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## California

## California's antitrust bar

Nestled in and around the high-tech hub of Silicon Valley, antitrust lawyers and law firms in the San Francisco Bay Area have a front-row seat for some of the most dynamic government investigations and courtroom battles. **Ron Knox** looks at the state's best practices

Antitrust practitioners along the West Coast of the US can, very often, look out of their office windows and see many of the companies that drive the US economy. Silicon Valley, and the San Francisco Bay Area generally, is the hub of the technology world, with a host of major companies and innovative start-ups calling the region home. From Apple to Oracle, Intel to Google, the list of Silicon Valley occupants reads like a who's who of global technology powerhouses – and of the world's most high-profile antitrust targets.

For the state's antitrust lawyers, familiarity with the varied technology industries and proximity to the companies puts them at the forefront of some of the most significant investigations and litigations in the country. Many of the state's top practitioners work on cases lying at the intersection of intellectual property and antitrust law – a junction that is growing more crucial by the day as companies in the smartphone and other technology industries use patents to wage war against one another.

And while things have been quiet on the surface lately, the San Francisco office of the US Department of Justice's antitrust division remains one of the government's most active criminal cartel enforcement shops, with several major grand jury investigations going on behind closed doors. Plus, the bustling entertainment industry in Los Angeles brings its own antitrust challenges, and even more work for the state's talented practitioners. The myriad antitrust issues make the state one of the most significant – and indeed interesting – places to practise antitrust law. Below, *GCR* profiles some of California's top antitrust and competition practices.

### Elite

While the landscape of the California antitrust bar has shifted many times, some things remain the same – including the high-profile and top-tier work carried out by the state-wide practice at **Gibson Dunn & Crutcher**. The firm's California group, led by *Who's Who Legal* nominee and antitrust bar stars Gary R Spratling and Daniel G Swanson, consistently handles complex matters for companies in markets ranging from high-tech, to financial services and smokestack industries. *Who's Who Legal* nominees Robert E Cooper, Trey Nicoud and Joel Sanders round out the talented Gibson Dunn team.

Spratling says that the past 12 months have been a “record year” at the firm. The team is currently involved in at least a dozen active international cartel matters, including government investigations and follow-on damage claims. These include older but still-active cases in the liquid crystal display,



Christopher Yates



Gary Spratling

cathode ray tube and DRAM markets, as well as bustling antitrust cases in the potato, polyurethane foam and freight forwarding cases. Although the Gibson Dunn list of antitrust matters is a long one, at the top is most likely the firm's cross-country efforts in defending client UBS in a series of cases alleging widespread collusion among banks to depress the Libor interbank exchange rate. Because of the potential damages at stake, the cases are probably the most significant antitrust class actions ever brought against financial institutions.

Sanders and the California antitrust team also advised client Micron in its private antitrust case against Oracle, stemming from the DRAM cartel investigation. Oracle sought a total of US\$3 billion in damages from Micron – an amount that was reduced to about US\$200 million because of Micron's leniency status. That case settled out of court in March for an undisclosed amount. The team has also taken the lead for Apple in the follow-on litigation related to the US Department of Justice's e-books collusion case. Other clients include Hewlett-Packard, Matson Navigation, Dole, Intel, Dell, Amazon, Sony and many others.

Gibson's chief rival among the top California antitrust practices, **Latham & Watkins**, has a diverse antitrust practice few in the state can match. The firm's global antitrust co-heads, Christopher Yates and Al Pfeiffer, are based in California. They're joined by arguably the top team in the state, including fellow *Who's Who Legal* nominees Daniel Wall, Hanno F



Kaiser and Karen E Silverman, who manages the firm's San Francisco office, as well as criminal antitrust specialist Niall Lynch. The antitrust team is firmly entrenched in the Bay Area's high-technology industrial complex, boasting one of the most impressive rosters of technology clients anywhere in the antitrust world – clients for whom the California team continues to carry out innovative and successful work.

