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GLOBAL COMPETITION REVIEW



# WOMEN IN ANTITRUST

# Women in antitrust

With women at the helm of the European Commission and the Department of Justice's antitrust division, **Emily Gray** considers whether any hurdles remain for women in antitrust

**P**olitical astuteness, formidable negotiating skills, an understanding of commercial realities and a straight-talking approach. These are just some of the attributes credited to Neelie Kroes by respondents to GCR's "women in antitrust" survey.

Make no mistake: Kroes has a large fan base among the female competition bar. But she has also come to represent more than just professional success. Beginning her working life in her father's transport business, she rose through the ranks of Dutch municipal politics and after a period in the Dutch parliament, she spent the 1980s serving as secretary of state and then minister for transport, public works and telecommunications. Kroes won praise for her consummate political skills, and in 2004, she was nominated as the Dutch government's candidate for European competition commissioner, despite heavy lobbying from other parties and high-calibre competition from other politicians.

Her achievements have rendered her both a role model for young women in competition, and even something of a celebrity – earlier this year, the "women of DG Comp" featured in a double-page spread in the Dutch edition of *Marie Claire*. Kroes has also been a fierce and loyal mentor of other women in the profession,

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fostering female talent within the European Commission and advocating for the advancement of women in the workplace.

When Kroes's appointment was announced in 2004, former competition commissioner Karel Van Miert summed up Kroes's approach as "pragmatic, energetic and determined". Five years on, she has failed to disappoint.

Meanwhile, on the other side of the Atlantic, Christine Varney has been confirmed as the new assistant attorney general at the US Department of Justice's antitrust division. Varney joined the division after spending 11 years in private practice, heading the internet practice group at Hogan & Hartson LLP's Washington, DC office. Before that, she spent five years in government, including a three-year stint as a US Federal Trade Commissioner. It is the first time in history that women have headed both the DG Comp and the DoJ's antitrust division simultaneously.

Impressive achievements certainly, but what do these advancements mean for other women working in competition?

At present, women average around one fifth of the partnership at major law firms. Being female may no longer be the disadvantage it once was, but professional women are still acutely aware of their minority status. And that status can have both advantages and disadvantages.

It seems that overt discrimination has been all but eradicated – the majority of sources feel their sex is no longer a barrier to professional success in the way that it could have been, say, 20 years ago. But more subtle factors remain in play. Most successful female antitrust lawyers can point to instances in their career where they were the only woman in the room during an important meeting, or the only woman on a team of men. "At times, you can feel like an outsider," says one.

But being different can also have its advantages – particularly in such a competitive field.

"In some ways, being a woman made life easier as, particularly in the early days, there were relatively few women around so you were more likely to be remembered," says Diana Guy, deputy chairman of the UK's Competition Commission.

"Everyone recognises my voice on a conference call," jokes Debbie Feinstein, of Arnold & Porter LLP in Washington, DC.

But with this recognition came a new kind of pressure. "People remember your screw ups as well as your successes!" says one partner. "You have to be on top of your game at all times."

But some managed to turn even individual prejudice to their advantage.

"I think that opposing counsel and clients might have had an initial tendency to underestimate me, which, frankly, was always just fine with me," says Katherine Kay, of Stikeman Elliott LLP in Toronto.

Women, it seems, face different expectations, pressures and dilemmas than their male colleagues. "It's not necessarily better or worse, it's just different," says one source.

This sentiment has led to the creation of several "women only" antitrust forums on both sides of the Atlantic. September saw the launch of the Women's Competition Network in Brussels, established by Kerri Vermeylen and Kristina Nordlander of Sidley Austin LLP. Similar groups already existed in New York and Chicago. Members convene to network, socialise and discuss issues that affect their lives. One source says the groups "shrink the world to a more manageable network", as well as introducing women to female colleagues with whom they might otherwise not have interacted.

“I’ve nothing against men and I don’t feel discriminated against,” says one competition partner. “It’s just interesting to talk to female partners about professional issues.”

Those issues run the gamut from the extraordinary to the mundane. “I’ll talk to female colleagues about what types of clothes are appropriate to wear to the office,” says one US-based antitrust specialist. “I just wouldn’t have that conversation with a guy – it doesn’t seem appropriate and it’s not a question they face.”

Of course, the most pressing issue for many women in antitrust, as in most professions that require long hours, facing clients and frequent travel, is how best to juggle work and family commitments. In a profession as demanding as antitrust, that can mean moving mountains to fulfil obligations to both clients and family.

“I see my daughter for breakfast in the morning and I come home from work in the evening to spend time with her and put her to bed – even if that means going back to work later in the evening until the early hours of the morning,” says one source. “That’s how I combine being a partner and having a happy daughter.”

Interestingly, several sources say such challenges are no longer confined to the realms of “women’s issues”. Senior partners say they are increasingly approached by men seeking to balance their careers with their personal lives. “That’s still the exception though,” says one. “Generally speaking, men are more willing to sacrifice their family for money or status.”

Nonetheless, law firms are becoming more supportive of employees with family responsibilities – allowing them to schedule flexible hours or to work from home. But some sources say they continue to see women sidelined if they take maternity leave or opt to work part-time hours while they have young children.

Perhaps surprisingly, many women are sympathetic to this approach. “I struggled with questions of how to deal with promotions,” concedes one. “Should a woman who had several children and had said she would work only an eight-hour day get the promotion over a man who was willing to invest 10 to 12 hours a day, which the job probably took?”

