

Vinson & Elkins

Established 1917

DECEMBER 5, 2017

# WHAT YOU DON'T KNOW ABOUT COMPETITION LAW CAN HURT YOU: *An Update on Key Antitrust Issues*

# Welcome & Introductory Remarks

Jim Reeder

# The Antitrust Basics

Stacey Vu

## OVERVIEW OF ANTITRUST LAWS

- Purpose of the antitrust laws is to protect competition
- Antitrust laws are based on the principle that competition fosters the most efficient allocation of resources, the lowest prices, and the highest quality goods and services
- Cost of antitrust violations:
  - Violating the antitrust laws can lead to severe consequences
  - Criminal penalties, which include fines up to \$100 million for corporations and fines up to \$1 million and/or ten years imprisonment for individuals for each offense
  - Legal costs in response to investigations and legal proceedings: \$, time, resources



## ANTITRUST ENFORCEMENT

- Antitrust laws are enforced by federal antitrust authorities
  - Department of Justice Antitrust Division
  - Federal Trade Commission Bureau of Competition
- State Attorney General Offices
  - Various states have antitrust sections that enforce state antitrust laws (generally tend to mirror the federal antitrust laws)
- Private parties can sue alleging antitrust violations and seek treble damages
- Foreign competition law authorities
  - May review the conduct and penalize violations

## ANTITRUST STATUTES

- The Sherman Antitrust Act
  - Cartels
  - Monopolization
- The Clayton Act
- The Robinson-Patman Act
- The FTC Act
- State Competition Laws
- International Competition Laws

## THE SHERMAN ACT: SECTION 1

*“Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.”*

*—Sherman Act Section 1*

- Prohibits agreements to restrain trade, both:
  - Horizontal (between competitors)
  - Vertical (seller-buyer)

## THE SHERMAN ACT: SECTION 2

“Every person who shall monopolize, or attempt to monopolize ... any part of the trade or commerce among the several States ... shall be deemed guilty of a felony.”

—*Sherman Act Section 2*

- Unlike Section 1, does not require an agreement
- Requires proof that the defendant: (1) possesses monopoly power, and (2) acquired, enhanced or maintained that power by use of exclusionary conduct



## THE CLAYTON ACT: SECTION 3

Section 3 of the Clayton Act makes it unlawful to lease, sell or contract to sell goods, or to fix a price:

*“on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods . . . of a competitor or competitors of the lessor or seller, where the effect . . . may be to substantially lessen competition or tend to create a monopoly in any line of commerce”*

*—Clayton Act Section 3*

- Arrangements that may violate this Section include:
  - Exclusive Dealing Arrangements
  - Requirements Arrangements
  - Tying Arrangements

## THE CLAYTON ACT: SECTION 7

*“No person ... shall acquire, directly or indirectly, the whole or any part of the stock ... or any part of the assets of another person, where in any line of commerce... the effect of such acquisition may be substantially to lessen competition....”*

*—Clayton Act Section 7*

- Process:
  - HSR Filings
  - Jumping the gun –
    - No exercise of operational control
    - Must continue to compete

## THE ROBINSON-PATMAN ACT

Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, makes it unlawful for any seller of goods:

*“to discriminate in price between different purchasers of commodities of like grade and quality . . . where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them. . . .”*

*—Clayton Act Section 2*

- “Discrimination” in price means that different prices for the same goods are charged to different customers
- “Price” includes all rebates, discounts and allowances

## UNFAIR COMPETITION AND OTHER LAWS

- The FTC Act:
  - The FTC Act prohibits “unfair methods of competition, and unfair or deceptive acts or practices...”
  - Section 5 serves as a “gap filler” to challenge conduct not covered under the Sherman Act
  - It may be an antitrust violation to engage in any business practice that can reasonably be termed “predatory” or “unfair” or which unreasonably restrains the economic liberty of a third party
- State and many foreign competition laws closely track the U.S. federal antitrust laws

## ANTITRUST AGENCY ENCOUNTERS

- Formal document requests (DOJ, FTC, State AGs):
  - Grand jury subpoenas
  - Civil Investigative Demands
- Depositions/Investigational Hearings
- Informal inquiries
- A company may need to respond even if not the target
- Industry participants as complainants

