

GCR

GLOBAL COMPETITION REVIEW



WOMEN IN ANTITRUST

Special feature

Women in antitrust

When GCR's last "Women in Antitrust" was published in 2009, Neelie Kroes was leading the European Commission, Christine Varney was the top figure at the US Department of Justice's antitrust division, and antitrust authorities in Canada and Brazil were also led by women. Now, men are at the helm of all of these agencies. Meanwhile, in private practice, the number of female antitrust lawyers roughly equal men at associate level, but this proportion falls dramatically by partnership.

As we once again profile 100 women who have excelled in the antitrust field, **Katy Oglethorpe** asks whether gender-based disadvantages still exist in private practice, government and in-house roles, and what can be done to address any imbalance.

Despite being described by one female lawyer as a "male bastion", antitrust has little trouble attracting women. From those profiled in the following pages, it is clear that the combination of law, sophisticated economics and business, along with the intellectual challenge and constant legal evolution, is equally attractive to both genders. Among GCR Global Elite competition practices surveyed for this feature, women nearly always constituted around half of associate numbers. But by partnership level, this changes – sometimes significantly.

Among the firms surveyed, the proportion of female competition partners drops to an average of just 20 per cent. More alarmingly, according to a 2011 Catalyst study, a female lawyer typically earns 33 per cent less than her male counterpart. Given the rate of change, the same study predicts it will take more than a female lawyer's lifetime to achieve equality.

Employers are clearly aware of this situation. It is difficult to find a firm that does not describe itself as "deeply committed" to the retention and promotion of female lawyers. In Europe and the US, most firms now offer above-statutory pregnancy and parental bonding provisions. Female-to-female mentoring schemes are common; Weil Gotshal & Manges hosts a special forum for associate mothers and Covington & Burling runs a work/life balance group, for men and women who are pursuing careers while raising children.

Female antitrust lawyers are also running their own networks that meet to discuss not only gender-based issues, but also policy and legal developments. Kristina Nordlander at Sidley Austin, who runs the Women's Competition Network (WCN) – a group of around 1,700 women in antitrust – says she was motivated to establish the WCN by "a very long career with no female role models" in which networking events were attended exclusively by men.

Some advocate concrete measures to improve the representation of women. As chair of the American Bar Association (ABA) antitrust section, Janet McDavid, at Hogan Lovells in Washington, DC, pioneered a policy in which the organisation committed never again to offer programmes in which the only speakers were white men. Despite some initial resistance, including arguments that "women don't try antitrust cases", the policy was put into place at both the ABA and International Bar Association. Since then, McDavid says the number of women actively involved in both organisations has substantially increased.

For the busy antitrust lawyer, finding a workable balance between career and family life is a perennial concern and, for some, a struggle. This is not of course an issue exclusive to women; but the fact remains that when having children, a woman is biologically impelled to take more time off work than her male partner, and is more likely to face the societal expectation to do so. But many of the women profiled say law firms have become more accommodating – offering more flexible working and the opportunity to stay on track for partnership when working part-time. This is greatly helped by technology.

"Just think how much difference it makes to be able to take a business call while in our cars or waiting for the teacher conference," notes Roxann Henry, at Morrison & Foerster in Washington, DC.

According to some, antitrust agencies are more accommodating to this work/life balance than private practice. Melanie Aitken, who returned to law firm life earlier this year, says Canada's Competition Bureau was a "more forgiving" place to work for a mother at the early stages of balancing work and family life.

Antitrust agencies generally report a higher proportion of female employees than law firms. But like law firms, many report a decline in the number of women in the agencies as seniority increases. At the FTC, women make up 48 per cent of the agency as a whole, but 35 per cent of the senior staff. At the European Commission, the proportion of women falls from 51 per cent of the entire agency to 23 per cent at senior management level. The commission has recently adopted targets for female representation. By 2014, it aims for women to make up 25 per cent of senior management and 30 per cent of middle management.

Having a female leader seems to have tangible consequences for the progress of women throughout the competition authority. While leading DG Comp, Kroes was well-known for her efforts to attract and advance female staff. Sharis Pozen says she made a "conscious effort to promote women" while heading the antitrust division, recognising the "positive dynamic" created by having an equal gender split within teams. When Pozen joined the DoJ, there had only been seven female deputy assistant attorney generals in the entire history of the agency; by the time she left, that number had grown to 12. Under Aitken, meanwhile, the number of female deputies at the bureau rose from two out of eight to six out of nine. Aitken says this was not

born out of a conscious effort to promote her own gender but because she found those individuals to have the “best judgment and the most rounded experience”.

Practitioners say these “trailblazers” leave an important legacy as role models.

“Neelie Kroes, Christine Varney and Melanie Aitken will help to change the picture in the long term,” says Deirdre Trapp, at Freshfields Bruckhaus Deringer. “These role models are extremely important in breaking down some of the barriers women face in securing opportunities for progression.”

In-house, women are also increasingly visible. Suzanne Wachsstock, chief antitrust counsel at American Express, says she is “pleasantly surprised” by the growing number of women in these roles. She says this is partly due to a more flexible working style.

“Overall, I am working even harder and more intensively now than I did in private practice, but am encouraged to work ‘virtually’ on a regular basis, handling challenging matters from home,” she says. “My sense is that traditional ‘big-law’ still tethers people to their offices in ways that continue to create challenges for working parents.”

