

Competition Group Of The Year: Morgan Lewis

By Anne Cullen

Law360 (January 23, 2019, 11:58 AM EST) -- Morgan Lewis & Bockius LLP's antitrust team notched an unprecedented win for a Shire PLC unit in a Federal Trade Commission pay-for-delay suit, grounded cable installers' collusion allegations against Comcast and successfully kept Philadelphia taxi drivers' antitrust allegations against Uber parked on appeal, continuing its streak as one of Law360's Competition Groups of the Year.

Practice group leader Steven A. Reed told Law360 he's thrilled with the recognition for the team's big victories this past year — which also included a landmark win across the pond for a supermarket battling Visa and MasterCard swipe fees — but said he's keeping his eyes forward, as his group will be tasked with holding down a number of those wins at the appellate level in the coming months.

"I expect 2019 will be a busy year," Reed said. "We have number of matters that are up in the appellate courts now from victories below."

The team's efforts to solidify their unheard-of win in March for drugmaker ViroPharma Inc. in the commission's pay-for-delay suit are already under way, as the agency brought the lower court's dismissal up to the Third Circuit where oral arguments kicked off in December.

Reed and his team are defending U.S. District Judge Richard G. Andrews' novel interpretation of the agency's judicial authority — as he ruled that the commission didn't meet the threshold requirements to seek a court injunction under Section 13(b) of the FTC's rules — with the agency asserting that the judge defied precedent with his improperly high pleading standard.

"The argument the FTC made both in the district court and the Third Circuit was that no court in the 45 years since Section 13(b) has been on the books has held the way that Judge Andrews did," Reed said. "But Judge Andrews' interpretation is consistent with the plain language of the statute."

"I think his decision was the correct one, but the obstacle we had to overcome there was the fact that the FTC argued that no court had ruled that way before," he said.

Reed will hit the Third Circuit floor again in March, this time for Comcast, to fight against the revival of two cable installers' suit alleging that the cable giant squeezed them out of the market by awarding



contracts to their competitors and trimming its subcontractor count.

U.S. District Judge Robert D. Mariani tossed the suit in May after finding the subcontractors' claims alleged only an injury to themselves, not the market as a whole.

Morgan Lewis secured that dismissal alongside the cable company's in-house team, a collaboration that Reed said was a key ingredient to their wins, not just for Comcast, but for their clients across the board.

"One of the things that I think that has led to our success is the fact that we've enjoyed really strong relationships with our clients, and work with excellent in-house lawyers who obviously contribute a great deal," he said. "We're very fortunate to have truly excellent lawyers in-house at our clients with whom we partner."

One victory the Morgan Lewis team won't have to defend in 2019 is an antitrust action from Philadelphia cab companies accusing Uber of attempting to monopolize the local taxicab market. The group convinced a Third Circuit panel in March that the suit has already run its course — after a Pennsylvania federal court dismissed it three years ago — and the Supreme Court refused to take up the case in October.

The appellate panel accepted Uber's argument that its entry into the market actually increased competition, rather than reducing it, and that the taxi companies were trying to use the antitrust laws to recover profits they lost due to the increased competition from an innovative company.

"That decision I believe is significant to Uber and certainly the standard generally in the Third Circuit, at least with respect to antitrust standing and antitrust injury," Reed said.

But Uber will keep his team busy in the upcoming year with other work, Reed said, pointing to a handful of competition suits under way in San Francisco.

The firm expanded dramatically several years ago when it took on more than 750 lawyers, legal professionals and staff from the now-dissolved Bingham McCutchen LLP. Those that joined the antitrust group are part of the reason it has done so well, Reed said, as the Bingham McCutchen attorneys brought with them knowledge and experience that complemented the Morgan Lewis team's existing strengths.

As of the beginning of this year, Morgan Lewis has 57 antitrust lawyers worldwide, with the bulk in Washington, D.C., and the rest in offices in Silicon Valley, San Francisco, New York, Philadelphia and Boston, as well as in London, Frankfurt and Brussels.

--Editing by Alyssa Miller.