

## Antitrust and Competition

### HIGHLIGHTS

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#### ■ An Elite Antitrust and Competition Practice

Hailed by *Global Competition Review* as “perhaps the best antitrust and competition practice for high-tech matters in the world,” Wilson Sonsini’s exceptional antitrust and competition practice group represents clients in high-stakes antitrust litigation, mergers, and criminal and civil investigation, in addition to providing valuable counseling on business strategy.

#### ■ A Team Led by U.S. and European Enforcement Agency Veterans

Wilson Sonsini’s antitrust and competition team includes former agency officials who served in senior-level roles at the U.S. and European agencies responsible for regulating and enforcing antitrust and competition matters.

#### ■ Recognized as a Leading Antitrust Practice in the U.S. and Globally

Wilson Sonsini’s antitrust practice has been recognized among *Global Competition Review*’s “Global Elite” and ranked as one of the top antitrust practices worldwide and in the U.S. by *Chambers Global* and *Chambers USA*, respectively.

### OVERVIEW

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Wilson Sonsini’s antitrust attorneys are uniquely positioned to assist clients with a wide range of issues, from day-to-day counseling and compliance to crucial bet-the-company matters. Our accomplished team is consistently recognized among the leading antitrust practices worldwide by such sources as *Global Competition Review*, *Chambers*, and *Law360*. *GCR* hailed the group as “perhaps the best antitrust and competition practice for high-tech matters in the world,” while *Chambers USA* characterized them as “a dominant firm for matters involving the hi-tech sphere, acting for many of the most prominent technology firms,” with a “deep and diverse bench of outstanding practitioners.”

Based in New York City, Washington, D.C., San Francisco, Silicon Valley, and Brussels, our highly regarded antitrust attorneys advise clients with respect to [mergers and acquisitions](#), [criminal and civil investigations](#) by government agencies, [antitrust litigation](#), and issues involving [intellectual property](#), [consumer protection](#), and [privacy](#). We advise clients on a full range of issues, including pricing, distribution, vertical restrictions, standard-setting activities, joint ventures, and patent pooling. Working with Fortune 100 global enterprises as well as venture-backed start-up companies, our attorneys have expertise in virtually every significant industry sector, including technology, media, healthcare, services, transportation, and manufacturing.

Wilson Sonsini’s attorneys have held senior positions at U.S. federal agencies, including:

- [FTC Acting Chair and Commissioner](#)
- [FTC Director of the Bureau of Competition](#)
- [Deputy Assistant Attorney General for Criminal Enforcement of the DOJ Antitrust Division](#)
- [Assistant Director of the FTC’s Mergers IV Division](#)
- [Assistant Chief of the New York field office of the DOJ Antitrust Division](#)
- [Attorney Advisor to the FTC Chairperson](#)
- [Chief of Staff in the DOJ Antitrust Division](#)

In addition, **Jonathan Jacobson** served as a congressionally appointed commissioner to the 12-member Antitrust Modernization Commission, which was responsible for reviewing and recommending potential changes to the nation's antitrust laws. All of our senior lawyers write and speak extensively on antitrust and competition topics, and many of our attorneys hold leadership positions in national and local antitrust bar organizations.

## Litigation

Wilson Sonsini's **antitrust litigation** attorneys litigate antitrust issues on behalf of the government and as trial counsel for company plaintiffs and defendants, including a significant docket of federal class action and "follow-on" cases after government enforcement. The team is routinely hired to represent companies such as Amphastar Pharmaceuticals, Google, Hitachi Chemical, Live Nation, Mylan, Netflix, Symantec, and Walgreens in their most important antitrust litigation matters.

## Mergers

The **merger clearance** attorneys in Wilson Sonsini's antitrust and competition practice have consistently been involved in complex deals involving market-leading companies in many of the most competitive sectors, including the technology, life sciences, media, energy, financial services, transportation, and consumer product industries. Because of our team's experience representing buyers, sellers, and third-parties in proposed mergers before the FTC, the DOJ, and the European Commission, the firm has been consistently top-ranked in annual surveys, both in the U.S. and abroad.

