



Global Companies Can Gain Advantage From Aggressive U.S. Antitrust Enforcement

U.S. agencies are leading the way in increasingly aggressive global antitrust enforcement, putting multinational companies with links to the U.S. at risk. However, this development has a silver lining - companies can leverage the intensifying environment to their advantage to keep unsavory competitors in check. Our team explains below.

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Antitrust enforcement is on the rise, particularly by U.S. government agencies. Companies with links to the U.S. or who want to grow in the U.S. are at increased risk of investigation and litigation. Those same companies can also benefit by creatively using various antitrust tools to keep hostile competitors in check.

Increasingly Assertive U.S. Enforcement

U.S. government antitrust agencies – including the U.S. Department of Justice (DOJ) Antitrust Division and the Federal Trade Commission (FTC) – have become increasingly aggressive on several fronts:

Geographic Reach: U.S. antitrust enforcers are increasingly pursuing individuals and companies outside the U.S., including those with little connection to U.S. interests.

Greater Appetite to Investigate and Sue: In the past, U.S. antitrust enforcers often looked to resolve matters and only brought action in court if necessary. Now, the government often defaults to suing first, and trying to resolve the case later (if at all).

Expansive Legal Theories: U.S. antitrust enforcers are investigating and prosecuting conduct once considered to fall largely outside the realm of antitrust, including harms to workers, privacy-based violations, and certain widely used sales practices. Companies in the technology, agriculture and healthcare/pharmaceutical industries are a particular focus for antitrust enforcement actions.

Growing Risks Also Present Opportunities

Although more aggressive scrutiny by U.S. agencies poses risks for multinational companies, those facing improper conduct by competitors may be able to use the intensifying U.S. antitrust environment to their advantage. For example, companies located outside the U.S. can pursue:

Obtaining evidence in the U.S. against competitors engaging in anticompetitive practices, under a mechanism known as a “Section 1782” application.

Bringing to the attention of U.S. antitrust enforcers the conduct of rivals that should be investigated.

Filing claims at the U.S. International Trade Commission (ITC)—a U.S. agency that can hear disputes between non-U.S. parties, imposes significant discovery burdens, and typically moves faster than the courts—on antitrust grounds.

Investigating “interlocking directorates”—where a company’s board member serves on the board of another company in the same industry—which is a particular focus for DOJ Antitrust Division.

Global companies and their counsel can capitalize on these opportunities—turning potential risks into gains. Working with seasoned former U.S. government prosecutors, they can develop creative and multi-faceted plans, to gain leverage over rivals and correct anticompetitive abuses.

About Kobre & Kim

Kobre & Kim is a conflict-free Am Law 200 law firm focused on disputes and investigations, often involving fraud and misconduct.

Our team of independent advocates in cross-border government enforcement investigations and actions:

includes 13 former U.S. government lawyers based globally, including a former trial lawyer from DOJ Antitrust Division;

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has experience litigating the full suite of competition-related issues, including criminal cartel matters and merger challenges;

has served as lead counsel in prominent enforcement actions including those involving antitrust and competition, market manipulation, bribery and corruption, economic sanctions, asset forfeiture, money laundering, extradition, fraud and other misconduct; and is able to either advocate directly or to work cooperatively with local counsel, in jurisdictions in the U.S., UK, EMEA, Asia, Latin America and key offshore financial centers.