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Antitrust in the Age of Talent Wars: All That In-House Lawyers and HR Departments Need to Know

A Practical Guidance® Article by David Emanuelson, Ludovica Pizzetti, Agnieszka Marciniak, and John Holler, Arnold & Porter Kaye Scholer LLP

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In an era defined by fierce competition for skilled labor, where employers compete for talent even when they may not compete to sell their products or services, the intersection of antitrust law and employment practices has emerged as a critical frontier in many jurisdictions globally.

As companies fight to attract and retain top talent in increasingly innovative and high-tech markets, regulators around the world (including in the U.S., the EU, and the UK) are intensifying their scrutiny of employer behaviors that may suppress wages, restrict mobility, or otherwise distort fair competition in labor markets. In this advisory, you'll find a map of global trends that provides a snapshot of the jurisdictions where, to the best of our knowledge, competition authorities have already launched investigations, issued decisions, and/or adopted or proposed reforms against anti-competitive practices in labor markets.

In-house lawyers and human resource (HR) professionals should be aware of key trends in this rapidly evolving enforcement landscape and be prepared to manage antitrust risk effectively, including by taking practical steps to prevent, detect, and mitigate such risk.

Key Areas of Antitrust Risk

There are four main types of HR-related conduct that may amount to a competition law breach:

1. Wage-fixing agreements, where two or more companies fix or coordinate on employees' pay, benefits, and/or other terms of employment
2. No-poach agreements (including no-hire and non-solicitation agreements), where one or more companies agree not to approach and/or hire another company's employees, either absolutely or without consent
3. Non-solicitation agreements ancillary to a wider underlying commercial arrangement (including M&A deals, secondment arrangements, consultancy agreements, or other service contracts), where one or more parties agree not to recruit the other's personnel during or shortly after the main contract's term

4. Information sharing (including through benchmarking activities), where competitors share competitively sensitive information concerning employment-related terms and conditions (e.g., pay, benefits, pension, insurance, or paid leave), either directly or indirectly through a third party

There has also been an increasing focus on non-compete clauses — which are restrictions (typically in employment contracts) on an employee's ability to work for businesses that compete with their former employer for a specific period after their employment ends. Fed. Trade Comm'n, Press Release, FTC Approves Final Order Requiring Divestitures of Hundreds of Retail Gas and Diesel Fuel Stations Owned by 7-Eleven, Inc. (Nov. 10, 2021); Fed. Trade Comm'n, Decision and Order, In re O-I Glass, Inc. et al., Matter No. 211 0182 (Dec. 28, 2022); Fed. Trade Comm'n, Decision and Order, In re Ardaugh Group S.A. et al., Matter No. 211 0182 (Dec. 28, 2022); Fed. Trade Comm'n, Analysis of Agreement Containing Consent Order to Aid Public Comment, In re Prudential Sec., Inc. et al., Matter No. 211 0026 (Dec. 28, 2022); Fed. Trade Comm'n, Press Release, FTC Takes Action to Protect Workers from Noncompete Agreements (Sept. 4, 2025); Press Release, Fed. Trade Comm'n, FTC Approves Final Order Prohibiting Noncompete Enforcement by Gateway Services (Nov. 26, 2025); Press Release, Fed. Trade Comm'n, FTC Finalizes Consent Order in Adamas No-Hire Agreement Matter (Feb. 12, 2026).

Historically, these clauses have not been a focus for antitrust enforcers, as they generally govern the individual employer-employee relationship (rather than being agreements between companies), and discrete non-competes were generally viewed as unlikely to reduce competition in a well-defined antitrust labor market. However, there have recently been proposals (e.g., in the U.S. and the UK) to ban or cap the length of such clauses based on competition-related concerns that employee non-competes are broader than necessary to protect an employer's investment and may reduce labor mobility. These clauses may also be scrutinized under rules against abusive conduct by dominant companies when they are instrumental to a dominant firm's strategy to limit competitors' access to key workers.

