

# Antitrust & Competition

Cozen O'Connor's acclaimed cross-border antitrust and competition practice has been representing clients in competition-related matters for more than 30 years. Our attorneys have prevailed in high-stakes antitrust and competition cases, and have been recognized by industry leaders for their depth and breadth of experience across the United States and Canada. We provide the full range of antitrust and competition legal services, including investigations and litigation initiated by the U.S. Department of Justice (DOJ), Federal Trade Commission (FTC), Competition Bureau Canada, state attorneys general, and foreign competition authorities. We assist clients in obtaining merger clearance on both sides of the border, including HSR notifications in the United States, and Competition Act and Investment Canada Act notifications and reviews in Canada, the latter of which is a burgeoning area of our Canadian practice as national security reviews proliferate.

We represent clients in private antitrust and competition litigation, including defending clients in class actions alleging price-fixing. We advise clients on proposed business practices and provide tailored compliance programs. Our clients include airline and aviation companies, hospitals and healthcare systems, telecommunications and entertainment companies, pharmaceutical and medical device companies, technology leaders, manufacturers of consumer goods and services, trade associations and industry groups, and some of the world's largest transportation companies. Not only has our team achieved notable successes in the pursuit and defense of high-profile antitrust and competition actions, but – just as importantly – our attorneys consistently provide the proactive advice and counsel that prevents such actions from arising in the first place.

## Who We Are

Based in the firm's Washington, D.C., New York City, Philadelphia, Los Angeles, Denver, Toronto, and Vancouver offices, our attorneys are longstanding leaders in the antitrust and competition bars, and are often asked to serve in key positions on legal industry committees and panels. Our cross-border antitrust and competition team includes seasoned trial attorneys and former government enforcement attorneys, including those who were previously with the antitrust division of the DOJ, U.S. Attorney's offices, and antitrust division of state attorneys general offices. Our attorneys understand how these crucial governmental agencies operate. That's not just because our attorneys worked for these agencies, but also because we still frequently work with these agencies, which gives us, and our clients, valuable insights into the best ways to move forward on any antitrust/competition issue, whether investigating, litigating or seeking deal clearance. And through Cozen O'Connor's renowned State Attorneys General practice, we maintain strong professional connections to chief antitrust prosecutors in every state.

## What We Do

Cozen O'Connor provides a one-stop shop for the full spectrum of clients' antitrust and competition needs, including civil litigation, merger notification and review, government investigations, criminal litigation and cartels, compliance and counseling, consumer protection, and maritime antitrust.

**Civil Litigation.** Cozen O'Connor frequently represents clients in antitrust and competition proceedings, including private and public damages litigation, competitor actions, class actions, and administrative actions, on both the plaintiff and defense sides. Moreover, because it is common for targeted companies to confront related civil and criminal litigation simultaneously, our seasoned team of attorneys defends complex multi-plaintiff disputes that involve a wide variety of alleged anti-competitive behaviors in multiple jurisdictions. We have a strong track record of success in these complex matters.



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## Related Practice Areas

- Business
- Health Care & Life Sciences
- Italy Practice
- Maritime Antitrust & Competition
- Mergers & Acquisitions
- Mergers & Acquisitions – Global
- State Attorneys General
- White Collar Defense & Investigations

## Industry Sectors

- Education
- Sports

**Premerger Notification and Review.** Our team is also adept at guiding clients through the regulatory process associated with mergers, acquisitions, joint ventures, licensing agreements, and other collaborations of competitors, from compliance with the notification requirements under the Hart-Scott-Rodino Act in the United States, and the Competition Act and Investment Canada Act in Canada, to defending investigations by the DOJ, FTC, state attorneys general, and Canadian Competition Bureau. We use our experience to help clients determine how to structure a deal to efficiently pass antitrust review and avoid overly onerous remedies. Cozen O'Connor has extensive experience with DOJ, the FTC, and the Canadian Competition Bureau in merger review (including Second Requests), and our State Attorneys General practice works with state enforcers exercising their concurrent authority to review and potentially challenge proposed mergers or acquisitions.

