Recent Antitrust & Competition Representations

Quinn Emanuel has achieved extraordinary successes when representing corporate defendants in complex, high-stakes, antitrust and competition disputes:

- We represented **Entergy Mississippi and affiliates** in defending a suit by the Mississippi Attorney General alleging that these Defendants intentionally purchased electricity from their own allegedly expensive power plants rather than from allegedly cheaper third-party sources, allegedly harming Entergy Mississippi's customers by forcing them to pay higher electricity rates. We assembled a factual defense that Entergy Mississippi and its affiliates needed to use their power plants to provide flexible electricity to match fluctuating demand for electricity, and that the third-party plants did not offer or provide the requisite flexibility. But we won summary judgment on the legal ground that this case is effectively a challenge to decisions made under standards set forth in the Entergy System Agreement, which is a federal tariff approved by the Federal Energy Regulatory Commission, and the violation of which is within the exclusive jurisdiction of that agency rather than any federal or state court.

- The firm represented **Express Scripts** in a breach of contract and antitrust action in the Eastern District of Missouri in connection with Express Scripts' termination of compounding pharmacies from its network. Plaintiffs sought over $120M in damages. This was only the second case that Express Scripts took to trial in the history of the company—in the first case, Quinn Emanuel obtained a jury verdict in Express Scripts' favor. In the lead-up to trial, Quinn Emanuel moved for and obtained what were effectively case-terminating sanctions for Plaintiffs' discovery violations; the Court awarded Express Scripts $360,000 in monetary sanctions, struck Plaintiffs' damages expert, and invited supplemental summary judgment briefing. Four days before the start of trial, the Court granted summary judgment in Express Scripts' favor on all of Plaintiffs' claims to be tried and held that Plaintiffs were liable on Express Scripts' counterclaims, leaving only the amount of Express Scripts' damages for the jury to decide. Following the Court's decision and during jury selection, Plaintiffs agreed to a $20M consent judgment, the full amount of damages sought by Express Scripts. This completed a string of victories that QE obtained for Express Scripts in five antitrust cases after taking over their defense from prior counsel.

- A federal judge has given final approval to settlements with the final defendants in our ISDAfix case, which was brought on behalf of investors such as insurance companies, pension funds, hedge funds, and other sophisticated actors. That brings the total recoveries in the case, which concerns the rigging of a financial benchmark used to determine the settlement value of certain financial derivatives, to over $500 million. We built the case from the ground-up after noticing anomalies in the data, before the government even acted. The successful settlement and then certification of the class was the result of years of dogged, groundbreaking work. We had to find traders explicitly admitting they were interested in manipulating the benchmark. We then had to match that admission to can actual trade by the right person, at the right time, in the right direction. We then had to demonstrate we could

show that those acts damaged class members, some of whom may have only traded hours or even days later. The Court said that this was the "the most complicated case" he ever faced, and that he could "not really imagine" how much more complicated "it would have been if I didn't have counsel who had done as admirable a job in briefing it and arguing it as" we did.

- We represented **Google, Alphabet, and several of its senior executives** in a case involving 13 claims, including RICO violations, securities fraud, antitrust, and breach of contract, arising out of plaintiff's termination from Google's AdSense program. The case was originally filed in New York, where plaintiffs reside, and we first successfully moved to transfer the case to California. We then moved to dismiss the case for failure to join the real party in interest, which the Court granted without prejudice. Once the amended complaint came in, we immediately moved to dismiss on statute of limitations grounds, arguing plaintiffs did not get the benefit of tolling or relation back. The Court agreed, granting our motion with prejudice.

- We achieved a favorable settlement for our clients **Yan Li, Hua Zhong, Zhenzhe Kou, and Eric Huo**, ending a lawsuit brought by plaintiffs UCAR Inc. and UCAR Technology (USA) Inc., alleging trade secret misappropriation, breach of contract, breach of fiduciary duty, and violations of the computer fraud and abuse act.