A Map of Global Trends

Competition authorities globally are intensifying their scrutiny of anticompetitive practices in labor markets. In recent years, labor-related practices have become a key enforcement priority in many jurisdictions, prompting investigations, enforcement actions, and/or regulatory reforms. The U.S. has been a historical leader in HR-related enforcement, but this momentum has recently been picked up by authorities around the world.

In the U.S., the Antitrust Division of the U.S. Department of Justice (DOJ) and the Federal Trade Commission (FTC) have been active in enforcing HR-related infringements since 2010, especially in the last five years. See U.S. Dep't of Justice, Press Release, Justice Department Requires Six High Tech Companies to Stop Entering into Anticompetitive Employee Solicitation Agreements (Sept. 24, 2010). Since late 2020, DOJ has criminally prosecuted a series of no-poach and wage-fixing cases. Nearly all of DOJ's attempts to secure a criminal conviction on labor-related charges have been unsuccessful (United States v. Patel, No. 21-cr-00220 (D. Conn. 2021) (pre-trial motion for acquittal granted); United States v. Surgical Care Affiliates LLC, No. 21-cr-00011 (N.D. Tex. 2021) (case voluntarily dismissed by DOJ); United States v. Jindal, No. 20-cr-358 (E.D. Tex. 2020); United States v. DaVita Inc., No. 21-cr-00229 (D. Colo. 2021); United States v. Manahe, No. 22-cr-00013 (D. Me. 2022) (juries acquitted defendants)), but in April 2025, DOJ secured its first conviction of an individual in a labor-related criminal antitrust trial. United States v. Lopez, No. 2:23-cr-00055 (D. Nev.).

Meanwhile, between 2020 and 2022, the FTC entered a series of settlements that required the parties to eliminate non-compete clauses or prohibit them from enforcing them. Fed. Trade Comm'n, Press Release, Rent-to-Own Operators Settle Charges that They Restrained Competition through Reciprocal Purchase Agreements (Feb. 21, 2020); Fed. Trade Comm'n, Press Release, FTC Approves Final Order Requiring Divestitures of Hundreds of Retail Gas and Diesel Fuel Stations Owned by 7-Eleven, Inc. (Nov. 10, 2021); Fed. Trade Comm'n, Press Release, FTC Approves Final Order Restoring Competitive Markets for Gasoline and Diesel in Michigan and Ohio (Aug. 9, 2022); Fed. Trade Comm'n, Decision and Order, In re O-I Glass, Inc. et al., Matter No. 211 0182 (Dec. 28, 2022); Fed. Trade Comm'n, Decision and Order, In re Ardaugh Group S.A. et al., Matter No. 211 0182 (Dec. 28, 2022); Fed. Trade Comm'n, Analysis of Agreement Containing Consent Order to Aid Public Comment, In re Prudential Sec., Inc. et al., Matter No. 211 0026 (Dec. 28, 2022).

In 2023-2024, the FTC issued a rule broadly banning most non-compete clauses, but after a federal court enjoined the rule's implementation, the FTC shifted back to enforcing non-competes on a case-by-case basis. Fed. Trade Comm'n, Press Release, FTC Takes Action to Protect Workers from Noncompete Agreements (Sept. 4, 2025). Press Release, Fed. Trade Comm'n, FTC Approves Final Order Prohibiting Noncompete Enforcement by Gateway Services (Nov. 26, 2025); Press Release, Fed. Trade Comm'n, FTC Finalizes Consent Order in Adamas No-Hire Agreement Matter (Feb. 12, 2026).

Additionally, in February 2025, the FTC created a Joint Labor Task Force to investigate and prosecute labor-related conduct, including no-poach, non-solicitation, no-hire, and wage-fixing agreements.

In the EU, the European Commission (EC) issued its first fine in a no-poach case in June 2025. The UK has also recently set its sights on HR-related competition infringements. Following its first labor market infringement decision in March 2025 concerning information exchanges on workers' pay, in September 2025, the UK Competition and Markets Authority (CMA) published new guidance on the application of competition law to recruitment, retention, and remuneration practices; it has also made tackling potential competition issues within UK labor markets a priority in its 2025-2026 annual plan.

