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WilmerHale

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Wilberforce highlights the significance of antitrust-related inquiries and enforcement related to ESG. She emphasizes the need for enforcers, defense attorneys, and courts to adhere to antitrust principles while analyzing alleged conduct under the law, even amid changing political leadership.

“Over the last several years, a broader set of enforcers have focused on enforcing the antitrust laws. Alleged conduct was typically investigated or litigated by traditional enforcers such as the FTC, DOJ antitrust division, as well as private parties in civil litigation,” Wilberforce said. “Recently, however, antitrust enforcement is also regularly driven by state attorneys general, congressional members and subcommittees and international enforcers. These enforcers may have varying goals, stakeholders and policy interests that can make it difficult to advise clients. For example, climate-related initiatives may receive intense scrutiny from certain enforcers while drawing praise from others. In advising a client, we then must consider all of the interests of the varying enforcers and advise the client that any business decision will likely come with some uncertainty or risk regardless.”

In the past, matters in which Wilberforce was not lead counsel included Cargill, Inc. and Cargill Meat Solutions Corp. against a class action alleging wage suppression among red meat processing companies. She has also

advised a financial services institution on antitrust risks related to hiring practices and assisted T-Mobile in securing antitrust clearance for its significant acquisition of Sprint.

Wilberforce points out the recent trend where antitrust enforcement is increasingly expected to address all market failures.

“While the antitrust laws were built to adapt with time and across markets, enforcers and other practitioners and policymakers will need to ensure that antitrust isn’t expected to address and rectify all issues that arise in adjacent areas of law and policy including trade, environmental, privacy, AI, digital platforms and intellectual property,” she said. “Separately, the DOJ will need to continue to assess the Antitrust Division’s Leniency Program to ensure its efficacy. In order for parties to self-report, they need to clearly understand the risks and costs of self-reporting, including being unable to satisfy the necessary requirements for leniency and the costs of potential follow-on civil litigation and related international investigations.”

Wilberforce is committed to mentoring young lawyers and law students, particularly those from underrepresented groups, and actively engages in pro bono work. She is also involved in organizations like the NAACP Legal Defense and Educational Fund and The Legal Aid Society.

While her clients are primarily confidential, Nana Wilberforce has been involved in advising a leading asset manager on environmental, social and governance (ESG) policies, particularly in relation to reducing antitrust and political risk. This involves navigating inquiries from state attorneys general and members of Congress related to ESG.