

Q&A with Robert Wick of Covington & Burling

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Robert Wick is a partner in the Washington, DC office of Covington & Burling, representing a variety of corporations and financial institutions on antitrust issues and class actions. *GCR* spoke with Wick to discuss important themes as they relate to antitrust enforcement in the US and abroad.

What are the most interesting or important issues in antitrust law today?

Well, a couple of interesting issues that affect my practice are the extent to which average or statistical evidence can be used in antitrust class actions, and the extraterritorial application of antitrust laws.

As to statistical evidence – contrary to conventional wisdom – I think that the Supreme Court’s brand new *Tyson*’s decision will end up supporting defendants not plaintiffs. As I read *Tyson*’s, statistical evidence can be used in a class action only where it would be probative in an individual action. And in many of the antitrust class actions that I’m involved with, we see plaintiffs putting forward evidence of broad average amounts of impact on a large group of people, which often are useless or irrelevant with respect to the amount of antitrust harm, if any, done to an individual class member. I think *Tyson*’s will make it harder to get those cases certified.

There are over 100 antitrust regimes all around the world, each with their own way of handling antitrust law. Are there any issues specifically internationally that you keep an eye on – and how might that affect antitrust law here in the US?

I try to keep informed about the development of class action law in non-US jurisdictions and the extent to which non-US jurisdictions will apply their antitrust regimes to conduct outside their borders that is believed to have had effects within their borders.

When you have a client with a global antitrust problem, it used to be that you had to worry mainly about regulators and about US private damages class actions. With the development of more robust class action regimes in Europe, that calculus is getting more complicated, and it affects any range of decisions for a company with an antitrust concern, such as the decision about whether to seek leniency or amnesty from antitrust prosecution. Anybody making that decision has to think carefully about what kind of class action exposure they're taking on by applying for leniency.

What advice would you give to a young antitrust lawyer just starting out?

If a young antitrust lawyer wants to be a counselor – wants to have a counseling or a merger clearance practice – I would consider doing a rotation in a foreign jurisdiction. So if you're a US lawyer, consider spending a year in Brussels; if you're a European lawyer, consider spending a year or six months in Washington, so that you're better positioned to counsel clients from a global perspective.

If a lawyer wants to have a domestic antitrust litigation practice, they'd be well-served to make sure they have at least a basic grounding in statistics and econometrics. They don't have to be an expert, but it's helpful to have a working knowledge of basic statistics.

What advice would you give the FTC and the DoJ as they handle these antitrust issues and why?

One thing I would say to DoJ Antitrust and to the FTC is that they should think very hard – and I know they do – about whether they want to try and apply US antitrust law to foreign conduct that has indirect effects in the United States.

Have you ever thought about working for either of the two agencies and why or why not?

I tend to like private practice and litigating in court, so while I wouldn't entirely rule out a turn in government, I'm very happy in private practice.

Are there any specific investigations or cases that you're following closely – besides the ones you're working on personally – and why are those important to you?

I'm working on a number of the antitrust cases involving financial institutions, so I try to follow cases involving financial institutions that I'm not involved with. For instance, I'm looking forward to the Second Circuit's decision in the *Libor* case, which I hope and trust will be an affirmation of the district court.

How do you see the merger wave playing out? And how do you think that will affect antitrust law more broadly?

A wave of large-scale mergers with international implications is likely to increase calls for more coordinated and streamlined international clearance of mergers. Whether the regulators will pay any attention to that pressure is something that remains to be seen.