## Civil Investigations and Criminal Investigations

Wilson Sonsini's antitrust attorneys have represented clients in connection with the most important **civil non-merger investigations** by the DOJ in recent years. The team has a long history of representing companies in connection with precedent-setting investigations such as *United States v. VISA*, *United States v. Microsoft*, *FTC v. VISX*, in addition to representing Google throughout the world on major investigations.

We have represented clients in connection with some of the most important **criminal investigations** brought by the Department of Justice and across jurisdictions. Combined, the team has more than 60 years experience as prosecutors and more than 35 years experience as defense counsel.

**While Wilson Sonsini's antitrust team is truly global in scope, it operates as a singular unit that tackles the largest, most complex, and most high-profile antitrust matters throughout the world—and does so with an unmatched record of success.**

## REP. LITIGATION MATTERS

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### Litigation

- Successfully defended against Google litigations filed by KinderStart, Person, TradeComet, and MyTriggers. In each case the plaintiffs challenged Google's Search rankings and AdWords quality score adjustments as acts of monopolization, and all were dismissed.
- Successfully defended Google in ongoing antitrust and contract litigation pending in the Northern District of California filed by Dreamstime, a stock photo website. Dreamstime alleged that Google reduced its rankings and entered into promotional deals with other stock photo websites, including Getty and Shutterstock, which favored those sites. In its January 28, 2019 Order, the court dismissed these claims with prejudice, holding that the alleged "mistreatment of Dreamstime as a customer of Google... even by a monopolist, does not necessarily reduce competition in the relevant market."
- Represent Mylan in high-stakes civil litigations as both a plaintiff and a defendant.
- Represented pharmaceutical company Amphastar in related antitrust and patent cases that were resolved in a global settlement after a successful First Circuit appeal. In June 2019, Amphastar announced that it has entered into a settlement agreement with Momenta/Sandoz, under which Momenta and Sandoz agreed to pay Amphastar \$59.9 million.
- Represent Symantec in *NSS Labs, Inc. v. CrowdStrike, Inc.*, et al, an antitrust litigation in the Northern District of California and filed by plaintiff NSS Labs, a cybersecurity testing vendor. Plaintiff alleges refusal to deal claims against Symantec and CrowdStrike, manufacturers of cybersecurity platform products known as endpoint protection products, other testing vendors, and the Anti-Malware Testing Standards Organization. On August 13, 2019, notwithstanding an amicus brief from the DOJ, Judge Freeman granted defendants' motion to dismiss. NSS did not replead.
- Represented Hebei Welcome Pharmaceutical and North China Pharmaceutical Group (NCPG) in the closely watched case concerning vitamin C exported from China. Wilson Sonsini successfully persuaded the Second Circuit to overturn a \$150 million judgment against Hebei and NCPG. When the Supreme Court later took the appeal, Wilson Sonsini filed the respondents' brief and argued before the Court. After the case was remanded to the Second Circuit, Wilson Sonsini briefed and argued the appeal again, and the court again overturned the judgment. The plaintiffs tried the Supreme Court again, but the Court denied certiorari.
- Represent Hitachi and two subsidiaries in follow-on litigation relating to a price-fixing investigation by DOJ. Wilson Sonsini has successfully guided Hitachi through complex strategic decisions raised by the parallel nature of the ongoing criminal investigations and civil litigation and negotiated favorable settlements with the class plaintiffs and numerous opt-out plaintiffs. Wilson Sonsini continues to represent Hitachi against a small number of opt-out plaintiffs, with motions for summary judgment to be filed in 2019.