- We successfully represented **CDC** as an intervenor in a case centering on the time limitation of Cartel Damages Claims. Under a statute only repealed in 2005, cartel damages claims were subject to a 10 year limitation period that expired regardless of the (potential) plaintiff's knowledge about its claim. This long-stop limitation period was inherently unfair as cartels are typically covert operations where injured parties lack actionable insights. Accordingly, the German parliament repealed that long-stop date in 2005 introducing a law, under which limitation periods are tolled during the pendency of cartel investigations by the competent authorities (at EU or national level). The question now answered in the affirmative by the German Supreme Court was whether the new tolling statute applied to cartel damages claims that were unexpired when the tolling statute took effect. Relying on century-old precedents, the Court found that all unexpired claims are vulnerable to subsequent statute of limitations changes. The German Supreme Court's ruling will apply to dozens of cartels, sometimes dating back to the early 2000s.

- We represented sofa manufacturer **Sofa Brands International Limited** and four of its subsidiaries in a claim for damages against Carpenter and Vita following-on from the European Commission's settlement decision establishing a cartel in the market for the supply of polyurethane foam (a key component of sofas) that sought to coordinate prices and allocate customers. The claim was resolved at a very early stage without the need for protracted litigation.

- We defended **Haymon Sports** and its CEO, **Alan Haymon**, the most prominent boxing manager in the sport today, in a $300 million antitrust lawsuit by Oscar De La Hoya and his Golden Boy promotion companies. The plaintiffs alleged that Haymon attempted to monopolize the market for promotion of Championship-Caliber Boxers through a "tie-out" clause in their management contracts, as well as a series of exclusive contracts with free network television and basic cable networks. On summary judgment, we demonstrated to the

Court that Golden Boy's claims were factually and legally meritless, and the Court agreed, dismissing all antitrust claims with prejudice and throwing the case out.

- We successfully represented **a market leading online travel** agency against a contracting partner asserting various abuse of dominance claims.

- We represented **FIFA** in a federal antitrust class action whereby plaintiffs alleged that FIFA and its co-defendants engaged in a conspiracy to force individuals who wished to attend the 2014 World Cup to purchase more-expensive hospitality packages instead of face-value tickets in order to drive up profits. At stake was not only hundreds of millions of dollars, but also FIFA's reputation as the leader of the World Cup, the world's most elite soccer event. In less than a year, not only did we get this action kicked out of court for lack of subject matter jurisdiction, but the court issued a scathing opinion finding that "plaintiffs engaged in a number of questionable actions," and stating that "a competent attorney" would not have brought this action.

- We represented client **J.G. Wentworth** in a case involving the acquisition of its largest competitor, Peach Holdings, LLC, in 2011. The plaintiff, a competitor in the structured settlement market, alleged that the acquisition resulted in an illegal monopoly and that J.G. Wentworth's subsequent use of Google AdWords to advertise both J.G. Wentworth and Peachtree to consumers was anticompetitive because it excluded other competitors from appearing in the most coveted positions on search engine results pages, diverted sales from other competitors, reduced the vigor of the competitive process, and caused consumer confusion as to the joint ownership of the two brands. The plaintiff also alleged claims of false advertising under the Lanham Act and unfair competition under California law. The Honorable Beverly Reid O'Connell, Central District of California, twice gave the plaintiff leave to amend before dismissing all claims with prejudice on the pleadings.

- We represented **Despegar.com** in a false advertising lawsuit brought by American Airlines. Just before initiating suit, American withdrew its tickets from all of Despegar's websites throughout the world. In addition to mounting a vigorous defense against American's claims, we brought an antitrust counterclaim on behalf of Despegar's U.S.-based subsidiary relating to American's anticompetitive air fare distribution scheme. On the eve of depositions we obtained a favorable settlement agreement which paved the way for Despegar to resume selling American tickets.

