

Antitrust & Competition

Pillsbury's Antitrust & Competition team has exceptional experience in all aspects of antitrust and competition practice, representing large publicly traded companies, middle-market companies and start-ups. Providing legal services at the nexus of business strategy and competition law allows us to leverage our deep client industry experience with a sophisticated understanding of the relationship between government and private enterprise. The team is composed of over two dozen attorneys in the key markets of California, Washington, D.C. and New York.

Our lawyers are well-versed in the complex issues surrounding parallel enforcement proceedings in multiple jurisdictions and the collateral consequences associated with civil and criminal litigation. As commerce has become increasingly globalized, routine business decisions can have significant antitrust ramifications. Pillsbury counsels corporate clients on high-level strategy and on-the-ground practices, including pricing and distribution, restraint of trade and sales-below-cost laws.

Our Antitrust & Competition team is distinguished by its experience with the complexities of:

- Private antitrust and related litigation, including industrywide, multidistrict class actions and parallel antitrust investigations;
- Antitrust aspects of mergers, acquisitions and joint ventures, including the Hart-Scott-Rodino premerger review process;
- Litigation and investigations by federal, state and local authorities, including civil and criminal cartel investigations by the Antitrust Division of the Department of Justice (DOJ), the U.S. Federal Trade Commission (FTC) and State Attorneys General;

- Nationwide and statewide consumer class actions that involve claims arising under state unfair and deceptive practice statutes, and state consumer fraud actions.
- Inquiries into advertising and trade practices, including collaborating with clients and their advertising agencies to identify vulnerabilities in claims, disclosures and advertisements; evaluating business processes involving the collection of consumer data; and mediating competitive disputes over allegations of false and misleading advertisements.

Antitrust Litigation

Our attorneys represent clients in some of the most significant cartel, antitrust, unfair competition and trade regulation litigation. The team is distinguished by its experience with the complexities of antitrust litigation—and by its track record in securing favorable resolutions through successful litigation, negotiated settlements and jury trials.

Our strengths include the efficient management of multidistrict class action litigation and parallel criminal antitrust investigations. We also have significant experience handling antitrust proceedings involving the

DOJ, FTC and U.S. Attorneys Offices, regularly appearing in federal district courts, federal circuit courts of appeal and state courts across the country, and advocating before federal and state regulatory agencies, as well as before states attorneys general.

U.S. News & World Report/Best Lawyers and Legal 500 US rank Pillsbury's Antitrust team as among the best nationally.



We represent clients in private litigation involving price fixing, cartels, tying, boycotts, monopolization, unfair competition, misappropriation of trade secrets, breach of contract, trade libel, deceptive trade practices and other business torts.

In addition, Pillsbury actively monitors opportunities for our corporate clients to secure antitrust recoveries as “opt out” plaintiffs. These opportunities frequently arise as a result of investigations and resulting civil or criminal actions brought by enforcement agencies, which then spawn civil class actions filed on behalf of direct or indirect purchasers of the product in question. When the product at issue is bought in large quantities by one of our corporate clients, the client may be well served by opting out of the class and pursuing its own action.

“The firm’s lawyers were well aware of the importance of the case to us, handled the litigation strategy beautifully, were excellent with our witnesses and were extremely effective in court.”

Robert A. Gordon, Senior Vice President & General Counsel, Safeway, Inc

Representative Matters:

- Represent a major international electronics manufacturer in parallel criminal antitrust investigations by the DOJ, the European Union, Japan and Canada, as well as in multidistrict antitrust litigation alleging industry-wide cartel to fix prices of TFT-LCD panels consisting of more than 130 direct and indirect purchaser cases that have been filed against more than 20 defendants.
- Represent a manufacturer of electronic capacitors in multiple federal antitrust class actions alleging that capacitor manufacturers engaged in an industry-wide cartel to fix prices of aluminum, tantalum and film capacitors.
- Represent an energy company in state and federal antitrust class actions arising out of allegations that natural gas transactions were misreported to commercially published indices that report daily/monthly index prices for natural gas at various trading hubs throughout the United States. The Tennessee Supreme Court reversed a lower appellate court ruling and ordered dismissal of the putative class action.
- Represent an energy company in consolidated federal class actions alleging horizontal and vertical conspiracies to provide preferential services in the natural gas storage and transportation industries. After defeating class certification, the plaintiffs settled their individual claims on terms favorable to our client.
- Represent a pharmaceutical company in federal multi-district class actions and attorney general litigation alleging concealment of information regarding lower priced bioequivalent drugs for the treatment of certain thyroid disorders. State Attorneys General and plaintiff classes comprised of consumers, pharmacies and insurers alleged monopolization, unfair competition and state law claims and sought billions of dollars in damages. After extensive discovery, successfully settled.
- Represent major pharmaceutical manufacturer in consolidated federal class actions and various state court actions claiming price fixing of brand name prescription drugs, and individual actions alleging price fixing of brand name prescription drugs and illegal discrimination in pricing between sales to HMOs, hospitals, and retail pharmacies. Also represented client in federal opt out cases and state court actions, including California. Settled Sherman Act claims on eve of trial, and negotiated successful resolutions of all class and state court actions.
- Represent a major retailer in federal action alleging that retailer engaged in group boycott to foreclose a product market from competing retailer.
- Represent a publishing company in a suit in which a bankrupt magazine wholesaler sought to impose a surcharge and assumption of inventory costs on publishers and then filed an antitrust conspiracy complaint when they refused.
- Represent a leading provider of ocean-shipping services in a proposed class action in California superior courts