The map below provides a snapshot of the jurisdictions where, to the best of our knowledge, competition authorities have already launched investigations, issued decisions, and/or adopted or proposed reforms against anti-competitive practices in labor markets.

The color-coded system indicates the level of enforcement activity by jurisdiction:

- **Red**: Higher-risk jurisdictions where authorities have conducted investigations, imposed fines, and/or issued guidance.
- **Orange**: Medium-risk jurisdictions where authorities have expressed interest in the topic and/or announced plans for legal or policy changes.
- **Grey**: Jurisdictions where no information is available and/or which do not seem to have yet expressed a position on the matter.

Higher Risk Jurisdictions

Belgium

One decision against no-poach (private security sector, 2024). **One** investigation into non-competes imposed by sports federation and banning affiliated sports players from participating in competing events (closed in 2025 due to changes in factual circumstances).

Brazil

Four ongoing investigations into the exchange of HR-related competitively sensitive information (healthcare sector, as well as various other industrial and consumer goods sectors). **One** investigation into the provision of salary/benefits benchmarking services closed due to lack of sufficient evidence (salary benchmarking services sector, 2023).

China

Two decisions against, respectively: (i) no-poach (pig-breeding sector, 2023), and (ii) no-poach and wage-fixing (driver training sector, 2021) adopted in mainland China. Already in 2018, Hong Kong competition authority confirmed that no-poach, wage-fixing, and the exchange of HR-related competitively sensitive information may fall within the scope of its antitrust enforcement.

Colombia

One ongoing investigation into no-poach and wage-fixing (football sector), **one** decision issued against no-poach and the exchange of HR-related competitively sensitive information (football sector, 2025), and **one** probe into no-poach closed in 2022 upon accepting binding commitments (football sector).

Czech Republic

One ongoing investigation into no-poach (unknown sector), and **one** decision issued against the recommended use by trade associations of non-compete clauses in employment contracts between their

Hungary

One decision issued against no-poach imposed by trade association to its members (HR consulting sector, 2020), and **one** decision issued against the exchange of HR-related competitively sensitive information in the context of trade association's activities (banking sector, 2016). Already in 2011, the antitrust authority issued warnings to professional associations in various sectors against setting minimum professional fees.

India

One ongoing investigation into no-poach (fragrance sector). In 2024, the authority already issued public statements regarding its ability and willingness to investigate into no-poach where appropriate.

Italy

One ongoing investigation into no-poach (automated machinery and packaging sector), **one** decision issued against no-poach and wage-fixing (modelling agency sector, 2016) and **two** decisions issued against the imposition by taxi operations of non-compete clauses preventing members from using services of rival platforms (taxi services sector, 2022 and 2020).

Lithuania

One decision issued against no-poach (real estate agency services, 2022) and **one** decision issued against wage-fixing (professional basketball sector, 2021 - annulled on appeal). Guidance on anti-competitive agreements in labour markets issued in 2023.

Mexico

One decision issued against no-poach and wage-fixing (professional football sector, 2021).

The Netherlands

One ongoing investigation into no-poach

Romania

One ongoing investigation into no-poach and wage-fixing (dental services sector). **One** decision issued against no-poach (motor vehicle manufacturing sector, 2026).

Slovakia

One decision issued against no-poach mandated by trade association to its members (energy sector, 2025). Economic report on competition conditions in Slovak labor markets published in January 2026, and comprehensive study on employer competition in the labour market published in November 2025.

Spain

Two decisions issued against no-poach (private education sector, 2023; logistics services sector, 2010), and **one** decision issued against no-poach and the exchange of HR-related commercially sensitive information (cosmetics manufacturing sector, 2011). Study on anti-competitive practices in labour markets, including in relation to collective agreements, issued in 2019.

