

## ANTITRUST AND TRADE REGULATION

For decades, Sheppard Mullin has been a leader in the antitrust bar. Gordon Hampton, one of the firm's name partners, was a founder of the Antitrust Section of the American Bar Association. That tradition continues today with a dynamic Antitrust and Trade Regulation practice spanning every aspect of antitrust law. Our practice currently encompasses matters involving mergers and structural issues, criminal grand jury proceedings, international antitrust enforcement, pricing practices, product distribution, joint ventures, class actions based on federal statutes and state unfair competition laws, among many other areas. We represent clients in a wide variety of industries, including healthcare, pharmaceuticals, financial services, aerospace, energy, technology, publishing, distribution, courier and food services.

Sheppard Mullin is respected nationwide for its strong expertise in the antitrust field. The firm's Antitrust lawyers both write and speak extensively before various legal, industry and trade groups. Recent publications include a book summarizing California Antitrust and Unfair Competition law and analyses of the DOJ/FTC Competitor Collaboration and Health Care Guidelines. Our Antitrust attorneys include former Antitrust Division lawyers, Federal Trade Commission lawyers, national practice leaders -- including one of the leading antitrust lawyers in the United States (Chambers and Partners) and a California Antitrust Lawyer of the Year (State Bar of California) -- and a former Chair of the Antitrust & Unfair Competition Section of the California State Bar.

### **Government Merger and Civil Conduct Investigations**

Much of the enforcement of antitrust laws is done by government agencies, particularly the Federal Trade Commission and the Antitrust Division of the Department of Justice. In addition, the California State Attorney General and local prosecutors often use California's Cartwright Act and Unfair Competition Laws to investigate and bring enforcement actions.

Sheppard Mullin counsels clients involved in government civil investigations and enforcement activities, including merger transactions, joint ventures and various types of pricing and distribution restraints. Our understanding of and direct experience with merger enforcement allow us to steer clients successfully through what can often be a difficult and complicated process. We also routinely represent our clients before the Federal Trade Commission and the Department of Justice, where we maintain a positive reputation and solid working relationships with government representatives. Some of our attorneys have many years of experience practicing at enforcement agencies.

### **Private Civil Antitrust Litigation**

Under both state and federal antitrust laws, private parties can bring antitrust claims seeking treble damages, injunctive relief and recovery of attorneys' fees. Such lawsuits may assert a variety of antitrust violations such as price fixing, price discrimination, distribution restraints, monopolization and the like. Sheppard Mullin typically represents defendants in such actions, although we sometimes prosecute such matters.

We currently represent various defendants in many of the most significant antitrust class actions in the country. These include actions relating to vitamins, wholesale electricity, Dynamic Random Access Memory ("DRAM") and cosmetics. In addition, we have recently defended—and prosecuted—monopolization and merger cases representing clients in industries ranging from sports to newspapers. Our attorneys have also successfully tried numerous major antitrust cases.

### **California Antitrust and Unfair Competition Law**

Sheppard Mullin routinely represents clients in defending and prosecuting state claims under California's Cartwright Act, Unfair Practices Act and Unfair Competition Law. The firm has significant experience defending clients in such cases, including for instance, defending recent claims brought against energy producers and credit card associations. We have also defended horizontal price fixing actions, both private actions and those brought by state government

enforcement agencies, as well as defended predatory pricing and other actions under California's Unfair Practices Act. The firm regularly provides advice to aid clients in complying with competition laws on pricing issues, such as discount, advertising and rebate programs.

While California antitrust law parallels federal antitrust law in many respects, there are important differences. We regularly publish a booklet on California Antitrust and Unfair Competition Law. Sometimes conduct which is permitted under federal law may not be allowed under state law, or vice versa. Sheppard Mullin lawyers maintain expertise in both areas, which allows our firm to provide effective advice in a cost efficient manner.

### **Criminal Antitrust Litigation**

Major recent international price fixing prosecutions, an unprecedented level of cooperation among prosecutors here and abroad and resulting multi-hundred million dollar fines and jail sentences have signaled a sharp increase in criminal antitrust enforcement and resulting civil cases. The effective defense of criminal antitrust matters—and parallel private civil litigation—is a particular Sheppard Mullin strength.

Criminal antitrust enforcement actions can be more serious than civil cases because of potentially large fines for corporations, jail sentences for executives and the consequences of criminal dispositions for the civil litigation that typically follows. Our first objective is to forestall criminal action by the enforcement agency or to obtain a determination from the government not to proceed with a criminal investigation that has already begun. We are fully prepared, however, to defend our clients through trial and appeal, if necessary.

