

U.S. States Allege Broad Generic Drug Price-Fixing Collusion



Image by [Images Money](#)

A large group of U.S. states accused key players in the generic drug industry of a broad price-fixing conspiracy, [reports Reuters](#).

Reporter Karen Freifeld writes: “The states said the drugmakers and executives divided customers for their drugs among themselves, agreeing that each company would have a certain percentage of the market. The companies sometimes agreed on price increases in advance, the states added.”

The suit names 18 companies and subsidiaries and named 15 medicines. Mylan NV, Teva Pharmaceuticals USA, Ascend Laboratories and Encure Pharmaceuticals are among the 18 companies named.

The Los Angeles Times also covered Mylan’s challenges: “[A price-fixing noose tightens around Mylan, the company that profited from the Epipen.](#)”

[Read the Reuters article.](#)

[Intel Scores Victory \(For Now\) In Fight Against \\$1.3 Billion Fine](#)

Fortune [reports](#) that Intel has won a victory of sorts in its long-running fight against a €1.06 billion (\$1.26 billion) antitrust fine that was levied against it by the European Commission eight years ago.

David Meyer writes that the Court of Justice of the European Union, the EU's top court, on Wednesday set aside the 2014 ruling of the General Court, which upheld the 2009 fine, on the basis that the General Court had made a legal error.

"This does not mean Intel is off the hook – rather, it means the General Court needs to examine Intel's legal arguments more closely than it did before, potentially giving Intel a chance to have the fine annulled or reduced," Meyer explains.

[Read the Fortune article.](#)

[Join Our LinkedIn Group](#)

Former FTC Chairman Timothy J. Muris Joins Sidley in Washington, D.C.

Timothy J. Muris has joined [Sidley Austin LLP](#) as senior counsel in the firm's Antitrust/Competition practice.

Muris, a former chairman of the Federal Trade Commission (FTC), has experience in antitrust enforcement as well as in key consumer protection issues, including advertising, consumer finance and privacy regulation, the firm said in a release.

The release continues:

During his lengthy tenure with the FTC, Muris held multiple high-level posts and was the only person ever to direct both of the FTC's enforcement bureaus. It was under his leadership that the FTC established the National Do Not Call Registry and brought numerous high-profile cases against firms for misusing government practices to raise prices. He also led the agency's efforts to bring lawsuits against physicians for price-fixing and in challenging fraudulent and deceptive advertising and health claims to protect consumers. In addition, Muris is responsible for spearheading the FTC's efforts to implement increased antitrust scrutiny of intellectual property issues and hospital mergers.

Muris has also spent a significant amount of time in private practice representing clients before the FTC, the U.S. Department of Justice and the European Commission as well as other domestic and international agencies. He regularly

advises clients on antitrust issues in high-stakes mergers and acquisitions, as well as on important consumer protection issues pertaining to advertising, consumer finance and privacy. He serves as a George Mason University foundation professor at the Antonin Scalia Law School, a post he's held since 1988.

"Tim is recognized as being among the best antitrust lawyers in the U.S. and we are delighted he chose to join Sidley," said Mark Hopson, managing partner of Sidley's Washington, D.C. office. "He's earned the respect of both the business and government communities for his vast knowledge of antitrust and consumer protection practices. Having Tim on our team puts us in an enviable position and adds to our already considerable capabilities in helping clients navigate these challenging issues."

[Join Our LinkedIn Group](#)

[Antitrust Lawyers Leiv Blad and Zarema Jaramillo Join Lowenstein in D.C. Office](#)

[Lowenstein Sandler LLP](#) announced that Leiv Blad has joined the firm as a partner and co-chair of the firm's antitrust practice in Washington, D.C. Blad joins with Zarema Jaramillo, who becomes senior counsel in the firm's antitrust practice. Both join from Morgan, Lewis & Bockius.

In a news release the firm said, Blad has spent nearly two

decades representing domestic and international companies in complex antitrust investigations and litigation, including matters involving price fixing and monopolization, including defending clients in the pharmaceutical and financial services industries, both of which have been the subject of government scrutiny for pricing practices.

Jaramillo has antitrust experience, providing counseling and representing clients in investigations related to mergers and acquisitions and complex antitrust class actions. She represents clients from the financial services, technology, life sciences, and telecommunications and other sectors before the U.S. Federal Trade Commission, the U.S. Department of Justice, and foreign competition agencies. Jaramillo also advises clients in government investigations and civil litigation involving violations of U.S. Securities Law and the Foreign Corrupt Practices Act.