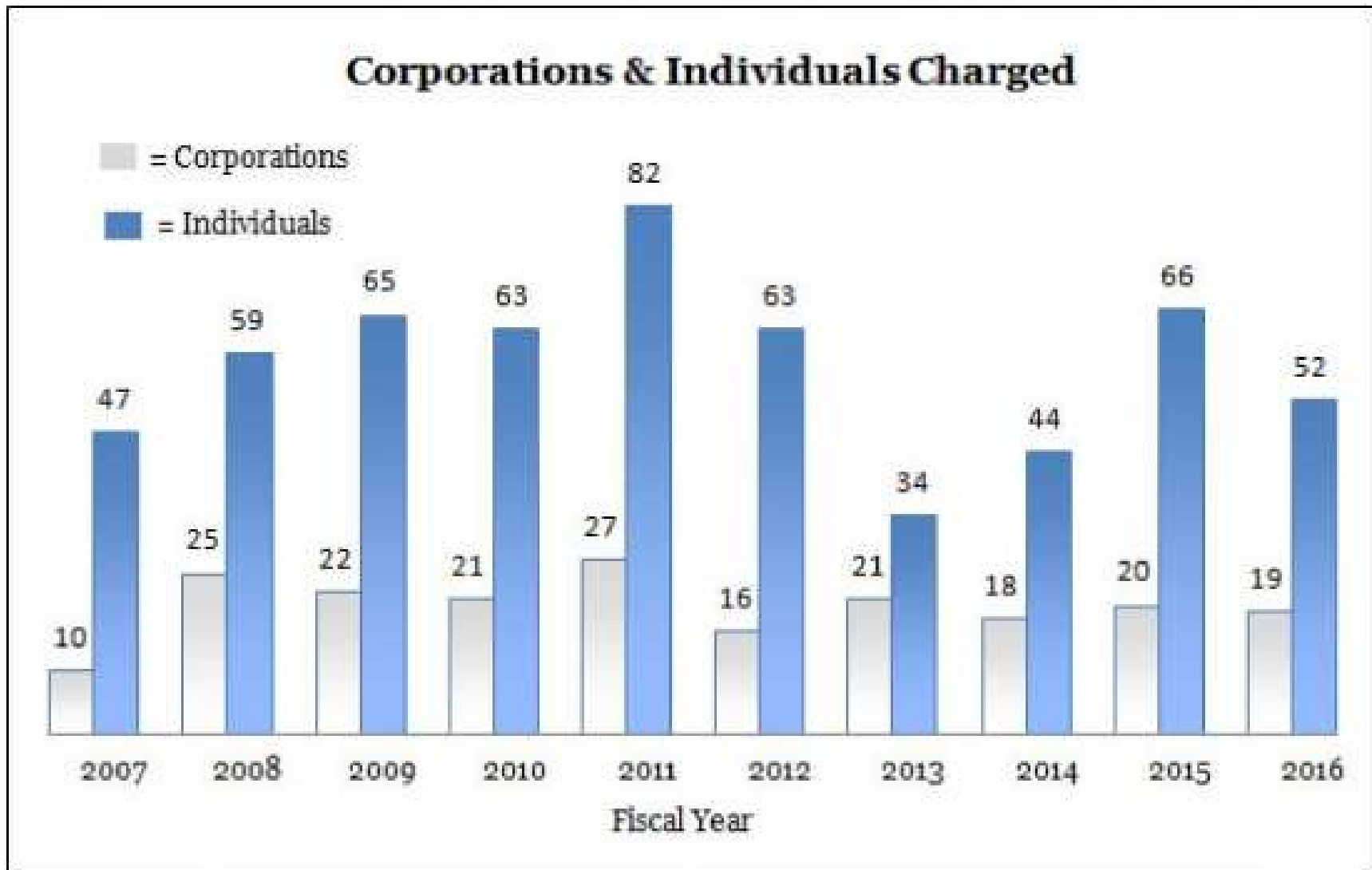
# Dealing with Competitors

**Matt Jacobs & Craig Seebald**

## THE BASICS

- U.S. law prohibits conspiracies that restrict competition
  - Price fixing, bid rigging, and market allocation are illegal
  - Conspiracy = Agreement

