

Competition Group Of The Year: Gibson Dunn

By Bryan Koenig

Law360 (January 22, 2019, 11:11 AM EST) -- Gibson Dunn & Crutcher LLP helped AT&T and Time Warner beat the U.S. Department of Justice's merger challenge in 2018's most closely watched antitrust case, netting the firm a spot for the third time in four years as one of Law360's Competition Groups of the Year.

U.S. District Judge Richard J. Leon's June decision rejecting the merger challenge, now on appeal at the D.C. Circuit, was one of several major wins Gibson Dunn scored either on its own or, in the case of AT&T/Time Warner, as part of a team of law firms. Other crucial wins between October 2017 and October 2018 include the successful defense of UBS AG against separate multidistrict litigations over alleged conspiracies to fix the prices of silver and gold, as well as defeating certification bids in two massive proposed class actions.

"We had a pretty good win record last year," said Daniel G. Swanson, who's co-chaired Gibson Dunn's antitrust and competition practice for more than 20 years.

Defending AT&T against DOJ assertions that the combination would drive up consumer pay-TV rates by hundreds of millions of dollars a year required working with a team put together by AT&T that also included Cravath Swaine & Moore LLP and O'Melveny & Myers LLP, which took the lead on the case under Daniel M. Petrocelli.

The Gibson Dunn team that included Robert Walters, Mike Raiff and M. Sean Royall, according to Swanson, played a key role, preparing for the cross examination of the government's expert economist and most important witness.

"It was a comprehensive team effort," he said.

Gibson Dunn, according to Swanson and partner Rachel S. Brass, is heavily focused on working as a team.

Brass, a member of Gibson Dunn's litigation department with a focus on competition and labor law, said the firm's antitrust practice is a "highly integrated team" that combines deep antitrust knowledge with particular technical skills and litigation prowess.



“We have a depth of lawyers who are not only substantive specialists in areas like merger law and alleged collusion and cartel matters, and other areas of antitrust law, but are highly experienced trial lawyers,” Brass said.

The firm’s antitrust practice, according to Swanson, is made up of roughly 180 attorneys spread across virtually every U.S. office, particularly New York, San Francisco, Dallas, Los Angeles and Washington, D.C. Roughly 10 to 15 percent of the firm’s business is tied in with antitrust, he said.

The firm’s wins last year, according to Swanson, help demonstrate the breadth of its strengths, which are still being utilized in its representation of Apple contract iPhone manufacturers in a suit brought by Qualcomm alleging they stopped paying licensing royalties amid Qualcomm and Apple’s massive patent fight.

Among last year’s wins is a New York federal judge’s July decision to dismiss multidistrict litigation against UBS over an alleged conspiracy to fix the benchmark price of gold, which investors claimed it knew of and benefited from. At the same time, U.S. District Judge Valerie Caproni also tossed an MDL against UBS and other major banks, including Bank of America Corp. and Barclays Bank PLC, over an alleged silver price-fixing conspiracy.

Swanson called the UBS win “a nice, clear, decisive victory” for a client that Gibson Dunn has performed “an enormous amount of work” for in the last eight or nine years.

“It’s a bit of a rarity to be able to slice through a very complex case,” Swanson said, “and to convince ... a judge that the case should be thrown out.”

Pulling the win off, according to Swanson, required bringing trial lawyer discipline to each phase of the proceedings: “thinking ahead from the beginning about what the key themes are and reinforcing them at every turn and trying to cut to the essence of a case.”

Two other key wins for the firm involved its successful defense against class certification bids.

In June, the firm helped convince a New Jersey federal judge to reject certification bids from a pair of putative class actions accusing Aetna of violating the Employee Retirement Income Security Act by shortchanging its customers on reimbursements for out-of-network services. That case, tracing back to 2007, nearly yielded a \$120 million settlement until Aetna scrapped the deal and moved forward with attorneys from Connell Foley LLP and Gibson Dunn.

The firm’s other win against class certification came in a case from rail shippers accusing Gibson Dunn client BNSF Railway Co., also represented by Wilson Sonsini Goodrich & Rosati and Steptoe & Johnson LLP, and its fellow rail giants of fixing fuel surcharges. A D.C. federal judge denied class certification in October 2017, after the case had already rebounded on appeal. The October 2017 ruling is on appeal to the D.C. Circuit.

--Additional reporting by Rachel Graf, Jeannie O'Sullivan and Linda Chiem. Editing by Alyssa Miller.