

Competition MVP: Gibson Dunn's M. Sean Royall

By Allissa Wickham

Law360, New York (November 24, 2015, 8:20 PM ET) -- Powerhouse antitrust attorney M. Sean Royall of Gibson Dunn & Crutcher LLP had a busy year securing a dismissal for Sanofi-Aventis SA in a novel False Claims Act case over the drug Lovenox, and defending AT&T Inc.'s \$48.5 billion acquisition of DirecTV, earning him a spot of Law360's 2015 list of competition MVPs.

Royall, a former deputy director of the Federal Trade Commission's Bureau of Competition, currently co-chairs both Gibson Dunn's antitrust and consumer protection practice groups. His antitrust expertise was evident this year while working on several high-profile cases and acquisitions.

One of Royall's biggest wins came in July, when a California federal judge threw out a novel FCA case with antitrust undertones against his client Sanofi-Aventis, brought by generic drug company Amphastar Pharmaceutical Inc.

Although Amphastar claimed that Sanofi-Aventis had fraudulently ramped up the price of enoxaparin — an anticoagulant sold under the name Lovenox — when charging the government, U.S. District Judge Marvin Garbis dismissed the case for lack of jurisdiction.

Royall, who served as the lead attorney for Sanofi-Aventis, pointed out that the FCA suit followed an unsuccessful antitrust case brought by Amphastar. The new FCA case relied on basically the same foundation, as it utilized an antitrust-based theory of alleged generic competition exclusion, he said.

"The allegation in the suit was that the governments were being overcharged through what amounted to an antitrust violation that led to higher prices," Royall said. "It was a novel claim — it was really the first claim of that nature that's been brought under the False Claims Act."

Royall was also tapped by AT&T ahead of the telecom company's bid to acquire DirecTV for \$48.5 billion, and headed a team of Gibson Dunn attorneys to defend the deal, according to the firm. Both the Federal Communications Commission and the U.S. Department of Justice eventually greenlit the merger.

"It was very exciting and tremendous development that after well over a year of government investigations ... both the DOJ and the FCC cleared the transaction, allowed it to proceed," Royall said.

When asked to describe the strategy that led to the deal's success before the government investigators,



M. Sean Royall
Gibson Dunn

Royall said that AT&T's approach was to emphasize the amount of competition in the pay-TV arena.

"There was a huge amount of change and dynamism in the marketplace, and along with that, substantial competition," Royall said. "And I think that those trends were very influential ... in persuading the agencies that this was a transaction that did not pose any material competitive threat."

Royall is also lead counsel for Allergan Inc. in two antitrust cases claiming that the company pushed out generic competition for its antibiotic drop dugs Zymar and Zymaxid, according to the firm.

In one of the cases, a company called Hartig Drug Company Inc. alleged that Allergan and its co-defendants had filed sham patent suits and engaged in "product hopping" to block pharmacies from substituting certain generic formulations. But a federal judge dismissed the suit against Allergan after concluding that the pharmacy chain that brought the class action did not have the right to sue as a direct purchaser under federal law.

"Both of these cases I think are really at the cutting edge of developments in antitrust law relating to generic drug competition, so it's been very interesting being involved in both of them," Royall said.

Royall is also lending his antitrust expertise to The Williams Cos. Inc. regarding Energy Transfer Equity LP's proposed \$38 billion acquisition of the company, according to Gibson Dunn. And he was previously tapped by Bazaarvoice Inc. as lead counsel in a DOJ probe over whether it had run afoul of a court order issued after the agency sued to undo its PowerReviews acquisition, the firm said.

Royall and his team helped resolve the probe, and Royall said that he felt the group did a good job reassuring high-level DOJ officials that Bazaarvoice was complying with its obligations under the consent decree.

"I think it was a big success for Bazaarvoice," Royall added, noting that he and his team were "privileged to be part of that."

--Additional reporting by Kevin Penton. Editing by Stephen Berg.

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