

## Third-Party Merger and Non-Merger Antitrust Representation



### HIGHLIGHTS

#### ■ Effective Client Advocacy before DOJ and FTC

Wilson Sonsini provides effective advocacy on behalf of clients before the DOJ and FTC, as well as competition enforcement bodies outside the U.S.

#### ■ 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

Wilson Sonsini's antitrust team has an unmatched record of securing favorable results when advocating for third-party clients before the DOJ and FTC, as well as competition enforcement bodies outside the United States, in the most high-stakes civil merger and non-merger matters. We are recognized among the leading practices in the United States for dealing with these issues because of our attorneys' experience advocating for clients in the largest and most high-profile antitrust investigations and cases.

In 2020, *Global Competition Review* ranked Wilson Sonsini No. 13 in *GCR's* "Global Elite" list, which consists of the top 25 firms practicing competition law internationally. Additionally, *GCR* listed Wilson Sonsini as an "outstanding" firm in Washington, D.C., and as a "highly recognized" firm in New York in its most recent rankings. *GCR* has also characterized the firm's antitrust group as "perhaps the best antitrust and competition practice for high-tech matters in the world."

In addition to representing buyers and sellers involved in mergers and acquisitions before the DOJ and FTC, we have a robust practice representing third parties that may be impacted by transactions in their markets. With our understanding of how the agencies operate, we are uniquely positioned to ensure that our clients are provided with the opportunity to participate in the merger investigation process, so that their concerns are adequately and promptly addressed. Most notably, Wilson Sonsini represented Netflix in relation to the DOJ's investigation into the acquisition of Time Warner by Comcast for \$45.2 billion, a transaction that the parties abandoned. Most industry and antitrust experts initially expected the Comcast/Time Warner deal to be cleared with some company divestitures and conduct remedies. Netflix's opposition to the merger, however, played an essential role in assisting the DOJ's review and ultimately shaping the investigation. Indeed, by the end of the investigation, Comcast abandoned the proposed merger in the face of a seemingly unfriendly government investigation.

Further, our attorneys assist clients who are the target of unfair business practices of competitors, suppliers, distributors, or other third parties that 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 MATTERS

#### Representative Merger and Non-Merger Antitrust Experience

The following matters are examples of our firm's merger and non-merger antitrust experience:

- Representing several third parties in the FTC's investigation into Staples' proposed acquisition of Office Depot
- Represented Google with respect to the DOJ's investigation and lawsuit—which the DOJ convincingly won—against Apple for violating Section 1 of the Sherman Act by conspiring with book publishing companies to raise the prices of electronic books
- Represented Netflix and other third-party complainants in the DOJ's and FCC's investigations of Comcast's proposed \$45.2 billion acquisition of Time Warner, which was ultimately abandoned because of concerns expressed by both agencies
- Represented a leading GPU manufacturer before the FTC in connection with the agency's investigation into Intel, ultimately securing behavioral relief that allowed for continued and improved interoperability between Intel's CPU and our client's GPU
- Represented one of the most significant third-party complainants in the European Commission and DOJ's investigations into Cisco's proposed acquisition of Tandberg, resulting in the EC's decision to require the parties to offer significant remedies to secure clearance of the transaction
- Represented several third parties in connection with the FTC and EC's investigations into Apple related to Apple's decision to prohibit third-party compilers from accessing its leading iOS mobile operating system. The investigations led Apple to change its policies.
- Representing a leading third-party industry participant in connection with the FTC's review of the Wright/Tourneau and Biomet/Zimmer transactions—two of the most significant joint-replacement transactions reviewed by the FTC
- Represented a leading third-party complainant in the FTC's investigation and challenge of Hologic's proposed acquisition of Fischer Imaging. Helped convince the FTC to require Hologic to sell the acquired assets after agreeing to a consent decree with the FTC, effectively abandoning the merger.
- Represented the leading third-party complainant in connection with the FTC's investigation into the proposed merger between Medicus and Inamed, the two largest medical device companies supplying dermal fillers. The transaction was eventually abandoned after extensive regulatory review and a decision by the FTC to enjoin the merger.
- Represented a third-party company that had developed a next-generation erectile dysfunction therapy in conjunction with Pharmacia. Helped to convince the FTC, in connection with its investigation into the merger of Pfizer and Pharmacia, to divest Pharmacia's interest in the collaboration back to the company, including providing substantial financial and in-kind assistance to allow for the continuing development of the therapy.
- Represented the leading third-party complainant in the FTC's investigation into IDT's proposed acquisition of PLX, which was ultimately abandoned because the FTC sued to enjoin the merger
- Wilson Sonsini antitrust practice co-chair Susan Creighton wrote the white paper that is credited with triggering the DOJ's investigation and eventual suit against Microsoft for illegal monopolization