The release continues:

Said Mr. Blad, "Lowenstein's sophisticated and accomplished team in D.C. impressed me, as did the firm's entrepreneurial culture and client focus. I was particularly struck by the fact that every attorney I met throughout the firm could articulate with great clarity the strategy of his or her practice group and of the firm. I don't know of another firm with that kind of strategic focus. I am grateful to be part of such a strong team as we help steer our clients through an evolving antitrust environment."

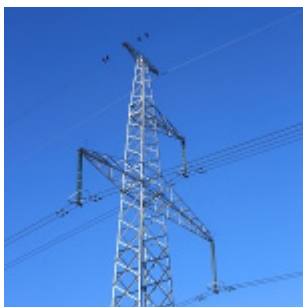
"Leiv is a leader among his peers with a strong reputation in the antitrust arena. Zarema brings important additional strengths to the team," said Jeffrey Blumenfeld, Co-Chair of Lowenstein's antitrust practice. "Leiv's extensive experience navigating the D.C. landscape will be invaluable to our clients. As we continue to grow our Washington office, Leiv and Zarema add to our already significant capabilities in core sectors including life sciences and

financial services.”

Gary Klein of Klein Landau provided legal search services to the firm on this placement.

[Join Our LinkedIn Group](#)

[How a Typical Tolling Agreement Cost Duke Energy Corporation \\$600,000](#)



Tolling agreements are a common feature of the energy industry. Through these agreements, a buyer will supply fuel to an electric generator and, in return, the generator will provide power back to the buyer, according to [an article](#) posted on the website of [Hogan Lovells](#).

But a court recent ruled that such a tolling agreement, when entered into between companies that intended to merge, violated the Hart-Scott-Rodino Antitrust Improvements Act of 1976, leading to the imposition of significant financial penalties against the buyer.

“Parties that have or may have an interest in acquiring the other party to the agreement must be careful to avoid assuming

beneficial ownership of the target before complying with the HSR Act's reporting requirements if HSR notification would be required," the article says. "Failure to do so may result in the tolling agreement being construed as evidence of gun-jumping and the acquiring person being subject to significant penalties of up to \$40,654 per day for noncompliance."

[Read the article.](#)

[Join Our LinkedIn Group](#)

[Judge Blocks \\$54 Billion Anthem-Cigna Health Insurance Merger](#)

A federal judge blocked the \$54 billion merger between health insurance giants Anthem and Cigna, saying the deal would increase prices and reduce competition, according to a report by [The Washington Post](#).

[Carolyn Y. Johnson](#) reports that this ruling is the second recent court decision to uphold the Justice Department's opposition to deals that would have consolidated the five largest insurers in the United States into three companies.

"The evidence has also shown that the merger is likely to result in higher prices, and that it will have other anticompetitive effects: it will eliminate the two firms' vigorous competition against each other for national accounts,

reduce the number of national carriers available to respond to solicitations in the future, and diminish the prospects for innovation in the market,” U.S. District Judge Amy Berman Jackson wrote in a 12-page order.

In the merger agreement, Anthem had agreed to pay Cigna a \$1.85 billion termination fee if the deal is blocked because of regulatory interference.

[Read the *Washington Post* article.](#)

[Join Our LinkedIn Group](#)

[Event – A Wake-Up Call: Antitrust Compliance in the U.S.](#)

Bloomberg BNA will present a [complimentary event](#) to discuss the widespread corporate apathy towards antitrust risks – and why the business community needs a collective wake-up call.

The event will be at the Bloomberg LP offices at 731 Lexington Ave. in New York on Thursday, Jan. 19, 2017, 8-10 a.m.

Robins Kaplan LLP is an underwriter of the event, will carries up to 1.5 CLE credits.

“Companies rely on their sales personnel to drive business growth and generate new revenue, while the in-house compliance team must prevent, detect, and report actions that could draw

scrutiny from antitrust enforcement agencies,” Bloomberg says on its website. “But what if those employees don’t even know what types of conduct is problematic under the antitrust laws?”

Bloomberg BNA and Robins Kaplan LLP conducted a survey of corporate sales and compliance professionals, and the results show a widespread lack of awareness of antitrust guidelines. Among the alarming findings: 25% of respondents are engaged in pricing activities that could rise to the level of illegality.