that alleged defendants engaged in a price fixing cartel involving ocean-shipping services and asserted California Cartwright Act and California Unfair Competition Law claims. Case successfully settled.

- Represent client in national antitrust class action litigation, multiple associated opt out direct actions and nationwide state court indirect purchaser actions alleging participation in a cartel that inflated the price of vitamins used as a supplement in animal and pet feeds.
- Represent a group purchasing organization against an antitrust and procurement law challenge brought by an unsuccessful bidder against a municipality. The court rejected the challenge in its entirety.
- Obtained a complete victory—in just two weeks—for a leading diversified television broadcaster facing allegations of anti-competitive tying. The judge denied plaintiff's preliminary injunction motion, ruling that the plaintiff had failed to demonstrate an unlawful tying arrangement and that its claimed injury was not redressable under antitrust laws.

“Pillsbury’s knowledge of recent legal developments and diligence in applying them resulted in novel and important rulings that significantly reduced Dynegey’s exposure in this important matter.”

Jason B. Kinzel, Corporate Counsel, Dynegey, Inc

Mergers, Acquisitions & Joint Ventures

Pillsbury lawyers have successfully led the antitrust review process on hundreds of mergers, acquisitions, joint ventures and other business combinations. These deals have involved clients in a diverse array of industries, including technology, health care, consumer and retail, energy, media and entertainment, and aviation.

Our knowledge and experience with federal antitrust agencies enables us to efficiently navigate the merger review process and minimize deal risk. We understand how antitrust agencies approach merger analysis, emphasizing the application of complex economic analyses and prior agency experience, not just conventional case law. Our familiarity with competition authorities allows us to devise customized strategies to meet the needs of our clients during the merger clearance process.

We represent both participants in joint ventures and the ventures themselves. We help clients analyze joint venture structures that include LLCs, contractual collaborations, two-company partnerships and industry-wide development forums. We approach these ventures with the understanding that antitrust agencies’ evaluation of joint ventures is based on economic analysis and agency lore rather than conventional case law.

Representative Matters:

- Represent Atlas AGI Holdings LLC in its acquisition of Shorewood Packaging Corporation and its international affiliates from International Paper Corporation. Pillsbury’s team was honored for their work at the 11th Annual M&A Advisor Awards. The acquisition, which involved stock and asset acquisitions in eight countries, was also recognized with an M&A Advisor’s Corporate/Strategic Acquisition of the Year Award (\$100 million – \$200 million).
- Assist the Lenovo Group, the world’s second-largest PC manufacturer, in its international joint venture with Boston-based, EMC Corporation, the world’s largest maker of data storage computers. Named by M&A Advisor as the Cross-Border Deal of the Year Award (\$35 million – \$100 million).
- Represent Atheros Communications, Inc., a global leader in innovative technologies for wireless and wired communications in its acquisition by Qualcomm. Pillsbury incorporated Atheros in 1998 and led the legal team representing the company in this transaction.

Antitrust Coordinating Counsel

We have also developed a niche strength in advising clients on international transactions, serving as lead antitrust coordinating counsel for foreign filings across the globe. While the majority of business combinations will continue to utilize the same law firm for all aspects of the transaction, there is a growing interest in spinning off the antitrust portion of a deal and awarding it to a different law firm. Pillsbury lawyers have frequently been asked to step in and coordinate the activities of competition counsel around the world.

Consumer Protection & Advertising Litigation

Our team has strength in defending companies in consumer class actions that involve claims arising under state unfair and deceptive practice statutes, and state consumer fraud actions. We are particularly adept at quickly resolving claims brought under California Business and Professions

Code Section 17200. We have defended scores of 17200 class actions brought by private plaintiffs, the State Attorney General, the FTC and other consumer protection agencies involving a wide array of consumer products.