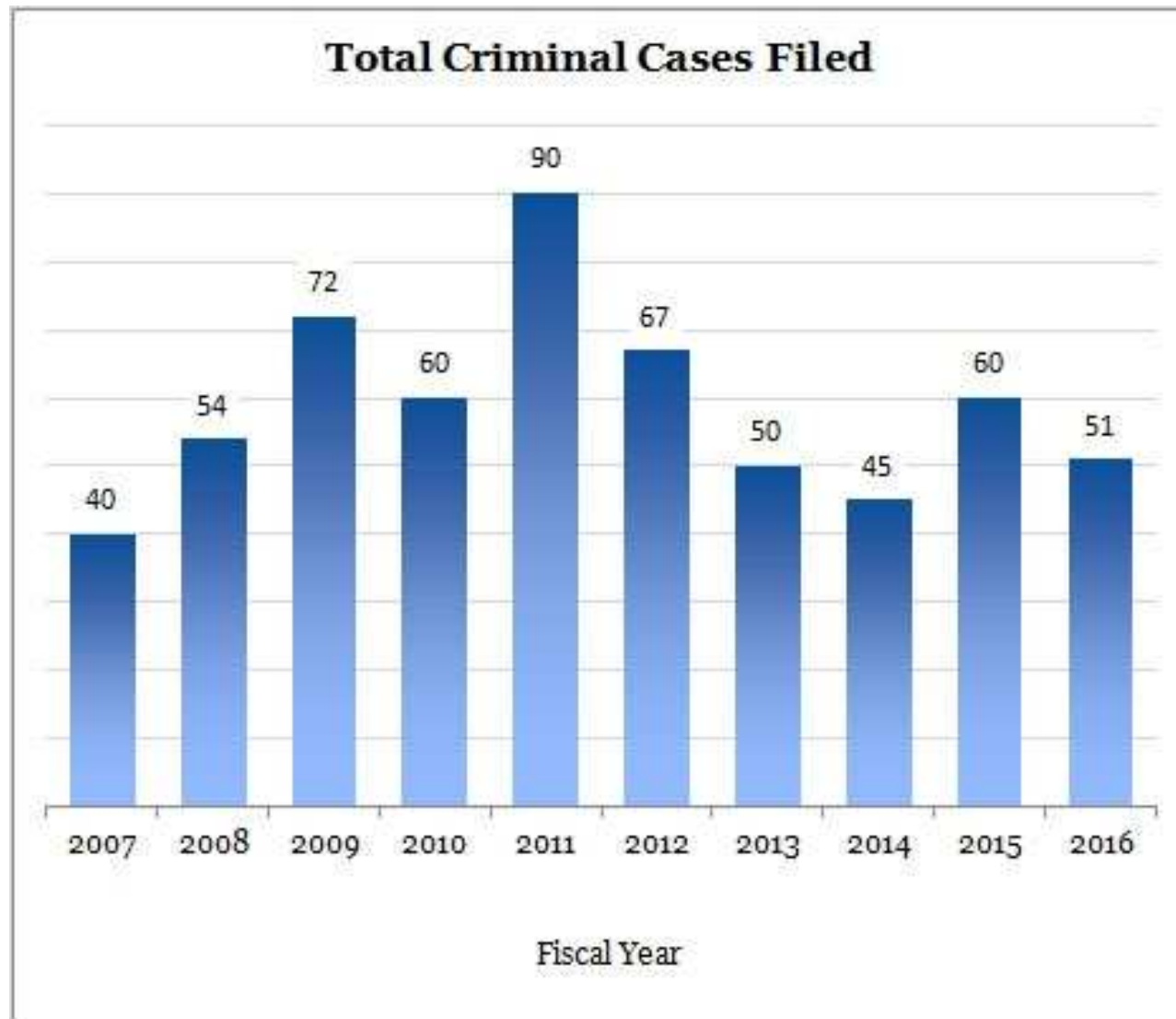
## HUGE FINES



Source: DoJ Antitrust Division

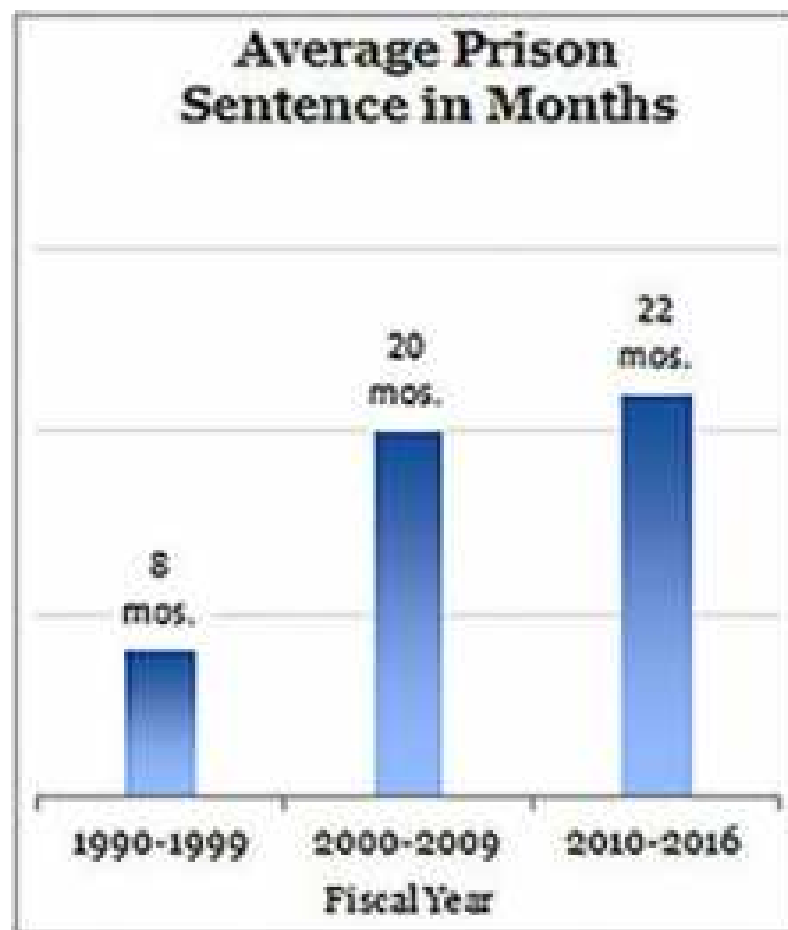


## CRIMINAL CASES FILED



Source: DoJ Antitrust Division

## INCARCERATION TRENDS



Source: DoJ Antitrust Division

## FOLLOW-ON CIVIL LITIGATION

- **Types of Plaintiffs:**
  - Direct purchasers
  - Indirect purchasers
  - States
  - Foreign Authorities
- **Damages:** joint and several + trebled damages = \$\$\$

## PROVING A CONSPIRACY

- Competitors
- FBI recordings
- E-mails
- Expense reports and phone records
- Pictures

## A STRONG COMPLIANCE PROGRAM IS NECESSARY

- Giving a yearly antitrust compliance presentation, providing a policy or taking an on-line course is not enough
- DOJ now expects much more
- Critical to have senior management buy-in

## CONTACTS WITH COMPETITORS

- Avoid communicating with competitors
- Avoid sharing:
  - Pricing information or price lists
  - Technology roadmaps
  - Sales or production forecasts
  - Cost information
  - R&D plans
  - Other competitively sensitive information
- Obtaining competitor's pricing information from customers is lawful

## LEGITIMATE COMPETITOR CONTACTS

- Legitimate contacts:
  - Trade associations/industry conferences
  - Customer/supplier arrangements
  - Standard setting organizations
  - Joint venture/merger/acquisition discussions
  - Licensing
- Have meeting guidelines/agenda

## DOCUMENT SOURCES

- Only obtain market information from legitimate sources, such as:
  - Customers
  - Distributors
  - Publicly-available trade publications and data
  - Consultants
- Competitors are never legitimate sources of pricing, cost or customer information
- Make sure business people identify sources of information contained in internal documents
- Avoid ambiguous references to “sources,” “contacts” and “friends”



## IF ALL FAILS, WHAT TO DO IF COMPANY IS RAIDED

- Contact counsel immediately
- Prevent document destruction
- Catalog what is seized
- No statements to FBI
- Get a copy of warrant
- Do not “assent” to search
- Prepare next steps
  - Alert overseas companies
  - Public disclosure
  - Press

# Selling & Distribution

Alden Atkins & Billy Vigdor

*Jim Reeder (Moderator)*

# ANTITRUST ISSUES IN SALES AND DISTRIBUTION

We will discuss:

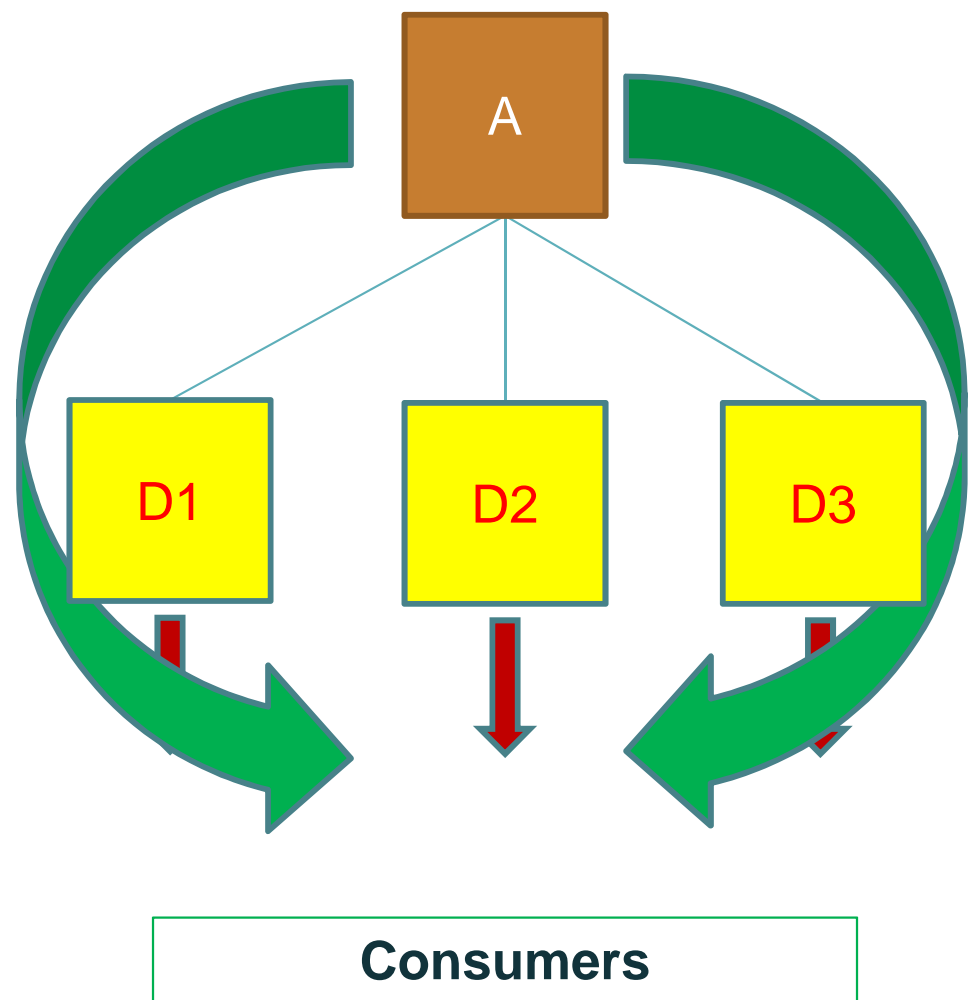
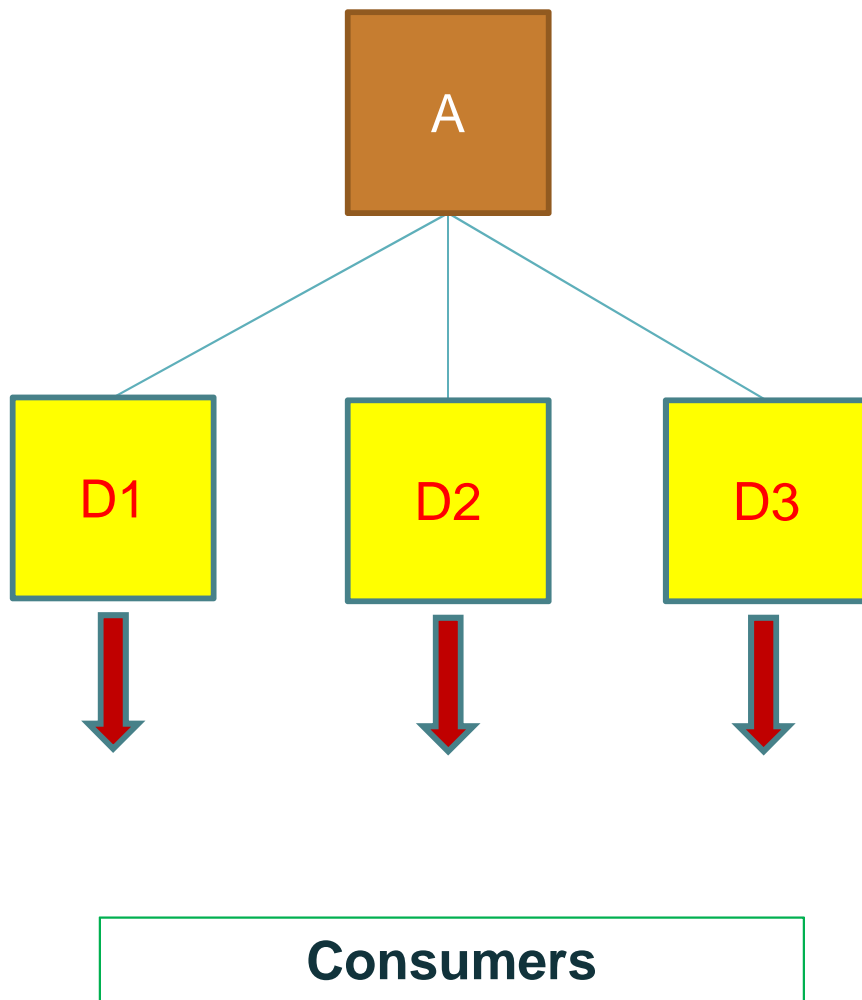
- Vertical distribution arrangements:
  - Vertical price restrictions (minimum resale price agreements)
  - Exclusive dealing
  - Tying arrangements
- Conditional Pricing or Contracts That Reference Rivals:
  - Bundling
  - Loyalty discounts
- DOJ's recent challenge of the AT&T-Time Warner merger based on vertical concerns
- Compliance Points

