



2014 Practice Group of the Year

Competition

Kirkland & Ellis LLP's antitrust team helped hospital company Community Health Systems Inc. navigate its \$7.6 billion acquisition of Health Management Associates Inc. and fended off high-stakes litigation against Teva Pharmaceutical Industries Ltd. and others, landing itself among *Law360's* Competition Practice Groups of the Year.

In addition to steering clients through multibillion-dollar deals and defending against bet-the-company lawsuits, Kirkland filed 206 Hart-Scott-Rodino premerger notifications in the Federal Trade Commission's fiscal year ending in September, which the firm said marked the second consecutive year in which it made filings in more than 12 percent of all deals reported under HSR.

Washington, D.C.-based partner Mark Kovner said Kirkland's 150-lawyer antitrust practice stood apart from other firms' competition groups because of the wide range of experience and expertise it offers clients.

"Kirkland has a breadth of experience in antitrust that I think is really hard to match, and may in fact be peerless," Kovner said. And while there are a lot of law firms that play up their commitment to client service, Kovner said that a client-centric focus has

always been ingrained in Kirkland's character.

"A lot of people tout excellence in client service, but we work hard to walk the walk," he said.

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One of the deals Kirkland's antitrust team was involved in recently created the largest U.S. for-profit hospital system, the firm said. Kirkland represented Community Health Systems in the \$7.6 billion Health Management Associates deal, convincing the FTC to approve the transaction in January 2014 after

CHS agreed to sell off two hospitals in Alabama and South Carolina.

CHS announced that the deal was wrapped up later that same month. The deal was noteworthy in part because it involved two of the largest hospital chains in the U.S., and the FTC has been "keenly interested" in hospital mergers for some time, noted Kovner.

"That was the largest hospital deal that had occurred in an area that's historically been one of the FTC's top priorities," Kovner said.

Kirkland also represented Infineon Technologies AG in its \$3 billion acquisition of El Segundo, California-based International Rectifier, a competitor of Infineon in the international power semiconductor market. The deal was announced in August, and Germany's Infineon announced that it closed on Tuesday.

Kirkland was able to get the transaction — between rivals in a complex worldwide industry — cleared in numerous jurisdictions very quickly, according to Kovner.

“You can do that if you do a lot of homework upfront,” he said. “This was an instance of that kind of effort.”

Kirkland’s antitrust group was also involved, on behalf of Leap Wireless International Inc., in Leap’s \$4 billion acquisition — a \$1.2 billion sale price plus the assumption of \$2.8 billion in debt — by AT&T Inc., a deal that won FCC approval in March.

And Kirkland, along with Wachtell Lipton Rosen & Katz, represented Charter Communications in a \$7.3 billion deal with Comcast Corp.

While Kirkland antitrust lawyers played a role in the Leap Wireless and Charter deals, Kirkland didn’t handle the transactional work for either of those clients. Clients are becoming less likely to let a firm’s antitrust team work on a deal simply because the firm is handling the transaction, and more willing to seek out stand-alone competition counsel, Kovner said.

“It’s increasingly true that there are clients who will park the antitrust work in a different firm than they do the transactional work,” he noted.

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Kirkland, and its antitrust group specifically, are in growth mode, said Kovner and fellow Kirkland partner Jim Mutchnik. There are several reasons for that, but one thing that has driven growth on the litigation side in the past five or six years has been so-called “reverse payment” — also called pay-for-delay — cases, an area where the firm has developed considerable expertise, Kovner said.

Reverse payment cases typically turn on settlements in which a branded drugmaker strikes a deal with a would-be generic competitor that arguably delays the competing drug’s introduction to the market.

Kirkland currently represents Teva Pharmaceutical Industries Ltd. at the Third Circuit in a case that turns on a patent settlement between GlaxoSmithKline LLC and Teva that allegedly postponed the production of a generic version of the epilepsy drug

Lamictal. The case was tossed in January 2014 and oral arguments at the appeals court were held in November.

Kirkland also took up Teva’s cause in a direct purchaser case over a deal with Wyeth Inc. in which Teva allegedly agreed to delay a generic version of the Wyeth antidepressant Effexor XR, the first FTC pay-for-delay suit the agency filed since the U.S. Supreme Court handed down its landmark decision in *FTC v. Actavis* in mid-2013, allowing antitrust challenges to Hatch-Waxman Act settlements.

And Kirkland has been representing Teva in a pay-for-delay battle over the heartburn drug Nexium, which became the first pay-for-delay suit to go to trial since *Actavis*.

“Kirkland is one of the leading firms in defending this unique type of case,” Mutchnik said.

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