

# GCR

GLOBAL COMPETITION REVIEW



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**A GUIDE TO THE WORLD'S LEADING  
COMPETITION LAW AND ECONOMICS PRACTICES**  
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# United States: New York

The Libor and e-book cases are keeping many of New York's antitrust practices busy, together with the regular financial services work. Meanwhile, many of these firms have worked hard over the past decade to expand their presence in Washington, DC, and add lawyers with significant government experience to their New York-based teams

## Elite

**Cravath Swaine & Moore** has enjoyed another highly successful year, with its antitrust practice guiding clients through a wealth of significant transactions and investigations. The Cravath team consistently earns praise from its rivals for the ability of its antitrust lawyers and depth of experience in all facets of antitrust law.

Christine Varney, former assistant attorney general in charge of the US Department of Justice's (DoJ) antitrust division, has led the firm's litigation department for over a year. The practice was further bolstered this year with the promotion of Yonatan Even, who joins a partnership that also includes *Who's Who Legal* nominees Rowan Wilson and Peter Barbur, not to mention presiding partner and *Who's Who Legal* nominee Evan R Chesler.

Cravath's reputation as one of the best antitrust shops in the city is backed by an impressive docket of cases and clients. The firm is advising American Express against allegations by the DoJ that the company's restrictions on merchants are anti-competitive, and this spring negotiated a settlement to one element of the complaint. Cravath also helped semiconductor manufacturer Qualcomm persuade a federal judge to dismiss True Position's claims against its client. The team continues its institutional outside counsel role for IBM in its myriad antitrust matters. Other clients include Cummins Filtration, Thai Airways International, and the Universal Health Services, whose US\$517 million merger with a rival hospital group was cleared this year with conditions.

The team at **Davis Polk & Wardwell** boasts five *Who's Who Legal* partners – the highest in New York – including practice head Arthur F Golden, merger specialists Ronan P Harty and Paul W Bartel II, and litigators Arthur J Burke and Joel M Cohen, out of a team of 12 antitrust partners.

While the firm's presence in Washington, DC, steadily grows, the New York practice continues to handle most of the deals headlining the firm's docket. The firm was part of the advisory team for Comcast in its part of the US\$3.6 billion wireless spectrum buy-out, which was conditionally approved by the DoJ. The Davis Polk team also advised Swiss-based electronic company TE Connectivity in its €1.55

billion purchase of Deutsch Group SAS, and software company Blackbaud in its acquisition of Convio, both of which also gained antitrust approval. Davis Polk is currently advising Bank of America in antitrust lawsuits alleging a Libor price-fixing conspiracy, is continuing its work for Comcast in litigation stemming from its spectrum buyout and is representing AstraZeneca against a class of health insurers.

**Simpson Thacher & Bartlett** continues to build upon its reputation as one of New York's leading antitrust practices. Practice head Kevin J Arquit is named in *Who's Who Legal* along with Aimee H Goldstein and Joseph Tringali. Six additional partners complete the team, which rivals say is one of the pacesetters in the New York antitrust bar.

The team's defence of both class-action litigation and grand jury cartel investigations continues apace. It is currently involved in several major class actions, including representing JPMorgan Chase in the Libor and municipal bond litigations, and defending CSL and its subsidiaries in litigation in the blood plasma therapeutic products industry. The team also successfully filed motions to dismiss on behalf of both Lloyd's subsidiary Equitas and several companies in the title insurance industry.

Recent merger work includes representing Admeld in connection with its acquisition by Google and steering CoStar's purchase of LoopNet through to conditional clearance from the FTC. The antitrust team does pick up work from the firm's impressive corporate practice, but antitrust clients such as Tyco are hiring the firm for their wider corporate needs after working with the firm's quality antitrust group. Other clients include Express Scripts, CSL Behring, HCA, Tyco, JBS.

Meanwhile, *Who's Who Legal* nominee Shepard Goldfein leads the way for New York firm. With 10 partners and more than two dozen lawyers in addition to this, the Skadden antitrust team is the largest in New York by some distance. Its deep bench, along with its sister offices around the country and in Europe, have allowed the team to handle leading cases across a range of antitrust work over the past few years.

