

# European Union/ International Competition

Skadden

Led from Skadden's Brussels office, our European Union/International Competition Group advises clients on a wide variety of cutting-edge competition law issues, including conduct cases (cartel arrangements, distribution and collaboration agreements, geoblocking clauses, alleged abuse of dominance), as well as mergers and acquisitions, state aid, litigation and other regulatory matters. Our attorneys include nationals admitted to practice in various member states within the EU and in the U.K.

Our European competition attorneys work closely with in-house counsel to advise on compliance matters, defend against enforcement actions brought by the competition authorities and, where necessary, represent clients in appeals before courts across the EU.

Our practice focuses on the following principal categories: EU, U.K. and other non-U.S. cartel, antitrust and merger control laws, as well as other significant EU and U.K. competition and regulatory issues. Our Brussels-based attorneys regularly coordinate with their U.K., U.S. and Asia-based colleagues on a variety of matters, providing the comprehensive, high-level client service for which our firm is known. Additionally, attorneys in our practice are fluent in English, French, Dutch, German, Greek, Italian, Spanish, Portuguese and Swedish.

Our European Union/International Competition Group has been recognized repeatedly by *Chambers Europe*, *IFLR1000* and *The Legal 500*. We also were ranked among *Global Competition Review's* Global Elite in the *GCR 100*, named European Competition Team of the Year 2021 by *The Lawyer* and recognized as the Competition Firm of the Year at the 2020 *Benchmark Litigation Europe Awards*. Additionally, Skadden was previously recognized as Competition Team of the Year by *Legal Business* and Transatlantic Antitrust Team of the Year by *The American Lawyer* and *Legal Week* at the Transatlantic Legal Awards.

## Merger Control

Attorneys in our European Union/International Competition Group counsel and litigate on behalf of clients regarding EU, U.K. and other non-U.S. antitrust issues raised by multinational mergers, acquisitions and joint ventures. Our attorneys appear regularly before the European Commission, the U.K. Competition and

Markets Authority (CMA) and national competition authorities on a global basis.

Additionally, Skadden represents clients in numerous multinational transactions each year. Examples of our work include representation of:

- ABB Ltd with the antitrust aspects of its:
  - US\$2.9 billion sale of its Dodge mechanical power transmission unit to RBC Bearings Incorporated;
  - US\$2.6 billion acquisition of General Electric Industrial Solutions; and
  - US\$7.8 billion sale of an 80.1% stake in its Power Grids division to Hitachi, Ltd.;
- Actavis, Inc. with the antitrust aspects of its:
  - US\$8.5 billion acquisition of Warner Chilcott plc; and
  - US\$25 billion acquisition of Forest Laboratories Inc.;
- Activision Blizzard Inc. in its US\$75 billion acquisition by Microsoft Corporation;
- Advantest Corporation in its US\$1.1 billion acquisition of Verigy Ltd.;
- Adobe, Inc. with the antitrust aspects of its US\$1.28 billion acquisition of Frame.io Inc., a cloud-based video collaboration platform;
- Air Canada with the antitrust aspects of its US\$523 million combination agreement with Transat A.T. Inc.;
- Archer Daniels Midland Company in its US\$3.1 billion acquisition of WILD Flavors GmbH;