Representative Matters:

- Represent a global telecommunications company in three consumer class actions alleging a practice of billing for unauthorized third-party services, referred to as “cramming.”
- Defend a major grocery chain in case alleging below-cost sales in violation of California’s Unfair Practices Act (UPA) and Business and Professions Code Section 17200. Before trial, we obtained summary adjudication of the plaintiff’s UPA claims, and obtained a ruling excluding the damages model of plaintiff’s economist. After a three-week trial, the court entered judgment in our client’s favor at the conclusion of plaintiff’s case in chief. Following victory at trial, three parallel cases were voluntarily dismissed by the plaintiffs.
- Represent a major luxury hotel chain in a putative nationwide class action asserting violations of California Business and Professions Code Sections 17200 and 17500, breach of contract, and unjust enrichment for allegedly inadequate and misleading disclosure of fees charged to guests at hotels around the world. Successfully limited the claims in the litigation and obtained a favorable nationwide class settlement.
- Represent a national bank in California-wide putative consumer class actions that alleged violations of California’s gift card law, Unfair Competition Law, and Consumers Legal Remedies Act in connection with the marketing of and expiration dates on the bank’s gift cards and in connection with the bank’s debit card rewards program.
- Represent multiple telecommunication/marketing companies in nationwide putative consumer class actions that alleged violations of the Telephone Consumer Protection Act in connection with allegedly unsolicited calls to cellular phones.
- Represent several out-of-state lender and automobile dealership clients in a California-wide putative consumer class action that alleged violations of California’s Rees-Levering Automobile Sales Finance Act, Unfair Competition Law and Consumers Legal Remedies Act in connection with the sales and repossessions of automobiles.

- Represent a manufacturing client in a California-wide putative consumer class action that alleged violations of the Unfair Competition Law, Consumers Legal Remedies Act and National Appliance Energy Conservation Act in connection with marketing of certain of its products.
- Represent dozens of retailers in consumer class actions alleging gift card violations and Song-Beverly Act violations.

Consumer Protection & Antitrust Investigations

Diverse and highly experienced, Pillsbury represents clients in a wide range of both formal and informal investigations conducted by the DOJ, FTC, State Attorneys General and local district attorneys. We have extensive experience with inquiries into advertising and trade practices, including structuring clients’ responses and negotiating resolutions as appropriate. Recent inquiries have involved Internet security and privacy issues, regulatory compliance, substantiation of advertising claims, gift card and gift certificate practices, and cash rebate fulfillment practices.

We also represent clients in a wide range of civil and criminal antitrust investigations, including those conducted by the DOJ, FTC and state attorneys general.

Representative Consumer Protection Investigations:

- Represent major retailers in several statewide District Attorney task force investigations challenging unfair competition and deceptive trade practices.
- Advise a leading health care services provider in an investigation by the FTC into a data breach involving customer financial and medical information.
- Represent a leading consumer product manufacturer in an FTC advertising investigation in which the FTC alleged the company made false and deceptive claims to consumers that two of its products reduced the risk of flu and other illnesses as well as eliminated common germs and allergens. We resolved the matter by a settlement in which the company did not agree to any wrongdoing.
- Lead counsel for putative expert endorsers of dietary supplement in non-public FTC investigation concerning advertising substantiation claims as to the efficacy of the product. Investigation was closed without any action against client-endorsers.

Representative Antitrust Investigations:

- Serve as lead counsel to a manufacturer in an investigation by the California Attorney General's office regarding alleged resale price maintenance in violation of the Cartwright Act. Reached stipulated judgment on behalf of our client with the Attorney General.
- Defend a specialty benefit management company against a challenge by a radiology provider involving allegations of price fixing, boycott, tying and monopolization under the Sherman Act. Plaintiffs agreed to dismissal rather than answer our motion to dismiss all claims.

Criminal Antitrust Investigations & Cartel Defense

As commerce has become increasingly globalized, competition authorities around the world have expanded the resources devoted to cartel investigations. Pillsbury's Antitrust & Competition team serves our clients at the nexus of business strategy and competition law by combining decades of experience in our clients' industries with a deep understanding of the investigation and criminal prosecution of domestic and international cartels.

Price fixing and market allocation create enormous exposure for companies and their executives. In Fiscal Year 2017, the Antitrust Division of the U.S. Department of Justice filed 24 criminal cases and obtained \$67 million in criminal fines and penalties.

Cartel investigations are now highly choreographed affairs with dawn raids occurring simultaneously around the world. The DOJ's steady increase in its prosecution of international cartels has also led to an increase in enforcement against foreign cartel defendants: both the number of foreign executives separately prosecuted for violating antitrust laws and corresponding prison sentences are on the rise. This growing emphasis on individual accountability crossed a major threshold in April 2014 when the DOJ announced its first successful extradition of a foreign national to the United States on antitrust charges. While traveling on business in Germany, this Italian executive was identified as a fugitive having been under indictment since 2010 based on his alleged involvement in a marine hose cartel that has produced a number of guilty pleas.