While the firm's New York antitrust practice began life handling transactions for Skadden's corporate practice, the

team's heavy hitters now spend a considerable amount of time in Washington, DC, before the US antitrust agencies, working alongside the firm's DC-based partnership, which now includes Sharis Pozen, former head of the DoJ.

The firm's antitrust team has a hand in numerous antitrust cases. It's involved in several multi-district antitrust class actions, including e-books, polyurethane foam and cement. Health care remains a key area of the firm's expertise – the team helped Express Scripts gain FTC approval of its US\$29.1 billion acquisition of Medco Health Solutions, and dismissed antitrust claims brought by pharmacies and industry associations in opposition to the merger. The Skadden team also has a major presence in sports litigation, where it has acted for the National Basketball Association and the National Hockey League, among others. Other major clients include Sprint Nextel, on whose behalf it successfully opposed the *AT&T/T-Mobile* tie-up, and HarperCollins, which it acted for in the DoJ's e-book case.

New York heavyweight **Sullivan & Cromwell** has a 17-partner team, including *Who's Who Legal* nominees Yvonne S Quinn and Steven L Holley. The firm has an extensive presence around the country and in other jurisdictions – including the firm's 35-year-old office in London – but Holley says New York still leads the firm's antitrust work. The practice prides itself on a vibrant litigation culture, describing all its lawyers as “seasoned litigators” who bring a litigator's insight not only to government enforcement and private litigation, but to also to merger work.

The firm has long-established ties to Wall Street and New York's financial services industry – ties that have been drawn tighter since the global financial crisis broke in 2008. The team has guided through transactions on behalf of Bank of Montreal, the Bank of New York Mellon Corporation and HSBC, to name a few. In litigation, the team is representing Barclays and the Bank of Tokyo-Mitsubishi in the multi-agency Libor investigation.

Microsoft continues to take much of the team's time. The firm advised the company in its approved purchase of Skype and is acting for Microsoft-led consortium CPTN Holding's purchase of patents from Novell. Meanwhile, last year marked the close of seven years of litigation facing Novell, after the team persuaded a judge to dismiss the last of the US\$3.9 billion damage claims facing its client.

The firm is involved in a wealth of multi-agency cartel investigations in areas including air cargo, marine hose, automotive lighting and LCD manufacturing, where it is defending Philips Electronics in pending multidistrict litigation.

Steven A Newborn now chairs the antitrust practice at **Weil Gotshal & Manges**, after Helene Jaffe left for Proskauer Rose after 36 years at the firm. Newborn, a *Who's Who Legal* nominee, says that although the departure of Jaffe was a “great personal and professional loss”, the firm is “busier than ever” and remains “one of few antitrust destinations in New York”, particularly for merger matters, where the firm maintains near-constant presence before the US antitrust agencies.

Newborn says the firm has worked on some of the largest transactions in its clients' histories this year, at one

point simultaneously handling five major mergers that each received second requests from the FTC or DoJ. New York also remains a litigation hotspot. American Airlines has retained Weil as counsel in its high-profile litigation against online travel agencies, and the firm is acting for Sirius XM Radio in a complaint against copyright collective SoundExchange. When acting for Panasonic Corporation, the Weil team negotiated a settlement with a class of direct purchasers. It also continues to fight several state actions and direct purchaser claims.

The team are involved in a range of other cartel work and corresponding private lawsuits, the cathode ray tube, auto parts, air cargo and e-books investigations, where it represents Simon & Schuster.

*Who's Who Legal* nominee Ilene Knable Gotts and the New York team at **Wachtell Lipton Rosen & Katz** have worked on some of the largest deals and litigations in the city. The seven-partner team includes four other *Who's Who Legal* nominees: David Neill, Joseph D Larson, David A Schwartz and Michael H Byowitz. Gotts says the lawyers work closely to handle the needs of the firm's growing client base. For merger control work, its rivals say the firm is arguably the best in city.

Wachtell has been involved in a number of major Google matters this year, including representing for Motorola Mobility in its acquisition by the search engine giant, a deal that attracted a considerable amount of antitrust scrutiny before the DoJ's unconditional approval in February. As counsel to aerospace company UTC, the team helped secure approval for a US\$18 billion offer for rival Goodrich, believed to be the largest deal in the history of the industry. The firm has also advised Temple-Inland in its deal with International Paper, Novartis in its merger with Alcon, Cooper Industries in its pending US\$11.8 billion combination with Eaton Corporation and Vulcan Materials in a hostile takeover attempt by Martin Marietta Materials, among others.