- We represented **TransWeb** in the defense of patent infringement claims asserted by 3M and the pursuit of antitrust claims against 3M. After a two-and-half-week trial, we obtained a unanimous jury verdict that 3M's asserted patent claims were invalid, not infringed, and (in an advisory capacity) unenforceable due to inequitable conduct. The jury also found that 3M violated the antitrust laws by attempting to enforce fraudulently obtained patents against TransWeb and awarded lost profits and attorneys' fees as antitrust damages, resulting in an approximately $26 million judgment. The district court subsequently adopted the jury's advisory verdict that 3M had committed inequitable conduct rendering the asserted patents unenforceable. On appeal by 3M, the Federal Circuit issued a unanimous and precedential decision affirming the judgments entered below, including specifically the finding of

inequitable conduct before the Patent and Trademark Office and the award of trebled attorneys' fees as antitrust damages pursuant to the *Walker Process* fraud claim.

- We represented **DIRECTV** in obtaining summary judgment on antitrust claims under the Cartwright Act brought by Basic Your Best Buy, a terminated retailer. Summary judgment was affirmed on appeal. The Plaintiff alleged that DIRECTV entered into a horizontal conspiracy with its other retailers through coercion not to bid on Basic's sales leads so that DIRECTV could acquire them at a below market price. We successfully argued that DIRECTV's restrictions on its retailers were vertical restraints on intrabrand competition subject to the rule of reason and that Basic could not establish essential elements to prove its claim, including an anticompetitive purpose or effect, a relevant market, or antitrust injury. The Court of Appeal affirmed.

- We represented **DIRECTV** in a case brought by Exclaim Marketing involving unfair and deceptive trade practices and cross-claims for trademark infringement. After a seven-day jury trial and post-trial briefing, we not only obtained a complete defensive victory for DIRECTV, but also won substantial damages and a sweeping nationwide permanent injunction against Exclaim.

- We won perhaps the most significant antitrust jury trial of recent years, defeating Rambus' multibillion dollar claims against our client **Micron,** even after Micron had pleaded guilty to antitrust violations.

- We obtained a dismissal for **Mattel** of a Sherman Act suit brought by a competitor seeking $3 billion in alleged damages.

- We successfully represented **Honeywell International** in defense of federal antitrust claims that it conspired with certain distributors to foreclose competition in the market for distribution of Honeywell fire safety systems for office buildings. We obtained a dismissal of all claims on the first motion to dismiss, having earlier won a stay of all discovery pending a ruling on the motion to dismiss.

- We successfully represented **IBM** in defense of price-fixing class action claims related to the market for Static Random Access Memory, and persuaded the class action plaintiffs to drop IBM as a defendant with prejudice.

- We successfully persuaded plaintiffs to voluntarily dismiss the claims against **Rabobank**, in the federal multidistrict Municipal Derivatives antitrust litigation – and secured this relief without any monetary payment and before any substantial discovery.

- We successfully persuaded plaintiffs to drop our client as a defendant in any antitrust class action alleging price-fixing among the manufacturers of gypsum.

- In the ***In re Flash Memory Antitrust Litigation*** **(N.D. Cal.)**, we represented **Samsung** in two price-fixing class actions, brought by direct and indirect purchasers of NAND flash memory. Although classes had been certified in similar cases in the same district, we

successfully defeated class certification motions in both actions, causing the direct purchaser representative to agree to a voluntary dismissal of all claims.

- We successfully represented **Shell Oil Products** in defense of antitrust claims by gas station owners alleging discrimination in wholesale prices of gasoline. Following a four-week jury trial, we obtained judgment in Shell's favor.
- We successfully represented **DIRECTV** in defense of two consumer class actions, with the court granting motions to dismiss all claims.

- We obtained a complete defense verdict in a four-week antitrust jury trial in the Southern District of New York, where over $250 million in damages was sought.

- We represented **Madison Square Garden** and **The New York Rangers** in defense of federal class action antitrust claims that the National Hockey League, regional sports networks, along with Comcast and DIRECTV, conspired to inflate prices for television and internet broadcast of NHL hockey games.

- We currently advise and represent a truck company in respect of potential claims that may arise from the European Commission's investigation into alleged anti-competitive conduct in the truck market.

