

Competition Group Of The Year: Gibson Dunn

By **Matthew Perlman**

Law360, New York (January 22, 2018, 3:07 PM EST) -- The competition team at Gibson Dunn & Crutcher LLP scored important wins for clients including Uber Technologies and Foxconn in high-stakes antitrust litigation last year, while also helping steer several major mergers through regulatory clearances, earning a place among Law360's Practice Groups of the Year.

Gibson Dunn's antitrust work on mergers included representing LinkedIn Corp. on its \$26.2 billion acquisition by Microsoft Corp., which the European Commission approved in late 2016 with only minor conditions. The firm also represented St. Jude Medical Inc. in its \$25 billion purchase by Abbott Laboratories, a deal that required approval from 11 jurisdictions and finally won clearance from the U.S. Federal Trade Commission in early January 2017.

The team has now been tapped by AT&T Inc. for the company's battle with the U.S. Department of Justice over its planned \$85.4 billion purchase of Time Warner Inc., which the government sued to block in November.

Daniel G. Swanson, co-chair of Gibson Dunn's antitrust and competition practice group, told Law360 that the AT&T case reflects the type of work the team is frequently asked to handle.

"We are often brought in because of tough deals that may need to be litigated and that's what I think is one of the overarching themes for our practice," Swanson said. "We're trial lawyers, we're appellate lawyers, we stand up and put our money where our mouths are."

Gibson Dunn has around 160 attorneys working on antitrust issues worldwide, with a team spread across several domestic offices, as well as offices in London, Brussels, Hong Kong, Paris, Munich and Frankfurt. They all have a background in litigation, which Swanson said provides a solid set of skills including the ability to handle large amounts of information and to simplify complex concepts.

He added that the group's litigation experience also provides a sense of confidence for clients, who know the same attorneys can see a matter through to the end.

"All of our antitrust lawyers go to court, and we think that makes a difference to the way we practice, and makes our lives more interesting too," Swanson said.



The firm's litigation work for Uber included defending against a price fixing class action filed by customer Spencer Meyer in New York federal court that attacked the basic business model of the ride-sharing service. After Uber moved to compel arbitration, U.S. District Judge Jed Rakoff ruled in July 2016 that the rider had not been given adequate notice that he was bound by an arbitration agreement when signing up for the service.

Uber appealed, and in August last year the Second Circuit vacated the lower court ruling, finding that Meyer had been given proper notice. The case was sent back to Judge Rakoff, who dismissed the suit in November.

"It's always very engaging to be litigating before Judge Rakoff, who is a brilliant jurist, but somebody with very strong opinions," Swanson said. "He definitely had a view, but we took it up the Second Circuit and they had a slightly different view. Things worked out well, that was a nice example of taking a case to an effective conclusion."

The competition group is also defending Foxconn and three other Apple contract manufacturers in a suit brought by Qualcomm alleging they stopped paying the chipmaker royalties. The dispute stems from a string of enforcement actions across the globe attacking Qualcomm's licensing practices, and lawsuits filed by Apple against Qualcomm in the U.S. and abroad alleging patent and antitrust violations.

Qualcomm sued the manufacturers in May, saying they stopped making royalty payments after Apple stopped reimbursing them and accusing the companies of failing to cooperate with Qualcomm's royalty audits and of manipulating sales information. The manufacturers shot back with counterclaims alleging that Qualcomm's licensing practices are anticompetitive.

Qualcomm sought a preliminary injunction against Foxconn and the others that would have forced them to hand over billions of dollars while the dispute with Apple is hammered out.

But in September, U.S. District Judge Gonzalo P. Curiel shot down the injunction bid, finding that Qualcomm would not be irreparably harmed by the withheld payments. Swanson said the team is proud of that win and that the case is now proceeding on an accelerated trial schedule.

"Obviously, Qualcomm has a number of cases hurtling towards trial, so I think that could be one of the most-watched set of proceedings in the antitrust world," Swanson said. "It's another example of the type of work that our antitrust group gets involved in — cutting edge and pivotal cases."

--Additional reporting by Bonnie Eslinger, Eric Kroh, Matthew Guarnaccia, Melissa Daniels and Melissa Lipman. Editing by Emily Kokoll.