- Represent Walgreens in a consolidated class action litigation regarding 1-800 CONTACTS' allegedly unlawful search advertising bidding agreements. Plaintiffs allege that some of those agreements between Walgreens (and its former subsidiary Vision Direct) and 1-800 CONTACTS, entered into in order to settle trademark litigation, unlawfully caused the prices of contact lenses sold online to increase.
- Defended Transitions in a long-running litigation in which class action plaintiffs and a competitor-plaintiff alleged that Transitions engaged in unlawful exclusive dealing and a refusal to deal. Wilson Sonsini successfully represented Transitions in defeating class certification in the Multi-District Litigation (MDL). The competitor-plaintiff Vision-Ease's refusal to deal claims were dismissed in the District of Delaware, and the parties settled the remaining claims.
- Represented Netflix in a major victory in the Ninth Circuit, which affirmed the dismissal of all claims by a class of subscribers that accused Netflix of conspiring with Walmart to illegally allocate and monopolize the online DVD rental market. Wilson Sonsini also successfully obtained a dismissal of claims by Blockbuster subscribers that they were allegedly harmed by indirect effects of the same conduct.
- Secured the dismissal of antitrust claims brought against Live Nation by a rival concert promoter and venue operator It's My Party. Plaintiff claimed that Live Nation had engaged in anticompetitive tying of promotion and venue services in order to monopolize the market for concert promotion. After the lower court granted Live Nation's motion for summary judgment, Wilson Sonsini also fended off plaintiff's appeal to the Fourth Circuit.
- Defended Live Nation in a case brought by classes of concertgoers alleging that the company had monopolized a market for live rock concerts. Wilson Sonsini defeated class certification, and the district court's ruling was affirmed by the Second Circuit. Wilson Sonsini then secured dismissal of claims brought by concertgoers from two cities, resulting in all plaintiffs dismissing their claims.

## REP. MERGER MATTERS

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### Mergers

- Represented Poly in its \$3.3 billion acquisition by HP. The transaction combined the collaboration technology company with a multinational information technology company. The deal was unconditionally cleared by regulators in the U.S., China, Columbia, Mexico, and by the European Commission. While COFECE cleared the deal unconditionally, it levied a gun-jumping fine against the parties, triggering a jurisdictional dispute between the IFT and COFECE, which had to be resolved by the court.
- Represented Mandiant in its \$5.4 billion acquisition by Google. The transaction was investigated by the DOJ and was subject to a Second Request before clearance. The acquisition combined the internet giant's existing security portfolio with Mandiant's cybersecurity and threat intelligence capabilities.
- Represented Bungie in its \$3.6 billion acquisition by Sony. The FTC reportedly investigated the deal over concerns that Sony would foreclose rivals by making Bungie's content exclusive to PlayStation. But under the merger agreement, Bungie would continue to retain the "ability to self-publish and reach players wherever they choose to play." The acquisition was subject to a Second Request before clearance.
- Represented ForgeRock in connection with its successful \$2.3 billion acquisition by Thoma Bravo. The transaction combined ForgeRock's identity security platform with Thoma Bravo's portfolio company Ping Identity. The acquisition was subject to a DOJ Second Request before clearance.
- Represented Altera in its acquisition by Intel, an all-cash transaction valued around \$16.7 billion. The transaction combined Intel's semiconductor manufacturing processes with Altera's FPGA technology. The deal was subject to investigations by the FTC, the European Commission, and China's Ministry of Commerce, and was cleared unconditionally by the DOJ.
- Wilson Sonsini has represented Google on antitrust matters in all of its major transactions, each of which has been subject to significant antitrust scrutiny, including:
  - Google's \$3.1 billion acquisition of DoubleClick, one of the leaders in the online advertisement-serving business. When the deal was announced, public advocates and others said the transaction would create "extreme market concentration." Wilson Sonsini convinced the FTC that, in fact, the companies were in different complementary spaces, and the transaction was cleared.
  - Represented Google in its acquisition of ITA Software, a major source of information about airfares used by airlines, travel agents, and Google's competitors. When the transaction was announced, the travel industry reportedly was "...worried that Google could end up wielding too much influence in the sector." Nonetheless, DOJ cleared the transaction within eight months, subject to a condition that only required licensing of ITA software on a nondiscriminatory basis.
- Represented Deutsche Telekom, T-Mobile's parent company, in T-Mobile's merger with Sprint, which was completed on April 1, 2020. The transaction is one of the largest telecommunications deals in history, creating "The New T-Mobile" with an enterprise value of approximately \$146 billion and more than 125 million customers. The completion of the transaction represents the successful culmination of a multi-year process involving multiple in-depth reviews by federal and state regulatory authorities.
- Represented Careem in its \$3.1 billion acquisition by Uber. A pioneer in the Middle East's ride-hailing economy, Careem operated in 15 countries in the greater Middle East region at the time the transaction was announced and the company was expanding services across its platform to include mass transportation, delivery, and payments.
- Represented Trulia in its \$3.5 billion acquisition by Zillow, a transaction that combined the two leading real estate listing portals. At the time the transaction was announced, the companies reportedly had a combined 61 percent share traffic for online home listings, and were described as "dominant." Wilson Sonsini successfully convinced the FTC to clear the transaction within six months of the deal announcement.
- Defended Qualcomm against a \$105 billion takeover attempt by Broadcom. The transaction would have been the largest technology merger in history and faced significant antitrust scrutiny in the U.S., China, the EC, and other jurisdictions. Wilson Sonsini worked with Qualcomm to secure the necessary regulatory commitments and protections to guard against the uncertainty raised by the proposed acquisition, and devised a strategy to protect the company from a prolonged and uncertain regulatory review.



