

Representative Matters

Currently representing senior executive and member of the board of directors of auto parts manufacturer in antitrust criminal cartel investigation of the auto parts industry.

Currently representing a major multinational corporation in a DOJ investigation into criminal price fixing.

Currently defending brand name pharmaceutical manufacturer in several federal and state class actions alleging that the manufacturer conspired with a potential generic entrant to delay or block generic entry in violation of Section 1 of the Sherman Act and certain state antitrust, unfair trade practices and related laws.

Currently defending a major US freight railroad in federal multidistrict litigation in which a purported class of shipper claims that the four major US railroads conspired to raise prices by instituting uniform fuel surcharges; in August 2013, the D.C. Circuit Court of Appeals vacated the District Court's order certifying a class and remanded the action for further proceedings.

Obtained summary judgment dismissing on the merits an action by California retail pharmacies alleging a conspiracy among brand name prescription drug manufacturers to fix prices in violation of the Cartwright Act, California's state antitrust law. Summary judgment was affirmed by the California Court of Appeal and, on November 28, 2012, the California Supreme Court denied plaintiffs' Petition for Leave to Appeal. On June 3, 2013, the US Supreme Court denied plaintiffs' Petition for a Writ of Certiorari.

Successfully moved to dismiss federal antitrust claims brought by book retailers against electronic book publishers and Amazon, alleging that the publishers and Amazon agreed to use proprietary digital rights management software to restrain competition in the retail sale of e-books.

Advised client Novartis International AG in connection with competition and regulatory approval aspects of its recent \$1.5 billion acquisition of Fougera Pharmaceutical. On July 13, 2012, the FTC approved Novartis' purchase from several private equity funds.

Successfully represented two European executives of TRW, a US automobile parts manufacturer, in a wide-ranging DOJ investigation. Criminal charges against the executives were avoided, even though the company agreed to plead guilty to criminal price fixing in July 2012.

Represented MDA, a Canadian company known for its space robotics and satellite systems, in connection with its approximately \$1 billion dollar acquisition of Loral's satellite division in 2012. The transaction was subject to an in-depth investigation, including a Second Request, because the DOJ was concerned about complex vertical issues involving the worldwide communications satellite industry. We not only convinced US DOJ antitrust authorities, but also competition authorities in Spain and the Ukraine that the transaction should be allowed to proceed without any remedial action.

Defended ExxonMobil in a lawsuit alleging anticompetitive conduct in connection with the standard-setting body ASTM. The plaintiff alleged that various participants in the standard setting process colluded to adopt a standard that impeded its ability to compete in the diesel fuel market. In 2012, we defeated an application for a temporary restraining order and preliminary injunction, and then brought two successful motions to dismiss that defeated all claims in the US District Court of New Mexico.

Contacts



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Litigation

Antitrust

By Your Side in Court. Always at Your Side.



"Kaye Scholer lawyers have a great understanding of how the FTC works and give timely and excellent advice."

U.S. News-Best Lawyers "Best Law Firms" 2013
(National: Antitrust Law: Tier 1)*

"Kaye Scholer is . . . home to one of the highly-esteemed antitrust groups in the marketplace."

LMG Life Sciences 2013
(Non-IP Litigation and Enforcement)

Challenged by complex competition laws and faced with enhanced scrutiny by enforcement authorities, clients rely on our Antitrust Practice for comprehensive cartel defense, litigation counsel, transactional guidance and regulatory acumen.



With more than 60 years' experience advising on the full-range of antitrust issues, and drawing on 30 competition lawyers from our Washington, DC, New York, Los Angeles, Palo Alto, Chicago and Frankfurt offices, we are adept at managing matters cost-effectively while providing you with senior-level attention and counsel throughout the duration of your matter. In many instances, success hinges on devising novel solutions to help achieve your business objectives—such as when we crafted the first-ever IPO divestiture settlement approved by the Federal Trade Commission (FTC). In other situations, our clients need lawyers with outstanding trial skills, such as when one of our

partners successfully defended a large pharmaceutical company in the first reverse payment case tried before the FTC.

Though we possess particular experience advising on competition issues related to the life sciences sector, including on Hatch Waxman matters, we have litigated disputes or secured merger clearance in numerous industries, from high technology and automobiles to tobacco and publishing.

We also provide employee education and compliance training programs and assist with establishing and enforcing internal regulatory compliance policies.