The event is designed for in-house counsel, compliance and business executives responsible for antitrust compliance.

[Register for the event.](#)

[Join Our LinkedIn Group](#)

[Lex Machina Expands Legal Analytics Platform to Cover Antitrust Litigation](#)

[Lex Machina](#), a LexisNexis company, announced the latest expansion of its Legal Analytics® platform into antitrust law, following its recent expansion into securities law in July.

In a release, the company said the move is part of the company’s ongoing plan to expand its Legal Analytics platform beyond intellectual property law to cover every federal practice area, including commercial, product liability, employment, commercial bankruptcy and more.

The release continues:

With the expansion, antitrust litigators will be able to use Legal Analytics to make data-driven decisions based on detailed information from more than 7,800 antitrust cases active since 2009 which have thus far resulted in more than \$20 billion in damages awarded. The platform gives attorneys a competitive advantage in antitrust litigation by providing strategic insights about trends in antitrust case timing, resolutions, findings, damages and remedies, as well as actionable intelligence on opposing counsel, law firms, parties, judges, venues, and more. These capabilities also extend to Multidistrict Litigation (MDL) – complex cases that could potentially have hundreds of plaintiffs across dozens of jurisdictions.

“In antitrust litigation, where potentially billions of dollars and companies’ entire futures could be at stake, Legal Analytics for Antitrust helps law firms, in-house counsel and government attorneys develop winning case strategies and data-driven arguments based on the outcomes of thousands of prior cases,” said Josh Becker, CEO of Lex Machina. “The power of Legal Analytics truly becomes apparent in multidistrict litigation where untangling some of the more complex cases could encumber attorneys for months, instead of finding the desired insights in minutes.”

As part of the product development process, Lex Machina interviewed antitrust litigators from top law firms, major corporations and government agencies to better understand their particular antitrust needs. The product team incorporated their feedback directly into the new offering. Some of the new features include:

- Expanded case coverage: Attorneys can now analyze federal cases brought under the Sherman Act, Clayton Act, Robinson-Patman Act, or Federal Trade Commission Act.
- New data source and case linking: Existing Lex Machina case data is integrated with data from the Judicial Panel on

Multidistrict Litigation to provide accurate MDL case counts. The platform also links procedurally connected cases to let attorneys analyze them in the right context.

- Antitrust findings analytics: New tags have been added for Class Actions, DOJ/FTC Enforcement cases, Robinson-Patman Act price discrimination cases, and cases where counterclaims were asserted.
- Enhanced case timing analytics: Median days have been added to Dismissal, Class Certification and Summary Judgment Orders – useful for budgeting, resource allocation and legal strategy.

Lex Machina's Legal Analytics is a "must have" tool for litigators in many of America's top law firms and corporations. Half of the AmLaw100 law firms use Lex Machina to craft successful litigation strategies, win cases and land new clients. Due to the depth and breadth of antitrust cases, which span every industry, Legal Analytics can help attorneys gain a competitive edge in antitrust litigation.

Prior to launch, Lex Machina mined all of the antitrust cases filed since 2009 and identified a number of important trends and insights, including:

- Judge Marianne Battani of the Eastern District of Michigan has handled the most antitrust cases (393 cases) since 2009 – more than twice as many as the next leading judge.
- The top defendants since 2009 include financial institutions like JPMorgan Chase & Co (270 cases), Goldman Sachs & Co (192 cases), UBS (188 cases), and Deutsche Bank (185 cases); electronics companies like Panasonic (265 cases) and Hitachi (253 cases); and several airlines, including Delta (231 cases), American Airlines (212 cases), Southwest (211 cases), and United Airlines (206 cases).
- Cotchett Pitre & McCarthy is the top law firm representing plaintiffs (255 cases), followed by Miller Canfield (248 cases), and Spector Roseman Kodroff & Willis (236 cases).
- Latham & Watkins (340 cases), Gibson Dunn & Crutcher (334

U.S. Attorney General Loretta E. Lynch said the proposed mergers “would leave much of the multitrillion-dollar health insurance industry in the hands of three mammoth insurance companies.”

“If these mergers were to take place, the competition among insurers that has pushed them to provide lower premiums, higher-quality care and better benefits would be eliminated,” she said.

“The companies responded by vowing, in varying degrees, to fight the government’s challenge,” report Leslie Picker and [Reed Abelson](#). “Aetna, which had hoped to gain an advantage by being the first to reach a deal, aggressively defended its proposed merger, which it contended was different from the larger Anthem-Cigna deal that followed.”

