

# WILMER, CUTLER & PICKERING

Washington • Baltimore • New York • London • Brussels • Berlin

January 29, 2001

## ANTITRUST AND COMPETITION PRACTICE AT WILMER, CUTLER & PICKERING: A Year 2000 Review

This newsletter is designed to update you on some of the more significant developments in WCP's antitrust and competition practice during the year 2000. The past year was an exciting one as we continued to expand our antitrust and competition practice, both in terms of the number of antitrust and competition lawyers in Europe and the United States and the breadth and significance of the matters on which we counseled. In the process, we solidified our position as a premier provider of global competition and antitrust counseling for merger clearance, litigation, and government investigations on both sides of the Atlantic.

### PEOPLE

WCP now has over 50 antitrust and competition lawyers with diverse expertise in antitrust, competition, and related areas of law. We have competition lawyers in all three of our European offices—Berlin, Brussels, and London.

**Veronica G. Kayne**, former Assistant Director of the U.S. Federal Trade Commission's Bureau of Competition, Anticompetitive Practices Division, joined the firm as a partner resident in the Washington, D.C. office. Veronica has special expertise concerning the interplay between intellectual property and antitrust as well as in price discrimination and exclusive dealing issues. She also brings extensive antitrust litigation experience to the firm.

**Thomas Mueller**, after successfully guiding the AOL/Time Warner merger through the European Union review process, has moved his principal residence from Brussels back to Washington. He spends substantial time in Brussels and will continue to work primarily on European competition matters, particularly as they impact U.S. clients and transatlantic transactions.

**Eric Mahr** and **Andrew J. Lorentz** moved from our Washington to our Brussels office.

**John J. Kallaugh**, a long-time WCP counsel, has joined the partnership and will continue to lead the competition practice in our London office.

**Jean-Michel Coumes**, **Andrew J. Lorentz**, **Jean Paul Poitras**, and **Sven B. Voelcker**, all resident in the Brussels office, have been promoted to counsel, and **Janet Durholz Ridge** has been promoted to counsel resident in the Washington, D.C. office.

We were disappointed that Jim Venit decided to leave us, but under the leadership of **Andreas Weitbrecht** and **John Ratliff** our European Competition practice continues to grow.

We are pleased that former WCP partner **A. Douglas Melamed** had the opportunity to serve in 2000 as Acting Assistant Attorney General in charge of the Antitrust Division after his distinguished tenure as Principal Deputy.

## **DEVELOPMENTS IN OUR PRACTICE**

We have represented clients in many of the most complex and groundbreaking antitrust and competition matters of the last year including three of the world's twelve largest deals. The following are some of the noteworthy matters we handled in 2000:

### **MERGER CLEARANCE**

**AOL/Time Warner.** WCP was lead counsel in securing antitrust clearance from the European Commission for this \$156 billion merger of leading Internet and multimedia businesses and also coordinated worldwide premerger notification and clearance of the transaction outside the United States and the European Union. In the EU, we worked through a full Phase II investigation to obtain clearance months before the U.S. FTC cleared the deal. Outside the EU, WCP coordinated the clearance process for the transaction in Poland, Argentina, Canada, Mexico, and South Africa.

**Unilever/Best Foods.** WCP's Washington and Brussels offices worked in parallel to obtain antitrust clearance for this \$60 billion horizontal merger of foods concerns from both the FTC and the European Commission. Even though the antitrust/competition agencies identified more than 80 competitively affected markets, we were able to obtain clearance for our client without a Second Request in the United States or a Phase II investigation in Europe.

**Deutsche Telekom/VoiceStream/Powertel.** WCP took the lead in obtaining clearance from the Department of Justice for Deutsche Telekom's acquisition of U.S. wireless operators VoiceStream and Powertel. The Department of Justice cleared both deals without issuing a Second Request. WCP also is handling ongoing reviews of the transactions by the Federal Communications Commission and Committee on Foreign Investment in the United States (CFIUS) and is representing the parties in connection with proposed legislation that would restrict foreign government-owned entities from acquiring U.S. telecom carriers.

**BAE SYSTEMS North America/Lockheed Martin.** WCP was lead counsel in securing clearance from the Department of Justice, which consulted closely with the Department of Defense, for BAE SYSTEMS North America's acquisition of Lockheed Martin's Aerospace

Electronics System business, the largest ever transatlantic defense merger. For this transaction, we were able to take advantage of WCP's substantial experience with the regulatory framework surrounding the defense industry in both the Britain and United States including CFIUS, in addition to our antitrust expertise.

**Bayer/Lyondell.** WCP was lead counsel in securing clearance in the United States, Europe, and the rest of the world for Bayer's \$2.5 billion acquisition of a portion of Lyondell's polyurethane business. We were able to obtain clearance from the FTC without a Second Request and the European Commission without a Phase II Investigation, despite the FTC's challenge to a prior transaction in one of the relevant industries.

**The Coca-Cola Company/Kar-Tess Group.** WCP successfully obtained approval from the European Commission for Coca-Cola Beverages plc's transaction with the Kar-Tess Group's Hellenic Bottling Company SA. The transaction merged the bottling operations of Hellenic and CCB to form the second largest Coca-Cola bottler worldwide. The transaction was the first Phase I clearance of a merger between Coca-Cola bottlers.

**Phillips Petroleum/Duke Energy.** WCP secured the FTC's approval for this \$6 billion transaction involving major energy companies in less than three months, including a response to a Second Request and successful negotiation of a consent decree.

