

Competition Group Of The Year: Crowell & Moring

By **Ben James**

Law360, New York (January 21, 2014, 5:03 PM ET) -- Steering Coventry Health Care Inc. through its \$5.7 billion acquisition by rival insurer Aetna Inc. and helping convince the D.C. Circuit to vacate the certification of a massive class of rail shippers in a price-fixing case against CSX Transportation Inc. and others landed Crowell & Moring LLP a spot among Law360's Competition Practice Groups of the Year.

Crowell's antitrust team not only had a hand in a variety of high-value transactions last year — and dealt with five “second requests” from U.S. regulators eyeing proposed tie-ups — but has been involved in noteworthy litigation, including a liquid crystal display price-fixing MDL in which the firm reached favorable settlement deals for its clients.

Crowell's lawyers also garnered some attention in February, when they convinced the Ninth Circuit to revive AT&T Inc.'s state law antitrust claims, which a trial court judge had nixed from the MDL.

One of the things that sets Crowell & Moring's competition group apart from other antitrust teams is the fact that it handles litigation for plaintiffs as well as defendants, noted partner Jason Murray.

“Not all firms are willing to play in that space just as hard as they play on the defense side,” Murray said of plaintiff-side antitrust litigation work.

The firm's antitrust group — comprised of about 70 full-time competition practitioners — is uniquely well-rounded, said practice co-chair W. Randolph Smith. Not only is the team's litigation component versatile, but the group is a force to be reckoned with on three other fronts: mergers and acquisitions, cartel defense, and counseling and training, Smith said.

“We've got a real strong bench across all four sectors,” Smith said. “We've got the breadth and depth.”

Crowell & Moring notched an important win in the cartel space last year when it convinced the U.S. Department of Justice not to indict a major Japanese auto parts manufacturer that was being investigated as part of a sweeping global price-fixing probe.

Other companies who have found themselves in the cross-hairs of that probe haven't fared so well. In a press release issued last week announcing a new guilty plea, the DOJ said that 24 corporations had pled guilty — or agreed to plead guilty — and had agreed to cough up a whopping \$1.8 billion in fines.

“That was a huge success for our cartel practice last year,” Smith said.

The Crowell antitrust group obtained some significant resolutions on the civil side as well, representing social media analytics company PeopleBrowsr Inc. in a dispute with Twitter Inc. over alleged competition violations related to Twitter's massive "Firehose" data feed. A settlement announced in April allowed PeopleBrowsr to continue to have access to Twitter's content through 2013.

The firm also obtained a dismissal with prejudice — now being appealed — for Kaiser Permanente in a suit brought by competing hospital chain Prime Healthcare Services Inc., accusing Kaiser of conspiring with labor unions to muscle competitors out of business.

Crowell is also serving as CSX Transportation's lead trial counsel in litigation accusing CSX and other major freight railroads of conspiring to fix fuel surcharge prices. In August the defendants got the D.C. Circuit to vacate class certification.

The firm also successfully defended Motorola in a lawsuit that sought to stop Motorola and AT&T from rolling out new 4G, or fourth generation, mobile devices.

Smith pointed out that getting five second requests last year, while not unprecedented, was quite rare. The firm obtained regulatory clearance in each instance, with the exception of one request related to AT&T Inc.'s still-pending \$4 billion deal to acquire Leap Wireless International.

Crowell represents AT&T in that deal, Smith said, going on to tout the firm's expertise in the telecommunications sector, as well as in aerospace and defense and health care.

"We've done essentially a deal a year for AT&T for the last 8 or 9 years," Smith said.

Another deal flagged by regulators for a second look was the acquisition of Coventry by Aetna, which involved two of the largest health insurance companies in the country coming together and raised complex market-definition issues.

"Despite those issues and DOJ's initial concerns about overlaps in many areas throughout the country, we were able to clear the deal without any conditions," Smith said.

While it may not have an eye-popping price tag when juxtaposed with other deals the firm handled, Flowers Foods Inc.'s \$355 million acquisition of Hostess Brands assets, which included the Wonder Bread brand, was one of the more interesting transactions from a legal standpoint.

Crowell & Moring represented Flowers in the transaction, which implicated some unique questions not just involving antitrust law, but bankruptcy law. Hostess Brands Inc. filed for Chapter 11 protection in 2011.

"Those matters where antitrust law intersects with another substantive area of law, particularly where the issues are novel or unresolved, that to us is the juiciest stuff," said Murray.

--Editing by John Quinn.