

Competition Group Of The Year: Morgan Lewis

By **Christopher Cole**

Law360 (December 9, 2020, 6:40 PM EST) -- Morgan Lewis & Bockius LLP helped lead Qualcomm's charge in the Ninth Circuit to overturn the U.S. Federal Trade Commission's lower court win against the chipmaker in a key antitrust dispute over licensing practices, making it one of Law360's Competition Groups of the Year.

The sprawling firm's antitrust team, composed of 68 lawyers in nearly a dozen offices around the globe, made legal news headlines in other cases as well, including a landmark decision in the U.K. Supreme Court in favor of British retail giant Sainsbury's Supermarkets Ltd. against Visa's European arm over credit card swipe fees.

Morgan Lewis also scored a win for Royal Dutch Shell in a closely watched antitrust case brought by a group of commodity traders who alleged a plot to manipulate the benchmark price of Brent crude oil, which underlies pricing for some two-thirds of the world's crude supply. The U.S. Supreme Court turned down review after the legal team won a Second Circuit ruling on the oil company's behalf.

Those are three major achievements for the practice over about a year, but as Steven Reed, leader of the firm's global antitrust and competition law practice, told Law360 in a recent interview, Morgan Lewis can count numerous high marks.

"What we've seen this year is a continuation of the work we've done over the past few years, which are pretty significant victories in different courts, in different countries," and that spans a wide variety of clients in diverse industries, he said.

"I think we all have to recognize what an extraordinary year this has been," he said. "It hasn't been business as usual for us."

One thing Reed said he would highlight was "how well our group has adjusted and responded to the COVID crisis and the other crises that are facing us in the country."

The Qualcomm case in the Ninth Circuit was easily one of the highest-profile triumphs for the practice, which was co-counsel for the chipmaker in defeating an FTC antitrust challenge to its licensing practices.



An appeals panel ruled in August that Qualcomm's practices for licensing standard-essential patents covering cellular technology do not violate antitrust laws. Because the full circuit declined to rehear the case, the only recourse left for the commission is to seek review of the decision by the U.S. Supreme Court.

Reed said the Sainsbury's case against Visa involving swipe fees, which have turned into a major antitrust issue worldwide, was a standout achievement for Morgan Lewis. Coupled with the U.S. Supreme Court's denial of review in the crude oil pricing case, that made for a pair of wins in the top courts on both sides of the Atlantic.

The U.K. case essentially centered on claims that credit card issuers' swipe fees, charged to retailers every time a customer uses a payment card to pay for a purchase, trigger antitrust violations.

A Morgan Lewis attorney involved in the Sainsbury's suit, Frances Murphy, managing partner for Morgan Lewis & Bockius UK LLP, told Law360 in an email "the significance of the ruling is that prior to the judgment of the Supreme Court there had been no English or European ruling that Visa's multilateral interchange fees [are] a restriction of competition."

"The Supreme Court judgment against Visa and MasterCard are among the most significant antitrust cases in the United Kingdom to date," she said, and "they tested the circumstances in which the English courts are bound by judgments of the European courts, whether the standard of proof is reserved for national law and the type of evidence that is required to meet the standard of proof under English law."

One key factor she cited was that the case also dealt with how damages are assessed.

Other cases cited by the antitrust practice as major accomplishments include multiple wins on behalf of Morgan Lewis client Uber Technologies, among them a California appellate decision upholding dismissal of a state class action over allegedly predatory pricing. Morgan Lewis also won dismissal of a federal antitrust suit against USA Cricket.

Reed said that across all the offices of the practice, which has locations as geographically apart as Boston and Brussels, the firm has an eye toward constant growth and high-profile victories in the antitrust field. Including the lawyers dedicated to the group, the firm says more than 125 of its attorneys have broad experience in competition law.

"It's a growing practice and we continue to invest in this practice," Reed said. "We're very happy with the results so far, but we're not done."

--Additional reporting by Bryan Koenig and Hailey Konnath. Editing by Amy Rowe.