- 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. As part of the services that it provides to health plan sponsors in the processing and payment of prescription drug claims, Express Scripts works to reduce fraud, waste, and abuse in the delivery of prescription medications by investigating, auditing and, where necessary, removing retail pharmacies from its approved network pursuant to certain contractual provisions. 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.

Quinn Emanuel is also a powerhouse on the claimant side, including serving as court-appointed lead plaintiffs' counsel in some of the most significant U.S. antitrust disputes:

- We represent a proposed class of **46 million consumers** seeking damages in the amount of at least £14 billion from Mastercard, arising from its unlawful anticompetitive interchange fees.

- In July 2017, we obtained a preliminary injunction in the Southern District of New York for **trueEX**, LLC, a fintech start-up platform for execution of interest rate swaps. The injunction blocks the defendant MarkitSERV, a unit of IHS Markit, from terminating the parties' services agreement pending determination of the action. Although MarkitSERV had a contractual right to terminate the agreement, we filed a complaint against MarkitSERV,

asserting a monopolization claim under Section 2 of the Sherman Act based on MarkitSERV's unilateral refusal to deal with trueEX. We alleged that MarkitSERV was a monopolist in the market for post-trade swap services and that MarkitSERV could not terminate our client if its motive was to harm competition. The Court agreed, and entered the preliminary injunction preventing MarkitSERV from barring TrueEx's access to certain of MarkitSERV's technology and software. This victory is notable both becayse Section 2 claims based on a defendant's unilateral refusal to deal with a rival are very challenging following the Supreme Court's decision in *Verizon v. Trinko*, and because, without injunctive relief, trueEX would have faced the prospect of a shutdown, leaving almost 60 people unemployed. Discovery is now underway with a trial scheduled for March 2018.

- We obtained an important victory in the U.S. Supreme Court on behalf of a **plaintiff class of consumers** challenging price-fixing of ATM access fees by Visa, MasterCard, and the big banks. The Supreme Court had previously granted the defendants' petition for certiorari from a D.C. Circuit decision upholding the complaint on a motion to dismiss. After we filed our merits brief as co-lead counsel for the plaintiffs, the Supreme Court dismissed the defendants' petition as improvidently granted, finding that the defendants' arguments were inconsistent with the question on which the Court had originally granted certiorari. This effectively upholds the D.C. Circuit decision in our favor.

- A federal court ruled that plaintiffs' claims can go forward in the Quinn Emanuel-led **Gold antitrust class action**, in which we allege that a group of banks conspired to suppress a worldwide benchmark price for gold known as the "London Gold Fix." The court largely upheld our complaint, which was built primarily around economic evidence showing prices moving in anomalous ways around the time of the Fix. Notably, the Court rejected the attempts by the banks to have the factual allegations about price movements discarded under a *Daubert*-like level of scrutiny, and to posit innocent counter-explanations for the anomalies. The court also rejected many other common defenses the banks have asserted in financial market manipulation cases, including that each plaintiff need detail its harm to a heightened extent, and that the size of liability was too big compared to the banks' culpability.

- Quinn Emanuel was appointed as co-lead in the ***In re Interest Rate Swaps Antitrust Litigation*** **(S.D.N.Y.)**, where the court cited, among other things, Quinn Emanuel's "impressive records of experience and success," "deep knowledge" of class action law, procedure, and antitrust law, and a "commitment to dedicating its resources to representing the interests of the class." This high-profile case against a dozen international banks and several co-conspirators challenges anticompetitive conduct in the market for interest rate swaps. In June 2017, the court issued an order denying in part and granting in part Defendants' motion to dismiss, finding that the case had pled a plausible conspiracy for the time period of 2012 onwards. The case is now proceeding into discovery.

- We represented **Salix Capital U.S. Inc.**, and were appointed lead counsel for a class of investors in credit default swaps ("CDS"), including pension funds, university endowment funds, hedge funds, insurance companies, corporate treasuries, fiduciary and depository institutions, small banks, and money managers. The defendants were twelve major Wall Street banks, including Bank of America, Goldman Sachs, and JPMorgan, as well as Markit, a financial services firm, and the International Swaps and Derivatives Association ("ISDA").

