

Competition Group Of The Year: Gibson Dunn

By **Matthew Perlman**

Law360 (January 31, 2024, 6:36 PM EST) -- The competition group at Gibson Dunn & Crutcher LLP scored key rulings in cases last year for clients including Merck and Chevron, while also helping guide VMWare's \$61 billion sale to Broadcom, earning the firm a spot as one of Law360's 2023 Competition Groups of the Year.

Gibson Dunn's antitrust and competition practice group includes more than 150 attorneys in offices spread throughout the globe. But Cynthia Richman, global co-chair of the group, told Law360 that the firm has more than 300 attorneys who do at least some competition or antitrust work based in 16 offices.

"One of the benefits of our platform and our practice group is that there aren't silos," Richman said. "You can have a general litigator who does a substantial amount of antitrust work. We have appellate attorneys who do antitrust work, we have class action lawyers that do antitrust work."

The firm's global presence has been critical for the growth and development of the antitrust practice, she said, calling the VMWare deal a good example of how the group was able to use its "resources around the world to deliver excellent results."

Chipmaker Broadcom's purchase of cloud service provider VMWare was announced in May 2022 and closed in November of last year. Kristen C. Limarzi, a Gibson Dunn partner who helped lead the firm's work on the deal for VMWare, told Law360 that the transaction was one of the largest ever in the tech industry and was investigated by enforcers in 12 jurisdictions around the globe.

The European Commission ultimately signed off on the deal in July, conditioned on commitments that Broadcom allow others access to certain tools and support, while Britain's competition enforcer cleared the deal a week later without any conditions, despite an in-depth investigation. The U.S. Federal Trade Commission also scrutinized the deal but declined to challenge it.

"In the current climate, global merger review requires more than just a substantive expertise in each jurisdiction," Limarzi said. "It takes a really holistic and strategic approach to the individual reviews, and also the timing and sequencing of how those fit together."

There are many balls in the air when a large transaction is reviewed by multiple regulators, Limarzi said,



but handling those kinds of deals is made easier by the firm's approach to coordinating work across offices and practice areas.

"That's something we do really well, in part because of the culture Gibson creates," she said.

The competition group also scored major wins last year in litigation involving allegations of anti-competitive conduct that were brought against several major clients. This included securing summary judgment for Chevron U.S.A. Inc., along with the other defendants, in a proposed class action seeking more than \$65 billion in damages for allegations that refining companies conspired to fix gasoline prices.

Samuel G. Liversidge, a Gibson Dunn partner who led the firm's efforts on the case, told Law360 that he moved for summary judgment before a class certification motion was even filed, and said this shows the firm's ability to get wins for clients in "creative" ways.

"We felt strongly that after years of discovery, there was no evidence of this claimed conspiracy and we felt that we were going to be able to demonstrate that on summary judgment," he said.

Gibson Dunn also helped another client, Merck & Co., defeat the certification of a class in a case accusing it of cutting an unlawful agreement with Glenmark Pharmaceuticals to delay a generic version of the cholesterol drug Zetia in 2022. The drug companies ultimately settled with the last group of buyers after jury selection had started in April 2023.

Prior to that ruling to deny certification, The U.S. District Court for the Eastern District of Virginia had in fact certified the class of drug wholesalers, but a Gibson Dunn team helped convince the Fourth Circuit to vacate the decision on an interlocutory appeal based on arguments about the small number of potential class members.

Liversidge told Law360 that this issue comes up frequently in antitrust cases involving the pharmaceutical industry, because there's only so many direct purchasers.

"The court determined that the numbers were not so great that we could not deal with this case through joinder," he said.

In the Zetia case, Liversidge said the certification decision "changed the dynamics" quite a bit, though he said it's difficult to tell what impact it had on the eventual settlements. He also said it was "bittersweet" to see a case settle after so much time and work, on the class certification issues and then getting it ready for trial.

"But sometimes you have to balance the desire to tell your story, which we were really anxious to do, with the need to help the client balance the risk that they're facing," he said.

--Editing by Karin Roberts.