

Competition Group Of The Year: Gibson Dunn

By **Beth Winegarner**

Law360, San Francisco (January 24, 2014, 7:20 PM ET) -- Convincing the U.S. Supreme Court to decertify a class of Comcast Inc. customers who claimed the company monopolized the Philadelphia cable market — a ruling that reshaped class actions nationwide — was just one of the feats placing Gibson Dunn & Crutcher LLP among Law360's Competition Practice Groups of the Year.

The high court reached its March ruling after Comcast's attorneys, including Gibson Dunn appellate leader Miguel Estrada, argued that the class's commonality claims were based on a flawed and inflexible damages theory, Dan Swanson, co-chairman of Gibson Dunn's antitrust practice group, said. Since then, the ruling has helped other heavyweights, including Philip Morris USA Inc. and Duane Reade Inc., prevent plaintiffs from joining forces.

“It seems clear that the [Supreme Court] is trying to say that overzealous certification of classes based on experts who wave their hands and subject the defendants to the legal equivalent of a gun to their heads ... that the district courts need to be more rigorous,” Swanson said. “They need to scrutinize the theories and take great care.”

Gibson Dunn defended Wal-Mart Stores Inc. before the Supreme Court in *Wal-Mart v. Dukes*, steering the court toward a similar watershed decision finding that the proposed class didn't have enough in common, Swanson said.

In tandem with that ruling, the decision in Comcast sends “a powerful message,” he said.

Gibson Dunn scored a major victory in the financial sector in 2013, guiding Swiss financial services firm UBS AG through an extensive investigation and, ultimately, to an immunity deal with European Union antitrust regulators over the firm's alleged involvement in manipulation of the London interbank offered rate, or Libor.

That settlement allowed UBS to escape one of the largest potential fines in antitrust history, worth close to \$3 billion, Swanson said. Gibson Dunn's representation of UBS in the matter was spearheaded by Gary Spratling, a former U.S. Department of Justice cartel expert who joined the firm 15 years ago, along with Joel Sanders and D. Jarrett Arp, Swanson said.

Gibson Dunn will continue to represent UBS in civil antitrust litigation over the Libor allegations, which has been consolidated into multidistrict litigation in New York federal court. Recently, the court narrowed that case, dismissing antitrust and other claims.

Another closely watched antitrust case keeping Swanson's hands full is one in which Apple Inc. is accused of conspiring with publishers to fix e-book prices. After U.S. District Court Judge Denise Cote ruled against Apple in July, the tech giant is readying its appeal — while also gathering momentum for a May 2014 trial in which the state attorneys general and consumers pressing the case seek close to \$500 million in damages, Swanson said.

“A lot of people have said, 'How can [Judge Cote's] ruling be overturned when it's so lengthy?' There are multiple answers to that, which we'll be unveiling in February,” Swanson said.

As for the damages trial, “We're going down the road of preparing a case to demonstrate the impact was nothing like the overbroad impact the plaintiffs' damage expert has come up with. It's a challenge we relish,” he said.

Gibson Dunn's antitrust practice group includes more than 100 attorneys across the U.S. and Europe. In 2013, it added some standouts, including Scott Hammond, Spratling's successor in the DOJ's antitrust division; Ali Nikpay, a former leader in the U.K.'s competition authority; and Adam Di Vincenzo, who was promoted to partner in Gibson Dunn's Washington, D.C., office in January, according to the firm.

The firm's antitrust group saw a number of other victories in 2013, such as steering BNSF Railway Co. toward an appellate victory, in which the D.C. Circuit decertified a class accusing the railway of conspiring with others to use fuel surcharges to fix the prices customers paid.

Gibson Dunn has also been busy on the merger front, guiding Ameristar Casino in its \$2.8 billion sale to Pinnacle Entertainment Inc., and Bi-Lo Holdings in its proposed \$265 million acquisition of three grocery banners from the Delhaize Group. The firm also represented Tenet Healthcare Corp. in its \$1.8 billion purchase of Vanguard Health Systems as well as its acquisition of Emanuel Medical Center.

Schlumberger Ltd. had Gibson Dunn on its side this year when it formed the OneSubsea oil and gas joint venture with Cameron International; the size of the deal required them to secure approvals from antitrust authorities in the U.S., Brazil, China and the European Union.

Dole Food Company also sided with Gibson Dunn in its complex \$1.6 billion deal to sell its Asia fresh and worldwide packaged foods businesses to ITOCHU Corp., a Japanese trading company.

--Editing by Christine Chun.