Litigation is the practice's focus at the moment. "The litigation side of our practice is just going crazy," Yates says. The firm continues to work for long-time client Oracle, which it is advising in its ongoing unfair competition litigation with Hewlett-Packard in California state court – a case potentially worth US\$4 billion in damages. Apple has also turned to Latham lawyers to advise on two consolidated federal lawsuits alleging that Apple violated antitrust law by requiring iPhone purchasers to use AT&T for their wireless service. The court eventually ruled that the plaintiff's antitrust claims must go through arbitration.

Other recent work includes advising Electronic Arts, the video-game maker, in a monopolisation suit in the market for American football-related video games. Emerson Electric is also a client; the company chose Latham over its California competitors to handle a monopolisation lawsuit in the residential food waste disposal market. Perhaps most interestingly, Latham took over for another antitrust team when the DoJ opened a post-closure merger investigation of Nuance Communication's acquisition of SVOX. The eight-month investigation ended with no charges filed, despite a staff recommendation to challenge the deal. Other clients include Guitar Center, Orbitz, Toshiba, Wells Fargo and Intuit, to name a few.

#### Highly recommended

Frank Hinman and his California team at **Bingham McCutchen** have been busy recently. The slate of high-tech and complex antitrust matters filling the firm's docket is as impressive as almost any practice in the state. The litigation-heavy practice focuses primarily on local clients with cases in the industrious District Court in Northern California, but also has the reach and depth to assist in international cartel matters and mergers alongside partners in, among other locations, Europe, Japan and Washington, DC.

Intel is the headline client here. The firm was part of the team tasked with defending monopolisation charges brought by rival AMD, the FTC and the New York Attorney General's office – the last of which was wrapped up in February. But the Bingham team continues to advise Intel in follow-on litigation related to the DoJ's Silicon Valley hiring case, as well as other antitrust matters. Sharp Corporation has also been a major source of work over the past few years, specifically for its involvement in the LCD cartel litigation. The team advises SanDisk in the SD flash memory antitrust cases now pending at the Ninth Circuit Court of Appeals. Firm-wide, the Bingham team is working on the auto parts and freight forwarding cartel investigations, and multiple high-profile mergers.

The antitrust group at **Fenwick & West** remains one of the top practices – if not the top practice – in Silicon Valley. The team, led by *Who's Who Legal* nominees Mark Ostrau and Tyler A Baker, brings an intimate understanding of IP and antitrust

issues to the table, and has a deep history of guiding clients through the trickiest of mergers and investigations. Rivals praise Baker, a former DoJ attorney and litigation specialist, for his consistently high-quality work, and observers say Ostrau is among the top dealmakers in the litigation-heavy Bay Area.

It's been something of a banner year for the practice, with a host of new deal work and other matters both in and out of the technology sector. At the top of the list is the team's work for Facebook in its purchase of Instagram, which is current under in-depth review by the FTC. The team is also advising on two major cloud computing deals – SuccessFactors in its tie-up with SAP, and Demandforce in its acquisition by rival Intuit. The team has also advised on deals in more traditional industries, including Diamond Food's purchase of the Pringles crisp brand from Procter & Gamble.

Since *Who's Who Legal* nominee Craig Waldman joined US antitrust powerhouse **Jones Day** in its San Francisco office two years ago, the West Coast practice has developed a significant presence and reputation in antitrust cases. Waldman is joined by four full-time antitrust partners, including the highly regarded Jeffrey LeVee, David Meyer and part-time Washington, DC, partner Margaret Ward. A host of other litigation specialists based in the firm's Los Angeles, San Francisco and Palo Alto offices assist on antitrust matters when required.