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- Armstrong World Industries, Inc. in the US\$330 million sale of its EMEA and Pacific Rim businesses to Knauf International GmbH;
  - ASML Holding N.V. in its US\$2.5 billion acquisition of Cymer, Inc.;
  - Aspen Technology, Inc. in its US\$11 billion merger with OSI Inc. and the Geological Simulation software businesses of Emerson Electric Co.;
  - Becton, Dickinson and Company in its US\$24 billion acquisition of C. R. Bard, Inc.;
  - Black Diamond Capital Management, L.L.C., along with InvestIndustrial, in their US\$425 million acquisition of the phenolic specialty resin, hexamine and European forest products resins businesses of Hexion Inc.;
  - BlackRock, Inc. in connection with its US\$13.5 billion acquisition of Barclays Global Investors from Barclays PLC;
  - Broadcom Corporation in its US\$37 billion acquisition by Avago Technologies Limited;
  - Castik Capital S.a.r.L. and other shareholders of Waterlogic plc in Waterlogic's merger with Culligan International;
  - China Huaxin Post and Telecommunications Economy Development Centre in its US\$362 million acquisition of the Enterprise business of Alcatel-Lucent S.A., a wireline and wireless telecommunications company in France;
  - CME Group Inc. in its acquisition of NEX Group plc for US\$6 billion, including assumed debt;
  - Convera in its US\$910 million acquisition of The Western Union Company's Business Solutions division;
  - CPI International, Inc., a portfolio company of Odyssey Investment Partners, LLC, in its acquisition of TMD Technologies Ltd;
  - Dell Technologies Inc. in its US\$4 billion sale of Boomi, Inc. to Francisco Partners and TPG Capital;
  - Dicerna Pharmaceuticals, Inc. in its acquisition by Novo Nordisk A/S (Denmark) at an equity value of US\$3.3 billion;
  - DSV Panalpina A/S in relation to its:
    - US\$4.2 billion acquisition of the Global Integrated Logistics business of Agility Public Warehousing Company K.S.C.P.; and
    - US\$4.6 billion acquisition of The Panalpina Group;
  - DuPont in relation to:
    - its US\$2.3 billion acquisition of Laird Performance Materials; and
    - the global antitrust aspects arising out of the US\$11 billion divestment of the majority of its Mobility & Materials segment;
  - DuPont de Nemours, Inc. in the US\$45.4 billion merger of its Nutrition & Biosciences business with International Flavors & Fragrances Inc.;
  - Ecolab Inc. on the antitrust aspects of its US\$8.1 billion acquisition of Nalco Holding Company;
  - E. I. du Pont de Nemours and Company in its merger of equals with The Dow Chemical Company;
  - Electronic Arts Inc. in relation to its:
    - US\$1.4 billion acquisition of Playdemic Ltd. (United Kingdom) from Warner Bros. Games and AT&T Inc.; and
    - US\$1.2 billion recommended cash offer for Codemasters Group Holdings plc;
  - Embraer S.A. in the proposed but terminated US\$4.2 billion sale of an 80% stake in its commercial aircraft and services business to The Boeing Company;
  - EMC Corporation in its US\$67 billion acquisition by Denali Holding Inc., the parent company of Dell Inc.;
  - Esterline Technologies Corporation in its US\$4 billion acquisition by TransDigm Group Incorporated;
  - Freescale Semiconductor, Ltd. and a private equity consortium that included The Blackstone Group L.P., The Carlyle Group LP, Permira Funds and TPG Capital, L.P. in Freescale's US\$11.8 billion acquisition by NXP Semiconductors N.V.;
  - GBT Travel Services UK Limited, d/b/a American Express Global Business Travel, in its acquisition of Egencia Europe SAS from Expedia Group, Inc.;
  - General Electric Company:
    - on the global antitrust aspects of its US\$13 billion acquisition of the energy unit of Alstom SA; and
    - on the antitrust aspects of its US\$4.3 billion acquisition of the aviation business of Avio S.p.A. from Cinven Limited and Finmeccanica S.p.A.;
