

## Competition Group Of The Year: Cleary Gottlieb

By Ryan Davis

*Law360, New York (January 6, 2016, 6:09 PM ET) --* Cleary Gottlieb Steen & Hamilton LLP's competition group advised GlaxoSmithKline PLC in securing global antitrust clearance of its multibillion-dollar, three-part transaction with Novartis AG and represented Family Dollar Stores Inc. when it was acquired by Dollar Tree Inc. for \$9.3 billion, earning the group a spot on Law360's Competition Groups of the Year.



In addition to its merger clearance work on some of the year's biggest deals, Cleary's competition group, which has about 200 lawyers around the world, also had a busy year in the courtroom. It persuaded the Second Circuit not to bar sales of Keurig Green Mountain Inc.'s new coffee-brewing machine in a monopolization suit brought by a competitor and won a landmark preliminary injunction for Teladoc Inc. against the Texas Medical Board.

Attorneys from the firm credit its success in part to its integrated antitrust practice, where attorneys work on both litigation and merger clearance, rather than focusing on one or the other.

"Doing litigation and regulatory work really gives us a leg up on both fronts," said partner George Cary.

The complex deal between GlaxoSmithKline and Novartis had three separate components, and Cleary was able to successfully coordinate all three to gain approval in more than 20 jurisdictions. The transaction was completed in March.

Under the deal, GlaxoSmithKline acquired most of Novartis' global vaccines business for \$5.25 billion, divested its oncology portfolio to Novartis for \$16 billion and the two companies created a consumer health care joint venture.

The deal was "hugely complicated" from an antitrust perspective, Cary said, because in swapping assets, it appeared that the companies were getting stronger in areas where each was already strong. However, Cleary was able to demonstrate to regulators that the transactions were in fact complementary and that the businesses being acquired had strengths that the acquirer lacked, he said.

"It was a challenging deal because of the breadth of the overlaps and the subtlety of the differences among the pharmaceutical products that appeared to be overlaps on first look," he said. "At the end of the day, the complementarities meant that the transaction was good for consumers."

In another closely watched merger matter, Cleary helped Family Dollar navigate competing bids and intense scrutiny from investors, resulting in the Federal Trade Commission clearing Dollar Tree's acquisition of the company in July.

Dollar Tree made an initial bid for Family Dollar, followed by a hostile bid from Dollar General Corp. Cleary persuaded Dollar Tree to divest as many stores as possible to secure antitrust clearance. Dollar General, in contrast, committed to divest up to 1,500 stores, but following Cleary's advice, Family Dollar's board rejected Dollar General's higher bid.

Dollar General then disclosed that it was unable to secure antitrust approval, clearing the way for shareholder approval of the Dollar Tree bid.

"It's really a model of how, in a contested merger, the quality of antitrust advice can make a real difference," Cary said.

In the courtroom, Cleary's work allowed Keurig to launch its new Keurig 2.0 coffee brewer, after the Second Circuit decided in October to affirm a lower court's decision not to issue a preliminary injunction barring the launch.

Keurig rival JBR Inc. is pursuing an antitrust suit over the new device, alleging that it is designed not to use competitors' coffee cups as part of an anti-competitive scheme. The Second Circuit ruled that JBR didn't provide enough evidence to support its claims and win a ban on sales of Keurig's device. The underlying antitrust suit is ongoing.

The case raises the issue of whether innovative product designs that are incompatible with competitors' products violates antitrust law, and the outcome could have an impact on companies in many industries.

"It's a case that a lot of folks are watching," said Cleary partner Leah Brannon. "It's important because many successful companies want to keep innovating and launch new products."

Soon after Cleary defeated the preliminary injunction request against Keurig as a defendant, the firm won a preliminary injunction for Teladoc as a plaintiff in one of the first cases to apply the U.S. Supreme Court's February decision that state boards are not immune from antitrust suits.

Telemedicine provider Teladoc sued the Texas Medical Board over a regulation that would have required physicians to see patients face-to-face before providing remote medical care. The company claimed that the regulation restricts competition and would put it out of business.

A Texas federal judge granted Teladoc an injunction in May preventing the regulation from taking effect. Then in December, the judge ruled that the board was not immune from the suit, which is ongoing.

Cleary's 200-lawyer competition group has 23 partners and six counsel, significant in size compared to other practices at the firm. The attorneys are based in offices around the world, from Washington to Brussels to Moscow to Hong Kong.

"We are growing and we are going to continue to grow," Cary said. "It's been an extremely busy year."

--Editing by Katherine Rautenberg.