Over the past year or so, the firm has assisted its multiple high-tech clients in a range of antitrust matters. The firm acted for two clients, Adobe and Intuit, in the follow-on litigation relating to the DoJ's employee soliciting case, which also included Apple, Google, Intel and others. Speaking of Apple, the company uses Jones Day's California team for parts of its antitrust work, including the DoJ's e-books investigation and private antitrust litigation alleging a monopoly between the company's iTunes music store and iPod music players. On the merger front, the team is assisting SAP with its purchases of SuccessFactors and Ariba – deals worth close to US\$8 billion combined – and LAM Research's merger with rival Novellus. Other clients include Synopsys, Union Pacific Railroad, Dollar Thrifty, Boehringer Ingelheim and Experian Information Solutions.

Elsewhere, antitrust litigation pacesetter **Morrison & Foerster** boasts one of the most impressive groups in the state. Led by partner and former FTC official Sean Gates, the talented team focuses primarily on litigation and criminal investigations for clients in a host of sectors. While the firm is deeply involved in the technology industry and the intersection of antitrust and intellectual property, it also advises clients in shipping, finance and other, more traditional industries. Other team members include rising litigation star Derek Foran, as well as partners Stephen Freccero and Stuart Plunkett.

Cartel-related work has kept the MoFo team busy over the past year. Their work in the liquid crystal display litigation continues with the team's work for client Seiko Epson. The company has settled both the direct and indirect purchaser lawsuits, but opt-out plaintiffs remain active – more than 25 cases, including a damages claim in the UK. Elsewhere, the firm is advising UPS in a case alleging a shipping conspiracy between it and rival FedEx. The firm won two motions to dismiss the

FIRM	HEAD OF COMPETITION	SIZE	CLIENTS
<b>ELITE</b>			
Gibson Dunn & Crutcher	Gary R Spratling, Daniel G Swanson	30p, 3c, 19sa, 31a	Intel, Microsoft, Apple, UBS, Sony, Dell, DreamWorks, Amazon, AkzoNobel, Ticketmaster, Hewlett-Packard, Micron
Latham & Watkins	Chris Yates, Al Pfeiffer	11p, 1c, 44a	Apple, Electronic Arts, Orbitz, Toshiba, Live Nation, Emerson Electric, Guitar Center, Wells Fargo Bank, Oracle, Avery Dennison Corp, Integrated Device Technology, Singapore Airlines Cargo
<b>HIGHLY RECOMMENDED</b>			
Bingham McCutchen	Frank Hinman	11p, 2c, 7a	Intel, Ricoh Americas, Sharp Corp, SanDisk Corp
Fenwick & West	Tyler A Baker, Mark Ostrau	2p, 4a	Facebook, Cisco, SuccessFactors, Diamond Foods, Tropos, Craft Edge
Jones Day	Craig Waldman	5p, 2c, 7a	Experian Information, Apple, Adobe Systems, Boehringer Ingelheim, Intuit, SAP, LAM Research
Morrison & Foerster	Sean Gates		Seiko Epson, UPS, JP Morgan, Nikon, CVS Caremark
O'Melveny & Myers	Kenneth R O'Rourke	9p, 7c, 4a	SK Hynix, Honeywell, Apple, eBay, Fedex, Advanced Micro Devices, Goodrich, Asiana Airlines
Orrick Herrington & Sutcliffe	Robert Rosenfeld	6p, 2sc, 7a	Microsoft, Sony, DHL, Instagram, Dyson
Winston & Strawn	Robert Pringle	7p, 6a	Panasonic, NEC, Dell, Abbott Laboratories, Wyeth, Kroger
<b>RECOMMENDED</b>			
Arnold & Porter	Ronald Redcay	5p, 1, 5a	Philip Morris, BP, Toyota, VeriSign, Datel, LG Electronics, General Electric
Davis Polk & Wardwell	Christopher Hockett	2p, 2a, 2c	Panasonic, Toshiba, SanDisk, ChiMei, T-Mobile, The United States Golf Association
Hogan Lovells	Megan Dixon	1p (three other partners handle antitrust matters)	American Society for Reproductive Medicine, Appliance Components Companies, Allflex, Sony, Vietnam Airlines, Ford Motor Company
Munger Tolles & Olson	Glenn D Pomerantz	7p, 5a	Abbott Laboratories, Universal Music, Fox Broadcasting, Rambus
Paul Hastings	Michael Cohen (DC)	3p, 1c, 10a	LG Display, Korean Airlines, Samsung, Del Monte, Hitachi Global Storage
Pillsbury Winthrop Shaw Pittman	Roxane Polidora	12p, 15a	Declined to name clients
Sheppard Mullin	Gary Halling	4p, 11a	Samsung, Samsung SDI, Walt Disney, Warner Brothers, 20th Century Fox
Sidley Austin	Samuel R Miller, Marie Fiala	4p, 5a	Macmillan, AstraZeneca, Johnson & Johnson, Microsoft
Vinson & Elkins	Matthew Jacobs	1p, 1c, 2a	Hitachi, Renesas Electronics Corp
Wilson Sonsini Goodrich & Rosati	Jonathan Jacobson, Susan Creighton	3p, 1sc, 5a	Google, Universal Surveillance Systems, Transitions Optical, Live Nation

