

## → Antitrust and Competition

Our antitrust roots run deep. One of our name partners, Gordon Hampton, was a founder of the American Bar Association's Antitrust Section in the 1950s and he helped forge a premier California antitrust practice that continues to thrive more than sixty years later. From there, we expanded our practice in parallel with the expansion of antitrust law itself—first into a national presence with the addition of our full-service antitrust team in Washington, D.C. and then into a global force with established competition practices in Brussels, London, Seoul, and Shanghai. The result is a practice that is international in every sense of the word, specifically designed to meet the realities of modern antitrust and competition enforcement, where a competition issue in one jurisdiction often cascades into other jurisdictions around the globe.

Today, our group is composed of more than 30 lawyers who do nothing but practice antitrust and competition law. The team includes former high-ranking officials and trial lawyers from the U.S. Department of Justice, U.S. Federal Trade Commission, and the European Commission's Directorate General for Competition, all working together, seamlessly handling matters on behalf of a diverse array of clients throughout the United States, Europe, and Asia.

Regardless of where we call home, we share a common ethic: we are *practical lawyers* who believe we should do the things that actually make a difference in achieving our client's goals. That ethic, combined with the breadth and depth of our experience, has enabled us to successfully resolve extremely complicated antitrust matters with teams that are lean and efficient.

Some highlights of our antitrust and competition practice include:

### Litigation

We regularly litigate some of the largest and most complex antitrust cases in the U.S., from federal multi-district class actions to civil litigation between competitors, suppliers, and purchasers. We also have deep experience with litigation arising under state antitrust and competition laws, including below-cost pricing, consumer protection, and unfair competition statutes. In the EU, our lawyers have an impressive track record of pleading competition cases before EU courts and the national courts of the Member States, challenging decisions taken by the European Commission and national competition authorities. They also regularly appear before national courts when EU law issues are at stake (in competition matters and beyond) and before the Court of Justice of the European Union in procedures referred by national courts.

### Merger Clearance

Our lawyers navigate the merger review and approval process in countries around the globe, and our merger clearance team assists multinational clients in crafting strategies and coordinating merger proceedings across multiple jurisdictions. Our lawyers have successfully represented clients in numerous high-stakes mergers, including General Electric's \$10 billion acquisition of Alstom's energy business in the EU and U.S.; the trial and appeal of Western Refining's \$1.4 billion acquisition of Giant Industries in the U.S.; and the H.J. Heinz Company's acquisition of BeechNut's baby food business, among many others. In recent years, healthcare-

related transactions have become a core component of our U.S. merger practice, and we routinely represent hospitals, doctors, insurance companies, and strategic venture capital and private equity buyers and sellers in such transactions.

## Cartels

Cartel defense work has been a pillar of our practice for decades. We were at the forefront of the explosion in international cartel cases beginning in the 1990s and have remained a leading cartel practice ever since. Our group includes some of the most experienced and accomplished cartel defense lawyers in the world, working in every phase of cartel defense, from government investigations, to criminal prosecutions and enforcement actions against businesses and individuals, through the resolution of civil class actions and other private litigation. In the U.S., we have successfully represented key defendants in government investigations, criminal prosecutions, and private class actions involving LCD panels, Dealer Management Systems, DRAM and SRAM memory chips, canned tuna, auto parts, cathode ray tubes, and Lithium ion batteries, among other products. In the EU, we have successfully represented clients in cartel investigations involving air cargo services, gas-insulated switchgear, power transformers, and many other areas. Compliance is also at the forefront of our client offerings.

## EU State Aid

We have an elite EU State aid practice, headed by lawyers with more than three decades of experience. We assist Member States, beneficiaries, and competitors with every type of State aid issue. We also tailor aid measures to ensure clearance from the European Commission and have authored innovative legal analyses that have led the European Commission to adjust its formal State aid enforcement policies. The Alstom restructuring case is one of our landmark cases before the European Commission. Our lawyers have also been involved in landmark State aid litigation, both before national and EU courts, that has helped shape the development of applicable EU law, including the Chronopost case on behalf of DHL and FedEx—the first action against a beneficiary of unlawful State aid—and the GB capacity mechanism case on behalf of Tempus Energy—the first annulment of an EU’s approval of a capacity mechanism.

