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Boston's competition bar

With its proximity to US antitrust hubs New York and Washington, DC, the antitrust bar in Boston can at times hide in the shadows of its towering neighbours. But very quietly, observers say, Boston boasts some of the most skilled antitrust lawyers in the country who advise clients in industries other practitioners only dabble in. **Ron Knox** investigates

NESTLED along the northeast coast of the US, Boston is something of an antitrust outpost – a kind of younger sibling to the larger merger and government antitrust hubs in New York and Washington, DC, and the litigation hotspots of San Francisco, Chicago and Philadelphia.

Five years ago, local practitioners say, it wasn't this way.

"Historically, if you go back a generation, the Boston legal community had a vibrant antitrust scene," says Robert Buchanan, partner at Choate Hall & Stewart LLP.

Once upon a time, Buchanan says, local firms such as Choate Hall jostled with one another to provide antitrust work to local clients – in courtrooms, merger discussions and elsewhere. While those local firms still give top-notch advice to major clients, the past 20 years has seen serious consolidation in the Boston market, either through mergers or closures. The result, Buchanan says, is a much smaller market with a few major, national players and a few strong local practices essentially comprising the city's antitrust bar.

"I think it's probably fair to say that the practices in Boston vary dramatically among the different firms," says Michelle Miller, partner at Wilmer Cutler Pickering Hale and Dorr LLP in Boston. "Some practices are very local – [handling matters in]

state courts, and mergers for local firms – and then there are a few firms that have much wider practices."

Wilmer Hale, which has been in Boston for nearly a century, certainly falls into the latter category, as do Boston stalwarts Ropes & Gray LLP and Bingham McCutchen LLP. While those firms have perhaps become better known for their antitrust practices elsewhere, Boston is home to several firms that have maintained their primary presence in the city and continue to boast some of the strongest antitrust practices.

Elite

William Berkowitz and Thane Scott lead the way for Boston stalwart **Bingham McCutchen LLP**. The firm's Boston antitrust roots date back to the 1960s and 1970s, when former antitrust division official John Curtin joined the practice. Curtin continues to practice as of counsel at the firm; the former chairman of the New England Antitrust Conference, he remains one of the pre-eminent antitrust stars in the city.

The Bingham practice is widely considered to be the best in the city. With close to 20 lawyers spending the majority of their time on antitrust issues, it's the city's largest practice by a good margin. The practice also covers the gamut of antitrust

issues, including price-fixing investigations, vertical restraints, litigation and compliance work. “I don’t think there’s anything we haven’t done, as far as the particular niches,” Berkowitz says. The practice’s bread and butter has been, and continues to be, the automotive and sports industries, but it also handles major cases for clients in the health care, biotechnology and financial services sectors as well.

The firm’s client list is enviable. Over the past year or so, the Bingham team in Boston has acted for carmakers including Nissan, Mitsubishi, General Motors and BMW – including helping BMW and Nissan back their way out of a case alleging a cartel for automotive imports in Canada.

The firm also won a victory for mattress maker Tempur-Pedic in a resale price maintenance case, and has handled antitrust and other issues for baseball’s Boston Red Sox and the Kraft family, which owns the New England Patriots American football team.

Practitioners in Boston and elsewhere say that for local firms, few have stronger antitrust teams than **Choate Hall & Stewart**. Buchanan splits the firm’s heavy workload with three other antitrust partners, who together handle mergers, counselling work and major litigations for the firm’s corporate clients whenever they approach antitrust issues. Partner Robert Frank, the firm’s former chairman and managing partner, remains one of the pre-eminent names in Boston antitrust litigation.

Buchanan says that the practice’s depth and diversity allow it to guide its stock of private equity, life sciences and health-care clients through whatever antitrust issues it may encounter. “If you picture a private equity firm looking at a deal, you want someone who can size it up when first giving advice and can then follow it on through,” he says.

The Choate antitrust practice had been doing just that for major clients for years. Institutional clients include computer maker Hewlett-Packard, which the firm has represented most recently in a resale price maintenance case filed in federal court in Massachusetts. The court dismissed the case after Choate lawyers objected to the lawsuit based on the Supreme Court’s decision in *Leegin*. The antitrust team also acts for major area health insurers Harvard Pilgrim Health Care and Tufts Health Plan, as well as Harvard University, Siemens and Bank of America.

In Boston antitrust circles, no name looms larger than **Wilmer Cutler Pickering Hale and Dorr LLP**. For a handful of reasons, including partner preferences, four members of the firm’s world-class antitrust team sit in Boston and act on major matters

as part of teams assembled from all over the country. Michelle Miller and James Burling, a nominee to *The International Who’s Who of Competition Lawyers and Economists*, lead the practice. Nine other lawyers assist the partners in counselling clients, trying cases in court and guiding mergers through antitrust review.

“I love the local bar and the local judges”

– Michelle Miller, Wilmer Hale

The vast majority of those cases are, at this point, in venues and involving companies outside of Boston. Since Boston’s Hale & Dorr merged with Wilmer Cutler & Pickering in 2004, the firm’s primary US antitrust offices have been in Washington, DC, and New York, and many cases are staffed with lawyers from multiple offices. “I love the local bar and the local judges,” Miller says. But both she and Burling “have practices that are global in nature.”

Over the past year or so, those practices have taken them to courtrooms on both coasts, where they have advised on some of the most high-profile matters in the country. Burling just completed his work for Intel, both in its private antitrust case against rival Advanced Micro Devices and before the US Federal Trade Commission. He’s also been in Philadelphia defending drug maker Cephalon against allegations of an illegal pay-for-delay settlement, brought by the FTC and a rival generic drug maker. Miller, meanwhile, has advised Apple in ongoing litigations in federal court in California, as well as a several other major matters.