Legal 500 US ranks Pillsbury's Cartel Defense & Criminal Antitrust team as among the best nationally.



The extradition of this foreign national demonstrates the DOJ's continued focus on cartel activity across the globe, as well as the risks posed to foreign executives traveling outside of their home countries while under indictment in the United States. The combined expertise of our antitrust and white collar criminal defense practices allows Pillsbury to defend clients in criminal cartel investigations on behalf of companies and individuals around the world. Our lawyers are well-versed in the complex issues surrounding parallel enforcement proceedings in multiple jurisdictions and the collateral consequences associated with civil and criminal litigation.

The firm's lawyers have been involved in many high-profile international cartel investigations and private damage actions, including cases in the following industries:

- Liquid Crystal Displays
- Capacitors
- Undersea Cable
- Carbon Fiber
- Plastic Additives
- Cathode Ray Tubes
- Rubber Chemicals
- Freight Forwarding
- Automobile Parts
- Municipal Securities Derivatives
- Air Cargo
- Parcel Tanker Shipping Services
- Magnetic Iron Oxide
- Brand Name Prescription Drugs
- Thermal Fax Paper
- Minerals & Mining

Representative Criminal & Antitrust Cartel Investigations:

- Represent a major international financial institution in multiple criminal and civil antitrust investigations into municipal securities derivatives, as well as in multi-district litigation alleging that several banks and their executives manipulated the bidding process. After ten years of investigations by multiple regulators including the DOJ, SEC, various State Attorneys General, the Internal Revenue Service, the Office of the Comptroller of the Currency and the Federal Reserve, these investigations were concluded without any charges brought against our client.
- Represent a Japanese auto parts manufacturer in various probes into allegations of anti-competitive practices in the auto parts industry by regulators in both the United States and Europe. After a two-year investigation and several declination presentations, convinced DOJ to cease its inquiry of our client.

- Represent officers of a Scandinavian parcel tanker shipping enterprise in a criminal antitrust investigation involving allegations of price fixing, customer allocation, and continued criminal conduct following disclosure under the DOJ's amnesty program. The indictment of the company was dismissed.
- Represent global provider of electronic payment and transaction processing services in a multi-year criminal investigation by the New York Antitrust Division of the DOJ into alleged fixing of foreign currency exchange spreads. The matter was resolved without any enforcement action or financial penalty.
- Represent a major marketer and distributor of agricultural and industrial products in a DOJ grand jury investigation alleging possible violations of antitrust law and obstruction of justice. Negotiated a very favorable resolution, including no antitrust indictments, no individual indictments and only a minor misdemeanor-level charge against the client.

“Pillsbury’s attorneys resolved this legal issue quickly and with finality. Their mastery of the applicable law was evident in the motion to dismiss, which went a long way towards inducing our competitor to abandon the litigation.”

Harlan Hatfield, Vice President, General Counsel & Corporate Secretary, Headwaters Incorporated

Counseling & Compliance

Seemingly routine business decisions can have significant antitrust ramifications. Pillsbury attorneys counsel corporate clients on high-level strategy and on-the-ground practices, including pricing and distribution, restraint of trade and sales-below-cost laws. We counsel clients on:

Compliance. We design and present training programs for compliance with state and federal antitrust requirements, and lead internal investigations into civil and criminal antitrust matters.

Advertising Review. We collaborate with clients and their advertising agencies to identify vulnerabilities in claims, disclosures, advertisements, web content and marketing materials.

Privacy. In an era of increased FTC focus on privacy issues, our lawyers have extensive experience drafting disclosure language and evaluating business processes involving the collection of consumer data.

Franchising Agreements. Our lawyers have a rare combination of experience representing both franchisors and franchisees. We use this knowledge of both sides of the table to draft distributor, dealer and franchise agreements that anticipate and address potential antitrust issues.

Distribution Agreements. We draft dealer agreements that conform to state and federal laws governing fair distribution practices. Our recent work includes drafting dealer agreement forms that comply with California’s AB 585 (2005), which amended the Business & Professional Code statutes on equipment manufacturers, distributors, wholesalers and dealers.

Trade Associations. We have experience counseling trade associations on the unique antitrust issues they face, such as formation and ongoing operations, disclosure and transparency issues, standards-setting processes, issue advocacy, and publications and surveys.

About Pillsbury

Pillsbury Winthrop Shaw Pittman LLP is an international law firm with offices around the world, and a particular focus on the technology, energy & natural resources, financial services, real estate & construction, and travel & hospitality sectors. Recognized by legal research firm BTI as one of the top 20 firms for client service, Pillsbury and its lawyers are highly regarded for their forward-thinking approach, their enthusiasm for collaborating across disciplines and their unsurpassed commercial awareness.

ATTORNEY ADVERTISING. Results depend on a number of factors unique to each matter. Prior results do not guarantee a similar outcome.

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