- Represented Seagate Technology in its \$1.4 billion acquisition of the hard-disk-drive (HDD) business of Samsung Electronics, a transaction that combined two of the world's largest HDD manufacturers. The transaction, which had worldwide implications, was reviewed by more than 12 jurisdictions and received significant scrutiny from the FTC, the European Commission, and China's Ministry of Foreign Commerce.
- Represented Tractor Supply Co. in its \$320 million acquisition of Orscheln Farm & Home stores. The transition was closed after clearance from the FTC, in which Tractor Supply Co. will sell a portion of the acquired stores. The store locations retained are to be refitted to Tractor Supply branding, expanding the company's regional reach across the Midwest.
- Represented Price Chopper Supermarket in its merger with Tops Friendly Markets. The deal increased the footprint of the two supermarket chains to approximately 300 store locations. The merger allowed for the companies to maintain separate branding while overseen by a new parent company.
- Represented Southeastern Grocers in connection with the sale of 62 of its stores to Ahold Delhaize in a transaction second requested by the FTC, and investigated closely by several State Attorneys General, including from North Carolina, South Carolina, and Georgia. The transaction cleared without any remedy, even though the consolidation resulted in markets concentrating far more substantially than previously had been allowed by the FTC. Wilson Sonsini convinced the FTC to consider far more product markets than traditional grocers, which had been the standard in all previous reviews.
- Represented Lucky's Market, a Colorado-based natural and organic supermarket chain that operates 17 stores in 13 states, in a strategic partnership with, and investment by, Kroger. Wilson Sonsini facilitated the development of complicated governance and distribution provisions that required antitrust counseling and creative solutions to significant business concerns.
- Represented Associated Wholesale Grocers (AWG) and Affiliated Foods Midwest Cooperative (AFM) in a merger of the two leading retailer-owned cooperatives. Despite significant geographic overlaps in the Midwest, Wilson Sonsini successfully argued that the merger would allow its member customers to benefit from additional scale and buying power.
- Advised The Food Partners' and Indiana Grocery Group's bid in a bankruptcy auction of 20 Strack & Van Til stores in the Midwest. Indiana Grocery Group was awarded the winning bid in the auction, unseating Albertsons' (Jewel-Osco) stalking horse bid and allowing the region's largest and best known independent supermarket chain to remain under the original owners' control. The critical aspect of the bankruptcy court not to accept Albertson's bid.

