

Competition Group Of The Year: Latham

By **Christopher Cole**

Law360 (February 7, 2023, 2:02 PM EST) -- Latham & Watkins LLP made history in the first defeat of a Federal Trade Commission in-house merger challenge, defending biotech firm Grail after its \$8 billion acquisition by Illumina, landing the firm among Law360's 2022 Competition Groups of the Year.

Latham's victory for Grail was part of a banner year for the antitrust group, which saw major wins in other trials on top of shepherding deals that included Amazon's tie-up with Latham-repped MGM Holdings. The firm has also represented U.S. Sugar as the U.S. Department of Justice fights its takeover of Georgia's Imperial Sugar.

The year was also historic for the firm in that a groundbreaking number of women led legal teams that carried clients to success, including one of the defendants who prevailed in a criminal conspiracy case brought by the DOJ involving broiler chicken prices. The government pursued the case twice more but fell short.

"The depth and breadth of what we accomplished this year has to be certainly record-breaking for us across a number of metrics," said Amanda Reeves, the global practice chair of Latham's antitrust and competition practice.

Those successes have "just been a tremendous reflection of the team that we've been building over the last two decades around the world," she said.

Latham's lawyers helped beat back the FTC's legal challenge of Illumina-Grail before its own chief administrative law judge, the type of case that agency enforcers usually win.

Illumina has closed its \$8 billion reacquisition of Grail, which pioneers cancer testing, but the FTC wants to unwind the deal, saying it could hinder potential Grail rivals that also use Illumina's DNA sequencing technology. Agency lawyers have appealed to the full commission, and the deal is still facing a legal challenge in the EU.

Michael Egge, a member of Latham's executive committee and former practice chair who spearheaded Grail's merger defense, told Law360 that Latham has built a "Lamborghini"-like, best-in-class antitrust group over the years, and "this year, we got to take it out on the track."



It's also been a year for Latham to demonstrate the capacity of its Brussels practice as it tackles EU challenges to mergers like Illumina-Grail, he said.

Despite the FTC's home-court advantage in the biotech case, Chief Administrative Law Judge D. Michael Chappell sided with the private parties in "recognizing how pro-competitive vertical deals like this can be, but then also saying that the FTC didn't meet its burden of proof," he said.

In the \$315 million sugar deal that triggered a DOJ merger challenge — the first under Biden-era antitrust chief Jonathan Kanter — U.S. Sugar and Imperial won in Delaware federal court by arguing the merger would help consumers by expanding domestic sugar supplies and keeping Imperial in business. The DOJ appealed the case to the Third Circuit, although the deal has since closed.

The district court win in that case, along with numerous trial victories and mergers, demonstrated the extent of Latham's legal talent, said Christopher Yates, a San Francisco partner and former practice chair who co-led Latham's team for U.S. Sugar with fellow partner Lawrence Buterman.

"It just was a year in which we were really hitting on every cylinder," he said. "And our goal has always been to be the best antitrust practice group in the world, and I think this is the kind of year we envisioned."

As Yates pointed out, the Latham team that won at trial court for U.S. Sugar included numerous female associates, and the firm said that women had a high profile across the spectrum of the antitrust group's work last year.

The competition group of 170 attorneys globally also focuses on bringing together teams of lawyers with talents in different areas — for example, a strong trial lawyer, an economics expert and someone who's great with witnesses. Reeves called this a "constellation of stars" approach. "We thrive and succeed based on the depth of the team," she said.

Reeves said that makes Latham well-positioned for the "period of unprecedented regulatory enforcement" taking hold. "And the plaintiffs' bar has likewise caught wind of what's going on and has become much more active on the merger side even over the last couple of months."

"So to be properly built for 2023 and beyond, you need depth on the regulatory side, you need depth from the trial side, and you need depth around the world," she added.

--Additional reporting by Matthew Perlman, Bryan Koenig and Madeline Lyskawa. Editing by Gemma Horowitz.