Turkey

Three ongoing investigations into, respectively: (i) wage-fixing and no-poach (concrete production sector), and (ii) wage fixing, no-poach and exchange of HR-related competitively sensitive information (audit sector and shipbuilding sector). **One** investigation (closed in 2011 due to expiry of statute of limitation, private school sector) into exchange of HR-related competitively sensitive information. **Five** decisions against no-poach (several sectors, including tech, e-commerce, media, and retail, 2023; IT sector, 2024; pharmaceutical sector, 2024; private hospitals sector, 2022). **One** decision against wage-fixing (school sector, 2024). Guidance on competition infringements in labour markets issued in 2024.

members and the respective employees (travel agency sector, 2023). In 2023, the competition authority also issued statements that no-poach and wage-fixing are among its enforcement priorities.

European Union

One decision issued against no-poach (food delivery sector, 2025). **One** decision upheld by the ECJ upon referral for a preliminary ruling by a Belgian court against transfer rules for players comparable no-poach (sports sector, 2024). **One** investigation against no-poach closed due to priority reasons (electronics sector, 2023). **One** ongoing investigation into no-poach (data centre sector).

Finland

One decision issued against no-poach (hockey sector, 2019). Also, in 2024, the competition authority, together with the authorities of other Nordic countries, published a joint report signaling potential stronger enforcement of competition law in labour markets across the region.

France

Five decisions issued against, respectively: (i) no-poach (ski sector, 2026), (ii) no-poach (IT sector, 2025), (iii) non-compete and no-poach clauses in the context of a merger (metal recycling sector, 2023), (iv) no-poach and the exchange of HR-related commercially sensitive information (floor manufacturing sector, 2017), and (v) wage-fixing (modelling agency sector, 2017).

(IT sector).

Peru

One decision issued against no-poach (construction sector, 2023). Guidance on anti-competitive agreements in labour markets issued in 2020.

Poland

One ongoing investigation into no-poach (transport sector) and **one** ongoing investigation into no-poach and wage-fixing (retail and transport services sector). **Two** decisions (both currently under appeal) against wage-fixing (professional car race sector, 2023 and professional basketball sector, 2022). Guidance on anti-competitive agreements in labour markets issued in 2024.

Portugal

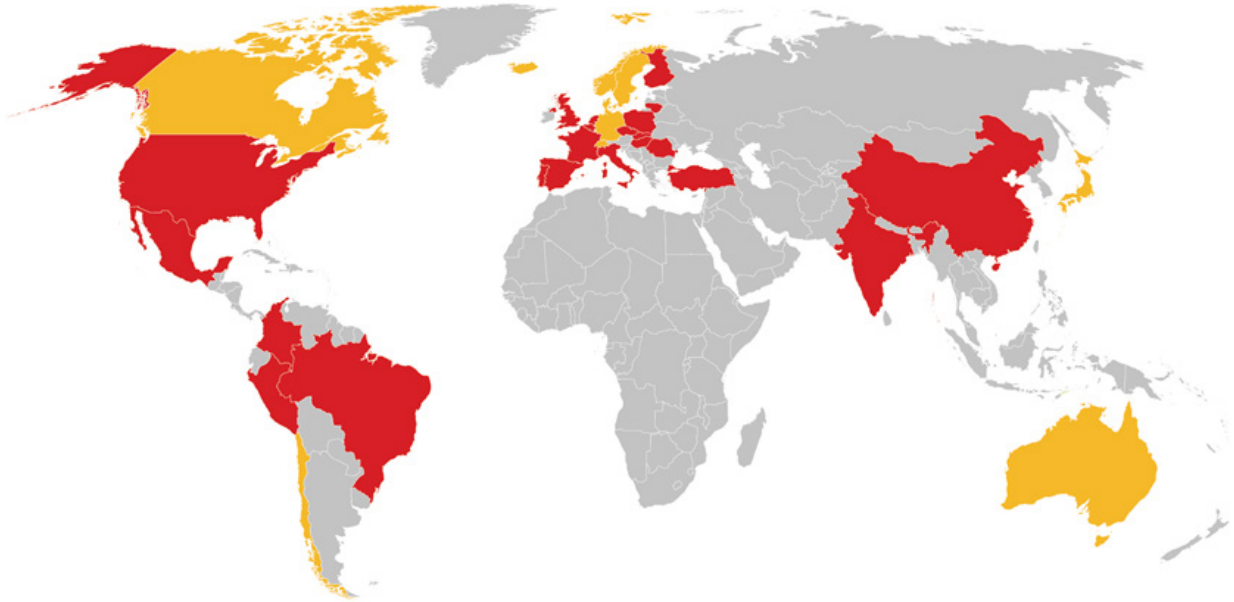
One ongoing investigation into no-poach (beverage sector), and **four** decisions issued against no-poach (private employment and HR sector, 2026; technology consulting sector, 2025; clinical analysis sector, 2024; professional football sector, 2022 – currently under appeal with the ECJ). Guidance on anti-competitive agreements in labour markets issued in 2021; study on HR-related anti-competitive practices in generative AI issued in 2025. Competition in labour markets also listed among the authority's top priorities for 2026.

