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# Handling Complex Mergers

An Interview with  
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Partners, Sullivan & Cromwell LLP

**EDITORS' NOTE** Steven Holley is a member of Sullivan & Cromwell's (S&C) Litigation Group whose practice focuses on antitrust counseling and litigation, but also includes securities, tax, and bankruptcy litigation, as well as complex commercial disputes. Holley is a graduate of New York University School of Law and has been with S&C since 1984.

Daryl Libow is a member of S&C's Litigation Group, managing partner of S&C's Washington office, and Co-Head of the firm's Antitrust Practice. Libow is a graduate of Cornell Law School and has been with S&C since 1986.

Yvonne Quinn is a member of S&C's Litigation Group and Co-Head of the firm's Antitrust Group. Quinn is a graduate of the University of Michigan Law School and has been with S&C since 1980.

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## What is notable about S&C's approach to handling merger clearances?

*Yvonne:* Unlike many of our competitors, especially those in Washington, D.C., S&C does not have an antitrust group comprising lawyers who do nothing but merger clearances. Instead, S&C litigators, who have broad experience with marshaling facts and presenting those facts in a persuasive manner, handle merger clearances – in addition to working on many other kinds of litigation. We think clients benefit from having experienced litigators handle merger clearances, as opposed to lawyers who have a narrow focus on just merger clearances. S&C litigators can provide advice about whether a transaction is feasible from an antitrust standpoint and assist with drafting a merger agreement that allocates antitrust risk in a rational manner, endeavor to persuade regulators to clear the transaction quickly, and defend against any litigation (governmental or private) seeking to block the transaction, including any necessary appeals, all without changing the lawyers on the team. That is a real plus for clients.

## Wouldn't it be better to have an anti-trust department that focuses exclusively on merger clearances?

*Steve:* Litigators bring a different skill set and, quite frankly, a different attitude to dealing with merger clearances than lawyers who have no real litigation experience. The ultimate question is always whether the government will sue to block a transaction, and litigators bring their judgment and experience from other types of litigation to bear in answering that difficult question. In addition, there tends to be an awkward transition at other firms when the going gets tough with antitrust regulators and it becomes necessary to “bring in the litigators.” Clients end up paying to educate new lawyers, and those new lawyers are forced to play catch-up just when it is most important to have a clear strategy and execute on it decisively.

## How do you handle merger clearances for such a wide range of companies? Don't you need to specialize in just a few industries?

*Daryl:* S&C lawyers pride themselves on being very quick studies, and we are not afraid of complicated industries that involve highly technical manufacturing processes. In fact, we like learning about our clients' businesses, and clients tend to be excellent teachers if we are willing to do the work necessary to understand what they are saying. Getting a merger cleared requires getting antitrust regulators comfortable so they understand the competitive dynamics of the relevant industry, and we know how to do that well.

## Should companies considering a merger involve antitrust lawyers early in the process?

*Yvonne:* Yes, yes, and yes. Many problems can be avoided if antitrust lawyers are consulted early on in the process of considering a merger. First and foremost, it is important to get advice about whether the merger has a realistic prospect of being cleared, and the likely timetable for the clearance process. There is no point spending time and money on a merger that will be blocked by antitrust regulators. In addition, overly exuberant or ill-informed employees and consultants can sometimes create documents that contain incorrect or misleading information, and such documents can really complicate and delay the merger clearance process. Explaining the process early on can avoid serious difficulties down the road.

## Does being in New York adversely affect your ability to deal with the Federal Trade Commission and the U.S. Department of Justice?

*Steve:* No, not at all. We have excellent antitrust lawyers in our Washington, D.C. office, including Daryl, but those of us based in New York also work very effectively with antitrust regulators there. A great deal can be done over the telephone and via email, and the Delta Shuttle and Acela Express make it easy to attend meetings in person when necessary. Having worked with large numbers of lawyers and economists at the FTC and DOJ for many years, S&C lawyers in New York are known at the agencies, and we are at no disadvantage to lawyers in Washington, D.C., in getting mergers cleared.

## How does S&C deal with mergers that will be reviewed by antitrust regulators in multiple countries?

*Daryl:* S&C has a very experienced team of lawyers in its London office who work closely with lawyers in New York and in Washington, D.C. in obtaining merger clearances on a global basis. We can handle merger reviews conducted by the European Commission and various member states of the European Union directly, including Germany and the United Kingdom. In addition, S&C has close relationships with leading antitrust lawyers in countries around the world, enabling us to coordinate large numbers of merger clearances simultaneously. Having one firm act as the quarterback is very important because antitrust regulators talk to one another with increasing frequency, so maintaining a consistent message is crucial.

## Are there any benefits to having merger clearances handled by the same law firm that is doing the corporate work on a merger?

*Yvonne:* Obtaining merger clearances is just one aspect of the larger transaction, and the timing of merger clearances is often critical to issues like financing and termination provisions in merger agreements. Having such related issues addressed by lawyers in different firms can lead to trouble. S&C lawyers working on a transaction are a tightly integrated team, so advice concerning merger clearances is informed by and coordinated with other advice being provided to the client about the transaction. There are real benefits to such one-stop shopping. ●