

# INVESTIGATIONS FOR ANTITRUST LITIGATORS

We have succeeded at a variety of fact-gathering assignments for counsel in civil and criminal antitrust litigation throughout the U.S. and around the world, in cases involving consumer goods, raw materials, software, food and a variety of other industries.

Our antitrust investigations have been on behalf of both plaintiffs and defendants, in lawsuits against competitors and suppliers over price fixing, tying, monopolization, market allocation, bid rigging and other allegedly anti-competitive practices.

## Typical Assignments

In recent cases, we have undertaken assignments for antitrust litigators that have involved answering such questions as the following:

### For Defendants

- Is a plaintiff company now blaming our client for its decline when its own missteps were the cause?
- Can we identify relevant consumers and ask whether they really believe they were hurt in the way alleged by plaintiffs?
- Do the members of a plaintiff class have business models and practices that are too disparate to be considered a class?
- Why did certain companies opt out of the class?
- Have the plaintiffs engaged in similar practices to the ones they now allege were anti-competitive?

### For Plaintiffs

- Do industry competitors hold undisclosed discussions about prices?
- Was a shortage of raw materials caused by coordinated hoarding as an excuse to raise prices?
- Have big retailers received under-the-table discounts from suppliers that smaller retailers are not offered?

### For Either Side

- What is the background and credibility of the opposing party's witnesses?
- Can we find the best witnesses from a long list of potential ones, by a round of interviews that are scripted by counsel and budgeted?
- Do key third parties have a footprint in our preferred jurisdiction?

Some details in these case studies have been changed to protect client confidentiality.



### **International Price-Fixing**

Most of our fact-gathering has been in civil matters, though we worked, for example, for counsel to a non-U.S. manufacturer that was under criminal investigation for price-fixing. The allegations against our client were being made by a competitor's executive who had already pleaded guilty. We investigated the accuser and found information abroad about previous antitrust schemes he had participated in, as well as negative information about his credibility as a witness.

### **Undisclosed Discounts**

The Mintz Group was described in the press as having worked for counsel to the American Booksellers Association, with the *Wall Street Journal* reporting:

“When a group of small-bookshop owners approached a lawyer with suspicions that publishers were giving secret discounts to big bookstore chains, the shop owners didn't have enough facts to sue. But their lawyer, Jerald A. Jacobs, wasn't deterred. He hired a private investigator, who tracked down current and former publishing employees and got information about specific titles that big retailers could buy for less. Citing these details, Mr. Jacobs sued the five publishers, who settled and agreed to offer comparable deals to the independent bookstores.”

### **Contacts**

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