### Highly recommended

At **Axinn Veltrop & Harkrider**, antitrust practice co-chair John Harkrider and name partner Stephen Axinn have built a boutique capable of handling the most contentious and complex matters without a corporate practice to lean on. The addition of Morris Bloom, who joined the practice after 27 years at the FTC in January, was a valuable boost for the practice.

Harkrider says 2012 has been “the best year ever” for the firm. The practice was doubly successful at the GCR Awards: Harkrider was named “Lawyer of the Year” while the firm won “Merger Control Matter of the Year” for its work on Google's acquisition of airfare search software company ITA Software. The firm was also appointed by Google to work on its acquisition of Motorola and in connection with the FTC's ongoing investigation of standard essential patents.

The Axinn team also advises Red Hat in what Harkrider says is a growing interest in open-source software patent issues. The firm this year guided auto parts makers Affinia Group and WIX Filters towards a settlement ending four-and-a-half year private litigation. Axinn is also representing

FIRM	HEAD OF COMPETITION	SIZE	CLIENTS
<b>ELITE</b>			
Cravath Swaine & Moore	Christine Varney	12p	American Express, British American Tobacco, Cummins Filtration, IBM, Qualcomm, Thai Airways International, Time Warner, Qualcomm, Universal Health Services
Davis Polk & Wardwell	Arthur F Golden	12p, 3c, 14a (New York and Washington, DC)	Comcast, Emerson Electric, SDI Health, T-Mobile, PepsiCo, AstraZeneca, Bank of America, Nautilus Hyosung Holdings, CVS Caremark, VF Corporation, Campbell Company
Simpson Thacher & Bartlett	Kevin J Arquit	17p, 1sc, 4c, 1oc, 31a (firm-wide)	CoStar Group, Equitas, Fidelity National Financial, HCA Inc, Kohlberg Kravis Roberts, JPMorgan Chase, The Blackstone Group, Tyco International, Varian Semiconductor, Viacom
Skadden Arps Slate Meagher & Flom	Shepard Goldfein	10p, 22a, 8c	Sprint, Southwest Airlines, Amylin Pharmaceuticals, Cemex, Express Scripts, HarperCollins, JPMorgan Chase, National Basketball Association
Sullivan & Cromwell	Yvonne S Quinn	17p	The Bank of Tokyo-Mitsubishi UFJ Limited, Barclays Bank, British Airways, Chrysler, Diageo, Goldman Sachs, JPMorgan Chase, Microsoft, Nippon Steel, Philips Electronics
Weil Gotshal & Manges	Steven A Newborn	3p, 20a	Sanofi, SEACOR Holdings, Vantec, Thomas H Lee, Simon & Schuster, Citadel Broadcasting, Specialized Technology Resources, General Electric, ExxonMobil, American Airlines
Wachtell Lipton Rosen & Katz	Ilene Knable Gotts	7p, 4a	Google, Motorola Mobility, UTC, Temple-Inland, New York Stock Exchange, Novartis, Airgas

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engineering company Tomkin in its battle with the European Commission and defending Takeda Pharmaceuticals against monopolisation claims.

**Crowell & Moring** continues to strengthen its profile on the New York litigation scene. Counsel and *Who's Who Legal* nominee Olivier N Antoine, and the office's group of skilled litigators, have worked with Crowell's strong Washington, DC, and European teams to manage the kinds of competition cases that could make its rivals envious. The New York team has the ability and expertise to handle every kind of antitrust issue, from mergers to criminal prosecutions – and do it well.

The team worked on some of the largest and most sophisticated mergers last year, including achieving the successful clearance of United Technologies' US\$18.4 billion acquisition of Goodrich – the largest aerospace transaction in history, representing Coventry Health in its US\$5.7 billion sale to Aetna, and acting for DuPont in a US\$4.9 billion sale of its coatings business.

