Pharmaceutical-Biotech Antitrust Expertise

Covington for decades has been a preeminent antitrust advisor, regularly providing U.S. and EU antitrust advice to Rx and OTC pharmaceutical companies and biotechnology firms around the world in connection with mergers, acquisitions, divestitures, litigation, R&D collaborations, licensing transactions and other strategic transactions. We have been home to six former heads of the Justice Department's Antitrust Division and two Chairmen of the ABA Antitrust Law Section – a unique distinction among law firms practicing in the antitrust area. We also enjoy among our antitrust partner ranks a former Deputy Attorney General from 1997-2001, a Deputy Associate Attorney General during 1999-2001 with oversight responsibility for major litigation matters handled by the Justice Department's Antitrust and Civil Divisions, a highly-regarded former General Counsel of the Federal Trade Commission, other alumni and alumnae of the Federal Trade Commission, Antitrust Division and Office of the Solicitor General, the author of the leading antitrust treatise on international business transactions, and a current member of the Antitrust Law Section’s Council. Additionally, two of our colleagues have served as General Counsel of the Food & Drug Administration, and another former partner left to become General Counsel of PhRMA.

In the M&A arena, we represented the U.S. Chamber of Commerce and several Fortune 50 clients in helping to shape the original Hart-Scott-Rodino premerger reporting program, and we represented the recipients of the first Second Request ever issued by the Federal Trade Commission. In ensuing years, our 50+ strong antitrust group has successfully represented numerous pharmaceutical clients – throughout the United States, Europe and Asia/Pacific – defending litigation, responding to informal and formal governmental investigations, practically resolving potential antitrust problems, helping to structure and efficiently clear transactions with antitrust authorities where necessary, and assisting in the negotiation of antitrust-viable patent, joint venture, licensing and R&D collaboration arrangements. Our thriving offices in Brussels and London routinely handle a variety of complex competition law issues for our pharmaceutical clients, as well as affording them highly-efficient “one stop shopping” solutions for international acquisition, licensing or marketing agreements with a European or even global dimension. And, C&B's pre-eminent FDA practitioners provide an enormously valuable resource for clients of our pharmaceutical antitrust practice, as does our expertise in the Rx anti-fraud compliance area and defense of massive Rx product liability litigations.

The following representative matters illustrate the overall depth, complexity and global breadth of our pharmaceutical antitrust practice:

- Antitrust counsel to the National Pharmaceutical Council, Consumer Healthcare Products Association, and Pharmacogenetics Working Group (EU and U.S. scientific representatives from 22 major pharmaceutical companies). More generally, the Firm serves as general counsel or principal outside counsel to over 20 trade associations in the food and drug area and related fields, including PhRMA.
- Development of compliance materials aimed at US and EU competition issues commonly arising in the pharmaceutical industry and training in-house lawyers on how to handle investigations carried out by the European Commission or national competition authorities.

- Strategic collaboration of Japan’s Chugai Pharmaceuticals with Roche Holdings of Switzerland, which entailed the complex structuring of a voluntary pre-merger divestiture of Chugai’s principal U.S. biotechnology subsidiary in conjunction with the first acquisition of control of a Japanese pharmaceutical company by a foreign firm.

- Successful defense of Eli Lilly in FTC investigation of its acquisition of an exclusive license from Sepracor for a potential antidepressant compound, in nationwide class actions, and termination of its DOJ hard gelatin capsule consent decree; and successful representation of a leading biotechnology company in FTC investigations of patent dispute cross-licensing settlement agreements involving four competitors.

- AstraMerck’s Rx-to-OTC switch licensing agreement with Procter & Gamble for Prilosec, at the time the world’s largest selling Rx drug product.

- Innumerable other domestic and international licensing, R&D collaboration, distribution, and M&A transactions for AstraZeneca, Chiron, Eli Lilly, Eisai, GSK, Imclone, Medarex, and others; DuPont’s acquisition of New England Nuclear and its formation of Dupont-Merck Pharmaceuticals, P&G’s initial entry into the pharmaceutical business via acquisition of Norwich-Eaton Pharmaceuticals; advice and assistance to leading biotech companies on all aspects -- including antitrust analysis, HSR filings and handling of a preliminary FTC investigation -- of important global R&D and marketing collaborations, one with a Japanese partner, another with a U.S. partner.

- Representation of two separate Rx clients in the FTC’s investigation of branded/generic agreements and generic competition.

- Defense of a major Rx client in a DOJ criminal investigation into broker commission rates; defense of Warner-Lambert in the In re Brand Name Prescription Drugs Antitrust Litigation and related state court lawsuits -- overall, one of the largest private antitrust litigations; defense of GlaxoSmithKline against antitrust lawsuits based on certain Relafen patent grants and, separately, numerous class actions challenging alleged pricing practices; defense of Purdue Pharma in multi-jurisdictional antitrust litigation raising claims of sham litigation and wrongful patent acquisitions; defense of Procter & Gamble against antitrust and unfair competition claims relating to generic drugs and various Hatch-Waxman Act issues.

- Sophisticated advice on complex price discrimination and other distributional issues relating to a wide variety of Rx distribution proposals and arrangements; assistance to a major U.S. pharmaceutical client in devising and implementing a pan-European distribution strategy, including notification
of the arrangement to the European Commission; advice under U.S. and EU law to several Rx clients on substantial co-marketing and co-promotion arrangements; advice to Rx and biotech companies on antitrust issues relating to proposed responses to illegal and unauthorized drug imports from Canada and other countries.

- Advice and assistance to Rx clients in responding to third-party CID's; industry-wide antitrust assessments of potential merger partners; and patent antitrust and patent dispute settlement advice in a variety of contexts to numerous pharmaceutical clients.

- Participation as the sole lawyer on the 2001 WHO/WTO program panel on “Differential Pricing & Financing of Essential Drugs” hosted by the Norwegian Government and attended by government officials from the U.S., UN, EU, UK, France and many other countries.

- Formation of RxHub LLC, a ground-breaking electronic and fulfillment joint venture of the three largest Pharmacy Benefit Managers (PBMs), together covering close to 200 million insured lives and 1 billion Rx prescriptions annually.

- Assistance to a national trade association client in lobbying with respect to the European Commission’s proposed Technology Transfer Block Exemption; lobbying assistance to the European biotech industry; advice to PhRMA on antitrust proposals included within federal legislation to encourage the development of bioterrorism countermeasures;

- Warner-Lambert’s global OTC joint ventures with Wellcome plc and Glaxo, and subsequent acquisition of Burroughs-Wellcome’s U.S. pharmaceutical business. Before its acquisition by Pfizer, we represented Warner-Lambert for a decade on numerous reportable M&A and licensing transactions with no formal government investigation ever initiated.

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