What We Do

Cartel Investigations

For many years, the DOJ and its foreign counterparts have made criminal investigations of international and domestic price-fixing cartels a top priority. With our recent addition of a 15-year veteran of the DOJ's Antitrust Division, we are uniquely well-suited to help devise the best strategy in these matters. Our lawyers have persuaded DOJ not to indict; obtained significant criminal fine discounts for cooperation; secured favorable negotiated resolutions; and defended clients at trial. Currently, we are defending a foreign-based company and a senior executive of another company in the largest criminal investigation in the history of the DOJ's Antitrust Division. We also represent executives in other DOJ criminal investigations.

Civil Litigation

Our antitrust litigators represent clients in cutting-edge civil litigation, including class actions, multi-district litigation, parallel federal and state court litigation, and disputes between competitors.

For example, in April 2013, we led the successful defense of the five major US book publishers in a putative class action brought in the US District Court for the Southern District of New York in which plaintiffs asserted that the publishers

conspired with Amazon to restrain trade in the retail sale of electronic books through the use of proprietary digital rights management systems. In December 2013, the Court dismissed all claims with prejudice.

And in a case before the US District Court for the Eastern District of Tennessee in November 2013, the judge accepted our arguments and declined to certify two classes of indirect purchasers of pharmaceuticals in a multi-district litigation alleging that our client, a brand-name prescription drug manufacturer, delayed generic competition for one of its products by bringing "sham" litigation, filing "sham" citizen's petitions with the FDA and conspiring with a potential competitor.

Administrative Litigation

Federal agency procedures are governed by the Administrative Procedures Act, and many states have adopted similar procedural formats either by law or regulation. Because we have experienced counsel who have worked with the FTC and practiced before it in many actions, we provide you an insider's perspective to help you navigate the regulatory minefield as expeditiously as possible, walk you through the various administrative remedies available, and, if necessary, help you file suit against the appropriate agency to challenge the administrative ruling.

Merger Clearance

Few issues can derail a proposed merger more thoroughly than a FTC or DOJ challenge. Our antitrust lawyers work closely with you and your deal counsel to assess the antitrust implications of mergers, acquisitions, joint ventures and collaborative arrangements and a wide variety of competitor and customer-relations issues to help you anticipate and address potential pitfalls even before a target entity is identified. We not only conduct thorough due diligence on your potential target, but also review your own operations to determine whether any behaviors or transactions undertaken previously may raise a red flag under Hart-Scott-Rodino pre-merger reporting requirements.

Of course, even absent an outright challenge, delay in obtaining review and clearance can itself impair the value of a transaction or, in the worst case, scuttle it. Our ability to quickly determine

what the government's concerns will likely be, raise the issues with regulatory staff before they have even identified them and work closely with client teams dedicated to providing information within hours after staff requests, has allowed us to obtain clearance for some large and complicated transactions in record time. Where time is of the essence, there is no substitute for experience, insight, creativity and teamwork.

We also counsel on structuring antitrust "risk sharing" and walk-away rights, and coordinate the antitrust regulatory reviews in the US with related regulatory review—for example, at the DOD or the FCC. At the same time, we can coordinate as well with foreign merger reviews as needed.

Recognition

Chambers Europe
(Germany: Antitrust), 2013

Chambers USA
(NY: Antitrust), 2006-2014

Global Competition Review 100
(NY: Antitrust: Highly Recommended),
2009-2014

LMG Life Sciences (Competition and Antitrust: Highly Recommended), 2013

U.S. News-Best Lawyers "Best Law Firms" 2013, 2014 (National: Antitrust Law: Tier 1 and National: Litigation - Antitrust: Tier 1)

U.S. News-Best Lawyers "Best Law Firms" 2014 (Los Angeles: Antitrust Law: Tier 2 and Los Angeles: Litigation - Antitrust: Tier 2)

U.S. News-Best Lawyers "Best Law Firms" 2013, 2014 (New York: Antitrust Law: Tier 1 and New York: Litigation - Antitrust: Tier 1)

U.S. News-Best Lawyers "Best Law Firms" 2013, 2014 (Washington, DC: Antitrust Law: Tier 2 and Washington, DC: Litigation - Antitrust: Tier 2)

Our Services

Our antitrust team includes FTC and DOJ veterans who understand how to reduce burdens and achieve success. Among the services we provide:

Prevention

Counseling on business strategies, M&A, licensing, patent (ANDA) litigation settlements, competitor collaborations

Pre-merger filings, complex investigations and negotiations with government agencies to obtain clearances

Executive and employee education and compliance training, including developing written compliance policies, guides and manuals, and conducting seminars

Remediation

Administrative litigation before the FTC

Civil and criminal investigations and proceedings brought by the DOJ

Class action and multi-jurisdictional litigation

Patent/antitrust litigation—bring infringement actions and defend against antitrust counterclaims or separate antitrust cases