

→ Criminal Antitrust and Cartel Investigations

Major international price fixing prosecutions, an unprecedented level of cooperation among prosecutors globally, 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. We have one of the most respected and successful antitrust and competition cartel practices globally, with more than 40 years of experience in defending companies and executives in international cartel investigations and litigation in the U.S., Europe and Asia. Our cartel practice is noted by clients as “prominent . . . in antitrust circles” (*Chambers USA*) and “highly recommended” (*Global Competition Review*).

Our expertise includes representing companies and senior executives in U.S. criminal investigations and prosecutions, defending companies in U.S. direct and indirect purchaser class action lawsuits, and serving as international coordinating counsel for multi-jurisdictional investigations in the EC and its Member States, Japan, Korea, China, Canada, Brazil, Australia, and elsewhere. We have sought and obtained amnesty for several clients, saving the company from criminal prosecution for cartel misconduct in the relevant product markets. In a number of cases, we succeeded in achieving outright dismissal of the investigation.

Our team includes the past Chair of the ABA Section of Antitrust Law and Co-Chair of its International Cartel Task Force, former senior prosecutors from the Antitrust Division, the European Commission’s DG Comp Division and U.S. Attorneys’ offices—all of whom have significant criminal trial experience. The team operates principally from our offices in San Francisco, Los Angeles, Washington D.C., Brussels and London.

EU Cartel Practice

Cartel enforcement continues to be a top priority for competition authorities worldwide and even more so in the EU. The risk of running into heavy financial penalties, criminal sanctions, reputational damage and costly damages actions is becoming a reality for many market participants. In times of crisis, companies must rely on a team that is experienced in handling cartel cases, from advising on leniency applications through to launch of an investigation, as well as any EU challenge and follow-on damages actions before national courts. We train and prepare our clients to deal with crisis situation and investigations.

Cartel investigations can be initiated in one or multiple national jurisdictions of the EU Member States and the European Commission reserves the prerogative of taking on or referring an investigation to national (Member States) competition authorities. We see an insurgence of cartels being investigated simultaneously by a number of competition authorities. It is crucial that clients rely on lawyers with the required expertise and ability to timely advice across several jurisdictions.

Our lawyers in Brussels and London regularly assist clients in coordinating and leading multi-jurisdictional cartel investigations, providing them with seamless international service. Some of our team members have been involved in high-profile, complex and innovative cartel investigations on the side of the investigating authorities as well as for clients and are therefore in an adept position to reach the best results. We have experience in launching appeals across multiple jurisdictions or to initiate damages claims resulting from cartel

behavior.

Experience

Representative Cartel Matters

- Defending honey importer Export Packers Company Limited dba Odem International against an antitrust and RICO class action brought by a putative class of U.S. domestic beekeepers, relating to a purported conspiracy to sell foreign fake honey.
- Assisting several global electronics and high-tech companies with their strategy and defense against cartel investigations by the UK CMA, the German Bundeskartellamt, and the European Commission, including defending those companies in private damages actions in front of UK courts, excluding them from investigations, substantially reducing fines, and obtaining advantageous settlements.
- Defending The Reynolds and Reynolds Company (“Reynolds”) in a case brought by Motor Vehicle Software Corporation (“MVSC”) alleging that Reynolds conspired with its competitor CDK Global LLC (“CDK”) to prevent MVSC from accessing the data it needed to compete in the Electronic Vehicle Registration and Titling markets in various states.
- Represented an international fashion company in connection with DOJ criminal antitrust investigation relating to alleged discussions and agreements with competitors relating to ESG and pricing issues.
- Successfully navigated a large energy company through self-disclosure under the DOJ Antitrust Division Leniency Policy marker process in a matter presenting complex legal and factual issues; DOJ closed the matter without charges or the matter becoming public.
- Successfully represented a Fortune 100 telecommunication and technology company through a non-public Antitrust Division criminal investigation. After navigating the company through two years of subpoena compliance and investigation, obtained a declination from DOJ, and the matter never became public.
- Represented a healthcare executive in a non-public DOJ Antitrust Division criminal price-fixing investigation and obtained a DOJ declination for alleged criminal antitrust conspiracy and obstruction of justice.
- Acted as lead trial counsel for defendants in a two-month antitrust trial in California federal court in case involving alleged price-fixing and market allocation claims relating to telescopes. Successfully obtained summary judgment on below-cost pricing and refusal to deal issues prior to trial.
- Represented Samsung in numerous criminal and civil matters relating to alleged price-fixing of various products including CRTs, LCDs, SRAM, and DRAM.
- Represented a light industrial government contractor in a criminal bid-rigging and wire fraud case.
- Represented a government contractor in a criminal bid-rigging and collusion case.
- Advised a UK company on the CMA’s cartel investigation into mobility scooters alleging vertical online price restrictions between manufacturers and retailers.
- Represented ALSTOM in the EU/non-EU investigations of gas insulated switchgears and power transformers cases.

Representative No-Poach Litigation & Counseling

- Representing aerospace industry outsource engineering supplier Cyient Inc. against antitrust claims brought by a class of aerospace engineers alleging a “no-poach” conspiracy among employers not to hire from each

other from 2011 to the present. This consolidated suit is the largest such civil case filed to date, alleging a novel outsource supplier-customer conspiracy lasting over a decade and involving highly skilled employees. The civil litigation came after the U.S. Department of Justice announced the criminal indictments of various aerospace executives for their alleged participation in the conspiracy in December 2021, that resulted in a rare judicial judgment of acquittal.

- Representing a major provider of construction materials in connection with a State Attorney General antitrust investigation relating to alleged conspiracy motivated by desire to reduce wages and/or benefits.
- Representing the former Head of Human Resources for a technology and advertising company in a non-public DOJ Antitrust Division criminal no-poach investigation.
- Represented a corporate defendant in one of the first DOJ Antitrust Division criminal no-poach and wage-fixing prosecutions and negotiated first-ever corporate plea and novel resolution in such an investigation.
- Represented a major California health insurer in a criminal no-poach and geographic allegation conspiracy case where leniency was obtained.