Related enforcement activity in the European Union and other countries often occurs in major cartel cases. For that reason, the defense of criminal antitrust litigation often requires knowledge of a complex array of laws, practices and procedures, both in the United States and abroad. Sheppard Mullin is well experienced in coordinating the worldwide defense of such cases.

### **International**

With the globalization of business and the economy, many antitrust issues arise with respect to the application of foreign antitrust laws or with respect to foreign companies doing business in the United States. Sheppard Mullin represents clients in connection with such proceedings, and we frequently advise companies based in Europe, Asia, Australia and Africa on the application of U.S. antitrust laws to their businesses in the United States and elsewhere.

In recent years, we have represented merging companies in pre-merger compliance negotiations with the relevant government authorities in the European Union, Brazil, Argentina, Australia and Iceland. We have advised foreign companies from Germany, France, Japan, the United Kingdom, Russia and Canada with respect to pre-merger notification and review in the United States, as well as making certain that their pricing and distribution practices comply with domestic antitrust laws. We also have advised such clients with regard to the antitrust laws of Canada and the United Kingdom. We have also represented foreign entities in investigations brought by U.S. agencies, and private antitrust lawsuits under both federal and state law. Our lawyers in China and the United States also have closely watched the developments regarding China's Anti-Monopoly Law and pre-merger notification rules.

### **Intellectual Property**

Intellectual property transactions and litigation can raise antitrust and trade regulation concerns where the acquisition, sale or enforcement of intellectual property rights might affect market power or lead to a restraint of trade. Sheppard Mullin advises some of the most forward thinking and innovative clients in the country in connection with the antitrust and trade regulation issues that may have an impact on such transactions. We represent many clients in the high tech industry on antitrust matters with respect to product distribution and licensing restraints, pricing practices, mergers and acquisitions, joint ventures and other competitor collaborations.

In addition to the wide range of computer and software businesses we represent, we have assisted healthcare,

transportation, music, publishing, defense and utility companies in resolving complex problems pertaining to antitrust challenges. We have defended our clients against alleged liability resulting from unlawful patent prosecution and the tying of IP assets; price maintenance and resale distribution problems; antitrust claims associated with the inappropriate use of copyrights, patents and trademarks; and the failure to meet the requirements of licensing agreements.

## **Healthcare**

Since the adoption of the Department of Justice and Federal Trade Commission's Antitrust Enforcement Policy in Health Care in 1996, the application of the antitrust laws to physician groups, physician and hospital joint ventures, hospital joint ventures and joint purchasing arrangements among healthcare providers is determined by a set of principles derived from other aspects of antitrust law. Sheppard Mullin's Antitrust lawyers are highly experienced in the practical application of these Health Care Guidelines.

We advise physician groups on the spectrum of antitrust challenges, including how to structure their organizations so that they can effectively negotiate with major payors without running afoul of the antitrust laws. We have provided advice to medical supply companies on joint purchasing arrangements, including designing them in a manner that achieves the client's objective of reducing purchasing costs while still complying with the Health Care Guidelines. We represented a company in the largest HMO merger in history involving the Medicare market. This merger was subject to scrutiny by the Federal Trade Commission, and our attorneys were successful in advocating the agency to permit the deal to close without taking an enforcement action.

Perhaps the largest area of our Antitrust practice is litigation, encompassing both private parties and with the government. Our expertise includes the defense of clients against price fixing and/or monopolization claims, as well as medical staff privilege cases raising issues under the Health Care Quality Improvement Act.

## **Antitrust Counseling**

Because the best way to solve problems is to prevent them in the first place, Sheppard Mullin specializes in formulating and implementing effective antitrust compliance programs. We offer a two hour compliance program to clients at no charge, as well as other more in-depth programs where appropriate. We advise clients about whether specific proposals or conduct are consistent with the antitrust laws. We can also "audit" a company's policies and procedures to be certain they comply with antitrust laws, as well as recommend solutions when and where they are needed. State laws, particularly those in California, often have unique interpretations that companies should know. Our antitrust compliance programs are company specific and cover both state and federal laws.

## **Consumer Protection**

Our attorneys have counseled and represented numerous firms and individuals in connection with consumer protection matters before the Federal Trade Commission, state attorneys general and private sector self-regulatory bodies. We have defended a myriad of companies and individuals that have been the subject of consumer protection investigations under Section 5 of the FTC Act. In that capacity, we have assisted our clients negotiate a broad range of remedies with the FTC, including cease and desist orders, corrective advertising, more complete disclosures and consumer redress, in addition to helping reduce the financial remedies and civil penalties demanded by the government for alleged violations of Commission orders. We also counsel clients concerning compliance with the FTC Act and various state consumer protection and deceptive practices acts.