The case involved allegations that the banks, Markit, and ISDA, engaged in a multi-year conspiracy to limit transparency and boycott exchange trading in the market for CDS. We achieved a **historic settlement of over $1.86 billion plus injunctive relief**, one of the largest private antitrust settlements in history. The settlement is particularly noteworthy because two separate governmental investigations—by the Department of Justice and the European Commission—failed to result in any penalties for any of the defendants.

- Acting for **The Home Depot**, we had a central role in persuading the Second Circuit to overturn a $7.25 billion class-action settlement in an antitrust suit against Visa and MasterCard arising out of wrongfully inflated credit card swipe fees. In exchange for the cash payment and certain injunctive relief, the settlement required more than 12 million merchants to release *all* current and future claims against Visa and MasterCard—without permitting merchants to opt out of that release. The district court approved the settlement, but we persuaded the Second Circuit that the class had been inadequately represented in violation of Fed. R. Civ. P. 23(a)(4) and that the settlement violated class members' due process rights because the relief was insufficient and merchants were unable to opt out of the release. Quinn Emanuel is now pursuing an opt-out suit (seeking damages) against Visa and Mastercard for The Home Depot. The parties have conducted hundreds of depositions and fact discovery is nearly over.

- As court-appointed co-lead counsel for direct purchaser plaintiffs in ***In re Flexible Polyurethane Foam Antitrust Litigation*** **(N.D. Ohio)**, we won certification of a national class of direct purchasers, defeated the defendants' effort to have the certification decision reversed on appeal, and defeated those same defendants' motions for summary judgment. As a result of this representation, we **achieved over $430 million in settlements** for the class from nine different defendants. We have also successfully pursued claims on behalf of bedding companies in the English courts against the polyurethane foam cartelists, successfully resolving the claims without needing to serve proceedings.

- We were retained by **Samsung** after its claim that Panasonic had conspired with Toshiba and SanDisk to fix prices (through a licensing entity called SD-3C) for the right to manufacture or sell secure digital (SD) memory cards was dismissed by the district court dismissed on statute of limitations grounds. On appeal, Quinn Emanuel obtained a unanimous reversal in the Ninth Circuit, which issued a significant antitrust precedent applying the "continuing conspiracy" doctrine to the antitrust statute of limitations for the first time since 1997. The Ninth Circuit decision clarifies that the continuing conspiracy doctrine remains a powerful vehicle for bringing complaints against long-running anticompetitive conduct. Following remand, Samsung filed an amended complaint, and the district court denied Panasonic and SD-3C's motion to dismiss.

- We **achieved a settlement for $130 million** plus even more valuable non-monetary relief (in the form for prospective changes to the defendants' practices) in ***Universal Delaware v. Comdata Corporation*** **(E.D. Pa.)**, concerning alleged monopolization and anticompetitive collusion in the markets for the truck fleet credit cards used at highway truck stops. We served as court-appointed co-lead counsel for a proposed class of over 4,000 independent truck stops. Defendants included Comdata (the leading issuer of trucker fleet payment cards) and three national truck stop chains.

- We are playing a major role representing plaintiffs in the pending ***In re Egg Products Antitrust Litigation*** **(E.D. Pa.)**, which alleges that defendant egg producers conspired to reduce the supply of eggs (and thereby raise egg prices) under the guise of "animal welfare." Quinn Emanuel presented the principal argument in opposition to the defendants' motions to dismiss, served as lead courtroom counsel for plaintiffs during a successful two-day evidentiary hearing on class certification, led the successful opposition to defendants' petition to appeal the class certification ruling to the Third Circuit, had principal responsibility for briefing and arguing in court against Michael Foods' motion for summary judgment, which the Court denied. Following that denial, the firm helped to achieve a $75 million settlement from Michael Foods. With this new settlement, subject to final court approval, the total recoveries to date exceed $130 million. Most recently, the firm briefed and argued the class' opposition to the defendants' motion to decertify the class, which the Court denied in the summer of 2017, paving the way for trial against the three remaining defendants in early 2018.

