

Competition Group Of The Year: Cleary Gottlieb

By **Aebra Coe**

Law360, Grand Rapids (January 17, 2018, 6:26 PM EST) -- Cleary Gottlieb Steen & Hamilton LLP's team of antitrust attorneys had a hand in some of the year's largest legal matters, including a \$130 billion merger between Dow Chemical and DuPont, earning it a spot among Law360's Competition Groups of the Year.

In addition to handling antitrust concerns for clients in some of the largest transactions of the year, such as the deal between Dow and DuPont, the law firm's competition group also successfully resolved a number of high-stakes government investigations and the team scored major wins in court, including a class action victory at the Third Circuit for shipping companies that had been sued by direct purchasers of ocean vehicle carrier services.

The group's global nature allows its attorneys to win major work from multinational companies dealing with antitrust issues around the world and allows them to generate successful outcomes for those clients, according to Cleary Gottlieb antitrust partner George Cary.

"We are able to field a team around the world that is recognized as top tier across those jurisdictions, which allows us to offer the client a one-stop-shop situation," Cary said. "And they don't have to sacrifice quality to get that advantage."

Cleary Gottlieb's antitrust practice features approximately 200 lawyers based in 12 offices in the United States, Europe, Asia and Latin America. In the U.S., the law firm has more than 60 antitrust lawyers, including 12 partners and counsel.

The group has grown over the past year with the promotion of two partners in Washington, one counsel focused on China and four counsel in Europe, as well as the recent addition from Linklaters of antitrust lawyer Wolfgang Deselaers to its Cologne, Germany, office.

The firm's major deals from the past year include not only the Dow and DuPont merger, but also Abbott Laboratories' \$25 billion acquisition of St. Jude Medical and eyewear maker Essilor's \$49 billion acquisition of Luxottica, along with a number of other deals.

In the massive merger between chemical companies, Cleary Gottlieb served as global antitrust counsel to Dow Chemical. Cary, who worked on the transaction, says that deal was enormously complex and challenging.



The transaction required merger clearances in over 20 jurisdictions, including the U.S., EU, China and Brazil. And the size of the transaction — one of the largest of all time — included multiple overlaps of the companies' businesses, which were investigated in each jurisdiction.

"In my experience doing this for a few decades now, this deal raised some of the most complicated antitrust issues I've ever seen," Cary said.

When looking at how to tackle the deal, the team of attorneys started by getting a comprehensive sense of what the antitrust issues might be, then figured out how to engage different agencies and when to do so, and finally pursued an "aggressive" path with agencies to address the potential antitrust concerns involved with the merger, Cary said.

He added that the law firm's efforts addressing questions from U.S. regulators helped it when similar issues arose in the European Union and in other jurisdictions.

"We had a good relationship with Department of Justice staff and engaged with them on the merits and presented detailed and sophisticated antitrust and economic arguments up front to the point where we got a very satisfactory conclusion," he said.

Cleary Gottlieb has more transactional work lined up for 2018, including working on Disney's proposed acquisition of 21st Century Fox. In a rare move, the law firm is serving as antitrust counsel for both parties in that deal.

The group did a significant amount of regulatory and litigation work in the field of competition over the past year as well.

The firm represented numerous automotive parts manufacturers in worldwide cartel investigations into industrywide price fixing and defended Sabre Holdings against litigation brought by US Airways alleging conspiracy with its competitors and challenging its agreements to provide global distribution through its computerized reservation systems.

At the Third Circuit, the law firm secured a decision affirming the 2015 dismissal of antitrust class actions against shipping companies — including its client Kawasaki Kisen Kaisha Ltd. and subsidiary "K" Line America — which had been accused by direct purchasers of ocean vehicle carrier services of conspiring to increase prices, allocate customers and routes, and restrict capacity in the industry.

The win is especially impressive, partner Jeremy Calsyn said, because the class actions followed guilty pleas made by several of the defendants with the U.S. Department of Justice.

The Third Circuit dismissed the direct purchaser plaintiffs' claims for damages as barred by the Shipping Act of 1984 — the key argument that Cleary developed and advanced in the district court case — and the U.S. Supreme Court subsequently denied certiorari.

"We came up with some very unique arguments and found a way to present extremely complicated regulatory and preemption arguments to the court in a way that I think were easy to understand," Calsyn said. "I believe that the 'K' Line win is a real highlight and a real testament to our litigation capabilities."

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