Key: p = partner, sc = senior counsel, c = counsel, a = associate

case, but then lost a third, and summary judgment motions are now set for December. The team is advising JPMorgan in the credit card interchange fees litigation before the Ninth Circuit, as well as Nikon, CVS Caremark and others.

*Who's Who Legal* nominee Kenneth O'Rourke leads the nine-partner, California-based antitrust group at **O'Melveny & Myers**. Spread between San Francisco, Century City and Los Angeles, the team often partners with practice leader Richard Parker and others in its the firm's outstanding Washington, DC, office to help advise its litany of major high-tech West Coast clients. Although the firm lost partner Thomas Brown to rival Paul Hastings earlier this year, O'Rourke and the O'Melveny California team continue to boast a well-regarded practice.

At the top of the practice's impressive docket over the past year or so was its successful representation of client Hynix Semiconductor (now SK Hynix) in an antitrust lawsuit and trial over Hynix's alleged role in a conspiracy to shut Rambus out of the DRAM market through standard setting. In November, after more than three months of trial and another full month of deliberation, a San Francisco jury returned a ruling in Hynix's favour. Rambus had sought damages that, when trebled, would have been close to US\$12 billion. The O'Melveny team is also assisting Apple in the government's e-books price-fixing case, as well as in the follow-on litigation stemming from the DoJ's investigation of employee hiring agreements between Apple, Google, Adobe and others. Members of the California team also assisted Graco in its purchase of Illinois Tool Works' powder finishing business, which the FTC challenged and eventually settled. Other clients include Hertz, RealPage, Ranbaxy Pharmaceuticals, Goodrich and eBay, as well as several companies involved in the DoJ's auto parts cartel investigation.

The antitrust team at **Orrick Herrington & Sutcliffe** has settled in well since gaining a raft of high-profile partners in 2009 after the collapse of Heller Ehrman and has emerged as one of the top high-tech antitrust practices in the state. The group, headed by practice leader and *Who's Who Legal* nominee Robert A Rosenfeld, has planted itself firmly in the space between intellectual property antitrust law, advising a number of clients on crucial patent use matters both publicly and, at times, behind the scenes. Fifteen lawyers round out the team, and the California lawyers work in tandem with offices in Japan, the UK, France, Germany and elsewhere.

Microsoft is undoubtedly the headline client here. Rosenfeld and his team are active in multiple matters for the software heavyweight, in both antitrust and IP cases. The team is helping to advise Microsoft in its long-running courtroom battle against Novell's illegal monopolisation claims – claims that were dismissed after a mistrial, although Novell says it will appeal. The team is also advising Instagram in its tie-up with Facebook, which is currently under second-request review by the FTC.