- We are court-appointed co-lead plaintiffs' counsel in ***Four In One Company, Inc., et al. v. S.K. Foods, L.P., et al.*** **(E.D. Cal.)**, an alleged class action concerning price fixing in the market for processed tomato products. The firm achieved **a ground-breaking settlement in bankruptcy court** that ensures a settlement class, certified by the bankruptcy court, will now be able to maximize its recovery from debtor SK Foods. The firm has also settled (subject to court approval) with the two other defendants for a total of **$6.4 million**.

- We continue to serve as court-appointed co-lead counsel for plaintiffs in the ***In re Rail Freight Fuel Surcharge Antitrust Litigation***. Although we secured a landmark grant of class certification in 2012, the Court of Appeals for the District of Columbia in 2013 vacated that decision and remanded the case to the district court for further proceedings in light of the Supreme Court's 2013 decision in *Comcast v. Behrend* (decided more than nine months after the district court's class certification ruling and following the full submission of all appeal briefing in the *Fuel Surcharge* case). The remand proceedings are now complete and the class certification motion is pending before the court.

- We advise and represent a major international automobile company in respect of its global claims arising from the auto parts cartels. The cartels in the auto parts sector are the most wide ranging ever to be investigated in a single sector, with authorities in the US, EU, Brazil, Canada, Japan, South Korea, Australia and South Africa investigating suppliers of car parts.

- We advise and represent **CDC Cartel Damages Claims SA** in antitrust follow-on litigation against HeidelbergCement AG arising out of the cement cartel, one of the biggest follow-on actions pending in Germany. As the assignee of the original purchaser of cement from the cartelists, our client seeks an award of damages of about €100 million.

We have also acted in some of the most significant matters at the cutting edge intersection of antitrust and intellectual property law, including the emerging issues related to standards setting and licensing abuses, geo-blocking, pay for delay patent settlement agreements, and licensing of IP rights including sports broadcasting rights:

- We represented **a global telecommunications company**, the world's largest manufacturer of mobile cellular handsets, in a case against Qualcomm before the European Commission, in which our client alleged that Qualcomm's licensing practices were anticompetitive. This was related to various other matters we handled against Qualcomm, in what was probably the largest intellectual property dispute in the world. We achieved a global settlement for our client on the eve of trial.

- In 2011, we secured final victory for our client **IBM** in ***International Business Machines Corp. v. Platform Solutions, Inc.*** **(S.D.N.Y.)**, when opponent T3 Technologies voluntarily dismissed its pending appeal of IBM's summary judgment win. The case involved IBM's intellectual property surrounding its core mainframe computer business, but a key focus of the litigation was the defendants' antitrust counterclaims, which accused IBM of monopolizing the mainframe computer technology market. Defendants demanded that IBM be forced to license its mainframe technology. In November 2007, T3 Technologies intervened in the case, accusing IBM of excluding T3 from the market by refusing to license IBM's technology to T3's suppliers. After IBM and Platform solutions settled their claims on favorable terms for IBM in 2008, T3 continued to pursue its antitrust counterclaims. In 2009, the court granted IBM's summary judgment motion against T3. T3 appealed, and the firm presented oral argument to the Second Circuit in October 2010. T3 voluntarily dismissed its appeal in May 2011.

- We represented **Avery Dennison** in an antitrust case against 3M, asserting claims regarding (i) 3M's monopolization of markets for retroreflective sheeting used in highway signage, and (ii) 3M's anticompetitive practices before a standards-setting committee and in connection with bidding on contracts to supply sheeting to government agencies. The case settled on confidential terms.

- In ***EcoDisc Technology AG v. DVD Format/Logo Licensing Corporation et al.,*** we won a significant ruling dismissing all claims against our client **The DVD Forum**. The court held that a trademark licensor's cease and desist notices to licensees were protected activity under the Noerr-Pennington Doctrine. The case also held that the activities of a Tokyo-based international standards organization did not provide a sufficient basis for establishing personal jurisdiction to pursue antitrust and false advertising claims in the United States.