  - Gilead Sciences, Inc. in its US\$5.1 billion transaction with Galapagos NV;
  - The Hershey Company in the US\$584 million acquisition by its subsidiary Hershey Netherlands B.V. of an 80% stake in Shanghai Golden Monkey Food Joint Stock Co., Ltd.;
  - Hg in its:
    - investments in Insightsoftware, Prophix Software, Howden Insurance, Litera Microsystems, Managed Markets Insights & Technology and Visma; and
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- £410 million sale of Foundry to Roper Technologies;
  - HighQ Solutions Limited in its sale to Thomson Reuters Corporation;
  - Hospira, Inc. in its acquisition by Pfizer Inc.;
  - HP Inc. in relation to its:
    - US\$3.3 billion acquisition of Poly; and
    - acquisition of Samsung Electronics Co., Ltd.'s printer business;
  - Intel in its proposed US\$5.4 billion acquisition of Tower Semiconductor, a leading foundry for analog semiconductor solutions headquartered in Israel;
  - International Paper Company in the US\$812 million sale of its pulp and paper mill and supporting operations in Kwidzyn, Poland, to Mayr-Melnhof Karton AG;
  - Key Safety Systems in its acquisition of substantially all of Japan-based Takata Corporation's global assets and operations;
  - Konecranes Plc in connection with its:
    - proposed US\$3 billion merger with Cargotec Corporation;
    - acquisition of Terex Corporation's Material Handling and Port Solutions unit; and
    - proposed but terminated all-stock merger with Terex Corporation;
  - LANXESS AG in its US\$2.5 billion acquisition of Chemtura Corporation;
  - L-1 Identity Solutions, Inc. in its acquisition by Safran SA in a cash merger transaction valued at US\$1.6 billion (inclusive of outstanding debt) and the related sale of L-1's Intelligence Services unit to BAE Systems, Inc. for US\$303 million (including certain assumed obligations);
  - LSI Corporation in its US\$6.6 billion acquisition by Avago Technologies Limited;
  - Marubeni Corporation in its US\$5.3 billion acquisition of Gavilon Group LLC;
  - Merck KGaA in:
    - its US\$17 billion acquisition of Sigma-Aldrich Corporation, a chemical company for the life sciences industry;
    - its US\$7.2 billion acquisition of the Millipore Corporation; and
    - the US\$6.7 billion sale of its worldwide generic drugs business to Mylan Laboratories, Inc.;
  - NCR Corporation in its US\$1.7 billion acquisition of Cardtronics plc;
  - Netflix, Inc. in its acquisition of The Roald Dahl Story Company Limited;
  - Nokia Corporation in:
    - the US\$7.1 billion sale of its devices and services business to Microsoft Corporation; and
    - its US\$16.6 billion combination with Alcatel-Lucent;
  - NXP Semiconductors N.V. in its proposed but terminated US\$47 billion acquisition by Qualcomm Incorporated;
  - Outokumpu Oyj in:
    - the sale of ThyssenKrupp Acciai Speciali Terni S.p.A. and Outokumpu VDM GmbH to ThyssenKrupp AG; and
    - its €2.8 billion acquisition of the Innoxum business unit from ThyssenKrupp AG;
  - PayPal Holdings, Inc. in its:
    - acquisition of Israel-based Curv, a startup and leading provider of digital asset security technology, one of the world's first cryptocurrency business acquisitions;
    - acquisition of iZettle for US\$2.2 billion, including representation in the phase 2 CMA inquiry into the acquisition, securing clearance without conditions; and
    - US\$4 billion acquisition of Honey Science Corporation;
  - Permira Funds and the Marazzi Group SpA in Marazzi's US\$1.5 billion acquisition by Mohawk Industries, Inc.;
  - Pfizer Inc. in its:
    - acquisition of the consumer health business of Ferrosan Holding A/S; and
    - US\$160 billion combination with Allergan plc, the largest-ever pharmaceutical sector merger;
