

Jeffrey W. Brennan
Partner
Washington
+1 202 261 3326
(fax) +1 202 261 3333
jeffrey.brennan@dechert.com

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Litigation

Antitrust/Competition, Life Sciences/Pharmaceutical

Experience and Background

Jeffrey W. Brennan, the FTC's principal drafter of the Commentary on the Horizontal Merger Guidelines, has extensive experience within the pharmaceutical and health care industries, focusing his practice on mergers, litigation, government investigations, and counseling.

Chambers USA ranks Mr. Brennan as a top antitrust attorney in Washington, D.C. and adds that he is an "extremely professional and excellent litigator" who is popular with clients for a "practical and knowledgeable approach." Best Lawyers in America 2010 and Super Lawyers also recognizes Mr. Brennan for his work in antitrust law.

In 2001, from his position as antitrust partner in a large law firm, Mr. Brennan joined the Federal Trade Commission (FTC)'s Bureau of Competition as Assistant Director, where he ran the Health Care Services and Products Division. In 2005, he became the Bureau's Associate Director. Upon departing the FTC for Dechert in 2006, the FTC Chairman presented Mr. Brennan with the Commission's Award for Distinguished Service for his leadership in advancing the Agency's competition mission--with particular recognition for his achievements in the health care sector and in mergers analysis.

As head of the FTC's Health Care Services and Products Division, Mr. Brennan supervised more than 30 attorneys and professional staff in antitrust investigations, litigation, and policy initiatives focused on health care competition--especially in the pharmaceutical, hospital, and medical profession sectors. He and his staff developed cases in emerging areas of antitrust law regarding patent settlement agreements between brand and generic drug manufacturers, abuse of government process in drug patent procurement and FDA procedures, sham litigation, and other exclusionary practices aimed at stifling rival entry and price competition. These matters were in addition to other investigations and litigation involving core antitrust areas, including mergers, joint ventures, price-fixing arrangements, and horizontal restraints. More than 30 cases under Mr. Brennan's direction resulted in FTC consent orders.

As FTC Associate Director, Mr. Brennan oversaw and directed merger and non-merger investigations across the Bureau of Competition and the FTC's regional offices, as well as special projects involving health care competition issues. He was chief FTC drafter of the Commentary on the Horizontal Merger Guidelines, which is the only comprehensive FTC-DOJ statement on U.S. merger analysis since the agencies issued the Horizontal Merger Guidelines in 1992. Mr. Brennan earned the Award for Superior Service for his work on the Commentary.

In private practice, Mr. Brennan has represented some of the country's largest companies in transactions, FTC and DOJ investigations, and antitrust litigation. He advises clients on the antitrust aspects of mergers, and innovator pharmaceutical companies in settling patent litigation. Mr. Brennan has tried seven government actions to enjoin proposed mergers, including most recently as counsel to Whole Foods Market, Inc., in defeating the FTC's effort to prevent consummation of Whole Foods' acquisition of Wild Oats Markets, Inc. Chambers USA described Mr. Brennan's role as "instrumental" to Whole Foods' victory in district court. Mr. Brennan currently is Vice-Chair of the Mergers & Acquisitions Committee of the American Bar Association's Antitrust Section, and is a former Vice-Chair of the Health Care and Pharmaceuticals Committee.

Professional Activities

- Member, American Bar Association Section of Antitrust (Vice Chair, Mergers and Acquisitions Committee, 2009-2010; former Vice Chair, Health Law and Pharmaceuticals Committee, 2001-2004)
- Member, American Intellectual Property Lawyers Association, Antitrust Law Committee

Bar Admissions

- Member, District of Columbia and New York Bars

Significant Representations

Representative Cases in Private Practice

Merger Investigations and Litigation

-- FTC v. Whole Foods Market, Inc. Successfully defended his client in an FTC suit to enjoin, prior to consummation, the client's acquisition of rival Wild Oats, Inc., and in an FTC post-consummation suit for divestiture, resulting in a favorable settlement.

-- Datascope Acquisition by Getinge AB. Obtained FTC approval of the client's sale after only a four-month investigation and without the need to comply with a second request; the divestiture was limited to single medical device product line.

-- United States v. Franklin Electric. Trial counsel for defendants in the first litigated case to recognize the right of merger parties to "litigate the fix."

-- Precision Castparts Corp./Wyman-Gordon. Represented the buyer in an FTC merger investigation; negotiated consent agreement that allowed the client to acquire the rival maker of forged & cast steel and titanium aircraft/power engine parts.

-- FTC v. Cardinal Health, et al. Represented McKesson Corp. in an FTC action to enjoin the acquisition of rival drug wholesaler AmeriSource Corp.; the case was consolidated with a simultaneous FTC challenge to the Cardinal Health/Bergen Brunswig transaction in same industry. Together the two deals encompassed the top four U.S. drug wholesalers.

-- U.S. v. Long Island Jewish Medical Center. Trial counsel for merging hospitals in defeating DOJ action to enjoin merger.

Investigations

-- Branded Pharmaceutical Clients (Confidential). Advises large-, medium-, and small-cap innovator companies through negotiations of, and FTC inquiries regarding, patent suit settlements with generic rivals regarding franchise drug products.

-- Large Industrial Client (Confidential). Defended a client in a DOJ investigation into possible industry-wide conspiracy to fix employee compensation; the DOJ took no action.

-- Lithotripters, Inc. Obtained an FTC decision to close an investigation after a lengthy inquiry into whether his healthcare client engaged in monopolistic conduct.

Private Antitrust Litigation

-- Impact Communications v. 3M Media. Won a directed verdict for client 3M in a federal jury trial of charges brought under section one of the Sherman Act.

-- Outdoor Advertising Co. v. 3M Media. Sole author of a motion to dismiss all counts of a complaint alleging that client 3M violated Sherman Act sections one and two.

Education

College of the Holy Cross, A.B., 1981

Georgetown University Law Center, J.D., 1985, Editor of the *American Criminal Law Review*