The California antitrust team from Chicago-based **Winston & Strawn** underwent some significant changes over the past year or so, both within its West Coast practice and beyond. While the team lost partner John Gibson this past year from its LA office to rival Crowell & Moring, it added strength to

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its antitrust group in several offices. Former Howrey chairman and antitrust litigator Robert Ruyak joined the firm and splits his time between Los Angeles and Washington, DC. The practice as a whole grew far deeper after Winston picked up antitrust partners Jeff Kessler, Paul Victor and Eva Cole – along with litigators including Seth Farber – from Dewey & LeBoeuf.

The firm's California antitrust practice is centred on a handful of major corporate clients. Panasonic and NEC Corporation have been major drivers of the practice's workload over the past several years. The Winston team advises Panasonic in the cathode ray tube and optical disk drive antitrust litigations, as well as in separate private antitrust and patent lawsuits against Oliver and Samsung, alleging illegal coordination on standard-essential patents in the SD memory card market. Panasonic won motions to dismiss both cases, which are now pending before the Ninth Circuit court of appeals. For NEC, the firm advised in the company in the expansive SRAM and DRAM price-fixing litigations, all of which were resolved. NEC won immunity from the DoJ in its investigation of DRAM price fixing in exchange for its cooperation. Other clients include Abbott Labs, Dell, Kroger, Omnicare Wyeth and others.

### Recommended

US antitrust heavyweight **Arnold & Porter** maintains a significant presence on the West Coast – a presence that has grown since the firm merged with smaller rival Howard Rice at the beginning of 2012. Former Howard Rice antitrust and IP litigator Dan Asimow added depth to the Arnold & Porter practice, as well as major casework he and other Howard Rice litigators brought with them in the move. That includes the team's work for Datel, which sued Microsoft for allegedly monopolising the market for Xbox 360 aftermarket controllers and other products. The case eventually settled late last year. Otherwise, the California partners also represent LG Electronics in the cathode ray tube investigation and follow-on litigations, BP in a resale price maintenance and tying case brought by retail franchisees, and Philip Morris in the long-running cigarette price-fixing litigations. VeriSign and Toyota are also clients.

The antitrust team at **Davis Polk & Wardwell** continues to be one of the top players in Silicon Valley. Partner Christopher B

Hockett is a *Who's Who Legal* nominee, and several other litigators assist on antitrust issues. The team has continued its busy pace, advising Panasonic, Toshiba and SanDisk in their SD memory card joint venture that came under fire by Samsung – a lawsuit that the team helped get dismissed but is now on appeal at the Ninth Circuit. Chi Mei is also a client – it is part of the LCD cartel litigation. The team is also advising T-Mobile in the text messaging antitrust litigation in Chicago, as well as a related short code text messaging case in New York.

Meanwhile, international powerhouse **Hogan Lovells** continues to develop its California-based antitrust practice as a cartel and private litigation hub. Local practice leader Megan Dixon brings significant antitrust experience to the team. Dixon is a former DoJ prosecutor and current member of the American Bar Association's cartel task force. She's joined by three other part-time antitrust litigators: Robert Hawk, Michael Shepard and Dean Hansell, a former Dewey & LeBoeuf lawyer based in the firm's Los Angeles office. The team is advising Appliance Components Companies in the international refrigerator compressors cartel probe, as well as follow-on litigation – recently securing assurances from the DoJ that they would not pursue charges against the company. Other clients include Sony Electronics, Vietnam Airlines and Ford Motor Company.

*Who's Who Legal* nominee Glenn D Pomerantz is one of seven partners at **Munger Tolles & Olson** who specialise in antitrust law matters. After a brief stint helping the DoJ prosecute its challenge to the *AT&T/T-Mobile* merger, Pomerantz is back at the practice and continues to handle major merger work in the entertainment and media industries. He's helping to advise Universal Music on its contentious tie-up with EMI, and he's assisting Fox Broadcasting in a class action alleging the illegal bundling of networks distributed to cable providers – allegations that Pomerantz argued before the Ninth Circuit and saw dismissed. The team has also advised Rambus, Abbott Laboratories, LG Display and others.