United Kingdom

One decision issued against the exchange of sensitive information about fees for freelance workers (sports broadcasting sector, 2025), and **one** decision closing on administrative grounds an investigation into the exchange of HR-related competitively sensitive information (non-sports broadcasting sector, 2025). **One** ongoing investigation into no-poach (fragrances sector) and **a few** other investigations into no-poach and wage-fixing understood to be potentially in the pipeline. Guidance on anti-competitive practices in labour markets issued in 2023 and 2025. A report on competition and market power in UK labour markets was also published in 2024. In its 2025/2026 annual plan, the authority has indicated a continuous focus on competition in labour markets.

United States

More than a **dozen** enforcement actions by DOJ and the FTC against HR-related practices (2020– April 2026). **Seven** DOJ criminal prosecutions of wage-fixing or no-poach agreements, **five** unsuccessful (healthcare and aircraft manufacturing sectors). **Nine** FTC settlements related to non-compete clauses (rent-to-own furniture, retail fuel, glass container manufacturing, building services, security services, pet cremation, and pest control sectors). Joint Labor Task Force created by FTC in February 2025 to investigate no-poach, non-solicitation, no-hire, and wage-fixing agreements.



Medium Risk Jurisdictions

Australia

No enforcement action yet, but in July 2025 the government announced it is considering criminalising wage-fixing and no-poach agreements, as well as banning non-compete clauses in employment agreements. Public consultation on this proposal concluded in September 2025.

Canada

No enforcement action yet, but as of June 2023 Canadian law has been amended to include no-poach and wage-fixing (as well as information sharing that achieves the same result) within the category of "per se" antitrust infringements, thus potentially subject to criminal and financial penalties.

Chile

No enforcement action yet, but in 2023 the FNE issued statements confirming that no-poach, wage-fixing, and the exchange of HR-related competitively sensitive information are potential breaches of competition law. Guidance on HR-related anti-competitive practices currently underway.

Denmark

No recent enforcement action, but in 2024 the competition authority, together with the authorities of other Nordic countries, published a joint report signalling potential stronger enforcement of competition law in labour markets across the region. Already in 2008, the authority adopted **one** decision against no-poach recommendation issued by trade association (banking sector).

Germany

No enforcement action yet, but **one** decision against the exchange of HR-related competitively sensitive information (broadcasting sector, 2016).

Iceland

No enforcement action yet, but in 2024 the competition authority, together with the authorities of other Nordic countries, published a joint report signalling potential stronger enforcement of competition law in labour markets across the region.

Japan

Report on anti-competitive practices in labour markets issued in 2019. **No "hard"** enforcement action yet, but only "soft" enforcement in the forms of warnings against the use of no-poach and other recruitment-related restrictive practices (professional basketball sector, 2024 and 2020).