## REP. CRIMINAL INVESTIGATIONS

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### Criminal Investigations

- Represented Hitachi Chemical Co., Ltd. in the DOJ's criminal investigation in the supply of electrolytic capacitors. Wilson Sonsini successfully negotiated a resolution for the company to pay \$3.8 million, which was the lowest fine imposed by DOJ in the investigation. Wilson Sonsini accomplished this despite the company being one of the largest companies under investigation. Notably, Wilson Sonsini negotiated this resolution before nearly every other company under investigation, resulting in significant savings and relieving the company of the burden of a long investigation.
- Represented a Japanese Auto Parts Company. Convinced DOJ to close its criminal investigation of the Japanese automotive parts manufacturer without taking any enforcement action against the company or any of its employees. Notably, DOJ's investigation into the auto parts industry has resulted in more than \$3 billion in fines imposed against other companies and more than 60 individuals being charged to date. DOJ's investigation spans more than five years, and currently remains the largest criminal investigation. Wilson Sonsini achieved its successful result for the Japanese auto parts manufacturer in just over one year.
- Represented an aviation fuel supply company. Convinced DOJ not to bring criminal charges against an aviation fuel supply company in an investigation of potential fraud and collusion in the industry. The investigation was particularly notable given DOJ's recent aggressive enforcement in the fuel supply industry. Wilson Sonsini was able to resolve the matter without any enforcement action against the company and its employees, all while minimizing the disruption that these investigations often have on day-to-day business operations.
- Represent one of the largest generic pharmaceutical companies in a multi-year, multi-agency criminal investigation. While many of the facts remain confidential, Wilson Sonsini has successfully convinced several agencies not to take enforcement action to date. The investigation remains one of the largest criminal antitrust investigations currently open at DOJ.
- Represent a large media technology company in a DOJ criminal investigation into certain hiring practices. Notably, this is one of the first criminal investigations following DOJ's announcement that it will begin investigating potential "no-poach" and "wage-fixing" agreements as criminal antitrust violations.
- Represented a hardware technology company. Convinced the European Commission to close an investigation of potential collusion in the supply of certain hardware technologies for a large, multinational company. Notably, the European Commission started the investigation by conducting a three-day "dawn raid" (search) of the company's multiple offices across Europe.
- Represented an executive of Alpha Corporation. Convinced DOJ not to bring criminal charges against a high-level executive of Alpha Corporation in DOJ's criminal investigation of the auto parts industry, despite Alpha Corporation's agreement to enter a guilty plea and pay a \$9 million criminal fine. Notably, DOJ had recommended criminal charges against this executive, but Wilson Sonsini convinced the agency to reverse its decision.
- Successfully represented a high-level executive of K-Line in a criminal investigation into ocean shipping services for roll-on, roll-off cargo. Wilson Sonsini convinced DOJ not to bring criminal charges against the client, despite the client's employer agreeing to enter a guilty plea and paying \$67.7 million in fines. DOJ's investigation has resulted in over \$255 million in criminal fines, and the agency charged more than ten individuals to date.
- Successfully represented a former trader of foreign exchange currency through a five-year criminal investigation that resulted in no criminal sanctions or prosecution. The investigation spanned across six countries and over 10 different government agencies over the five years, with Wilson Sonsini serving as a lead counsel for the client in every aspect of the investigation. The result is

particularly notable given that the investigation resulted in banks paying more than \$10 billion in fines, and DOJ bringing criminal charges against several other individual traders.

- Successfully represented five current and former advertising executives in a multi-year criminal investigation that resulted in no charges against these individuals. The DOJ investigation, which was reported on by the *Wall Street Journal* and other press, involved allegations of fraud and collusion in the bidding on broadcast and other commercial advertising projects.