[Read the article.](#)

[Governance Challenges 2016: M&A Oversight](#)



The National Association of Corporate Directors’ 2016 edition of Governance Challenges combines guidance from five strategic content partners of the NACD with broad M&A expertise. The report addresses the importance of early board engagement in strategy, the need for proactive dialogue with

all key stakeholders, and the imperative to balance short-term and long-term goals throughout the M&A process.

A complimentary copy of the report is [available for download](#).

Boards can use this new resource to:

- identify “drive and drag” factors that can advance or delay transaction results;
- monitor key aspects of the due-diligence process before approving the deal;
- understand the tax implications of a prospective transaction;
- consider exposure to risk from antitrust liability, cybersecurity challenges, and environmental liability; and
- select and retain talent and adjust compensation arrangements during the leadership change.

[Download the report.](#)

[Reverse Break-Up Fees and Specific Performance: A Survey of Remedies](#)

Thomson Reuters is offering a complimentary copy of the 2016 edition of Practical Law’s study, [Reverse Break-Up Fees and Specific Performance](#): A Survey of Remedies for Financing and Antitrust Failure.

This year's edition analyzed all 85 merger agreements entered into in 2015 for debt-financed acquisitions of U.S. reporting companies in deals valued at \$100 million or more. The study provides a detailed guide to the negotiation of remedies for buyer breach by:

- Examining how deal characteristics such as the size of the transaction and the profile of the buyer affect the negotiation of enforcement and monetary remedies.
- Reviewing the sizes of reverse break-up fees in leveraged deals as percentages of deal value and as multiples of the target company's break-up fee, and compares reverse break-up fees that cap the damages payable by the buyer against those that do not.
- Analyzing other techniques for allocating risk in debt-financed transactions, including the buyer's financing covenants, the definition of the lenders' marketing period, and the agreement's "Xerox" provisions.

New this year, the study contains a supplement analyzing antitrust-triggered reverse break-up fees and other mechanisms for allocating the risk of antitrust failure. For this inquiry, the study surveyed all 49 agreements in the Practical Law What's Market M&A database for 2015 that contained a reverse break-up fee payable for antitrust failure. These included 27 agreements for the acquisition of a US reporting company in deals valued at \$100 million or more and 22 publicly filed agreements for private M&A deals involving the acquisition of a US company or business valued at \$25 million or more.

[Download the study](#) and receive free temporary access to Practical Law online resources.

When Customer Supply Contracts Lead to Trouble

The Federal Trade Commission (FTC) continues to aggressively enforce the antitrust laws, reports [Melanie A. Hallas](#) of [McDermott Will & Emery](#).

“On April 27, 2016, the FTC took action against Victrex, plc and its wholly owned subsidiaries, Invibio, Inc. and Invibio Limited (collectively, Invibio) because of exclusivity terms in its supply contracts. The consent order requires Invibio to cease and desist from enforcing most of the exclusivity terms in its current supply contracts and generally prohibits Invibio from requiring exclusivity in future contracts. Invibio is also prohibited from using other pricing strategies, such as market-share discounts, that would effectively result in exclusivity,” she writes.

In [her post](#), she explains that exclusivity terms that arguably have the effect of harming competition may raise antitrust concerns.

[Read the article.](#)

Justice Scalia's Death Prompts Dow Chemical to Settle Price-Fixing Case

The death of Supreme Court Justice Antonin Scalia has prompted Dow Chemical to settle a class action lawsuit and pay out \$835 million, [reports CNN](#).

“The case involved an allegation that Dow and other makers of a chemical known as urethane had conspired to fix prices between 1999 and 2004,” the report says. “Other defendants in the case settled with the plaintiffs but the case against Dow went to a jury trial.”

Dow was facing a \$1.1 billion judgment in a price fixing case, and the company was appealing the verdict all the way to the Supreme Court. But now Dow Chemical says it no longer thinks it could win its appeal without Scalia on the bench.

[Read the article.](#)

Quarles and Brady Partner Andre Fiebig Publishes Two Books

[Andre Fiebig](#), a partner in [Quarles & Brady LLP](#)'s Business Law practice group, has recently published two books. He co-authored the fourth edition (2016) of one of the leading works

on international antitrust: "Antitrust and American Business Abroad," published by Thomson Reuters, and is the author of "EU Business Law," published by the Business Law Section of the American Bar Association.

