quinn emanuel trial lawyers
quinn emanuel urquhart & sullivan, llp

Life Sciences and Pharmaceutical Antitrust Litigation

Quinn Emanuel has one of the world's leading antitrust practices, with unique experience, capabilities, and resources to successfully represent life sciences clients in antitrust and competition disputes in the U.S. and abroad. We regularly bring and defend competitor suits and class actions, and our extensive experience on both sides of the "v" for pharmaceutical clients provides us deep understanding of how best to frame and organize—and win—complex antitrust lawsuits. We have won numerous dismissals by motion, and we have negotiated excellent settlements for our clients, including several settlements not requiring any monetary payment. But we are also a firm with the genuine ability and track record to take antitrust cases to trial, which provides an edge in litigation and any settlement talks, because the other side understands that we are ready and willing to successfully pursue our client's case as far as it needs to go.

Quinn Emanuel's antitrust practice is not comprised of general litigators who know a bit about competition law or antitrust transactional lawyers who have done a bit of litigation. Our antitrust lawyers are accomplished courtroom advocates with a deep understanding of competition law, and each year are recognized by such publications as *Chambers*, *Benchmark Litigation*, and *Best Lawyers* as among the world's finest. In 2015, *Law360* recognized our antitrust practice as one of the top five in the U.S. *The Recorder* selected Quinn Emanuel as one of the "Leading Antitrust Litigation Departments of the Year 2015."

Our antitrust lawyers regularly work with other lawyers at the firm specializing in numerous legal areas relevant to our life sciences clients, including intellectual property, government investigations, and products liability. We have a Crisis Law Strategy group that provides strategic guidance for critical public relations issues in high-profile litigation. We therefore bring a comprehensive approach to competition issues that provides our life sciences clients a "one stop shop" for all their competition and antitrust needs.

Quinn Emanuel is also at the forefront of antitrust and competition matters throughout the world. Our worldwide resources – from the United States to Europe, the Asia-Pacific and Australia – enable us to execute comprehensive global strategies, taking account of the differences of national laws, efficiently because we do so as a single law firm.

- **Brussels:** Quinn Emanuel's rapidly expanding, multilingual and diverse Brussels office focuses primarily on complex antitrust/competition law related disputes and investigations involving the European Commission, the EFTA Surveillance Authority, the EU national competition authorities, and associated litigation (whether before the EU Courts in Luxembourg or in the member states). Having been involved in many of the major investigations of the last 30 years, the team has particular expertise in handling multi-jurisdictional and EU cartel investigations and associated litigation, abuse of dominance claims, state aid, mergers and joint ventures, and matters relating to cross-border trade/EU internal market issues.
- **London:** Quinn Emanuel has become a go-to firm for the range of contentious competition law services, acting on both sides of competition law disputes, as well as providing advice and

representation in respect of investigations involving the European Commission and national competition authorities.

- **Germany:** Our German antitrust team has broad experience in litigation and investigations, representing clients before courts and regulators (including the European Commission, the German Federal Cartel Office and the German Financial Supervisory Authority). This expertise covers all aspects of German and European competition law, including abuse of dominance cases – with particular experience at the intersection of IP and competition law.
- **Asia-Pacific:** Our competition practice draws on the experienced and well-connected lawyers in Quinn Emanuel's offices in Hong Kong, Tokyo, and Australia.

REPRESENTATIVE LIFE SCIENCES ANTITRUST / COMPETITION REPRESENTATIONS

- The firm recently settled an eight-generic challenge to **Celgene's** (now BMS's) blockbuster cancer treatment, Pomalyst® (pomalidomide). The product is used for a variety of cancer treatments and has sales in excess of $3 billion per year. Due the firm's efforts, Pomalyst® will remain patent protected until 2026.

- We represented **The Broad Institute, Inc.** in a patent interference (Interference No. 106,048) suggested by the University of California and Emmanuelle Charpentier challenging key Broad patents directed to use of CRISPR in eukaryotic cells, humans, other mammals, and plants. CRISPR technology has been widely hailed in the press as one of the most important scientific breakthroughs of this century. We, along with co-counsel, obtained a victory for the Broad, MIT and Harvard as the PTAB declared there was no interference in fact and dismissed the interference with our client's patents. On September 10, 2018, the Federal Circuit issued its decision in favor of our client, affirming the PTAB's ruling.