Norway

No enforcement action yet, but in 2024 the competition authority, together with the authorities of other Nordic countries, published a joint report signalling potential stronger enforcement of competition law in labour markets across the region.

Singapore

No recent enforcement action, but **one** decision against wage fixing in 2011 (employment agency services sector). Study on anti-competitive practices in labour markets issued in 2019.

Sweden

No enforcement action yet, but in 2024 the competition authority, together with the authorities of other Nordic countries, published a joint report signalling potential stronger enforcement of competition law in labour markets across the region.

Switzerland

No "hard" enforcement action yet, but **one** decision finding indications of wage-fixing and unlawful exchange of HR-related competitively sensitive information (preliminary investigation in the banking and other sectors, 2024). Best practice guidelines on anti-competitive practices in labour markets expected to be issued in the coming months.

Key Watchouts

- **Generally considered as "serious competition infringements."** Wage-fixing, no-poach, and non-solicitation agreements that are not reasonably ancillary to a legitimate agreement are typically classified as "per se" or " by object" restrictions (i.e., the conduct is presumed illegal without needing to analyze its competitive effects). Notably, like any other cartel, they do not need to be in writing, formal, or mutual to be illegal — so-called "gentlemen's agreements" and unilateral commitments (e.g., not to hire the other party's employees) may also be unlawful, attract high fines, and in some jurisdictions, potential criminal liability, director disqualification orders, and exclusion from public tenders.
- **Not just about employees**. Labor-related competition law infringements are not limited to traditional employment relationships. Investigations around the world have also considered practices involving freelancers and contracted workers. For example, in March 2025, the CMA fined four broadcasters for exchanging information on fees paid to freelance workers. Competition and Markets Authority, Press Release, Sports broadcast and production companies fined £4 million in freelancer pay investigation (Mar. 21, 2025).
- **Wider concept of competitors**. Competitors for labor may not necessarily compete to sell products or services to customers. Companies operating in different sectors or at different levels of the supply chain can still compete for the same talent, making them rivals in recruitment.
- **"Genuine" multi-employer collective bargaining likely to fall outside the prohibition**. Multi-employer collective bargaining — where multiple employers or one or more employers' industry body or trade association negotiate with workers' organizations to determine wages, working hours, or other terms, or regulate relations between them — is likely exempt from antitrust scrutiny provided certain conditions are met (notably, that no competitively sensitive information beyond what is strictly necessary

is shared). For avoidance of doubt, single-employer collective bargaining (i.e., one employer negotiating with one or more workers' unions) does not instead generally raise competition issues.

- **Trade association and benchmarking activity may be caught**. Companies should be cautious when engaging in trade association and/or benchmarking activities. Competition authorities have taken enforcement action against trade associations for recommending or imposing on their members no-poach, non-compete, and other restrictive clauses (typically in their respective codes of conduct), as well as for facilitating the exchange of competitively sensitive HR-related information. Benchmarking activity (including when conducted via third-party consultants) has also been under scrutiny. HR-related information, especially salary and benefit information, shared through benchmarking activities may raise antitrust issues where the information is not, or not sufficiently, aggregated and anonymized.
- **No-poach agreements included as part of a wider underlying commercial arrangement may not infringe competition rules if appropriately tailored**. A number of authorities, including the EC, the CMA, and the French competition authority, have recognized that non-solicitation/no-poach clauses concluded in the context of a wider commercial relationship or M&A deals may not be anticompetitive under certain conditions. This is also generally true under U.S. law. While there are some differences in approach (the EC has taken a stricter stance so far), these clauses are generally permissible where the restrictions are objectively necessary to enable the main transaction, are proportionate and are limited in duration, subject matter, and geographic scope.
- **Higher risk in highly technical and specialized sectors where talent is a key asset and plays an important role in companies' competitiveness, as well as in very low-level employment, where the rationale for a non-compete to protect trade secrets is less plausible**. Higher-risk sectors include healthcare, sports, information technology, high-tech (including artificial intelligence), engineering services, and professional services. For instance, sandwich shops have faced lawsuits for their use of non-competes in employment relationships.