"Antitrust and American Business Abroad: (4th ed. 2016) builds upon the work of previous editions and discusses recent developments in the ever-changing world of international antitrust law. Divided in six parts, the result is a comprehensive look at the contemporary landscape of international antitrust that is grounded in historical context.

"EU Business Law" is an analysis and explanation of European Union business legal issues ranging from competition and antitrust law to electronic commerce and consumer protection.

Fiebig's practice focuses on corporate and antitrust law with an emphasis on mergers and acquisitions, international joint ventures, and commercial law.

He is currently an adjunct professor at Northwestern University School of Law where he teaches Mergers & Acquisitions. Andre also teaches regularly at Bucerius Law School in Hamburg, Germany and Hong Kong University.

"I am happy to be able to provide American-based corporations with an understanding of international business issues, and share practical information on issues affecting companies that do business abroad," said Fiebig.

[High Court Allows State Law Antitrust Claims to Proceed Against Interstate Pipelines](#)

The U.S. Supreme Court on April 21 ruled that state law antitrust claims brought against interstate pipeline companies by a group of manufacturers and other retail buyers of natural gas are not pre-empted by the Natural Gas Act, according to a report from [Mintz, Levin, Cohn, Ferris, Glovsky and Popeo](#).

The court considered whether the Natural Gas Act pre-empts state law antitrust claims when the challenged conduct affects both federally regulated wholesale natural gas prices and non-federally regulated retail natural gas prices, explained author [Dionne Lomax](#).

“According to the majority, the state law price-manipulation claims were not pre-empted because they were directed at practices affecting retail rates, which falls squarely on the states’ side of the dividing line,” she wrote. “Justice Scalia and Chief Justice Roberts strongly dissented.”

[Read the report.](#)

[Drug Maker Accused of Price Gouging](#)



A lawsuit alleges Gilead Sciences is price gouging by pricing its Sovaldi hepatitis C treatment at \$1,000 a pill, the *Wall Street Journal* reports in one of its blogs.

The Southeastern Pennsylvania Transportation Authority, which serves the greater Philadelphia area, last week filed an unusual lawsuit claiming that Gilead is price gouging. The drug maker charges \$84,000 for a 12-week regimen, or \$1,000 a pill.

“In arguing its case, the transit agency claims that, by using ‘exorbitant pricing,’ Gilead has made it difficult for some consumers and government programs to afford its medication and, subsequently, violated antitrust laws,” the blog reports.

A Gilead spokeswoman is quoted as saying the lawsuit is “completely devoid of merit.”

[Read the story.](#)

Antitrust Treatment of
Physician Practice
Acquisitions

warned that the probe in China, which began last year, presented “significant challenges” in forecasting the year ahead.

Qualcomm recently disclosed two new investigations had begun in the last month, one into its patent licensing business by the Federal Trade Commission in the United States and the other into its baseband chip set business in Europe.

[Read the story.](#)

[Apple Facing Trial for Music Downloading Restrictions](#)



Apple will try to defend against allegations that it violated antitrust laws by trying to restrict music downloads for iPods to its iTunes store. Jury selection in the federal trial will begin Nov. 19, reports the *San Jose Mercury News*.

While Apple abandoned the restrictions in question years ago, the stakes are still high – damages could exceed \$1 billion if antitrust violations are proven, and an adverse verdict would amount to a black eye for the company’s past business practices, reports the *News*.

It continued, “The antitrust case was first filed in 2005, alleging Apple created a monopoly by blocking iPod owners from going to competitors for their music. The central issue involved Apple’s ‘FairPlay,’ a so-called digital rights management system, or DRM, that ensured iPod owners could only

download songs from the iTunes store.”

[Read the story.](#)

Hot Topics in Antitrust Compliance and Enforcement

✘ Baker & McKenzie presents a free on-demand webinar on how companies can address antitrust issues and enforcement in their compliance programs.

The webinar includes discussion on cascading cartel investigations, information exchange, dawn raid protocols, and document management. This webinar is an installment in the firm’s Antitrust and Competition Strategies Series.

Presenters for the webinar are Edward W. Batchelor, a partner in the Baker & McKenzie Brussels office; Katherine Funk, a partner in the firm’s Washington, D.C., office; Dr. Akira Inoue, a partner in the Tokyo office; and María Carolina Pardo Cuéllar, a partner in the Bogota office.

[Watch the on-demand webinar.](#)