Highly Recommended

Lisa Wood leads one of the city’s larger antitrust practices at **Foley Hoag LLP**. The six-partner team handles a range of antitrust issues, as do many practitioners in Boston, with a sharp focus on the life sciences industry that peppers the Boston area.

Much of that work comes through the team’s impressive patent litigation and prosecution practice. When the firm handles settlement negotiations between branded drugmakers and generic rivals, Wood’s team gets involved, supervising settlements and handling all interactions with antitrust regulators monitoring such settlements. On the criminal side, the firm has advised on multiple cartel investigations, both on behalf of companies and individuals,

Firm	Head of competition	Size	Clients
Elite			
Bingham McCutchen LLP	William Berkowitz and Thane Scott		Nissan, Mitsubishi, Tempur-Pedic, NetLogic Microsystems, Boston Red Sox, BMW, General Motors
Choate Hall & Stewart LLP	Robert Buchanan	3ep, 1p, 1a	Harvard Pilgrim Health Care, Tufts Health Plan, Hewlett-Packard, Bank of America, Harvard University, Siemens
Wilmer Cutler Pickering Hale and Dorr LLP	James Burling and Michelle Miller	4p, 3c, 6a	Apple, Braintree Laboratories, Cephalon, Research In Motion, Intel
Highly Recommended			
Foley Hoag LLP	Lisa Wood	6p, 10a	The Boston Herald, CRA International
Nixon Peabody LLP	David Martland	1p, 1a	Bruker, Catholic Medical Partners, Gannett, Hasbro, Samsonite, Bosch
Nutter McClennen & Fish LLP	Kathryn Conde	1p, 4a	Tufts Health Plan, American Association of Anesthetists, Egenera
Ropes & Gray LLP	Cary Armistead	2p, 1c, 2a	Genzyme, Daewoo International, TravelCenters of America, Hitachi-LG Data Storage, Thomas H Lee Partners, Birkshire Hathaway
Key: eq p = equity partner; p = partner; c = counsel; a = associate			

including several in the life sciences market. Wood and her team also have a strong private civil antitrust practice, working for companies in the automotive, publishing and garment industries.

Boston is home of the largest office of national corporate and litigation firm **Nixon Peabody LLP** – one of several firms in Boston born in smokestack towns throughout the north-east before following

Nutter McClennen has had an antitrust practice for about as long as antitrust law has existed in the US

industry to the city. The firm's Boston office is also home to one of the city's most prominent antitrust and M&A lawyers, David Martland. Martland, the firm's global business and transactions leader, shares the antitrust work in the Boston office with one dedicated associate, but coordinates often with the firm's other antitrust practices in San Francisco and Washington, DC.

While the practice is small, Martland is front and centre in mergers, joint ventures and other deals pursued by the firm's extensive roster of private equity, venture capital and health-care clients. The health-care portion of his portfolio is impressive: along with two major hospital mergers, Martland says he represents 10 per cent of the doctor and hospital groups nationally that are preparing to apply for antitrust review to qualify for the government's accountable care organisation programme. Martland says he also spends a significant amount of his time on distribution issues.

Elsewhere, the 135-year old firm of **Nutter McClennen & Fish LLP** has had an antitrust practice for about as long as antitrust law has existed in the US. Practice leader Kathryn Conde says she and a group of litigation and corporate associates can handle all comers, from court cases to merger work. "We do everything," she says. "We are not limited to litigation work, not limited to plaintiffs or defendants."

On the counselling front, Conde says that as of late, the antitrust team has been busy advising on both privately and publicly-held companies looking to enter the Asian market through joint ventures and distribution deals. On the merger front, the team has advised Tufts Health Plan on its merger with Network



Health, and offers antitrust advice to several groups of doctors and other health-care providers, including the American Association of Nurse Anaesthetists.

Meanwhile, **Ropes & Gray LLP** has continued what has become something of a tradition in its Boston antitrust practice – splitting its work evenly between partners who specialise in litigation and counselling, respectively. Partner and *Who's Who* nominee Cary Armistead handles mainly counselling matters for the firm's broad corporate client base, while partner Jane Willis focuses her practice on antitrust litigation. Counsel Deidre Johnson is also part of the firm's Hart-Scott-Rodino pre-merger notification team in the Boston office.

Armistead and Willis boast a formidable health care and bio-sciences practice. Of note was the firm's representation of bioscience heavyweight Genzyme during its US\$20 billion deal with pharmaceutical company Sanofi-Aventis. Willis's practice is as varied as it is impressive. She's advised both Daewoo International and Hitachi-LG Data Storage in antitrust class actions alleging price-fixing schemes. Armistead, meanwhile, advises several private and public equity companies on purchases and joint ventures, including Thomas H Lee Partners, Warren Buffett's Berkshire Hathaway and others.

Other firms

The Boston antitrust market includes several other teams with sizeable practices, including both local firms and international powerhouses with Boston offices. Partner Christopher Holding and the antitrust team at **Goodwin Procter LLP** handle both criminal and civil matters, including investigations before the FTC and the US Department of Justice's antitrust

Robert Frank, former chairman and managing partner at Choate Hall, remains a pre-eminent name in Boston antitrust litigation

division. **Jones Day's** Boston office features partner and trial practice leader Thomas Cullen, who spends about half of his time in Washington, DC, and is slated to grow over the next few years. Meanwhile, international firms **K&L Gates LLP**, **Skadden Arps Slate Meagher & Flom LLP** and **Proskauer Rose LLP** all have major Boston offices and can handle antitrust matters there.