- We obtained on behalf of **MannKind Corporation** unanimous affirmance from the California Court of Appeal of trial court rulings dismissing at the pleading stage plaintiff's breach of contract and fraud claims related to pharmaceutical licensing and distribution.

- We represented **Gilead Sciences** in a lawsuit brought by a generic manufacturer competitor. The case involved Gilead's product Letairis®, which is subject to an FDA-mandated restricted distribution program (REMS). The plaintiff alleged that its failure to obtain samples of Letairis® outside the REMS was the result of a "refusal to deal" by Gilead and a conspiracy between Gilead and the specialty pharmacies that distribute Letairis®. We obtained complete dismissal of all claims before any discovery. This was the first time a brand name pharmaceutical company has prevailed on a motion to dismiss involving "refusal to deal" claims brought by a generic manufacturer. Several similar motions have been denied.

- We currently represent **Celgene Corporation** in a lawsuit brought by the generic company Mylan asserting that Celgene unlawfully maintained monopolies over two cancer treatments, Thalomid® and Revlimid®, by a "refusal to deal" which allegedly prevented Mylan from obtaining product samples.

- We represent **Express Scripts**, one of the largest pharmacy benefit managers in the United States, in five antitrust matters in the Eastern District of Missouri. Plaintiffs—independent

specialty and compounding pharmacies located throughout the United States, and current or former members of Express Scripts' retail pharmacy network—allege that Express Scripts conspired with other major pharmacy benefit managers to boycott and eventually eliminate the competition, and thereby steer patients to Express Scripts' own specialty and compounding pharmacies, in violation of Acts 1 and 2 of the Sherman Antitrust Act as well as state antitrust laws in New Jersey, Texas, Virginia, and elsewhere.

- We represented a well-known international branded pharmaceutical manufacturer in drafting an *Actavis*-based complaint related to a competitor's patent settlement-related anticompetitive conduct. On the basis of our parallel intellectual property litigation, as well as this complaint, we obtained a settlement on favorable licensing terms for our client.

- We have represented and continue to represent pharmaceutical clients in criminal investigations launched by the U.S. Department of Justice's Criminal Antitrust Division in Washington, D.C. concerning drug pricing.

- In the EU, we advised a major originator pharmaceutical company regarding a competitor's anticompetitive strategy revolving around various patenting practices and strategies, such as patent thickets clusters, secondary or follow-on-patents, and defensive patenting. The parties subsequently reached an accommodation and cross-licensed and then sold the affected businesses.

- Our Brussels team successfully represented **Nestlé** in its US$39 billion sale of its eye care division to Novartis before the European Commission and other global antitrust agencies. The Commission's investigation examined a large number of ophthalmological pharmaceutical markets and consumer vision care markets across the EEA and identified horizontal competition concerns in a number of these markets, including that Novartis' and Alcon's products are close competitors and there are barriers to entry to new entrants in the relevant markets. To address the concerns, the parties offered to divest a number of businesses across the EEA in the product areas concerned.

- Our Brussels team advised **Merck & Co**. (then Schering-Plough) in the European Commission's multi-year Pharmaceutical Sector Inquiry, which sought to investigate the reasons for the apparent lack of competition in the market for human medicines in Europe. Since the sector inquiry closed, the Commission has focused on implementing the policy recommendations that came out of it and on enforcement action. Based on our positioning efforts, Merck & Co. was not investigated.

- Our Brussels team represented a major U.S. originator company regarding the European Commission's Article 102 TFEU investigation into alleged patent misuse to exclude rivals for chronic obstructive pulmonary disease (COPD). The Commission's novel investigation concerned the alleged misuse of the patent system in order to exclude potential competition in the area of COPD in breach of EU antitrust rules. We were able to have our client dropped from the investigation.

- We are advising **Pfizer Pharmaceutical Company** (Pfizer) in relation to the design and implementation of remedies in the context of the sale of Pfizer's consumer health business to Johnson & Johnson.

- Represented and advised **Wyeth** throughout the European Commission's recent Pharmaceutical sector inquiry, including attending the dawn raids undertaken by the European Commission, providing advice regarding EU privilege rules and their application to U.S. materials and patent-related work product, and providing advice on what at the time was the novel issue of pay for delay and potential competition law issues.