  - Phoenix Group Holdings plc in its US\$4.1 billion acquisition of ReAssure Group plc from Swiss Re AG;
  - Proofpoint, Inc. in its US\$12.3 billion acquisition by Thoma Bravo;
  - Red Hat, Inc. in its acquisition by IBM in an all-cash transaction valued at US\$34 billion;
  - Reichhold, Inc. in its combination with Polynt Group;
  - Rockwell Collins, Inc. in its US\$30 billion acquisition by United Technologies Corp.;
  - Rockwood Holdings, Inc. on the antitrust aspects of the US\$1.3 billion sale of its titanium dioxide pigments and four other nonstrategic businesses to Huntsman Corporation;
  - Royal Caribbean Cruises Ltd. in its initial US\$1 billion acquisition of a 66.7% interest in Silversea Cruises and its subsequent acquisition of the remaining 33.3% interest in the company;
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- SanDisk Corporation in its:
    - US\$1.1 billion acquisition of Fusion-io, Inc.; and
    - US\$19 billion acquisition by Western Digital Corporation;
  - SCOR SE in its US\$912.5 million acquisition of Transamerica Re's mortality business;
  - Schulman, Inc. in its US\$2.25 billion acquisition by Lyondell-Basell Industries N.V.;
  - Silver Lake V, L.P. in its €500 million acquisition of Silae;
  - SK hynix, Inc. in its US\$9 billion acquisition of the NAND memory and storage business of Intel Corporation;
  - Spotify Technology S.A. in relation to its:
    - US\$235 million acquisition of Megaphone LLC from Graham Holdings Company; and
    - acquisition of Findaway World, LLC, an audiobook distributor;
  - Stanley Black & Decker in its US\$850 million acquisition of Infastech;
  - Stryker Corporation in relation to its:
    - US\$5.4 billion acquisition of Wright Medical Group N.V.; and
    - US\$1.5 billion acquisition of Boston Scientific Corporation's Neurovascular business;
  - Sun Life Assurance Company of Canada in its US\$390 million acquisition of an 80% stake in InfraRed Capital Partners;
  - Toto Wolff, an Austrian investor, on the extension of his tenure as team boss and chief executive of Mercedes-Benz Grand Prix Ltd., the operating company of the Mercedes Formula 1 team;
  - Travelport Ltd., a portfolio company of The Blackstone Group, L.P., on the antitrust aspects of its US\$1.4 billion acquisition of Worldspan, L.P.;
  - Valeant Pharmaceuticals International, Inc. in its US\$8.7 billion acquisition of Bausch & Lomb Holdings Incorporated;
  - Validus Holdings, Ltd. in its US\$5.6 billion acquisition by American International Group, Inc.;
  - Veoneer, Inc. in its initially unsolicited, but subsequently agreed upon, US\$4.5 billion acquisition by Qualcomm Incorporated and SSW Partners;
  - Viagogo Entertainment Inc. in its US\$4.05 billion acquisition of StubHub, Inc. from eBay, including a phase 2 CMA merger inquiry requiring innovative remedies packages;
  - Visa Inc. in its:
    - US\$2.2 billion acquisition of Tink AB; and
    - proposed but terminated US\$5.3 billion acquisition of Plaid Inc.;
  - WABCO Holdings Inc. in its US\$7 billion acquisition by ZF Friedrichshafen AG;
  - WeWork Companies LLC in its US\$4.4 billion investment from SoftBank Group and SoftBank Vision Fund;
  - Willis Towers Watson in relation to its:
    - US\$4 billion sale of Willis Re to Arthur J. Gallagher & Co.; and
    - US\$30 billion proposed but terminated acquisition by Aon plc;
  - Wolt Enterprises Oy in its US\$8 billion acquisition by DoorDash, Inc.;
  - Worldpay in its US\$43 billion merger with FIS;
  - Xilinx, Inc. in its US\$35 billion acquisition by Advanced Micro Devices, Inc.;
  - XL Group Ltd. in its US\$15.3 billion acquisition by AXA SA;
  - ZeniMax Media Inc. in its US\$7.5 billion acquisition by Microsoft Corporation; and
  - Zuber and Mohsin Issa, owners of EG Group, and TDR Capital LLP in their £6.8 billion acquisition of a majority stake in ASDA Group Limited from Walmart Inc.