# ANTITRUST ISSUES IN SALES AND DISTRIBUTION

Vertical arrangements have these antitrust issues in common:

- How does the arrangement enhance competition?
  - Many arrangements encourage the distributor/retailer to invest resources to sell the manufacturer's product.
- Does the arrangement result in:
  - Foreclosure?
    - Restrict or limit access to
      - competitive/necessary inputs
      - distribution or customer channels
  - Predation?
    - A price below an "appropriate measure of cost"?
  - Consumer Harm?
    - Higher prices or facilitate collusion
    - Reduced product choice or variety
- Non-standard restrictions; legal tests are not well established; economic models vary

# RESALE PRICE MAINTENANCE



# RESALE PRICE MAINTENANCE

## THE TENSION BETWEEN FEDERAL AND STATE ANTITRUST LAW

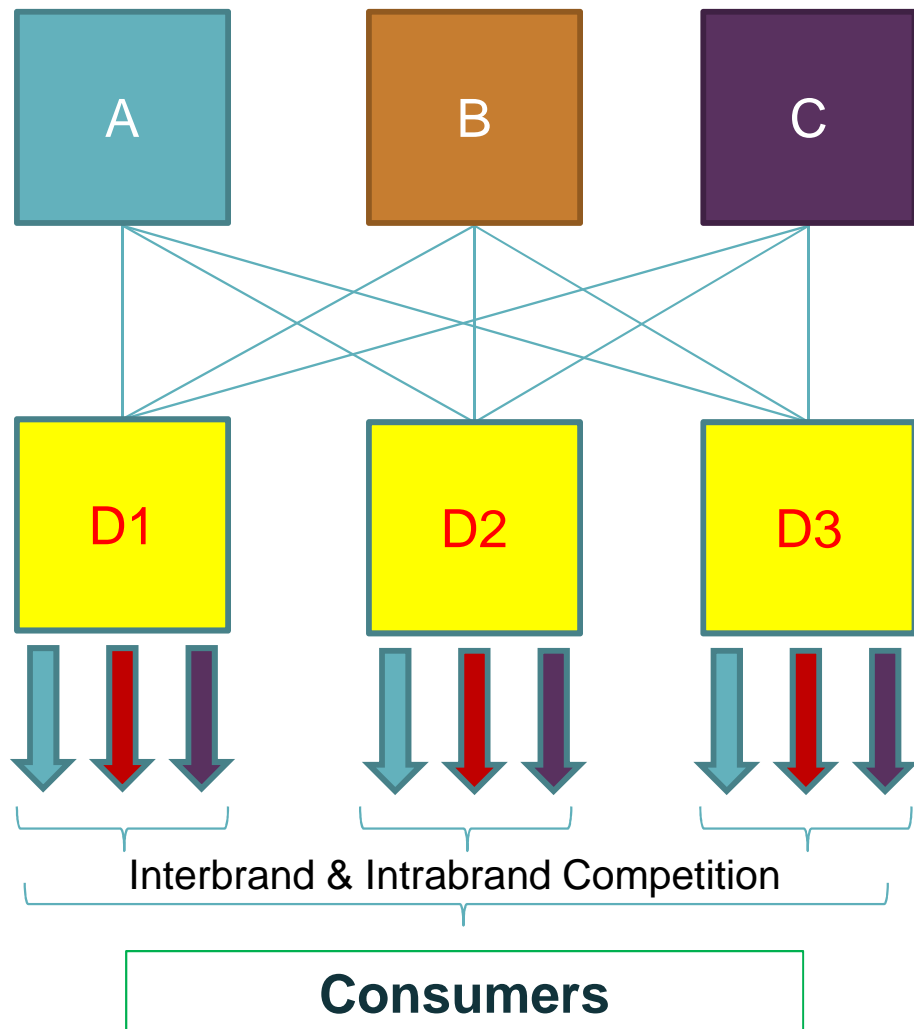
- **Defined:** An agreement between two companies at two levels of distribution regarding the price at which the buyer can RESELL the products
- Maximum resale price maintenance
  - Preventing a reseller from **INCREASING** resale prices
  - Risk: Maximum price restrictions evolve to minimum price restrictions
- Minimum resale price maintenance (MRPM)
  - Preventing a reseller from **LOWERING** resale prices
  - In 2007, the Supreme Court overruled over 100 years of precedent and concluded that MRPM is not per se unlawful
- **Procompetitive:** Promote interbrand competition, prevent free riding, and foster entry
- **Risk Factors:** Market power of manufacturer, adopted at the behest of retailers and used by a significant number of companies in the market (concerned about MRPM facilitating horizontal collusion)