The degree to which female antitrust lawyers still face overt or subtle discrimination is one that draws mixed responses from our featured women. Things have certainly progressed from the time when Eleanor Fox, at New York University, started practising in the 1960s and would be told “I am sorry, we are not hiring women – we tried it once and it did not work out”. But some say women still fight against a largely unspoken expectation that they will be less competent, or less dedicated, than their male counterparts.

“There are just some unconscious attitudes which are hard to overcome,” says Vanessa Turner, at Visa Europe. “I don’t think we women experience much deliberate discrimination any more, but the partnership statistics in private practice are what they are. Clearly, some women may have other priorities but this to me is not the explanation for the statistics.”

Most of the female antitrust lawyers GCR spoke to still regularly find themselves the only woman in a client meeting room or in a case team. But Henry says the corporate world is placing increased emphasis on diversity, and this is having a knock-on effect. At a recent meeting at the FTC, she says, it was a female client who noted “with surprise” that all seven commission staff were male.

Margaret Zwisler at Latham & Watkins in Washington, DC, says that while antitrust litigation is still a largely male domain, corporate clients are now much more likely to entrust their “bet-your-company cases” to a female lawyer.

Deborah Garza, at Covington & Burling says: “There was a time when the ABA antitrust Spring Meeting dinner was a sea of men in blue suits. Now I see sisters (and not always in navy blue!) throughout the room, and I love it.”

Sometimes, being a female antitrust practitioner can have its advantages. Anne Federle, at Bird & Bird in Brussels, says: “I find it easier to establish a cooperative working relationship and trust with female clients or female competition officials. There is a sense of solidarity between women who have to juggle work and family, which can create strong bonds.”

Janet Hui, at Jun He in Beijing, says a female antitrust lawyer

is in a “better position” than her male counterparts. “Clients generally believe that we are more careful, detailed and cautious in preparing antitrust documentation and advice, and it is easier for us to communicate and get along with clients and relevant parties at all levels,” she says.

When asked whether antitrust still operated as a “boy’s club”, most featured answered no, or at least that they do not personally feel that being female has had a negative effect on their career. Danish authority head Agnete Gersing says she has “never had any trouble making [her] voice heard”. Aimee Imundo at General Electric says she “always felt respected” for what she brought to the table. Many women say they work in a “gender blind” or “truly meritocratic” system.

In younger enforcement agencies, women are frequently seen in top positions – the competition authorities in Pakistan, Malaysia, Egypt and Costa Rica, for example, are all headed by women. In Pakistan, chairperson Rahat Hassan says women make up 40 per cent of the agency overall. In Brazil, Mariana Tavares de Araujo, at Levy & Salomão Advogados, says women thrive in a young legal field like antitrust, where most partners are under 50. Half of the partners in her firm are women, and all are under 50, something she says is largely typical of firms across the country.

It remains to be seen whether older jurisdictions are able to emulate these newer regimes and if the high number of female associate numbers translates to partner level. Fiona Carlin, at Baker & McKenzie in Brussels, believes a shift is inevitable.

“The pace of change is bound to accelerate in the coming years,” she says. “I am increasingly realising that women need to overcome the fatalistic view that talent and hard work will be recognised eventually and be prepared to put themselves forward and express their ambitions more forcefully”.

The position of women in antitrust must inevitably be part of a much wider and more complex story about the place of women in the broader society and economy. Whether the playing field levels out depends on many factors – the actions of employers and governments, the attitude of society towards the roles of women and of course the calibre of the individuals themselves. Like the rest of the female workforce, women in antitrust sometimes struggle with under-representation and the pressures of balancing career and family life. But it is important to remember that these women benefit from many advantages above most of the female workforce; often having the financial means to employ outside help, and the type of job in which working remotely is at least a possibility.

Indeed, many of the women featured in the following pages describe themselves as fortunate – to have been at the right place at the right time, and to have supportive partners and families who understand that their evenings will more likely be spent in front of an 80-page client report than a hot stove. But without doubt they are also exceptional; their inclusion in this edition signals not only their accomplishment in an inescapably male-dominated field, but also their skill and endeavour as partners, in-house lawyers, enforcers, economists and academics. What is clear is that competition law benefits from a wealth of formidably successfully women, who will serve as important role models for both women and men following in their footsteps.

100 WOMEN

The fourth edition of *Women in Antitrust* profiles 100 successful women in the field of competition law. Based in jurisdictions across the world, our entrants were asked a series of questions about their work, developments in the field and how being a woman has coloured their career. In larger interviews, Kristina Nordlander at Sidley Austin discusses her enterprise the Women's Competition Network, while Rahat Hassan, chairperson of the Competition Commission of Pakistan, speaks about her experience as an enforcer in an emerging regime. The answers from all our entrants were at once candid, thoughtful and humorous, and speak volumes of the joys and challenges of being a female lawyer, in-house counsel, academic, economist or enforcer in the world of antitrust. Our sincere thanks to everyone who took part.



BOJANA IGNJATOVIC
Partner, RBB Economics,
London
 Years in antitrust: 11

My proudest moments are invariably on cases where a rigorous economic analysis is not only instrumental to the outcome of a competition case, but also helps the clients understand their business

better or in a different light. It is particularly satisfying – and a vindication of one's economic approach – when large international businesses use the models that we build for merger analysis to inform their pricing or investment decisions.

I have had the great fortune of working with hugely experienced colleagues, both in my early career at the OFT and more lately at RBB. Many of those colleagues have shaped and continue to shape the development of competition policy in Europe from within their respective positions in competition authorities, economic consultancies and law firms.

My experience has been that gender is irrelevant to success. The presence of successful women across all areas of competition policy has, I believe, been instrumental in creating this environment.