## Government Investigations

Our European Union/International Competition Group also advises clients in investigations before various government agencies, including in relation to alleged violations of Article 101 and Article 102 of the EU Treaty on the Functioning of the EU (TFEU), and its U.K. equivalent, and defends clients against increasingly vigorous enforcement actions brought by the European Commission, the CMA and other antitrust agencies worldwide. We frequently assist clients who face parallel investigations coordinated among global antitrust authorities in diverse jurisdictions, including the EU, the U.K., the U.S., Australia, Brazil, Canada, Israel, Japan, New Zealand, South Africa, South Korea and Taiwan.

Our attorneys carefully conceive innovative and creative strategies to address important differences in procedural requirements and policy priorities that arise in global investigations, including on issues pertaining to document production, confidentiality and privilege; criminal sanctions; and third-party access to evidence produced in other jurisdictions, both in litigation and administrative proceedings. Our global team works closely with our London litigation attorneys, who have extensive experience in handling private litigation that flows from findings of competition law infringements in Europe and worldwide.

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We have represented:

- ABB Ltd in a cartel investigation before the European Commission and several other antitrust agencies throughout the world. ABB Ltd was granted full immunity in the decision by the European Commission issued in 2014. Subsequently, ABB partially successfully lodged an appeal against the scope of the Commission decision. In the same matter, we assisted ABB Ltd in securing a favorable settlement in respect of a Belgian Competition Authority investigation and before the Brazilian antitrust authority. The settlement was the first under Brazil's new cartel settlement rules;
- Aspen Pharmacare Holdings before the European Commission in relation to allegations of abuse of dominance (excessive pricing) brought in May 2017. This was the Commission's first investigation into concerns about excessive pricing practices in the pharmaceutical industry. The Commission accepted proposed commitments that ended the investigation without an infringement finding on the part of Aspen. The matter was identified by *Benchmark Litigation* as Impact Case of the Year in 2020;
- Sabre Corporation in the phase 2 merger inquiry and consequent appeal proceedings before the U.K. Competition Appeal Tribunal, following the CMA's decision to block Sabre's US\$360 million acquisition of Farelogix, Inc.;
- Dyson in a case before the EU courts challenging labeling regulations favoring competing vacuum cleaners. This case was recognized as an Impact Case of the Year by *Benchmark Litigation* in 2020;
- UniCredit in relation to an investigation conducted by the European Commission into European government bonds. Skadden assisted UniCredit throughout the administrative investigation and in its appeal before the General Court against the Commission decision adopted in May 2021;
- ZeniMax in relation to the European Commission's long-running video games inquiry. The case raises complex issues of law and intellectual property, involving legacy arrangements to combat piracy in Eastern Europe that the Commission claims should be treated as illegal export restraints;
- Kuoni and Thomas Cook in relation to an investigation by the European Commission into geoblocking clauses that provided for different accommodation conditions depending on the location or residence of the traveler. Following several years of investigation, the Commission agreed to suspend its investigation into the tour operators without penalty;
- GUK, a Mylan company, in the first investigation and decision by the European Commission in relation to a pharmaceutical patent settlement arrangement based on allegations of delay to generic entry ("pay for delay") (the Lundbeck decision) and the pending appeal against that decision;
- Kingfisher as state aid counsel in connection with the European Commission's state aid investigation into the group financing exemption in the U.K.'s former controlled foreign company (CFC) rules. Skadden advised Kingfisher throughout the investigation and the consequent annulment proceedings against the Commission's decision before the EU General Court;
- A multinational software client in relation to bringing an excessive pricing claim under Article 102 of the TFEU. Our client was defending itself in a non-EU jurisdiction in respect of royalty payments it was claimed were owed by the client to a third party for use of the third party's technology. With Skadden's assistance, the client brought a claim in an EU member state to assert its EU law rights in respect of the claims made in relation to EU sales. The matter was resolved when the client subsequently reached a commercially compelling settlement in its non-EU case and withdrew its claim under EU law;
- A company active in the stainless steel sector in an EU investigation;
- Warner Bros. in the settlement of the long-running European Commission pay-TV inquiry and ensuring that remedies were withdrawn following a successful appeal to the EU Court of Justice;
- An international media rights buyer in the dropping of proceedings against our client in an EU investigation of alleged collusion in media rights purchasing;
- Victaulic in its appeal before the General Court challenging the European Commission's decision that Belgian excess profit tax rulings constituted state aid;
- GE in relation to allegations of anticompetitive practices in the maintenance and repair of commercial aircraft engines by CFM International, a GE joint venture with Safran Aircraft Engines, following a complaint to the European Commission by the International Air Transport Association (IATA). Following a successful resolution of IATA's concerns through a settlement agreement, IATA withdrew its complaint and the Commission closed its inquiry; and
- Xperi and Auro in relation to a complaint with the European Commission regarding Dolby's post-processing policy. After discussions with the Commission, Dolby withdrew all limitations that it placed on the use of third-party post-processing technologies.

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## **Antitrust Counseling, Litigation and Compliance**

Our European Union/International Competition Group also handles counseling, litigation and regulatory work on non-transactional EU and U.K. competition and related regulatory matters. Much of our non-transactional practice is centered on EU, U.K. and other national competition laws regulating unilateral and concerted business conduct.

Our attorneys advise clients on Article 102 issues, including the legality of pricing, refusals to deal and other non-pricing business behavior by companies with significant market positions; and Article 101 issues, such as strategic alliances, review of structuring distribution arrangements, intellectual property licenses (e.g., patents, know-how, trademark and copyrights), and other vertical agreements and arrangements affecting parallel imports and other competitive arrangements.

The team also works closely with in-house counsel to structure and implement EU antitrust compliance programs and to defend clients in enforcement actions brought by the European Commission.