



O'MELVENY & MYERS LLP

together with



present

A Half Day Conference

EU Antitrust Litigation and Class Actions: Where Is Europe Going and What Can We Learn From The US Experience?

- *What are the implications of the European Commission's White Paper on private antitrust actions? Has the EC avoided US-style exposure?*

This session will analyze the implications of the proposals in the EC's White Paper on antitrust damages claims and the extent to which this brings new exposure to companies doing business in Europe, when taken in the context of current initiatives in Member States to encourage private litigation and the introduction of new forms of class action to recover damages for cartel activity.

This session will highlight the key legal developments in the European Union in this area and the best means available to ensure that your company fully understands the ramifications of the forthcoming changes - in terms of both potential benefits and pitfalls.

- *The US experience:*

What is the US doing to reduce companies' exposure to class actions?

Federal legislation and recent case law suggest that the tide may be turning against the class action device with more rigorous scrutiny of class certification methodologies.

This session will highlight these recent trends and survey their substantive and procedural implications for companies involved in antitrust class actions, assisting foreign corporations in navigating the US process as well as in understanding how similar rules that might be adopted in Europe are likely to function.

When will a US Court entertain a claim base on cartel behavior outside the US?

In recent years plaintiffs have made increasing use of the Foreign Trade Antitrust Improvements Act (FTAIA) to attempt to recover damages in United States courts for loss suffered from conduct outside the US. The burgeoning and as yet largely unsettled case law relating to the FTAIA has come to the fore in a range of high profile US cases in the last three years. The session will examine the post-*Empagran* case law regarding the FTAIA, and

the scope and application of the rules which permit the adjudication of non-US antitrust claims in US courts.

This session will highlight recent developments in this cutting-edge area of the law and suggest strategies for dismissing claims based on foreign injuries for lack of jurisdiction under the FTAIA.

- **How are damages proven in an antitrust case?**

Janusz Ordovery, a leading economist and former Deputy Assistant Attorney General for Economics at the US Department of Justice, will give an overview of methodologies for showing antitrust impact, causation, and damages.

Speakers



John Beisner chairs O'Melveny's Class Actions, Mass Torts, and Aggregated Litigation Practice and is one of the United States' best-known and highly respected class action defense lawyers. Among other notable achievements, John is a leader in the Vioxx pharmaceutical class-action defense who helped negotiate the recent settlement that could dispose of nearly 50,000 claims. Over the past 25 years, John has been involved in defending numerous major US and non-US corporations in more than 600 purported class actions filed in the US federal and state courts of 40 states at both the trial and appellate court levels. John argued *Blades v. Monsanto*, 400 F.3d 562 (8th Cir. 2005), a leading case affirming the denial of class certification in the price fixing context. He is generally credited as one of the principal authors of the US Class Action Fairness Act of 2005 and is an adviser to the American Law Institute's project on the "Principles of the Law of Aggregate Litigation."



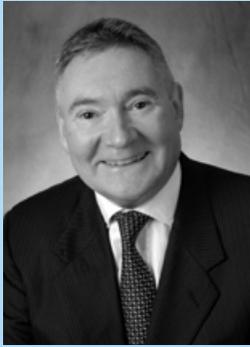
Riccardo Celli is head of O'Melveny's Brussels office and chair of the Firm's European Antitrust and Competition Practice. Riccardo has practiced in Brussels since 1992 covering the entire spectrum of competition law, including mergers and acquisitions, anti-competitive agreements and concerted practices, cartel investigations, abuse of dominant position and state aids. He advises on competition and regulatory aspects in proceedings before both national and European courts, and represents clients in proceedings before the European Commission and the EU courts. His practice also includes regulatory work, particularly in the energy and transport sectors, as well as advising on general EU law and public procurement. He has worked for many of the world's largest corporations across a wide range of industries, including energy, IT/media, transport, banking, automotive, pharmaceuticals, aerospace, chemical, and manufacturing. Riccardo speaks at many conferences and authors a number of articles on competition law and regulatory matters, especially in the energy sector. He co-chaired the preparation of the IBA's submission to the US Antitrust Modernization Committee and is recognized globally as a leading lawyer in the field of competition law in many specialized publications.