## COMPLIANCE POINTS

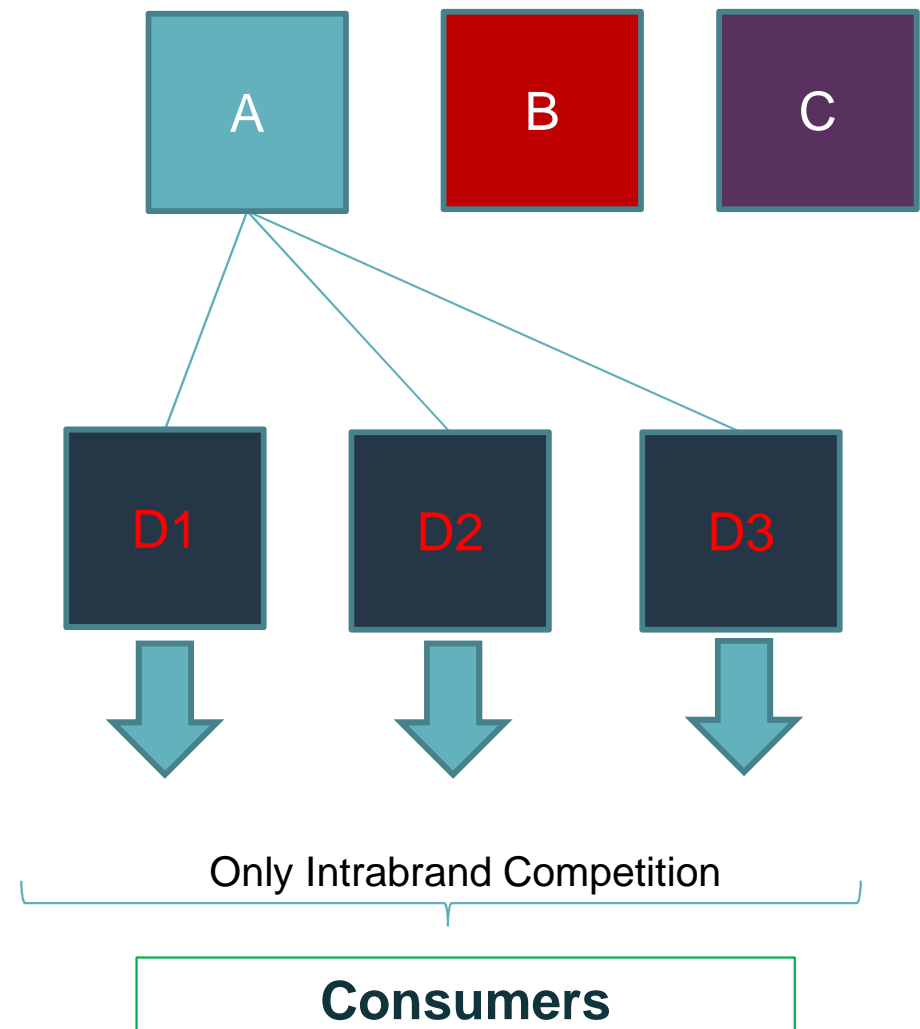
- Firms with large shares may face more risk than others
- Legality may depend on the use of minimum resale price restrictions by others
- Business rationale?
- Will an alternative suffice?
  - Suggesting resale prices
  - Coop advertising funds
  - Using exclusive contracts
- How would the provision be enforced (termination)?
- Exit strategy?

# EXCLUSIVE DEALING

## No Exclusivity



## Exclusivity

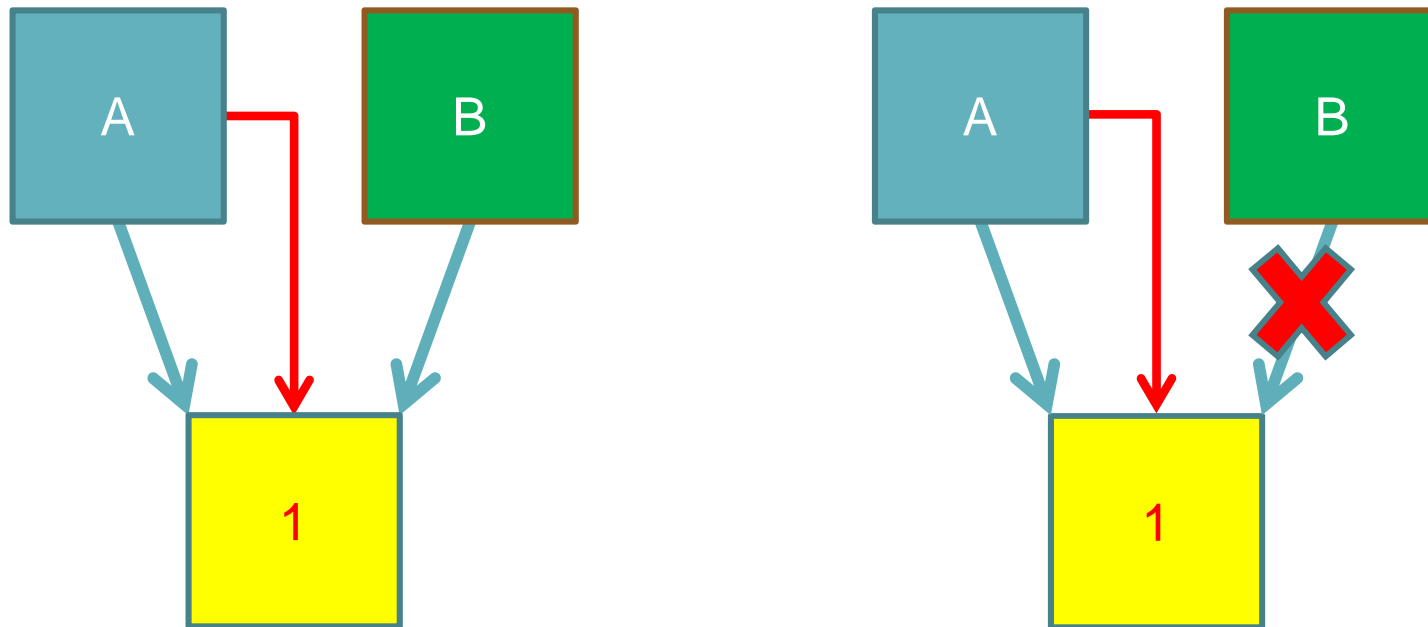




## EXCLUSIVE DEALING GENERAL STANDARDS

- **Exclusive Dealing** is an agreement in which one company agrees to buy (or sell) exclusively all or almost all from another company
- **Procompetitive Benefits:**
  - Promotes interbrand competition (priority of antitrust)
  - Enhances selling efforts and aligns manufacturer/distributor incentives
  - Prevents free riding
- **Anticompetitive Concerns:**
  - Market power
  - Forecloses rivals
  - Prevents or inhibits entry
  - Deny access to “significant” resources or minimum sales levels
  - Consumer harm
- Older cases suggested 1 year restrictions are presumptively lawful. Recent enforcement actions call this into question.