**Government Investigations.** Our attorneys regularly defend clients in civil conduct and criminal antitrust and competition investigations initiated by the DOJ, FTC, state attorneys general, and the Competition Bureau concerning price fixing, collusion, bid rigging, abuse of dominant position, monopolization, and other alleged anticompetitive conduct. We provide a seamless cross-border service, and are particularly adept at managing investigations that involve multiple jurisdictions, agencies, levels of government, and/or related civil and criminal inquiries. When contacted early in the process, Cozen O'Connor is often able to quickly identify solutions, conduct efficient discovery, and conclude investigations without enforcement action.

**Criminal Litigation and Cartels.** Cozen O'Connor represents companies, employees, and witnesses in the United States, Canada, and beyond in criminal proceedings. Our attorneys have deep experience with the DOJ's amended amnesty program and the Competition Bureau's Immunity and Leniency programs, and have earned a reputation within the enforcement community for trustworthiness and candor, all of which allows us to move quickly and decisively toward dismissal rather than sanction.

**Compliance and Counseling.** Our attorneys help clients comply with all federal and state antitrust/competition, consumer protection, and privacy laws and to do so in ways that support the client's business objectives. We advise clients on matters such as information sharing, joint venture and teaming arrangements, exclusivity and MFN provisions, distribution systems, predatory pricing, and Robinson-Patman Act compliance. We also conduct antitrust and competition compliance audits and help our clients establish high-quality compliance regimes. We work closely with you to balance legal objectives and risks with your business needs.

**Consumer Protection.** In addition, our team of attorneys has vast experience helping public and private companies respond to consumer protection government investigations, consumer claims, and class actions.

**Aviation and Maritime Antitrust & Competition.** Our renowned aviation and maritime antitrust and competition attorneys advise many of the world's largest transportation companies on the unique intersection of antitrust laws and transportation regulations.

In the multi-faceted and high-stakes area of antitrust and competition law, Cozen O'Connor has the experience, tenacity, and intellectual rigor necessary to achieve the best possible result for our clients.

## Experience

### *Mergers, Notification, and Review*

- Represented a foreign-based multinational company in its acquisition of a California-based manufacturer of physical access solutions such as speed gates, turnstiles, and other admission devices. The transaction drew on the experience of the firm's corporate, tax, real estate, employee

benefits and executive compensation, intellectual property, environmental, antitrust, and labor and employment attorneys.

### ***Civil Litigation***

- Represent healthcare transportation broker in dual antitrust proceedings pending in the Central District of California.
- Defend manufacturer and distributor of flight helmets in complex antitrust litigation pending in the District of Delaware.
- Represented renowned independent concert promoter in a multimillion dollar private antitrust action alleging, inter alia, monopolization, attempted monopolization and tying in violation of Sections 1 and 2 of the Sherman Act. In addition to successfully defeating summary judgment, this action has involved the supervision of extensive and voluminous e-discovery, the handling of numerous depositions of high-level executives and popular music artists, and a tremendous amount of fact gathering and analysis.
- Represent generic pharmaceutical manufacturer in price fixing litigation pending in the Eastern District of Pennsylvania.
- For more than twenty years, acted as co-class counsel representing all National Football League players and the NFL Players Association in Sherman Act Section 1 antitrust conspiracy case *White v. National Football League*. Under a 1993 settlement favorable to the players, the class action court supervised successive collective bargaining agreements between the NFL and the players and acted as final adjudicator of player-team disputes involving discipline, entitlement to bonuses, etc. See, e.g., *White v. Nat'l Football League*, 585 F.3d 1129 (8th Cir. 2009) [Michael Vick bonus dispute].
- Obtained summary judgment in favor of client Experian Information Solutions dismissing claims of antitrust conspiracy, monopolization, and false advertising in the credit scoring industry. *Fair Isaac Corp. v. Experian Information Solutions Inc.*, 645 F. Supp.2d 734 (D. Minn. Jul. 24, 2009). This was followed by a four-week jury trial resulting in jury and bench trial verdicts in favor of client Experian rejecting plaintiffs' claims of trademark infringement (including a keyword advertising claim), passing off, unjust enrichment, and violation of Minnesota Deceptive Trade Practices Act, rejecting plaintiffs' claim for over \$300 million in damages, and granting Experian's counterclaim for fraud on U.S. Patent & Trademark Office. *Fair Isaac Corp. v. Experian Information Solutions Inc.*, 711 F. Supp.2d 991 (D. Minn. 2010). The United States Court of Appeals for the 8th Circuit affirmed the victory in all respects. *Fair Isaac Corp. v. Experian Information Solutions Inc.*, 2011 WL 3586429 (8th Cir. Aug. 17, 2011).
- Represented American Home Products and American Cyanamid and acted as defense liaison counsel for 26 pharmaceutical manufacturer defendants defending against separate class action antitrust complaints under state law by direct purchasers (pharmacies) and indirect purchasers (consumers) in *In Re Minnesota Drug Pricing Litigation* and *Kerr/Fontaine v. Abbott Laboratories*. Defeated class certification in one case and successfully settled both cases.
- Represented Delta & Pine Land Company in multi-billion dollar litigation over a failed merger with Monsanto; the case involved complex antitrust, patent, and commercial law issues and required extensive discovery and appellate motion practice. The matter resolved on the courthouse steps with a transactional settlement in which Monsanto agreed to acquire Delta & Pine Land Company in 2006.
- Successfully represented agricultural biotechnology company in an antitrust and RICO litigation in federal court in Alabama.