## REP. CIVIL INVESTIGATIONS

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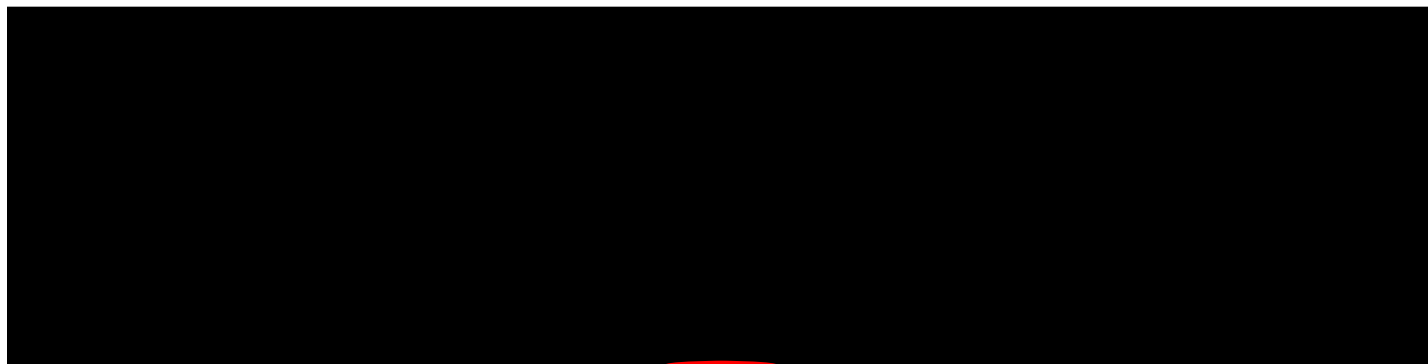
### Civil Investigations

- Wilson Sonsini counsels and represents Google throughout the world on major investigations, including representations before the FTC, the European Commission, Brazil's CADE, the Australian Competition and Consumer Commission (ACCC), the Competition Commission of India (CCI), and the Canadian Competition Bureau.
- Lead counsel in the FTC's investigation into Google's Search and Android practices, which successfully closed in 2013.
- Successfully represented Google in investigations around the world on issues related to Search, Search advertising and syndication, Display advertising, and Android.
- Counsel Google on antitrust product design issues relating to its flagship products and services, including Search, Android, and Assistant.
- Represented a major Internet infrastructure company in negotiations to amend a legacy agreement through which the Department of Commerce restricts certain aspects of the company's business. Wilson Sonsini engaged in extensive advocacy before the Department of Commerce and DOJ to update them on recent market developments rendering these restrictions unnecessary. This advocacy led to the signing of an updated agreement, providing the company with significantly greater flexibility to conduct its business.
- Represented Vector Capital in connection with a DOJ investigation into claims that the company was involved in illegal club bidding with other private equity firms. The DOJ closed the investigation taking no action against the company. Wilson Sonsini also successfully defended Vector Capital in connection with a private lawsuit alleging the same facts, and the firm secured complete dismissal of the complaint, even where other, similarly situated PE funds paid significant settlements in similar litigations.
- Represent a major semiconductor company in connection with the FTC's challenge to business practices related to the company's intellectual property portfolio. The FTC alleges that the company engaged in anticompetitive conduct and unfair methods of competition in violation of Section 5 of the FTC Act. The allegations include conditioning the supply of baseband processors on the purchaser first agreeing to a license to the company's standard-essential patents, paying incentives to purchasers of baseband processors to induce them to accept certain license terms, refusing to license its standard-essential patents to the company's competitors and entering into alleged exclusive dealing arrangements.
- Represented TD Ameritrade in connection with a multi-state investigation into claims that the company and other online brokers engaged in an illegal group boycott. The investigation was closed with no action taken against the company.
- Represent a music streaming service company currently involved with the DOJ's review and potential modification of the ASCAP and BMI decrees. Wilson Sonsini has represented the company in parallel private litigation raising similar issues.
- Represented multiple companies in connection with DOJ investigations into alleged agreements not to solicit employees from other technology companies in Silicon Valley. This has been the most active area of antitrust enforcement for DOJ, and to date, no Wilson Sonsini client has been fined or otherwise found liable, notwithstanding the numerous instances where DOJ has brought a challenge to such conduct.
- Represented American Express, the primary third party in the government's case against Visa and Mastercard for price fixing, market allocation, and monopolization.
- Represented Netscape, one of the primary third parties in the government's investigation of Microsoft for unlawful monopolization. Wilson Sonsini drafted the white paper that assisted the government in its analysis of challenged conduct.
- Successfully defended VISX in a precedent-setting case by the FTC alleging that VISX and its competitor unlawfully pooled their patents for purposes of monopolizing the market for laser-eye correction techniques, and that VISX obtained its key patent through inequitable conduct before the PTO.

