

Antitrust Law— Women Seek Power in Numbers

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It is common knowledge – and cause for concern – that the number of women entering professions requiring quantitative skills is far too low. One of those professions is the economics-laden field of antitrust law.

The field is a vibrant one, requiring the lawyer to master complex facts in diverse industries and evaluate the competitive effects of the client's conduct or the proposed merger on the marketplace. It requires a comprehensive understanding of the products or services involved, the markets in which they compete and the effects of the conduct at issue on the prices or quality of a product or service. The depth of the issues is vast in any type of case, regardless of whether the product is as simple as ice cream or as complex as a computer software program. Often the lawyers work with economists and other experts to assist them in understanding the competitive effects of the conduct or merger on the marketplace.

Antitrust issues arise in nearly every type of industry; no one industry dominates this area of law. The most famous of the recent cases is the one brought by the Antitrust Division of the Department of Justice against Microsoft. The government challenged Microsoft's conduct relating to, among other things, its Windows operating system. But antitrust issues are not just the concern of huge corporations. The size and variety of antitrust issues are born out by a sampling of recent cases: a merger involving companies that sell glassware to restaurants, a merger of two businesses in the disaster recovery business for computer data, challenges to Visa and MasterCard's agreements with banks, challenges to the prices charged by the pharmaceutical manufacturers to drug wholesalers and challenges to the rules set by sports associations.

The resolution of an antitrust issue often has a direct impact on the consumer in terms of the price paid for the product or service or the availability of the product. For example, the Antitrust Division of the Department of Justice recently announced that it would seek to enjoin the merger of DIRECTV and Dish Network because it believed the merger would result in higher prices to consumers of direct broadcast satellite television, particularly in areas where cable services are not available. As a result, the parties dropped their merger plans, and consumers will continue to enjoy the benefits of price competition between DIRECTV and Dish Network. Conversely, the Federal Trade Commission, the other federal agency charged with enforcement of the antitrust laws, recently allowed the merger of two cruise lines to proceed, finding that prices to consumers were unlikely to increase as a result of the acquisition.

Despite the surge in the number of mergers and acquisitions (and the legal workload that results) over the past few years, the percentage of women lawyers practicing in the field remains low. Only 19 percent of the members of the American Bar Association's Antitrust Section are women. At the federal antitrust agencies, the Federal Trade Commission and the Antitrust Division of the Department of Justice in Washington D.C., the number of women at the staff level is fairly respectable, but the number of women at the senior levels is abysmal. In fact, only one woman, Anne Bingaman, has ever headed the Antitrust Division (from 1993 to 1996) and only one of the five current FTC Commissioners is a woman.

Whether it is because antitrust is based on economics, and women unfortunat-

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ly do not gravitate to math-based professions, because of an "old-boys" network in the antitrust field, or for other reasons, women (and some men) antitrust lawyers realized that women should have a larger voice in the profession. In the fall of 2000, the New York Women's Antitrust Lawyers Group was formed to provide an opportunity for the few women practicing antitrust in New York to get to know one another, provide the same type of networking opportunities and resources afforded to men, and hopefully, encourage more women to enter the field.

The New York group started with only a handful of women attorneys. Since then, it has met on average of every other month and the number in attendance has grown. The group invites leading women (and, on occasion, men) in the antitrust field or in fields related to antitrust to have lunch, breakfast or cocktails with them at one of the law firms around town. Guests have included high-ranking women from at the Antitrust Division of the Department of Justice and the Federal Trade Commission. The group has succeeded beyond what its founders could have hoped for and requires larger and larger conference rooms for its events because of the growing size of the group.

Has the networking paid off? The antitrust area of law has been so long dominated by male attorneys that progress will be slow, but members now feel a camaraderie that they did not have before and have at their disposal an invaluable resource base. Whether it's at an antitrust conference, before an antitrust agency, or in court, members see the familiar faces of their female colleagues. Public recognition by ones' peers helps in client relationships and increases the likelihood women will remain and progress in the field.

The New York group is one small step. Networking groups of this kind are needed in Washington, D.C. and other major cities throughout the United States to retain the women antitrust lawyers already there and so young

female attorneys can see the area as a realistic career option and receive encouragement from women already in the field.

The services of antitrust lawyers have been and will continue to be in demand. The stakes are high in antitrust litigations and mergers and the issues are complex and challenging. Hiring a team of lawyers with experience in the field and that are trusted and respected is crucial. Over time, the business executive making the hiring decision is increasingly likely to be female, and the profession will benefit if she has the option to hire a team led by and/or containing more than one or two women lawyers.

More than 49 percent of law school students are female so there is optimism that at least some will be encouraged to pursue careers in this growing field. Strong networking groups, much like those enjoyed by men through the years, will help and guide these young female attorneys to achieve successful and rewarding careers in antitrust law.



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