- Successfully represented major investment bank in litigation in the Southern District of New York over the sale of mortgage-backed securities. The case involved RICO, antitrust, and securities claims. All RICO and antitrust claims were dismissed and the remainder of the case settled on favorable terms.
- Represent healthcare transportation broker in dual antitrust proceedings pending in the Central District of California.
- Secured dismissal of complex antitrust litigation against our client, a manufacturer and distributor of flight helmets. The lawsuit stemmed from an advertising campaign which the client's competitors alleged violated not only federal antitrust laws, but also state defamation, unjust enrichment, and civil conspiracy law; the Delaware Consumer Fraud Act; the Federal Trade Commission Act; and the Lanham Act. The U.S. District Court for the District of Delaware dismissed the complaint in its entirety, with prejudice, and the U.S. Court of Appeals for the Third Circuit affirmed.
- Represents a major life insurance company in bad faith and antitrust litigation.
- Prevailed on a motion to dismiss, affirmed by the U.S. Court of Appeals for the Third Circuit, on behalf of a group of physicians facing an antitrust suit brought by a charity hospital which claimed that the physician group schemed to send its patients to a different hospital to force the plaintiff-hospital out of the market. Both the district court and the court of appeals accepted our argument that the antitrust claim failed because, at best, the plaintiff could show anticompetitive effects only on a small subset of the relevant geographic market.
- Represented a large magnesium oxide producer defending against price fixing and market allocation claims in proposed nationwide class actions. The court dismissed the claims of all direct and indirect purchaser plaintiffs with prejudice.
- Lead counsel for Blue Cross of Northeastern Pennsylvania in pending MDL class action challenging the Blue System's exclusive geographic licensing system under the antitrust laws.
- Successfully represented a major pharmaceutical manufacturer in a federal antitrust lawsuit regarding pricing of prescription drugs.
- Represented a Fortune 100 company in antitrust litigation regarding the sale and marketing of printing systems and in connection with developing a global strategy to address claims related to lead-based paint, including State AG litigation, and to implement impactful, proactive solutions to childhood lead poisoning.
- Represented a major pharmaceutical manufacturer in private class action antitrust drug importation litigation in California and Minnesota.
- Represented a Fortune 100 pharmaceutical company to avoid AG antitrust investigations and lawsuits regarding foreign drug importations.
- Represented a vaccine manufacturer in an antitrust class action brought by Berger & Montague on behalf of direct purchasers alleging that the manufacturer used anticompetitive product bundling agreements to artificially inflate prices for multiple pediatric vaccines.
- Represented Full Tilt Poker, winning a stay and dismissal of a series of related cases, including allegations of defamation, breach of contract, alleged violation of RICO and antitrust laws.
- Represented a college basketball star and a certified class of all current and former men's Division I football and basketball players in bench trial against the NCAA for allegedly violating federal antitrust law by unlawfully foreclosing former players from receiving any compensation related to

the use of their images and likenesses in television broadcasts, rebroadcasts, footage clips, and video games.

