

Antitrust Civil Enforcement

HIGHLIGHTS

■ Success in Prominent Matters for High-Profile Clients

Our team successfully defended Google against the FTC's closely watched search investigation, which ended with the five commissioners unanimously voting that Google's handling of its search results did not violate any U.S. antitrust laws.

■ A Leader in Single-Firm Conduct Issues and Civil Conduct Investigations

Wilson Sonsini is widely regarded as the leading U.S. law firm for single-firm conduct issues, and represents a broad range of clients in civil conduct investigations both domestically and abroad.

OVERVIEW

Wilson Sonsini has an unmatched record of success representing clients before the DOJ, FTC, and foreign jurisdictions such as the European Commission in connection with the most high-profile civil non-merger investigations. Due to our extraordinary track record, we are regularly called upon to represent all manner of companies, either in connection with an antitrust agency's investigation into the company's business practices or in helping an agency investigate the conduct of others.

Most recently, our world-renowned antitrust team was retained to represent Google in connection with a landmark antitrust lawsuit filed in October 2020 by the DOJ and a group of 11 state attorneys general that accuses the company of maintaining an illegal monopoly over internet search and search advertising—a case widely regarded as the most aggressive action the U.S. government has taken against any technology company in years. The lawsuit has far-reaching implications not only for Google, but for Silicon Valley and the entire technology sector.

The DOJ's lawsuit comes approximately seven years after the U.S. government last probed Google for antitrust violations, when Wilson Sonsini successfully represented Google in the FTC's search investigation into the company's business practices. In 2013, the FTC closed its 19-month investigation without bringing charges or seeking significant penalties after the five commissioners unanimously voted that Google's handling of its search results had not violated the U.S. antitrust laws on any grounds. The FTC said that Google's practices improved its search results for the benefit of consumers and that "any negative impact on actual or perceived competitors was incidental to that purpose."

With our successful defense against the FTC's search investigation of Google serving as a prime example, Wilson Sonsini is widely viewed as the leading firm in the United States for single-firm conduct issues. We are also frequently retained to represent clients—including Walgreens, Twitter, Symantec, Seagate, Spotify, Verisign, and Qualcomm, among others—in civil conduct investigations in both the United States and abroad.

As previously noted, the DOJ and FTC occasionally investigate the business dealings of our clients. Competitors, customers, suppliers, and distributors frequently bring their business concerns to the antitrust agencies, which in turn can result in substantial investigations into the legality of the challenged business conduct. It is important for our clients to secure representation to defend themselves not only before the antitrust agencies, but also in the all-too-often private cases that follow government enforcement actions. Our attorneys bring extensive experience and a deep understanding of the agency process to their representation of clients in these investigations. In addition, we assist clients who are the target of unfair business practices of competitors, suppliers, distributors, or other third parties who

who hamper their ability to compete. Bringing such behavior to the attention of the antitrust agencies is often an alternative to litigation, and can provide a swift and definitive resolution to such practices.

REPRESENTATIVE CIVIL NON-MERGER INVESTIGATIONS

Representative Civil Non-Merger Investigations

Our antitrust team has been involved in several of the most significant civil non-merger investigations, each time securing a successful result for the client, including:

- Represented Google in connection with the FTC's investigation into a number of the company's business practices and provide continued representation in a number of jurisdictions around the world
- Represented Walgreens in connection with the FTC's investigation into its subsidiary, VisionDirect, alleging unlawful search advertising bidding agreements.
- Represented a firm in connection with a DOJ investigation into claims that the company was involved in illegal club bidding with other private equity firms
- Represented a pharmaceutical company in a pay-for-delay FTC investigation regarding a pharmaceutical patent settlement between a brand firm and several generics. This matter is still ongoing before the FTC only (no other government entities).
- Represented an online broker in connection with a multiple-state investigation into claims that the company was involved in an illegal group boycott
- Representing a company in connection with the DOJ's review (and potential modification) of the ASCAP and BMI decrees
- Represented a leading social media company in connection with allegations that its conduct violated Section 5 of the FTC Act
- Represented a company in an FTC investigation into the licensing of standard essential patents
- Represented a media company in connection with an FTC investigation into a number of the company's business practices
- Represented a technology company in connection with a DOJ investigation into an alleged agreement not to solicit employees from other technology companies in Silicon Valley
- Represented a technology company in connection with a non-public investigation of its conduct with respect to interoperability among its competitors
- *USA v. Visa*: Represented American Express, the primary third party in the government's case against Visa and MasterCard for price fixing, market allocation, and monopolization in violation of the Sherman Act. The government won the case, and the victory was affirmed by the Second Circuit.
- *FTC v. VISX*: Defended VISX in this 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 Patent and Trademark Office. The patent misuse claim was tried to an administrative law judge at the FTC, who ruled in VISX's favor and dismissed the FTC staff's claim.
- *USA v. Microsoft*: Represented Netscape, one of the primary third parties in the government's investigation of Microsoft for unlawful monopolization in violation of the Sherman Act. Drafted white paper that assisted the government in its analysis of conduct subsequently challenged by the government in its successful case against Microsoft.
- Represented an internet joint venture among competitors whose services were distributed through multiple channels, including their own separate internet sites, in a civil investigation by the Antitrust Division regarding certain "most favored nation" and exclusivity provisions. The investigation was closed without action by the agency.
- Represented a technology company in connection with a non-public FTC investigation into an alleged monopolization claim based on the company's proprietary file format
- Represented a large management company in a civil investigation by the FTC regarding its business practices
- Represented a company in an abuse of dominance investigation before the NDRC
- Represented a multinational company in responding to the FTC's compulsory study of PAEs
- Represented a U.S. equipment manufacturer and licensing entity in an abuse of dominance investigation by the NDRC regarding its licensing practices