# TYING



**Red** is the “must have” or tying product  
**Blue** is the tied product

# TYING

- **Defined:** An arrangement where a supplier agrees to sell one product (the tying product) only on the condition that the buyer also purchases a different or tied product. The elements of a per se unlawful tying arrangement are:
  - Two products that are tied
  - Market power in the tying product (prospect of monopoly power in the tied product)
  - Not insubstantial amount of commerce in the tied product is affected
  - Anticompetitive effect (some courts)
    - Forestall interbrand competition, deny access to customers, create entry barriers, extend market power to the tied product market
- Justification
  - Efficient manufacturing and distribution (*e.g.*, software components)

## TYING DEFENSES

- There is only one product
  - Not practical to sell the products separately and there is no demand for separate products
    - *E.g.*, an automobile is not a series of tied products
    - *E.g.*, each cable channel may be a separate product
- Each of the products is reasonably available (economically and practically)
- The package of products costs less than individual components
- There is a sound business justification for the tie
- The product is not unique
- Low shares
- Robust competition in the tied product market or new entry

## CONDITIONAL PRICING/CONTRACTS THAT REFERENCE RIVALS

- Contracts that condition discounts on certain minimum requirements:
  - Many forms
  - Bundling
    - Discounts for purchasing volumes of multiple products
  - Loyalty discounts
    - Discounts based on meeting certain sales thresholds
- Benefits
  - Incentivize customers to focus on particular products and efforts
  - Reduce costs of distribution
  - Lower prices can be passed to consumers

## WHEN CAN HARM ARISE

- Foreclosure
  - Eliminate rivals
  - Through lower sales, reduce scale and effectiveness of rivals
- Predation
  - Discounts below an appropriate measure of cost
  - Discount attribution test
- Consumer harm
  - Higher prices
  - Lower product choice
  - Less product availability
- No established legal approach and no established economic model

## *UNITED STATES V. AT&T*

- DOJ recently filed suit to challenge the merger of AT&T and Time Warner. It is the first time in 30+ years that DOJ has challenged a merger on vertical grounds.
- AT&T owns leading distribution channels, such as DirecTV.
- Time Warner owns valuable programming, such as HBO, CNN, TNT and TBS. It distributes the programming through several channels, such as cable and satellite TV.
- As a separate company, Time Warner wants to distribute programming through as many channels as possible.
- DOJ's theory: If combined with DirecTV, Time Warner would have an incentive and ability to:
  - Charge higher prices to DirecTV's competitors
  - Refuse to sell HBO, CNN, TNT or TBS to DirecTV's competitors.
  - Refuse to sell to disruptive competing technologies, such as internet distributors
- DOJ apparently seeking a divestiture to remedy the issue.

# COUNSELING ON DISTRIBUTION ISSUES

- Justifications are more likely to succeed if they (supported by ordinary course documents)
  - Promote competition and improve service
  - Encourage investment
  - Increase output or lower costs
- Restrictions should be narrowly tailored (not overly broad) to achieve the efficiency
- Use market power screens
  - Consider using ordinary course business documents as your market share proxy
  - Consider whether your prices are higher than your competitors
- Consider both foreclosure and predation tests as well as consumer harm
- What is the likelihood of a challenge?
- How will the agreement be enforced (termination?)
- How much of an advantage do the restraints provide?
- Do you have an exit strategy?
- Communications plans (internal and external)



# Purchasing & Employment

Jason Powers & Lindsey Vaala

# ANTITRUST ISSUES IN EMPLOYMENT & PURCHASING

## OVERVIEW

- Competition concerns not limited to sales personnel.
  - Purchasing and Employment also involve functions subject to scrutiny
- **Employment as a marketplace**
  - Increased regulatory and enforcement interest on:
    - Non-compete agreements
    - Compensation, hiring and benefits

## RESTRAINTS ON EMPLOYMENT

- Legality depends on context

### Per Se Illegal

- “Naked” agreements not to solicit/hire or to set benefits/compensation

### Rule of Reason Analysis

- Ancillary to otherwise legitimate arrangement
  - Balance procompetitive benefits v. anticompetitive restraints
  - Business justification
  - Reasonably limited in scope and duration
  - Examples: non-solicitation or non-compete in a confidentiality agreement, NDA or joint venture/joint development agreement

## RESTRICTIVE COVENANTS IN EMPLOYMENT CONTEXT

- Burgeoning number of state legislatures and AGs considering impact of non-compete obligations on employees
- Extent of restriction a consideration. *Is restraint narrowly tailored?*



States may apply different standards to different restrictive covenants depending on extent of impact on ability to earn a living.

- Employee Non-Solicit
- Customer Non-Solicit
- Non-Compete
- No-Hire

Acceptability of arrangement diminishes as employee freedom to work decreases

# DOJ GUIDANCE AND LITIGATION CHALLENGE “ANTI-POACHING” DEALS



## ANTITRUST GUIDANCE FOR HUMAN RESOURCE PROFESSIONALS

DEPARTMENT OF JUSTICE  
ANTITRUST DIVISION

FEDERAL TRADE COMMISSION

OCTOBER 2016

This document is intended to alert human resource (HR) professionals and others involved in hiring and compensation decisions to potential violations of the antitrust laws. The Department of Justice Antitrust Division (DOJ or Division) and Federal Trade Commission (FTC) (collectively, the federal antitrust agencies) jointly enforce the U.S. antitrust laws, which apply to competition among firms to hire employees. An agreement among competing employers to limit or fix the terms of employment for potential hires may violate the antitrust laws if the agreement constrains individual firm decision-making with regard to wages, salaries, or benefits; terms of employment; or even job opportunities. HR

“An agreement among competing employers to limit or fix the terms of employment for potential hires may violate the antitrust laws if the agreement constrains individual firm decision-making with regard to wages, salaries, or benefits; terms of employment; or even job opportunities.”

## DOJ GUIDANCE HIGHLIGHTS

- Employers = competitors
  - Maintain competitive employment marketplace
  - Do not need to be in same industry
- Express or implicit agreements not to compete unlawful
  - Wages, benefits, no-poaching, no-solicitation
  - Direct or indirect (trade association)
  - Individual and corporate prosecution
- HR professionals well-positioned to ensure hiring practices comply and to implement safeguards
  - Beware of info sharing re employment benefits/conditions

# DOJ Enforcement Actions

## High Tech Cases

### Agreements not to cold call

- Series of bilateral agreements between Adobe, Apple, Google, Intel, Intuit and Pixar not to cold call one another's specialized employees (engineers, etc.)
- *Senior management involved in making agreements; HR personnel were asked to ensure compliance*

### Agreements not to recruit or hire

- Senior personnel at Lucasfilm and Pixar agreed not to cold call employees, to notify when making offer and not to counteroffer (Digital animators)
- eBay and Intuit agreed not to recruit and eBay agreed not to hire
- *Companies self-policed the agreement, including through HR personnel*

## Civil Litigation

### Threat of Class Actions

- **2011 class action in N.D. Cal. against Adobe, Apple, Google, Intel, Intuit, Lucasfilm and Pixar**
- Alleged conspiracy to fix and suppress compensation of broad swath of employees
- Class certified: Persons employed in a technical, creative, or R&D position from 2005-2009
- Settlements in excess of \$400 million following several years of litigation