The collapse of the AT&T/T-Mobile merger did not signal the end of the firm's work in the technology sector. The team has successfully argued for the dismissal of claims that AT&T worked with Apple to monopolise the iPhone and has represented Oracle in obtaining a substantial recovery in the

DRAM litigation. Other antitrust-IP clients include Alcoa, Avaya, Cisco, Motorola, Mozilla, Rambus and Via Licensing.

*Who's Who Legal* nominee Peter Sullivan headlines the impressive New York practice at **Gibson Dunn & Crutcher**, which is made up of 11 partners with a total of 31 lawyers practising antitrust law. The New York practice has taken on an impressive slate of cases for major clients over the past 12 months.

Notably, the firm is lead counsel to Apple in the DoJ's e-book case and the related litigation brought by 33 attorneys general. It is also defending UBS in 17 antitrust class actions filed around the country alleging collusion on Libor rates that have been consolidated in federal court in New York. Representing NBC Universal, the firm successfully achieved the dismissal of an action brought by a class of over 90 million cable and satellite television subscribers. Last year also saw the successful end of a lawsuit facing headlining client Intel, as the firm was able to eliminate 98 per cent of damages claimed by the New York attorney general, who alleged the company monopolised the microprocessor market.

The team is also representing Hewlett-Packard Company in its litigation battle against Oracle, and German automobile company TRW as part of the DoJ's auto parts investigation.

FIRM	HEAD OF COMPETITION	SIZE	CLIENTS
<b>HIGHLY RECOMMENDED</b>			
Axinn Veltrop & Harkrider	John Harkrider	5p, 16a	Google, UFC, HiP Foundation, Group Health Incorporated, Omnicare
Crowell & Moring	Olivier N Antoine, Daniel Zelenko	27p, 10c, 27a (firm-wide)	Alcoa, AT&T, Avaya, Daybreak Foods, DuPont, Enterprise Holdings, Humana, Kaiser Health, Lonza AG, Motorola, Nestlé S.A., Reed Elsevier Inc., Rio Tinto, Siemens, United Technologies
Gibson Dunn & Crutcher	Peter Sullivan	11p, 19a	Apple Inc., Intel Corporation, Hewlett-Packard Company, UBS AG, Microsoft, 3M Corporation, Chungwa Picture Tubes, Micron Technology, AkzoNobel, Ticketmaster, Coty
Jones Day	Fiona A Schaeffer	4p, 3a	Bombardier, Cigna, Daniels Corporation, Hearst Communications, Houghton Mifflin Harcourt Publishing, Procter & Gamble, MasterCard, Sanofi, Sirius XM
Kaye Scholer	Saul Morgenstern	6p, 6c, 20a (firm-wide)	Novartis, Norfolk Southern, Random House, Hoechst AG, Infineon Technologies
Shearman & Sterling	Beau Buffier	7p, 1c, 20a	Cargolux, Citigroup, NASDAQ, Sony, Barclays Bank, ArcelorMittal, Thomson Reuters, Viacom, Thomson Reuters, Citigroup, BASF, Sony, Cargolux, Nasdaq, Bunge, Hilton, JBS
Wilson Sonsini Goodrich & Rosati	Jonathan Jacobson	3p, 7a	Adobe, Caregroup, Clear Channel, Coca-Cola, Google, HTC, Live Nation, Micron Technology, Mylan, Netflix, Netgear, The Nielsen Company, NVIDIA, Transitions Optical
White & Case	Joseph Angland, Robert Milne	9p, 31a	Toshiba, Experian, Saudi Aramco, Belarusian Potash Company, Pfizer, Novartis, Sandoz, Metso Corporation

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

Partner and *Who's Who Legal* nominee Fiona A Schaeffer leads the way for the New York practice of US antitrust heavyweight **Jones Day**. The four-partner, three-associate team handles a range of antitrust matters, including mergers and acquisitions, and litigation. The team also provides substantial support to the firm's Latin America practice, particularly relating to cross-border transactions involving Brazil.

On the merger side, Schaeffer and her team advised health insurance company Cigna Corporation on the anti-trust aspects of its purchase of HealthSpring, Eastman Chemical Company on its multi-jurisdictional acquisition of chemicals producer Solutia, and Sanofi through the FTC's investigation of the divestment of its dermatology business. The team's litigation docket has also been busy, with the team coordinating Hearst Communications' litigation against magazine publishers and defending Sirius XM against a class made up of satellite radio subscribers, which ended in a settlement this year.