## Standard-Essential Patents (SEPs)/FRAND

We have a renowned practice in the area of increasing overlap between antitrust and intellectual property laws, and our lawyers are on the cutting-edge of antitrust issues arising from the use and licensing of standard-essential patents (SEPs). We recently achieved a complete dismissal of all claims in an antitrust case challenging the legal viability of one of the world’s largest defensive patent aggregators and we are currently representing Samsung Electronics in global patent and standards-related governmental and private antitrust actions involving Qualcomm, Apple, and Ericsson.

## Big Tech and Antitrust

With ever-increasing focus on Big Tech by U.S. federal and state antitrust enforcement agencies, Sheppard Mullin’s antitrust team is uniquely positioned to help our clients—whether as an interested third-party or an investigatory target—respond to inquiries from these agencies and, if necessary, manage involvement in related litigation. The United States antitrust laws have existed for over 125 years. However, the rise and alleged dominance of Big Tech companies have led to unprecedented concerns about whether antitrust laws and

enforcement policies address modern competitive issues, or whether significant changes are required. In light of such warnings and proposed reforms, some commentators have noted that “Big Tech has an antitrust target on its back.” The Department of Justice, the Federal Trade Commission, State Attorneys General, and private enforcers have taken aim, pursuing novel and aggressive strategies against Big Tech companies, such as the DOJ’s and various state Attorneys General’s cases against Google. Because interacting with these Tech Giants is a practical and existential necessity for most companies, many may find themselves caught in the cross-fire. We can help companies navigate this new frontier of antitrust enforcement and scrutiny. Our antitrust team, including former high-ranking officials and trial lawyers from the DOJ and FTC, regularly represent companies involved in government civil investigations and enforcement actions, from responding to investigative demands and subpoenas, to advocating before government agencies, and to representing our clients in litigation if necessary.

## EU Regulatory

Our EU lawyers guide clients navigating EU legislation in a number of sectors, including energy, transportation (rail, aviation, road, maritime), telecommunications and satellite, food and beverage, postal services and logistics, life sciences and pharmaceuticals, electronic devices, medical devices, construction, tax, financial services, retail, and consumer products, among others. Our team also develops advocacy opinions on proposed EU legislation in many sectors before the European Parliament or other EU institutions, including the European Commission and the Council of Ministers.

## Experience

### Horizontal Restraint Cases

- ***In Re: Dealer Management Systems Antitrust Litigation, MDL 2817 (N.D. Ill.):*** Defending Reynolds and Reynolds Company in connection with federal antitrust multi-district litigation.
- ***Motorola Mobility vs. Samsung SDI:*** secured dismissal of multi-billion dollar TFT-LCD price-fixing claims based on overseas purchases.
- ***In re Dynamic Random Access Memory (DRAM) Antitrust Litigation:*** represented industry leading defendant in federal and state civil actions alleging price fixing in the memory chip market, as well as in related grand jury proceedings.
- ***In re Lithium Ion Batteries Antitrust Litig., MDL No. 2420:*** served as *national counsel defending industry-leading multinational electronics companies in criminal and civil price-fixing actions regarding lithium ion rechargeable battery products.*
- ***In re Cathode Ray Tube (CRT) Antitrust Litigation, MDL No 1917:*** served as national counsel defending coordinated antitrust price-fixing class actions, opt-out actions, and state attorney general claims, as well as related grand jury proceedings.
- ***In re TFT-LCD (Flat Panel) Antitrust Litigation, MDL No 1827:*** served as national counsel and defense liaison counsel for coordinated antitrust price-fixing class actions, as well as in related grand jury proceedings.
- ***In re Currency Conversion Fee Antitrust Litigation:*** represented MasterCard International Incorporated in multidistrict litigation under federal antitrust laws and Truth In Lending Act. Reached comprehensive settlement, affirmed by the Second Circuit.

- ***Schwartz v. Visa Int'l Inc., et al.***: for MasterCard International Incorporated, obtained dismissal of representative action brought under Cal. Bus & Prof. Code § 17200 challenging currency conversion practices of MasterCard and Visa following lengthy state court trial and appeal.
- ***In re SRAM Antitrust Litigation, MDL No. 1819***: defended industry-leading international electronics company in civil price-fixing class actions regarding static random access memory chip products, and related grand jury proceedings.