- Defended physician practice group against claims that the group and two hospital systems violated the antitrust laws and engaged in unfair competition, interference with prospective economic advantage, business disparagement, and conspiracy by purportedly participating in an alleged plan to divert business from plaintiff hospital.
- Represented pharmaceutical manufacturer and its subsidiary in multi-district antitrust proceedings arising from the settlement of patent litigation between brand name and generic manufacturers.
- Represented credit card issuer in a nationwide antitrust class action stemming from provisions of cardholder agreements.
- Represented large Philadelphia law firm in an antitrust and civil rights action. Motion to dismiss granted for our client.
- Represented Philadelphia area hospital in health care antitrust case brought by home care provider. Summary judgment granted for our client.
- Co-tried leading antitrust case in 3rd Circuit for Ford Motor Company - Tunis Brothers v. Ford Motor. The case tried for 10 weeks to a jury and resulted in a seminal 3rd Circuit opinion finding in favor of Ford Motor on antitrust injury and market definition grounds.
- Represented USAir in what was then the largest class action in U.S. history, i.e., the consolidated domestic airlines antitrust litigation in Atlanta.
- In an antitrust action brought against a large pharmaceutical company by a group of third-party payors, led a team which uncovered and litigated a number of electronic evidence preservation and production issues.
- Represented title insurance rating bureaus in 15 putative antitrust class actions involving allegations of price fixing in the Pennsylvania and Delaware markets for title insurance. The actions were dismissed with prejudice.
- Represented a large pharmaceutical company in an antitrust action involving claims of monopolization, sham patent litigation, and fraud on the PTO. The case settled favorably prior to trial.
- Represented ten heavy duty diesel truck engine distributors in nationwide antitrust class actions alleging a group boycott and resale price maintenance. The cases settled favorably prior to trial.
- Handled claims involving Internet security, privacy, theft of confidential data, website content, unfair competition, antitrust, advertising and intellectual property issues.
- Defended FXI Holdings, Inc. in 45 multi-party industry-wide civil treble-damage antitrust class actions filed to date in the United States. Also, led the coordination of defense of FXI Holdings, Inc. in multiple-class actions filed in Canada.
- Defended class action plaintiffs, Kleen Products LLC, R.P.R. Enterprises, Inc., El Jay Poultry Corporation, and Mighty Pac, Inc. against Chapter 11 debtors seeking to enjoin their pursuit of an anti-trust conspiracy action under the Sherman Act for price fixing in the container board industry as being in violation of the Chapter 11 discharge and related discharge injunction.

#### ***Compliance and Counseling***

- Outside antitrust counsel to healthcare providers providing advice and counsel on proposed joint

ventures and mergers.

- Counseled an innovative provider of transportation services regarding state and federal antitrust and market access issues.
- Advised an NBA player agent on labor and antitrust issues pertaining to the NBA lockout.
- Prepared and presented compliance programs for a number of ocean common carriers, covering subjects such as antitrust and competition law, the U.S. Shipping Act, U.S. trade sanctions, and U.S. Foreign Corrupt Practices Act.
- Advised a marine terminal operator on regulatory and antitrust issues.
- Represented a number of hedge funds providing analysis related to antitrust issues in the PBM industry.
- Advised a physician organization on compliance with the antitrust laws in connection with negotiating managed care contracts on behalf of its member constituents.

#### ***Criminal Litigation & Cartels***

- Represented a Japanese pharmaceutical company in connection with the largest antitrust matter ever prosecuted criminally by the U.S. Department of Justice, and also handled the related civil class action litigations, all involving the worldwide vitamins industry.
- Represented numerous high-level employees who were targets in federal criminal antitrust investigations.
- Served as lead counsel to a car carrier in a five-year federal antitrust investigation into price-fixing, bid-rigging, and customer allocation by all major players in the roll-on/roll-off shipping industry. After extensive negotiations, the carrier pleaded guilty to one count of Sherman Act conspiracy in exchange for a reduced fine with no forfeiture or restitution.

