatives. In many instances, cross-industry collaboration is important for such initiatives to succeed.

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## Framing patents as essential facilities in Chinese antitrust: *Ningbo Ketian Magnet Co., Ltd. v. Hitachi Metals*

7 September 2021

### [ANTITRUST MATTERS](#)

A Chinese court recently ruled in *Ningbo Ketian Magnet Co., Ltd. v. Hitachi Metals, Ltd.* that a patent-holder's refusal to license patents for producing rare-earth magnets to competitors constituted an abuse of dominance in violation of China's Antimonopoly Law (AML).

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## The challenges of compliance in a modern world: The changing landscape of cartel enforcement

7 September 2021

### [ANTITRUST MATTERS](#)

With the rise of technological developments, we also have seen increased risks. In this new digital world, we are creating more data year on year. Data storage, ease of communications (including the use of email and chat), along with the ease of photos and videos means that data volumes are increasing exponentially.

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## The Challenges of Compliance in a Modern World: The Changing Landscape of Cartel Enforcement

25 August 2021

## ANTITRUST MATTERS

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### Caveat Emptor in UK merger control: Record fine highlights the non-filing risks for buyers

24 August 2021

The UK Competition and Markets Authority has imposed its largest ever fine for a single infringement relating to non compliance with an initial enforcement order. Serving as a reminder to buyers of the pitfalls of completing a transaction without first obtaining UK merger clearance.

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### Multi-jurisdiction guide for screening foreign investments

26 May 2021

The aim of this guide is not to substitute proper due diligence and specialized advice when conducting business, it will hopefully help the reader navigate the different FDI regimes. Particularly in this complex context and in view of the proliferation of new regimes, by explaining the key aspects of regimes including main issues to consider, thresholds and proceedings to take into consideration when investing in our globalized world.

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### Representing individuals in interviews – the US perspective

30 March 2021

Determining whether to consent to an interview, and any interview itself, can be pivotal.

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### Antitrust and unfair competition lawyer John Gibson joins DLA Piper in Los Angeles

28 January 2021

John Gibson has joined the firm's Litigation and Regulatory practice as a partner in Los Angeles.

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### Antitrust Matters - Special edition

17 December 2020

## ANTITRUST MATTERS

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

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### Competition policy and the Green Deal

17 December 2020

In October 2020, the Commission published a call for contributions on questions about how competition rules and sustainability policies work together. With this initiative, the Commission followed in the footsteps of several national competition authorities which had already issued guidance on the topic of competition and sustainability.

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## Market Definition Notice

17 December 2020

The public consultation on the 23-year-old Market Definition Notice was launched over the summer of 2020. The objective behind this consultation is to determine whether the Notice is still fit for purpose and if/how it can be improved to better reflect new market developments.

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## New competition tool and ex ante regulation of gatekeeping platforms

17 December 2020

Over the summer of 2020, the European Commission conducted several public consultations, including two interrelated consultations of significant importance to the Commission's digital agenda.

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## White Paper on Foreign Subsidies

17 December 2020

The Commission's White Paper on Foreign Subsidies, which was under public consultation until 23 September 2020, focuses on how to address distortions caused by foreign subsidies in the EU.

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## New antidumping duty petition filed against imports of polyester textured yarn from Indonesia, Malaysia, Thailand, and Vietnam: Consequences for exporters and US importers

2 November 2020

Additional duties can be imposed if the DOC determines that imported goods are dumped and the ITC determines that the domestic industry is materially injured or threatened with such injuries.

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## Cartel Enforcement Global Review 2020

24 September 2020

Since DLA Piper's original review of global cartel enforcement in 2017, competition authorities have further intensified their enforcement activities in relation to horizontal collusion. Our 2020 update provides insights into trends that have emerged around the world.

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## Antitrust Matters

September 2020

### [ANTITRUST MATTERS](#)

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

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## It's all linked: a close look at the EC's proposed Digital Services Act and its moves to protect strategic EU industries

September 2020

The Digital Services Act (DSA) is a legislative package first announced by European Commission President Ursula von der Leyen in the political guidelines back in July 2019 and confirmed in February 2020 in the Commission's communication, Shaping Europe's digital

future.

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### **South Africa: Asset transactions during COVID-19 and the role of merger control approval**

September 2020

#### **ANTITRUST AND COMPETITION: NOVEL ISSUES IN A POST-CORONAVIRUS WORLD**

The decision by governments to impose restrictions on businesses to slow the spread of coronavirus disease 2019 (COVID-19) has had a severe impact on the global and South African economy.

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### **State aid rules in pandemic times: Flexing or bending?**

September 2020

#### **ANTITRUST AND COMPETITION: NOVEL ISSUES IN A POST-CORONAVIRUS WORLD**

As of 27 August, a staggering amount of EUR1.358 billion in State aid measures to be granted by Member States across the EU to tackle the economic impact of the coronavirus outbreak had been approved by the Commission.

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### **The 2019 rail franchising litigation - procurement: Legal privilege and a duty to give sufficient reasons**

4 August 2020

Mr Justice Stuart-Smith handed down judgment in the 2019 Rail Franchising Litigation, one of the largest and most complex procurement and commercial judicial review claims litigated to date in the UK. In this, our second article, we examine the Court's findings as they relate to legal privilege and the duty to give sufficient reasons.

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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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## **NEWS**

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### **Four DLA Piper (Canada) LLP partners recognized in the 2022 *Lexpert*®/*ALM* 500 Directory**

7 January 2022

DLA Piper (Canada) LLP is pleased to announce that the 2022 *Lexpert*®/*American Lawyer Guide to the Leading 500 Lawyers in Canada* has recognized Howard Krupat (Construction), Alan Macek (Intellectual Property), Bruce Stratton (Intellectual Property) and Kevin Wright (Competition) as leaders in their field.

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## **DLA Piper Canada recommended by *Legal 500 Canada 2022***

12 November 2021

DLA Piper (Canada) LLP and its lawyers have been recommended in the latest edition of the *Legal 500 Canada*.

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## **DLA Piper strengthens Antitrust and Competition offering in Russia with new partner hire**

5 August 2021

DLA Piper has appointed Denis Gavrilov as a partner in the Moscow office and Head of the Antitrust and Competition practice in Russia. Denis joins the firm from Egorov, Puginsky, Afanasiev and Partners, together with senior associate Karin Ovakimyan.

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## **DLA Piper Canada has strong showing in 2021 *Canadian Legal Lexpert Directory***

22 April 2021

DLA Piper (Canada) LLP has increased their rankings in the Canadian Legal Lexpert Directory for the third consecutive year.

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## **DLA Piper (Canada) LLP recognized by *Chambers Global 2021***

19 February 2021

DLA Piper (Canada) LLP and nine of its practitioners have been recognized in the 2021 edition of *Chambers Global*.

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## **DLA Piper (Canada) LLP recognized by *Chambers Canada 2021***

10 September 2020

DLA Piper (Canada) LLP is pleased to see 25 of our lawyers recognized across 16 practice areas in the 2021 edition of *Chambers Canada*.

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## **DLA Piper advises Heidelberger Druckmaschinen on the sale of MIS software provider CERM**

6 August 2020

DLA Piper has advised Heidelberger Druckmaschinen AG (Heidelberg) on the sale of CERM, a global provider of Management Information System (MIS) software for the printing industry, in a Management Buyout (MBO).

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