## BUYER-SIDE CONDUCT

### MIRROR-IMAGE CONCERNS

- Cornering the market
  - Monopolizing by bidding up critical inputs to drive out competitors
- Buyer-side price-fixing
- Price discrimination
  - Robinson-Patman § 2(f) makes it illegal “knowingly to induce or receive a discrimination in price which is prohibited by this section”



## BUYER-SIDE CONDUCT

### CIRCLING THE WAGONS

- Exercising leverage over suppliers
  - Defending your sales by demanding supplier “loyalty”
  - Supplier vulnerability
- Group Boycotts

## BUYER-SIDE CONDUCT

### COOPERATION WITH OTHERS

- Benefits of joint-purchasing arrangements
  - Meeting unique needs
  - Efficiencies
  - Economies of scale
- Joint-purchasing risks
  - Collective market power in the purchased items
    - 35% of the market
  - Standardizing competitors' costs
    - 20% of any competitor's revenues

## KEY TAKE-AWAYS

### PURCHASING & EMPLOYMENT

## **Antitrust compliance training isn't just for salespeople**

*Time to welcome Human Resources and Purchasing to the party*

## **Communicating with competitors is risky**

*And that includes competing buyers, not just competing sellers*

## **Take care in cutting off businesses that depend on you**

*Whether they are your distributors or your suppliers*

**BREAK**

# BREAKOUT SESSIONS

## TOPIC

### Mergers & Acquisitions

**Presented By:**

- *Neil Imus, Partner*
- *Billy Vigdor, Partner*
- *David Smith, Senior Associate*

### Private Equity & Public Market Investments

**Presented By:**

- *Alden Atkins, Partner*
- *Jim Reeder, Partner*
- *Craig Seebald, Partner*

## LOCATION

**26 C&D**

**26 G**

# Antitrust Enforcement in the Trump Administration

PANEL DISCUSSION

*Jim Reeder (Moderator)*

# **SPEAKER BIOGRAPHIES**

# SPEAKER



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## Select Recognition

- *Legal 500 U.S.*, Antitrust, 2016 and 2017
- Selected to the Washington, D.C. Super Lawyers list, *Super Lawyers* (Thomson Reuters), 2013–2017
- *Latin Lawyer 250*, 2012–2017
- *International Who's Who of Business Lawyers* (Law Business Research, Ltd.), 2012
- *Who's Who of International Oil & Gas Lawyers* (Law Business Research, Ltd.), 2011
- Global Arbitration Review's *GAR 100*, "Partner to Know," 2010

**Alden's** legal career of more than 30 years has ranged from orchestrating multijurisdictional, multinational litigation to some of the most significant multidistrict class actions, and to high-profile cases like the Whitewater investigation. Amounts at stake frequently involve hundreds of millions of dollars or more, and often the cases raise "bet the company" issues. Alden has argued appeals, tried cases, and had evidentiary hearings in federal and state courts across the country, as well as domestic and international arbitral tribunals.

Alden's principal area of practice is complex commercial litigation, with particular emphasis on antitrust, class actions, contractual disputes, product liability, and international litigation and arbitration. He has represented clients across a spectrum of industries, including airlines, auto parts, banking and finance, communications, computers, energy, LNG, government contracting, polymers, and transportation. Many of his cases have raised highly complex technical matters involving science, accounting, or financial issues. Alden is a frequent speaker on international arbitration and antitrust, and he has published several articles in those fields. He has also devoted significant time to pro bono civil rights litigation.



# SPEAKER



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## Select Recognition

- *Chambers USA*, Antitrust (District of Columbia), 2008–2017
- Legal 500 US, Antitrust: Merger Control, 2017; M&A Antitrust, 2012–2014
- *The Best Lawyers in America*® (Woodward/White, Inc.), Antitrust Law, 2016 and 2017
- Selected to the Washington, D.C. Super Lawyers list, *Super Lawyers* (Thomson Reuters), 2016 and 2017

**Neil** is an antitrust lawyer focusing on mergers and acquisitions and other antitrust matters before the Federal Trade Commission, the U.S. Department of Justice, state and international antitrust authorities, and U.S. Courts. He has represented and counseled clients in a wide variety of industries with extensive experience in energy, food, health care, aviation, media, retail, and technology.

# SPEAKER



**MATTHEW J. JACOBS**  
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## Select Recognition

- *Chambers USA*, White-Collar Crime & Government Investigations (California), 2015–2017
- *Legal 500 U.S.*, Antitrust, 2012–2015; White-Collar Criminal Defense, 2015–2017
- Selected to the Northern California Super Lawyers list, *Super Lawyers*® (Thomson Reuters), 2006–2016
- Finalist for appointment as U.S. Attorney, 2008

**Matt** is a former federal prosecutor in the Northern District of California with more than 20 years of experience. Matt is well recognized for his experience in internal investigations, government investigations, and white collar matters of all kinds, as well as complex commercial litigation.

Matt frequently advises Boards of Directors, Audit Committees, and General Counsels on critical issues. Matt is Co-Chair of the firm's Government Investigations & White Collar Criminal Defense practice, and is the Managing Partner of the San Francisco office of V&E. He is *Chambers*-rated, ranked by the *Legal 500*, and has been recognized as one of the leading lawyers in San Francisco by *San Francisco Magazine*.

Matt has a national and international practice representing U.S. and foreign-located companies and executives in high stakes matters involving FCPA, antitrust, trade secrets, health care, and commercial disputes including IP litigation and consumer class actions. Matt is a seasoned trial lawyer who has tried more than a dozen criminal and civil cases to verdict. As a federal prosecutor in San Francisco, Matt prosecuted many high profile cases involving securities, health care and energy. Matt is particularly experienced in “bet-the-company” and high profile matters. He has extensive experience dealing with the press, first as an award winning journalist in Louisiana, and later as the federal prosecutor responsible for handling all media inquiries on behalf of U.S. Attorney (and former FBI Director) Robert S. Mueller III. As a prosecutor, Matt was the recipient of the Justice Department's Director's Award and the FBI's Director's Award.

# SPEAKER



**JASON M. POWERS**  
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**Jason** focuses primarily on controversies between businesses, especially disputes relating to joint ventures and the joint development of business opportunities through strategic contracts and investments. Disputes over failed joint ventures often present formidable challenges, as they frequently involve management changes, complex accounting issues, a dearth of available witnesses and business records, and parallel investigations. These cases also embrace a wide-ranging body of law, including antitrust, securities, business torts, and contracts. Jason brings to bear more than a decade of experience handling cases in each of these substantive areas and overcoming the obstacles these cases present.