Richard Parker is a partner in O'Melveny's Washington, DC office and co-chair of the Firm's Antitrust and Competition Practice. During his tenure as Director of the US Federal Trade Commission's Bureau of Competition, Rich oversaw the Exxon-Mobil, BP Amoco-ARCO, and AOL-Time Warner merger investigations. After he returned to O'Melveny, he successfully represented Triton Coal in defeating an FTC attempt to enjoin its merger with Arch Coal in federal court. Rich has represented clients in the full range of antitrust matters including merger review, civil and criminal investigations, private litigation and litigation against the government, and he has extensive experience dealing with top US Department of Justice Antitrust Division officials on both criminal and civil matters. He is consistently ranked as a leading antitrust lawyer by *Chambers USA*, *Chambers Global*, *Best Lawyers*, and *Super Lawyers*.



Ian Simmons is a partner in O'Melveny's Washington, DC office and a member of the Antitrust and Competition Practice. Ian spent four years as a trial lawyer with the US Department of Justice's Antitrust Division. In 2007, Ian prevailed in New York's Highest Court, in what *Global Competition Review* termed "a landmark ruling," holding that treble damages class actions are not cognizable under New York's antitrust statute, the Donnelly Act. See *Sperry v. Crompton Corp.*, 863 N.E. 2d 1012, 8 N.Y. 3d 204 (2007). He is also lead counsel for Chemtura Corporation (formerly Crompton Corporation) in more than 70 US federal and state price fixing actions and in federal multi-district litigation (MDL) actions alleging conspiracies involving five-different products and five-separate time periods. Last year, Ian achieved the dismissal of foreign claims under the rapidly evolving case law of the Foreign Trade Antitrust Improvements Act ("FTAIA"). The District Court for the Northern District of California dismissed for lack of subject matter jurisdiction foreign claims that did not satisfy the "domestic injury" exception. See *In re Rubber Chemicals Antitrust Litigation*, 504 F. Supp.2d 777 (N.D. Cal. 2007).



John Cook is of counsel in O'Melveny's Brussels and London offices and a member of the Firm's Antitrust and Competition Practice. With more than 30 years experience as an EU and UK competition lawyer, John has advised governments, public bodies, international corporations and UK firms on competition and regulatory matters. He spent four years as a legal advisor at the UK Office of Fair Trading and a similar period at the UK Trade and Industry Department, and advised the European Commission on the methodology and application of the Aviation Anti-Subsidy Regulation and possible changes to the EC CRS code of conduct. John has been involved in a string of notable and high-profile cases, such as *TUI/First Choice* (for TUI AG), *Stena/P&O* (the first merger inquiry under the UK Enterprise Act 2002), and the seminal *Airtours/First Choice* (for the main objector), as well as monopoly inquiries, price cap reviews, cartel investigations, complaints, and litigation before the UK and European Courts. He recently co-chaired the "EU Antitrust Litigation" roundtable at the ABA's International 2007 Fall Meeting, and also the IBA's response to the European Commission's consultation on the new consolidated jurisdictional notice relating to the EC Merger Regulation. John is the co-author of *EC Merger Control*, published by Thomson/Sweet & Maxwell, now in its 4th edition, which provides a comprehensive and up-to-date coverage of the EC merger control regime.



Janusz Ordovery is a Senior Consultant at Competition Policy Associates. Dr. Ordovery is Professor of Economics and Director of the Masters in Economics Program at New York University. Dr. Ordovery has published many articles in economics and law journals on various antitrust issues, including predation, access to bottleneck facilities, vertical integration, as well as overlap between intellectual property rights and competition policy. In 1991-1992, he served as the Deputy Assistant Attorney General for Economics in the Antitrust Division of the U.S. Department of Justice. While at the Antitrust Division, Dr. Ordovery was one of the main drafters of the 1992 Horizontal Merger Guidelines. Dr. Ordovery has served as an advisor to the Organization for Economic Cooperation and Development (OECD) in Paris, the World Bank, and the Inter-American Bank for Development on matters of privatization, regulation, international trade policy, and competition policy. He has also advised the governments of Poland, Czech Republic, Russia, Hungary, Argentina, and others on regulation and competition matters, as well as on privatization strategies. He has acted as a consultant to the Department of Justice, Federal Trade Commission, State Attorneys General, as well as corporations and law firms in the United States, Australia, New Zealand, South Africa, Poland and other countries.