## VIDEO

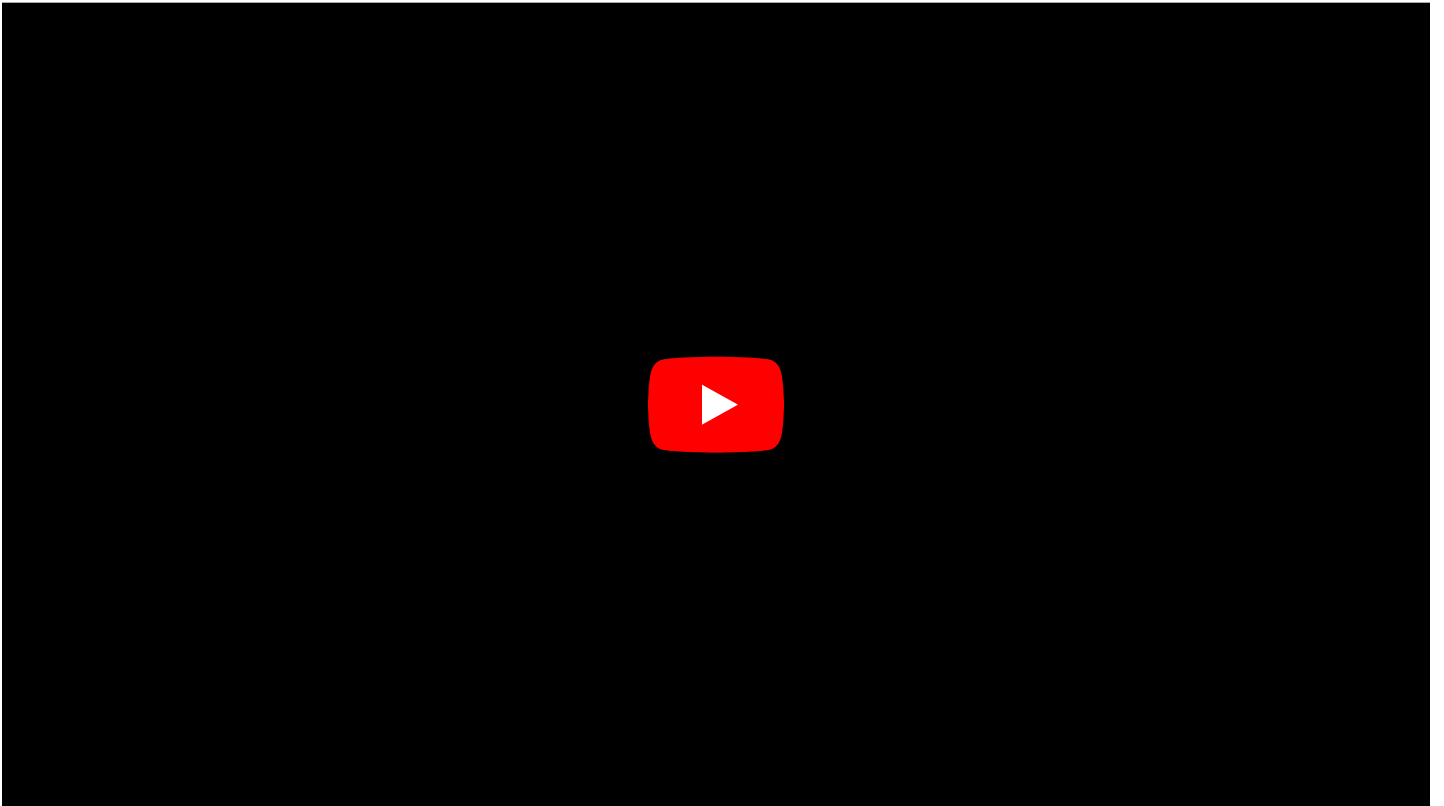
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Mikaela Evans-Aziz and Jonathan Jacobson, "Fundamentals of Antitrust Law," February 11, 2022





Brent Snyder and Karen Sharp, "Criminal Antitrust Investigations," February 9, 2022



Kenneth O'Rourke and Allison Smith, "Antitrust Litigation," February 9, 2022