Practical Steps to Assess and Mitigate Risk

Businesses should educate their HR and senior management functions around these trends, particularly when they are ramping up hiring and/or where they are looking for skills that are in high demand but short supply. See generally U.S. Dep't of Justice & Fed. Trade Comm'n, Antitrust Guidelines for Business Activities Affecting Workers (Jan. 2025).

Aside from encouraging whistleblowing activity and relying on leniency applications, competition authorities are increasingly utilizing new tools to detect antitrust violations. As such, beyond maintaining comprehensive and updated compliance protocols and regularly training staff, companies must be prepared to respond swiftly and effectively in the event of an investigation.

As a reminder, many jurisdictions offer leniency programs for self-reporting of wrongdoing and/or give companies credit (including a potential discount on the applicable fine) for effective compliance efforts, internal audits, and internal reporting arrangements. As such, robust internal policies and procedures help both prevent, detect, and mitigate anticompetitive conduct as well as limit companies' potential liability if anticompetitive conduct is uncovered.

Related Content

Practice Notes

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Checklists

- Antitrust Program and Conduct Audit Checklist

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David Emanuelson is a member of the firm's Antitrust/Competition practice, where he serves as co-chair of the firm's Technology and Media industry group. His practice focuses on antitrust issues in the technology and life sciences industries.

Prior to joining Arnold & Porter, David held multiple in-house antitrust leadership positions for over a decade, as Chief M&A Regulatory Counsel and Associate General Counsel for Intel Corporation and Head of Antitrust Americas for Novartis Corporation.

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Ludovica Pizzetti has over 15 years of experience advising clients on both UK and EU competition law matters. Ludovica has a highly international profile: she is dual-qualified in the UK and Italy and is fluent in Italian, English, and French.

Ludovica's experience in relation to behavioral matters includes advising clients on distribution agreements, licensing, competitor collaborations, pricing and discounting practices, parallel trade, pay for delay, product disparagement, no-poach, and other labor-related competition matters. Ludovica has also experience in assisting clients in the context of antitrust investigations and devising their response strategy, in advising clients in relation to leniency and other self-reporting mechanisms, as well as in devising tailored antitrust compliance programs and "dawn raids" training.

Ludovica has worked on several M&A transactions and regularly assists clients in relation to multijurisdictional deals, including advising on deal structure, overlap analysis, filing requirements, and antitrust risk assessment (including in relation to risk of Article 22 EUMR referrals). In this context, she has extensive experience in securing merger control and FDI clearances and coordinating the work of local counsel around the world.

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Agnieszka Marciniak advises clients on UK and EU competition law, including merger control, foreign direct investment, competition conduct matters, and private damages claims.

Prior to joining private practice, Agnieszka spent over five years in-house at a major multinational pharmaceutical company, where she advised on regulatory and litigation matters. She collaborated closely with intellectual property, regulatory, and commercial teams to support product launch strategies and managed damages claims arising from wrongfully granted injunctions.

Her experience also includes legal and regulatory investigations in the media and telecoms sectors, gained through her roles at a leading media and entertainment company and in the competition team at Ofcom.

With a focus on life sciences, media, and telecoms, Agnieszka combines competition law expertise with practical industry insight. She regularly advises on complex merger control issues, strategic regulatory engagement, and compliance, as well as antitrust investigations, including dawn raids.

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John Holler's practice focuses on helping clients navigate complex antitrust issues. He represents clients across a range of industries in government merger and conduct investigations and in civil antitrust litigation. Prior to joining Arnold & Porter, John worked as a trial attorney at the Antitrust Division of the U.S. Department of Justice (DOJ). While at DOJ Antitrust, he played a key role in nearly a dozen civil antitrust investigations and two merger litigations (Anthem-Cigna and Sabre-Farelogix).

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