

Competition Group Of The Year: White & Case

By Bryan Koenig

Law360 (January 28, 2019, 12:32 PM EST) -- White & Case LLP scored crucial antitrust wins last year, including paring down potentially massive cases into far more manageable and cheaper threats, beating back class certification bids and winnowing down a criminal case to a relatively small settlement, making it one of Law360's Competition Groups of the Year.

The more than 2,400 attorney strong firm, according to antitrust and competition practice head Mark Gidley, benefits from a global reach and extensive experience litigating antitrust cases. Those factors helped it steer Japanese auto parts maker Maruyasu Industries through a \$12 million plea deal with the U.S. Department of Justice for participating in a criminal conspiracy to fix prices, rig bids and allocate customers for automotive steel tubes.

The financial penalty ordered by an Ohio federal judge in May, according to Gidley, could have been far worse.

"The government was going for a lot more," he said, telling Law360 the exact amount was never publicly disclosed.

According to Gidley, the firm managed to score what he called "a very favorable win" after forcing discovery on exculpatory material and raising the prospect that the DOJ lacked direct jurisdiction over a Japanese company with no U.S. business, one of the first times he said a 14th Amendment due process argument had been raised in a criminal case.

The case, Gidley said, "plays right to White & Case's strengths," including the firm's global presence that allows it to navigate distinct cultural and legal nuances across borders. It's being recognized for wins notched between October 2017 and Oct. 1 of last year.

Another crucial strength, Gidley said, is in the high frequency with which White & Case goes to trial, which is roughly once every year.

"It sounds silly but if you don't do it all the time, your skills kind of lapse," he said.

Those skills also played into important antitrust wins in the pharmaceutical space where White & Case's 201 antitrust lawyers — spread across 24 cities in 16 different countries — have developed a major focus, including when defending Par Pharmaceutical Cos. Inc. against a suit alleging it and several other



pharmaceutical companies conspired to delay the entry of generic competitors for AbbVie Products LLC testosterone drug AndroGel.

A Georgia federal judge refused in July to grant class certification to a group of drug wholesalers, holding that the proposed class was far too small to certify and comprised sophisticated members who could actively participate in litigation rather than passively awaiting developments for the class. According to White & Case, the decision appears to have been just the second time in the roughly 20-year history of so-called reverse payment antitrust cases that direct purchasers were refused class action status.

White & Case's lead attorney for Par, Eric Grannon, said the ruling means judges now "have their eyes open — to the fundamental unfairness of multibillion-dollar companies manipulating the class certification process to avoid discovery."

Defeating class certification, Grannon said, could help dissuade some potential plaintiffs who might decide the expense of litigation is "not worth their while." He said it also represents a disruption to the "business model" of pharmaceutical antitrust class actions where smaller companies often acquire the right to pursue claims attributed to much larger firms.

The July success against class certification was followed by what White & Case says was another key win in the spat: the judge's refusal to consolidate the private plaintiffs with the action the Federal Trade Commission is still pursuing against the other pharmaceutical companies after having settled with Par and its partner, Paddock Holdings LLC. That means the private plaintiffs won't be able to rely on the FTC's case, potentially upping the pressure for them to cut a deal or drop the case.

According to Gidley, White & Case tries to be continuously "creative and innovative."

That mantra continues to play out in the firm's work, including in its successful defense of JPMorgan Chase & Co. trader Richard Usher, who was acquitted alongside fellow London-based foreign exchange traders for Barclays PLC and Citigroup Inc. of forex-rigging criminal charges by a Manhattan federal jury in late October. The acquittal, Gidley said, was a "once-in-a-decade kind of win," achieved in a case that played to White & Case's cross-border strengths.

That same month, the firm convinced a First Circuit panel to overturn certification of a class of buyers who purportedly bought Allergan medicines at artificially high prices.

The First Circuit had previously made the rare move in January 2018 of pausing the trial days before opening arguments and allowing Allergan to immediately appeal,



Mark Gidley



Eric Grannon



Jack Pace

where it won a decision holding that certification couldn't be granted because roughly one-in-10 class members suffered no injury. The plaintiffs in that case are currently seeking reconsideration by the full First Circuit.

The Allergan win, according to White & Case's Jack Pace, is part of a growing pushback against the presumption of class certification.

"This is ... the most significant because it's the court of appeals level," he said.

--Additional reporting by Matthew Perlman, Stewart Bishop, Jeff Overley, Christopher Cole, John Kennedy and RJ Vogt. Editing by Alyssa Miller.