## Monopolization/Merger Cases

- ***WIN Learning v. ACT, Inc.***: for ACT, Inc., prevailed on motion to dismiss \$30 million antitrust counterclaim brought by competitor WIN Learning under Section 2 of the Sherman Act, accusing ACT of unlawfully monopolizing nationwide market for career readiness assessments and related products. All antitrust allegations dismissed with prejudice.
- ***Rambus, Inc. v. Samsung Electronics, Inc.***: represented Samsung in multi-billion dollar horizontal boycott litigation regarding Rambus claims involving suppression of next generation of DRAM computer chip.
- ***Healthcare Acquisitions***: defending acquisitions involving healthcare entities, including ongoing antitrust litigation between competing hospitals and representing multiple hospitals and doctor groups in clinical integration and affiliation transactions in California and New York.
- ***The Hearst Corporation***: successfully defended client in high profile San Francisco federal court trial in private antitrust action challenging acquisition of the San Francisco Chronicle.

## Boycott/Tying/Vertical Restraint/Unfair Competition Claims

- ***Cascades v. RPX***: defending Samsung Electronics against boycott and monopsonization claims relating to smartphone patent licensing and membership in defensive patent aggregator RPX Corporation.
- ***California Law Institute v. Visa USA, Inc. et al.***: for MasterCard, obtained dismissal of putative representative action brought under CA UCL (§ 17200) alleging that MasterCard's chargeback policies were unfair and/or unlawful under UCL.
- ***Schickel v. Sterling Jewelers, Inc.***: represented Sterling Jewelers in consumer class action litigation alleging deceptive practices allegedly violating CA Unfair Competition Law. Claims voluntarily dismissed by plaintiffs.
- ***Cartel State Law Claims***: defending industry leading electronics companies in series of national indirect purchaser MDL class actions against numerous state law unfair competition claims regarding DRAM, LCD, CRT, SRAM and Lithium Ion batteries industries.
- ***In re Credit/Debit Card Tying Cases***: representing MasterCard International in coordinated class actions and related appeals following settlement concerning alleged nationwide payment card tying practices and alleged network "exclusionary" rules.

## Price Discrimination Issues

- ***In re Guida-Seibert Dairy***: represented Guida-Seibert in antitrust investigation of alleged price-fixing in school milk industry. Represented company in debarment proceedings before U.S. Departments of Defense and Agriculture. Represented company in investigation by Connecticut Attorney General into alleged price discrimination among milk retailers.

- **Harris v. Duty Free Shoppers, Ltd.:** defended commercial bribery claim under the Robinson-Patman Act and California Unfair Practices Act, dismissed following successful Ninth Circuit appeal.
- **Caribe BMW v. BMW AG, et al.:** represented BMW AG in antitrust action alleging violation of Sherman and Robinson-Patman Acts brought by a Puerto Rico importer/distributor of BMW automobiles. Mr. Colbath assisted in developing a successful motion to dismiss involving an intricate analysis of the interplay between the Sherman and Robinson-Patman Acts, which was later reversed by the Court of Appeals for the First Circuit. See *Caribe BMW, Inc. v. Bayerische Motoren Werke A.G.*, 19 F. 3d 745 (1st Cir. 1994)

## Government Cases and Investigations

- **Standards Essential Patents Investigations:** Successfully defended Samsung Electronics in Department of Justice investigation concerning Samsung's mobile technology standards essential patents.
- **Auto Parts Antitrust Grand Jury and Litigation:** defending a senior auto parts executive in a DOJ grand jury investigation and a major Japanese auto parts company to defend related class action civil litigation.
- Defended numerous DOJ Antitrust international cartel price fixing cases, including coordinating defense of related international investigations in the EC, Japan, Korea, Canada, Brazil and elsewhere.
- **Home Foreclosure Antitrust Grand Jury:** defending companies and a principal in a DOJ antitrust grand jury investigation into alleged bid rigging of home foreclosure sales and related proceedings.
- **Samsung Electronics:** defended nationwide DRAM, TFT-LCD, SRAM, Flash DOJ grand jury and foreign enforcement investigations and related direct and indirect class action price fixing actions nationwide.
- **Samsung SDI:** defending companies in DOJ Antitrust Division grand jury criminal price fixing and foreign enforcement investigations involving cathode ray tubes and lithium ion batteries.