**Pulitzer/Suburban Journals.** We took the lead in obtaining antitrust approval for the acquisition of the Suburban Journal, a group of 38 newspapers targeting communities within St. Louis and its suburbs, by Pulitzer, owner of the major daily St. Louis newspaper. The Department of Justice cleared the deal without a Second Request.

**Bayer/Novartis Crop Fungicide.** WCP guided Bayer's acquisition of the strobilurin fungicide business of Novartis through the clearance process before both the FTC and the European Commission. Novartis had been required to divest the business under a consent decree.

**Aramark/Ogden.** WCP secured clearance in the U.S. for Aramark, Inc.'s \$245 million acquisition of Ogden Corporation's food and beverage concessions and venue management business.

## MERGER NOTIFICATION

Under the leadership of Janet Ridge, we have continued the rapid growth of our merger notification practice under the Hart-Scott-Rodino Act. In 2000 we prepared nearly 80 HSR filings on behalf of clients, nearly double the average number over the previous three years. From our European offices we also made numerous filings with the European Commission and the antitrust agencies of individual European countries. In addition, we continue to coordinate merger filings in countries around the world for clients involved in mergers with multi-national dimensions. Over the past few years we have coordinated with local counsel for filings in at least 29 different countries.

## LITIGATION/GOVERNMENT INVESTIGATIONS

**Microsoft.** WCP filed *amicus* briefs on behalf of its client in both the U.S. District Court and Court of Appeals supporting the defendant in the landmark case of United States v. Microsoft Corporation. The brief in the Court of Appeals was the only *amicus* brief that Microsoft authorized in support of its position.

**Pacific Exchange.** WCP's Antitrust and Securities Groups teamed to defend and successfully settle both government and private claims asserting that the Pacific Exchange, the third largest U.S. options exchange, illegally agreed with the other U.S. options exchanges not to list options exclusively listed by a rival exchange.

**Kish v. Commission.** WCP successfully represented an intervener in support of the Commission in an action before the European Court of First Instance. Kish Glass had challenged the Commission's rejection of Kish's complaint that our client was abusing a dominant position in float glass. The Court agreed with the position we advocated on market definition, a key issue in the case, and dismissed Kish's application.

**Friedman v. Salomon Smith Barney.** WCP secured dismissal with prejudice on implied immunity grounds of this major antitrust and securities class action alleging that eighteen investment banks had colluded with respect to their policies concerning the "flipping," or immediate resale, of shares allocated by the firms in initial public offerings. The result was particularly significant given the increased antitrust attention focused on the securities industry in the wake of the NASDAQ case.

**United States v. Franklin Electric Co, Inc.** WCP represented a party opposed to the formation of a joint venture between the only two producers of submersible petroleum pumps in the U.S. during both the Department of Justice investigation and the Department's successful court challenge to the venture, in which our client was the principal fact witness.

**Hamilton College.** WCP partner Robert Bell represented Hamilton College in securing summary judgment in an antitrust suit brought against the College in the U.S. District Court for the Northern District of New York. The action involved claims by several fraternities that Hamilton College was attempting to monopolize the market for campus room and board. The court rejected plaintiffs' proposed, narrow definition of the relevant market as housing for Hamilton College students and entered judgment for the College on all claims.

**German Coal Subsidies.** WCP represents the principal German coal mining company in a series of high-profile cases in which the UK mining industry is challenging the Commission's approval of German coal subsidies (US\$ 5 billion annually) before the Community courts. WCP scored an important first victory by helping to secure the precedent-setting dismissal of the first case by the Court of First Instance. WCP also helped secure orders ending two other pending cases.

For further information on these or other antitrust matters, please contact one of the lawyers listed below:

**Washington:**

William J. Kolasky	202-663-6357	<a href="mailto:bkolasky@wilmer.com">bkolasky@wilmer.com</a>
Robert B. Bell	202-663-6533	<a href="mailto:rbell@wilmer.com">rbell@wilmer.com</a>
Loring Jetton, Jr.	202-663-6738	<a href="mailto:ljetton@wilmer.com">ljetton@wilmer.com</a>
Veronica G. Kayne	202-663-6975	<a href="mailto:vkayne@wilmer.com">vkayne@wilmer.com</a>
James W. Lowe	202-663-6059	<a href="mailto:jlowe@wilmer.com">jlowe@wilmer.com</a>
Thomas Mueller	202-663-6766	<a href="mailto:tmueller@wilmer.com">tmueller@wilmer.com</a>
Ali M. Stoeppelwerth	202-663-6589	<a href="mailto:astoeppelwerth@wilmer.com">astoeppelwerth@wilmer.com</a>

**Brussels:**

John Ratliff	322-285-4908	<a href="mailto:jratliff@wilmer.com">jratliff@wilmer.com</a>
Andreas Weitbrecht	322-285-4902	<a href="mailto:aweitbrecht@wilmer.com">aweitbrecht@wilmer.com</a>
Thomas Mueller	322-285-4907	<a href="mailto:tmueller@wilmer.com">tmueller@wilmer.com</a>

**Berlin:**

Matthias Wissmann	49-30-2022-6439	<a href="mailto:mwissmann@wilmer.com">mwissmann@wilmer.com</a>
-------------------	-----------------	--

**London:**

John Kallaughner	44207-872-1050	<a href="mailto:jkallaughner@wilmer.com">jkallaughner@wilmer.com</a>
------------------	----------------	--

**New York:**

Paul Engelmayer	212-230-8820	<a href="mailto:pengelmayer@wilmer.com">pengelmayer@wilmer.com</a>
-----------------	--------------	--