Michael Cohen was one of the co-heads of the Heller Ehrman antitrust practice when it collapsed in 2008. Now the global head of the **Paul Hastings** antitrust group, he says he's worked hard to establish the firm's presence in the California antitrust marketplace. He went quite some way towards accomplishing that over the past 18 months by hiring star litigator Holly House from Bingham McCutchen, and former Heller partner Tom Brown, who brings a significant antitrust payments practice with him from O'Melveny & Myers. In all, three partners and 10 associates make up the practice.

The California team at **Pillsbury Winthrop Shaw Pittman**, led by partner and firm-wide practice leader Roxane Polidora, continues to have a significant presence in the state's antitrust landscape. About half of the firm's 60 lawyers are in California, with 12 antitrust-focused partners, serving mainly middle-market, Fortune 50 companies and start-ups in Silicon Valley. The firm hesitates to name its clients. However, it is advising a major electronics company in follow-on litigation related to the liquid crystal display cartel, as well as an energy company in the wholesale natural gas multi-district litigation in

Las Vegas and eventually before the Ninth Circuit. The team also sees a significant number of cases alleging breaches of the unfair competition clause of California's Cartwright Act.

Gary Halling leads a four-partner, 15-lawyer team for **Sheppard Mullin** in California. The team has an impressive cartel practice, acting for clients in some of the most significant cases in the country. Samsung is a major client on several fronts. The group has been advising the company in the liquid crystal display follow-on litigations stemming from the government's cartel investigation in which the company won leniency for its cooperation. Not only did the company assist in the government's prosecution of defendant AU Optronics, but it is also preparing for trial against several major opt-out plaintiffs, including Nokia, Motorola, AT&T and others. The firm is also defending Samsung SDI, an independent company, in the cathode ray tube DoJ investigation and follow-on litigation. Elsewhere, the firm's outstanding entertainment industry practice is also keeping the Sheppard antitrust team busy. The firm is currently advising on the antitrust aspects of a joint venture between Disney, Warner Brothers, 20th Century Fox and others to help identify standards for digital film technology.

Antitrust counsel Samuel Miller is part of a talented and busy California team at **Sidley Austin**. The four-partner team remains involved in major litigations and government cases involving every facet of antitrust law, and its lawyers combine the competition and intellectual property experience necessary to handle the most cutting-edge legal issues. Along with Miller, partner Marie Fiala boasts a strong antitrust and energy practice, while Teague Donahey shifts between antitrust and IP cases. California clients include, among others, LG Electronics, which the company is advising in the liquid-crystal display and cathode ray tube investigations; PG&E in a number of cases; and Johnson & Johnson and AstraZeneca in separate conspiracy litigations. National and international clients include AT&T, Macmillan, Norinchukin Bank and Microsoft.

The California antitrust team at **Vinson & Elkins** adds support to the firm's impressive national practice, which advises clients involved in dozens of complex investigations and litigation. The four-lawyer team is led by partner Matthew Jacobs and counsel Katherine Kim, both in the firm's San Francisco office. Recent client work includes advising Hitachi in two major matters – the ongoing optical disc drive antitrust litigation, alleging a cartel in the industry, and the flash memory case against a class of indirect purchasers.

Meanwhile, three California-based partners work with the larger antitrust team at **Wilson Sonsini Goodrich & Rosati**, helping to advise the firm's extensive high-tech client base. Dylan Liddiard, a partner in the firm's Palo Alto office, helps Washington, DC, partner Scott Sher and others advise headline client Google in a range of antitrust matters. The California team also advises Transitions Optical in the transition lens antitrust litigation, and Universal Surveillance Systems in a monopolisation case, among other matters.