Some would say no. “If a woman chooses to have a family and a career, the burden is on her to make it work,” says one US-based antitrust partner. “You can’t be rigid and say ‘I don’t work Fridays’ – colleagues must see that you are still a full-time team member, and you cannot sacrifice any business development efforts or firm leadership responsibilities.

“If you really want to have a great, dynamic career then you have to embrace the fact that it’s a service industry,” the same source continues. “If the phone rings, I pick it up – if someone needs to talk to you, they need to talk to you right then, even if your kids want to talk to you too.”

Others disagree, arguing that allowances must be made. Francesca Marchini Camia, of Jones Day in Brussels, says women have to be treated differently. “Women need to be given the flexibility to combine motherhood and career if they wish,” she says. “Law firms should realise it’s not in their interest to lose talented women lawyers.”

But the long hours and high stakes that accompany the partnership track have left some wondering whether they made the right choices. “I had my first child at 39 and I wish now that I’d started earlier and

had more,” says one source. “Have children when you’re ready and figure the rest out later.”

“It’s never the right moment, so see when it fits with your private life,” another agrees. “I know so many women who decide it’s the right time for kids, but then they aren’t able to have them. It can’t be planned 100 per cent.”

One Chicago-based lawyer says that while children can thrive in all kinds of situations, often it’s the parents who suffer. “Don’t miss out on more than you can bare,” she says. “One of the really good things about the law is that there isn’t a lot that you can’t do from a home office.”

Many argue that lawyers often continue to work unduly long hours out of habit, rather than necessity.

## Since the early 1990s, the numbers of men and women graduating from law schools has been about equal, so why are there so few female partners?

“Twelve hour days aren’t always that efficient,” says Stephen Kinsella, of Sidley Austin LLP in Brussels. “Many women can do more in four days than a man will do in five! Besides, all of us have to juggle different commitments – as someone who spends a lot of time looking after my son, I don’t think it’s always a woman’s job.”

Nevertheless, women continue to make up only a small proportion of the partnership at most major firms. “I suspect if you had the data, you would find that women who become partners also make up a smaller percentage of those who get the largest compensation at any firm,” says one Washington, DC-based partner.

So is discrimination still happening? Since the early 1990s, the numbers of men and women graduating from law schools has been about equal, so why are there so few female partners? Some say that more time is needed for promising young female associates to move up the ranks and begin taking up more senior positions. “It’s a combination – some choose to step back, others are victimised by lack of flexibility,” says one source.

Meanwhile, the impact of the financial crisis on the number of women in the field remains to be seen. Some women who dropped out of the labour force may be seeking to return to work to bolster the household income. But as law firms seek to make redundancies in a bid to cut costs, many are reducing their associate headcounts. And it is at the associate level where women continue to fare best in the major law firms.

The success of Kroes and Varney is testament to the incredible progress that has been made, especially since many partners remember a time when women couldn’t head a litigation section, “since women didn’t have what it takes to litigate”.

The impact of such success stories has been two-fold. First, they provide a positive role model for young women considering joining the field. Second, their appointment has led to the promotion of more women within those organisations.

Indeed, Neelie Kroes has made no secret of her desire to promote qualified women to senior positions within the DG Comp, telling GCR: “I believe there’s a special place in hell for women who cut off other women!” ■

**Emily Gray asked 100 women working in competition – lawyers, economists, enforcers and consultants – for their views on the profession. Here’s a selection of their responses.**



**Shari Lahlou**

Crowell & Moring LLP Washington, DC

Partner

Age 40

Number of years as partner: 1

I have been with Crowell & Moring my entire legal career, having started as a summer associate. My career highlights are also my most challenging cases, where success required creative solutions in addition to good, traditional lawyering. One example is a price-fixing case that started with a DoJ investigation. We culled the facts and data to tell a powerful story through oral and written advocacy that ultimately persuaded the DoJ not to take any action against our client or its officers. We then derailed the follow-on civil class action lawsuit. Instead of moving to dismiss the suit, we moved to compel arbitration based on arbitration clauses in our contracts that do not permit class arbitrations. Although we lost in the district court, we won on appeal in the Fourth Circuit. I argued the case just weeks after the birth of my second child.

It’s usually subtle, but there are certain challenges to being a woman in this field that sometimes make it harder to have your voice heard. But with persistence, you can demonstrate that you have the skills, substance and talent to be a real asset to any project. Then gender becomes irrelevant and it is only a question of who can deliver the best result. ■

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**Christine White**

Crowell & Moring LLP New York

Partner

Age 40

Number of years as partner: 10

My competition career began in the Federal Trade Commission’s health care division, where I prosecuted conduct and merger cases, and also contributed to advisory opinion letters. My private practice is equally varied. As a competition lawyer, I advocate before the enforcement agencies, litigate in state and federal courts, negotiate contracts and settlement agreements, counsel on myriad issues, and conduct compliance training programmes. I focus on health-care, telecommunications, private equity, consumer products and other industries.

I spent six months on a technical mission in Russia advising the Russian Anti-monopoly Commission. Some of my most compelling work has been advising hospitals and other health care organisations, like the United Health Alliance, a hospital and physician network joint venture, and the Health Care Administrative Services, a health plan joint venture.

I am “treated differently” in terms of evoking a different response than other attorneys, based on my unique attributes – including my gender, but typically also including other characteristics such as my substantive knowledge, advocacy skills, and personal and professional presentation. I appreciate the trailblazing accomplishments of earlier generations of women, and feel fortunate to practise at a time of increasing diversity, including on the bench, in client offices and at management and partnership levels. ■