## Healthcare Antitrust Matters

- **Arcadian Insurance** – Represented Arcadian Insurance in the FTC investigation of its acquisition by Humana, Inc., and negotiation of eventual consent decree
- **Blue Shield of California** – Represented Blue Shield of California's new healthcare services and physician practice platform Altas in its affiliation with Brown & Toland Physicians, which was acquired by Altas. This was Blue Shield of California's first vertical acquisition of a downstream outpatient medical group, the largest remaining independent physician group in the San Francisco Bay Area, which posed the need for cutting-edge vertical antitrust market analysis.
- **Bon Secours Mercy Health** – Advised Bon Secours Health System, Inc., a Catholic health system sponsored by Bon Secours Ministries with multiple hospitals and facilities across six states, and its subsidiary, Bon Secours Charity Health System, Inc., a three-hospital health system north of New York City, with respect to the sale of its controlling interest in BSCHS to, and the creation of an ongoing joint venture arrangement with, Westchester Medical Center.
- **Duke University Health System and WakeMed Health and Hospitals** – Represented Duke University Health System and WakeMed in creating joint operating agreements for the collaboration of both Cancer Care Plus+ and Heart Care Plus+.
- **Humboldt Medical Center** – Represented Humboldt Medical Center in antitrust litigation commenced against Humboldt Doctor Group and primary hospital with which the group was affiliated which was dismissed after the filing of a motion to dismiss.

- **Molina Healthcare** – Represented Molina Healthcare in antitrust litigation by the Department of Justice challenging Aetna’s proposed acquisition of Humana after Molina agreed to acquire more than \$400 million of Medicare Advantage assets from both Aetna and Humana to fix any potential anticompetitive impact that would have resulted from the transaction.
- **SSM Health** – Advised SSM Health, a Catholic, not-for-profit integrated health system serving the comprehensive health needs of communities across the Midwest, in multiple mergers and acquisitions of hospitals and insurance companies in Missouri, Oklahoma, and Wisconsin.
- **WellStar Health** – Represented Atlanta hospital system WellStar Health with the Federal Trade Commission’s investigation of its \$575 million acquisition of five metro Atlanta hospitals from Texas-based Tenet Healthcare, obtaining merger clearance. The merger stood among the largest hospital transactions for 2016 in the United States by number of facilities.

## EU Competition & Regulatory

- **ALSTOM** – Assisted ALSTOM in the largest ever GE’s acquisition (acquisition of ALSTOM Energy business) including Phase II EU clearance across 25+ jurisdictions
- **ALSTOM Transport** – Assisted ALSTOM on its acquisition of GE’s signaling business
- **Airbus** – JV with OneWebb micro satellites
- **Brussels Airlines** – Litigation in Brussels South Charleroi Airport case, supporting the Commission’s position in the action lodged by the airport
- **EDF** – Obtained a successful judgment of the General Court of the European Union for EDF (and other interveners supporting the European Commission) rejecting as inadmissible an action for annulment lodged by French fishermen against a Commission’s decision approving a multibillion French State aid for the construction and operation of offshore wind farms. Important case clarifying the notion of “interested parties” admissible in contesting a Commission’s decision approving aid without initiating a formal investigation procedure.
- **Micula** – Obtained landmark litigation victory after challenging an unprecedented European Commission decision on State aid through an ICSID arbitration award for damages. In June 2019, the General Court of the EU annulled the Commission’s State aid decision, allowing client Viorel Micula to pursue the hundreds euro million damages by Romania that were awarded to them by an ICSID arbitral tribunal.
- **Samsung** – Represented Samsung Mobile Display and Corning on the EU notification of their Korean JV in OLED production
- **SK hynix** – Advised SK hynix in front of the General Court challenging the Commission’s commitment decision against Rambus
- **Tempus Energy** – Litigation challenging the first Commission decision approving a Member State electricity capacity mechanism in the UK
- **Tube Lines** – Advised Tubes Lines on the refinancing of the London Underground PPP and received aid