**Kaye Scholer** is another New York institution that maintains an impressive slate of antitrust work in the city. Practice head Saul Morgenstern leads a team of four partners and, at times, more than 20 other antitrust lawyers in litigation, cartel and merger matters that are often placed at the intersection of intellectual property and antitrust law. While pharmaceutical clients have been a speciality, the firm has proven recently that its abilities extend to all segments of the economy.

On the pharma front, the firm achieved a summary judgment for major client Novartis and 15 other drug manufacturers relating to price-fixing claims and also led Novartis through its US\$1.5 billion acquisition of Fougere Pharmaceutical. It is defending Pfizer's King Pharmaceuticals in a cluster of class actions brought on behalf of direct and indirect purchasers in a "pay-for-delay" case. In other sectors, the firm is acting for Random House in the DoJ's e-book investigation and is defending Norfolk Southern against in several class actions alleging price fixing on freight shipments.

FIRM	HEAD OF COMPETITION	SIZE	CLIENTS
<b>RECOMMENDED</b>			
Debevoise & Plimpton	Gary Kubek, Daniel Abuhoff	N/A	N/A
Greenberg Traurig	James Serota	11p, 2c, 8a	First American Financial Corporation, Northeast Pharmaceutical Group, Ganz, Tomra of North America, IESI Corporation, Lorillard
Hogan Lovells	Janet McDavid, Sanford M Litvack, Susan Bright (global)	3p, 8a	Air Canada, American Express, AvMed, Bollore Groupe, Ford Motor Company, Home City Ice, IBM, News Corporation, UnitedHealthcare Group
Linklaters	Thomas McGrath	2p, 1a	Deutsche Börse, Dish Network, Air France, BP, WellPoint
Mayer Brown	Richard Steuer	5p, 6a	Société Générale, EMI, Temple-Inland, BASF, ITWAL
O'Melveny & Myers	Andrew Frackman	4p, 1c, 2a	Bank of America, Capital One Financial, Honeywell International, FedEx, Aveta
Paul Weiss Rifkind Wharton & Garrison	Aidan Synnott	N/A	N/A

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The New York practice of **Shearman & Sterling** has again established itself as one of the deepest and most well-rounded antitrust groups in New York. Seven partners handle antitrust issues in the office, including practice leader Beau Buffier and *Who's Who Legal* nominees Wayne D Collins, Lisl J Dunlop and Kenneth S Prince, who has won considerable praise from his colleagues in the bar.

On the merger side, the company has been busy with multiple big-ticket deals, including advising Citigroup on the divestment of its EMI businesses, NASDAQ in its attempted hostile takeover of NYSE Euronext, and ArcelorMittal in its divestiture of Skyline Steel and Astralloy. Thomson Reuters remains an important source of work with its acquisition of FX Alliance as the latest example.

As for contentious matters, Buffier and his colleagues are advising six different clients in cartel investigations. Notably, the group acted for Barclays Bank in recently settled interchange fee antitrust class actions and remains involved in the air cargo litigation for long-standing client Cargolux.

No New York antitrust team punches above its weight quite like west-coast transplant **Wilson Sonsini Goodrich & Rosati**. The team played a part in two matters recognised in this year's *GCR Awards* – its representation of Seagate in

its acquisition of Samsung's hard drive business was selected as "Matter of the Year", and its successful defence of Netflix in a multidistrict class action was named "US Behavioural Matter of the Year".

The three-partner practice, which includes *Who's Who Legal* nominees Jonathan Jacobson and Charles E Biggio, is well known for its experience in the high-tech sector. The firm is acting for Google in several matters, including the FTC's investigation of search and advertising, while other major clients include HTC, Transitions Optical and Micron Technology. The team also acts as regular counsel to a diverse range of clients on top of this, including Coca-Cola and Pixar. This year also saw the successful conclusion of a decade-long class action litigation facing major client Live Nation, after a judge granted Wilson's plea for summary judgment.