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## Select Recognition

- *Legal 500 U.S.*, Antitrust: Civil Litigation/Class Actions, 2017
- *Euromoney's Benchmark Litigation*, "Future Litigation Star" in Texas, 2009, 2012–2018
- *Who's Who Legal* (Law Business Research Ltd.); Competition, 2016
- "Partner to Know," Global Arbitration Review's *GAR 100*, 2009
- Selected to the Texas Rising Stars list, *Super Lawyers* (Thomson Reuters), 2004–2006 and 2008–2012

## SPEAKER / MODERATOR



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### Select Recognition

- *Chambers USA*, Antitrust (Texas), 2010–2017
- *Legal 500 U.S.*, Antitrust, 2009 and 2012–2017
- *The Best Lawyers in America*® (Antitrust Law, 2005–2017; Commercial Litigation, 2011–2017; Litigation–Mergers & Acquisitions, 2014–2017 ("Lawyer of the Year," 2013))
- *Euromoney's Benchmark Litigation*, "Local Litigation Star" in Texas, 2012–2017

**Jim** has extensive experience litigating antitrust and complex commercial cases. His antitrust practice extends to many industries, including the chemical, health care, commercial aviation, energy, and entertainment industries. He has advised clients on, and tried cases involving, claims of price-fixing, group boycott, exclusive dealing, tying, monopolization, discriminatory pricing, and conspiracy. Jim has also handled matters and tried cases involving claims of fraud, negligent misrepresentation, RICO, breach of fiduciary duty, deceptive trade practices, and violations of federal and state securities laws. He was one of the leaders of the trial team that successfully developed the current law on material adverse effect clauses in mergers. Jim is the co-head of the firm's Antitrust practice.

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- *Chambers USA*, Antitrust (District of Columbia), 2009–2017; Antitrust (Cartel) (Nationwide), 2014–2017
- *Legal 500 U.S.*, Antitrust, 2012–2017; White-Collar Criminal Defense, 2016
- Selected to the Washington, D.C. Super Lawyers list, *Super Lawyers* (Thomson Reuters), 2016 and 2017
- *Euromoney's Benchmark Litigation*, "Local Litigation Star" in District of Columbia, 2012–2013, 2016–2017

**Craig** is a partner in the Antitrust Group in Washington, DC. With over 20 years of antitrust experience, Craig is well positioned to represent clients in all areas of antitrust law, including criminal defense, class action litigation, and merger investigations. His experience spans a wide range of industries, including technology, aerospace and defense, semiconductors, transportation, consumer products, and energy, among many others. Another key area of Craig's practice is representing clients in antitrust matters involving intellectual property. He has counseled clients on patent pools, standard setting, patent acquisition, and licensing. He has litigated several antitrust cases involving patent pools, licensing agreements, standard setting, and the enforcement of invalid patents.

Craig has been ranked in *Chambers USA: America's Leading Lawyers for Business* from 2009–2017. Clients note that Craig impresses with "his in-depth knowledge of our business and the issues we confront." Craig co-heads the Antitrust Practice Group and serves as Managing Partner of the Washington, DC, office.

# SPEAKER



**WILLIAM R. VIGDOR**  
PARTNER

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## Select Recognition

- *Chambers USA*, Antitrust (District of Columbia), 2010–2017
- Selected to the Washington, DC Super Lawyers list, *Super Lawyers* (Thomson Reuters), 2012–2017
- Legal 500 US, Antitrust: Merger Control, 2017; M&A Antitrust, 2012–2014
- American Lawyer Media, Washington DC & Baltimore's Top Rated Lawyers, 2012–2013

**William (Billy) Vigdor** came to Vinson & Elkins from the Federal Trade Commission (FTC) in 2003. He assists clients in identifying and managing the antitrust and national security risk of global mergers and joint ventures.

Billy provides substantive and strategic antitrust risk assessments in a wide array of industries and transaction structures (mergers, acquisitions, and joint ventures) and represents clients before the FTC, Department of Justice, and states attorneys general. He assists private equity, hedge funds, portfolio and public companies in addressing global merger control issues and in assessing risks. Billy also represents clients before the Committee on Foreign Investment in the United States (CFIUS).

Billy represents clients in some of the most complex mergers and acquisitions, joint ventures, partial ownerships, and government investigations involving price-fixing and monopolistic practices, as well as multijurisdictional merger control. He works with a wide range of clients, including hedge funds, master limited partnerships, and private equity firms. His antitrust work covers most of the economy, including energy (from well to burner tip or gas tank), petrochemicals, health care, technology, aerospace, telecommunications equipment, auto parts, retailing, food manufacturing, and pharmaceuticals. Billy has experience seeking agencies' approval not to challenge mergers and not to issue second requests.

Since 1995, Billy has represented clients—buyers, sellers, and privately and government-owned—in multibillion dollar transactions before CFIUS, including companies involved in energy, technology, telecommunications, petrochemicals, satellites, real estate, and other industries. He has assisted clients in negotiating FOCI mitigation agreements with CFIUS agencies.

# SPEAKER



STACEY NEUMANN VU  
COUNSEL

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## Select Recognition

- Selected to the Texas Rising Stars list, *Super Lawyers* (Thomson Reuters), 2009–2010, 2014 and 2016

**Stacey's** practice focuses primarily on antitrust and other commercial litigation, with an emphasis on handling complex legal and factual issues that require careful research, analysis, and strategy. In her more than ten years of trial practice, she has litigated antitrust cases involving claims of price- and supply-fixing, group boycott, exclusive dealing, tying, monopolization, and conspiracy. In addition, she has handled contractual and business tort disputes and suits involving Lanham Act, RICO, ERISA, and federal tax claims. Stacey's clients include Fortune 150 corporations and other major companies in a variety of industries, such as petrochemical, petroleum, telecommunications, grocery, agriculture, and health care.



# SPEAKER



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## Select Recognition

- Selected to the Washington DC Super Lawyers list, *Rising Stars*, Antitrust Litigation, 2015–2017

**David's** principal practice area is antitrust, with experience across multiple areas of antitrust law. His experience includes all stages of civil litigation from complaint to trial, including motions to dismiss, summary judgment, and class certification, as well as appellate experience arising out of these same matters. He has additional experience in civil and criminal investigations, antitrust counseling, and the review of mergers by antitrust enforcement agencies, with a particular focus in the energy and chemical sectors. David also has experience regarding the intersection of antitrust and intellectual property.



# SPEAKER



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## Select Recognition

- Selected to the Washington, D.C. Rising Stars list, *Super Lawyers* (Thomson Reuters), 2015–2017
- Selected for [D.C. Bar John Payton Leadership Academy](#), Class of 2014
- Vinson & Elkins Pro Bono Award Recipient, Family Law, 2012
- Vinson & Elkins Pro Bono Law Award Recipient, Disability Rights, 2013

**Lindsey** is a senior associate in the complex commercial litigation practice group. Her principal areas of practice include white collar criminal defense and civil litigation, with an emphasis on antitrust matters.

Lindsey also represents companies and individuals in a variety of government and congressional investigations. Her area of practice includes class actions and other civil litigation matters, and defending clients in government investigations, grand jury subpoenas, and other proceedings. She also has handled several pro bono litigation matters, including a contested child custody dispute in D.C. Superior Court, and co-chaired a jury trial in a disability discrimination case brought in federal court in the District of Columbia. Lindsey also is integrally involved in the D.C. office's community outreach and partnership efforts.

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