#### ***Government Investigations***

- Represented major Canadian paper manufacturer in connection with DOJ Antitrust Division investigation of price-fixing allegations in the paper industry.
- Represented an international supplier of automotive parts in connection with a federal antitrust investigation. We convinced the U.S. Department of Justice to drop the investigation without any charges filed against the client.
- Counseling and representing a major pharmaceutical company in various antitrust matters at the state and federal level, including representing the company in antitrust investigations by state and federal competition regulators.
- Successfully represented a public company in obtaining a rare, non-public investigation closure determination, and in resolving multiple state investigations into consumer contract and pricing practices as well as a multistate antitrust task force into market practices.
- Representation of a Fortune 100 pharmaceutical company in several State Attorney General consumer protection and antitrust investigations and litigation involving the marketing and sales of prescription medicines and other products.
- Representation of a Fortune 100 chemical company in several antitrust and consumer protection investigations and litigations before State Attorneys General, Federal Trade Commission, and U.S. Department of Justice involving a wide range of businesses, including agriculture, chemicals, and

packaging graphics.

- Successfully represented a Fortune 100 pharmaceutical company to avoid AG antitrust investigations and lawsuits regarding foreign drug importations.
- Represented generic drug manufacturer Apotex in an Antitrust Division, U.S. Department of Justice Criminal Grand Jury Investigation arising from a referral made by the Federal Trade Commission. The investigation concerned the circumstances of a proposed settlement of patent litigation involving the blood-thinning drug Plavix between the patent holders – Sanofi, S.A. and Bristol-Myers-Squibb, Inc. – and Apotex.

#### ***Maritime Antitrust***

- Secured dismissal of multidistrict litigation centering on allegations that our ocean common carrier client, and several other defendants, fixed prices for transporting vehicles. In granting our motion, the court held that the federal Shipping Act precludes private federal antitrust lawsuits and preempts state law antitrust, consumer protection, and unjust enrichment claims centering on conduct prohibited by the Act. This decision was affirmed by the U.S. Court of Appeals for the Third Circuit.

#### ***Mergers, Notification, and Review***

- Outside antitrust counsel to healthcare providers providing advice and counsel on proposed joint ventures and mergers.
- Represented Eurofins Scientific SE in the acquisition of EAG Laboratories from affiliates of Odyssey Investment Partners. The transaction is valued at \$780 million on a cash-free, debt-free basis and includes EAG's 21 laboratories in 18 locations around the world, including subsidiaries in the United States and six other countries. This significant transaction drew upon the experience of the firm's corporate, international, antitrust, tax, real estate, transportation and trade, employment, and benefits attorneys.
- Obtained antitrust clearance for a leading provider of post-acute care related to its acquisition of a portfolio of skilled nursing facilities.
- Obtained antitrust clearance for Blue Cross of Northeastern Pennsylvania in its acquisition by Highmark, Inc.
- Represented an influencer marketing company in connection with its acquisition by a leading intelligent commerce intermediary. This multi-faceted transaction drew on the experience of the firm's corporate, tax, antitrust, employment, benefits, and intellectual property attorneys.
- Advised a major telecommunications company regarding antitrust clearance through every major and high-stakes acquisition the company has undertaken over the past decade.
- Represented Utz Quality Foods, LLC in connection with its acquisition of Alabama-based public snack food company Golden Enterprises, Inc. for \$146 million. The acquisition was financed through an investment in Utz by private equity firm Metropoulos & Co. Cozen O'Connor represented Utz in that investment by Metropoulos, which was the largest initial private equity transaction for a U.S. snack food company since 2013.
- Obtained AG antitrust clearances of multiple multibillion dollar mergers in a variety of industries.
- Represented Utz Quality Foods, LLC in its proposed acquisition by Snyder's of Hanover. An acquisition agreement was negotiated and signed by the parties. However, the deal was ultimately terminated due to antitrust issues.



- Obtained antitrust clearance for a large nationwide health insurer in the sale of its pharmaceutical benefit management business.
- Obtained antitrust clearance for Florida hospital system seeking to acquire a nearby hospital.
- Advised a U.S. ocean carrier on joint venture issues and antitrust issues presented.