Led by Robert Milne and *Who's Who Legal* nominee Joseph Angland, **White & Case's** nine-partner New York antitrust team continues to expand, with 31 associates now involved in antitrust work.

The team has an enduringly strong foothold in the pharmaceutical sector, where it is at the heart of much of the litigation fuelling the so-called "pay-for-delay" debate. The New York team is acting for Pfizer in several matters, including



the Effexor litigation, which has recently attracted FTC intervention, and 19 class actions regarding Lipitor, the highest-selling pharmaceutical of all time. Work also continues apace for major client Novartis. The firm this year steered through the dismissal of antitrust actions brought by pharmaceutical manufacturers, and the team continues to defend the company against actions brought by health insurers. White & Case has also successfully represented Novartis affiliate Sandoz in battles with Sanofi-Aventis over contraventions of the Robinson-Patman Act.

But the New York team's reach extends well beyond health care – it worked alongside the Washington, DC, office in helping Toshiba escape from nearly all US\$2.7 damages in the first US antitrust class-action jury trial involving the extraterritorial application of the US Sherman Act. It also defended Toshiba in the TFT-LCD criminal investigation.

### Recommended

**Greenberg Traurig** now has an impressive 11 partners handling antitrust matters in New York. This year the team, led by James Serota, completed 78 summary judgment wins and appellate victories for First American Financial Corporation in the sprawling title insurance antitrust litigation. The firm secured a summary judgment win for Progressive Waste and picked up a new client in Concord Associates as plaintiff's counsel in a US\$500 million monopolisation case in the gaming industry. The team also acted for tobacco company Lorillard in an indirect class action alleging price-fixing. Treble damages amounting to billions of dollars were sought but the court granted summary judgment in a matter that is now under appeal.

Headlined by renowned litigator and *Who's Who Legal* nominee Sanford M Litvack, the New York office of **Hogan Lovells** has the skills to take on the largest matters in antitrust the country has to offer. The team regularly advises major New York-based clients on antitrust issues, including IBM Corporation and American Express, as well as handling antitrust issues for major international companies, including Air Canada, Ford and UnitedHealthcare. The firm recently advised H&R Block on merger litigation in which the DoJ sued to thwart H&R Block's acquisition of TaxAct. On behalf of Home City Ice, it negotiated a US\$13.5 settlement with a class of direct purchasers. The team has served as co-counsel to IBM on a number of matters, including US and European investigations related to its mainframes business.

The New York antitrust team at **Linklaters** draws on the experience of former enforcement officials, commercial litigators and antitrust specialists. The practice is headed by Tom McGrath, while the experience of *Who's Who Legal* nominee Jeffrey Schmidt as former head of competition law enforcement at the FTC is another major draw for clients. The team advised Deutsche Börse on its approved – though ultimately abandoned – merger with NYSE Euronext, while fending off the hostile bid by NASDAQ. The team is now taking on another major transaction in its representation of Glencore on its proposed merger with Xstrata. In cartel work, Linklaters acted for Air France KLM in the air cargo cases, and was liaison counsel for the defence group in the air cargo litigation.

At **Mayer Brown**, partner and New York practice head Richard Steuer handles litigation, deals, government investigations and counselling. The rest of the New York antitrust team shares Steuer's dexterity, advising major clients in the full spectrum of antitrust matters. Class actions have been a heavy focus for the office over the past year. The team is involved in several, including those in the banking and digital music industries. It is acting for Société Générale in municipal bond litigation and Temple-Inland in a corrugated products lawsuit. The team also specialises in pharmaceuticals and health care in general. EMI, BASF and ITWAL are all regular clients.

Partner Andrew Frackman leads the New York office of DC-based **O'Melveny & Myers**. The O'Melveny team has made an impressive showing in New York, especially in the litigation matters that are the practice's bread and butter. Some of these are independently run, while others include Washington, DC, superstar partner Richard Parker. The team's docket includes work for financial industry companies that are the backbone of the New York economy. It is representing Apollo in a long-running class action litigation accusing various private equity firms of conspiring to depress prices for multibillion-dollar takeovers and has acted for Capital One in the defence of various antitrust actions. Other clients include Honeywell International, FedEx and US Airways, on whose behalf it took up a lead-counsel role in litigation against Sabre and other travel agents.