

## Competition Group Of The Year: Latham & Watkins

By Aaron Vehling

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Latham & Watkins LLP's antitrust and competition group had a banner year, from representing WhatsApp in its \$21.8 billion sale to Facebook Inc. to helping the London Metal Exchange beat price-fixing claims and successfully defeating class certification in the Toshiba Corp. optical disk drive litigation, earning the firm a spot on Law360's list of Competition Practice Groups of the Year.

A global Latham & Watkins team represented instant-messaging company WhatsApp, securing merger clearance in the U.S. in April and in the European Union in October for Facebook's major acquisition of the company whose chat app has 450 million monthly users.

The firm's 140-member international antitrust and competition practice group, which co-chairs Al Pfeiffer and Chris Yates lead from San Francisco and which co-chair Mike Egge leads from Washington, D.C., and Brussels, also helped the 140-year-old LME successfully argue that the Foreign Sovereign Immunities Act protected it from claims in U.S. courts that it conspired with banks and others to fix the price of aluminum.

In another major case, the practice group, representing a Toshiba Corp. subsidiary, in October successfully defeated certification of two nationwide classes of indirect and direct purchasers accusing Toshiba and other electronics producers of conspiring to fix the prices of optical disk drives.

Egge said there are two core ingredients for ensuring that Latham achieves the level of success it enjoys: talent and teamwork. The co-chairs invest a lot of energy into building a team with the highest quality talent while offering a globally integrated service across 17 international offices, Egge and Pfeiffer said.

"We bring together talented people who will be good team players," Pfeiffer said. "It's not necessarily all about their ego."

All of that is important because the group spans multiple countries with different policies and regulations with respect to antitrust and competition matters, Egge said, noting that when a transaction requires lawyers in jurisdictions where Latham doesn't have offices the spirit of teamwork extends to attorneys in other firms.

"We work with local partners in different countries where we don't have offices, and are particularly adept at being able to take strategic transactions and execute on the regulatory front on a timetable that meets clients needs," Egge said.

Egge's expertise leans toward the merger clearance side, and the Whatsapp deal, announced in February, was an especially big case in that arena and showcased the "talent and teamwork" principle rather prominently.

Latham represented the company in both the U.S. and European jurisdictions, which vary drastically in their approach to clearance, Egge said. Some of the principles are similar, but the processes are very different, he said.

Egge has spent more than two years working out of the Brussels office, and was in the middle of a move back to D.C. when Law360 caught up with him to discuss the practice group's successes.

For one thing, the European process is more front-loaded, he said. There is a lot of work to be done during the pre-filing period, spending several months preparing drafts and complying with rules and methods of practice that aren't necessarily in the books, according to Egge.

Contrast that with stateside practices, in which the front end consists of a 30-day waiting period before closing a deal, Egge said. If the Federal Trade Commission doesn't find anything warranting further review, it can terminate proceedings immediately or just let that waiting period expire.

Egge lauded the "incredibly detailed work" of the team working on the Whatsapp deal, which the FTC approved in April and the European Commission gave a nod in October.

In addition to Latham representing clients in deals worth billions of dollars, it scored a huge win for the storied LME in the aluminum antitrust MDL when it brought the FSIA argument to the New York federal court as a first-impression question.

Although plaintiffs have previously made antitrust claims against companies that traded on the LME, the exchange itself has not been a defendant, according to Latham.

In her August ruling U.S. District Judge Katherine B. Forrest professed she "initially found this result somewhat surprising and counterintuitive" but concluded that the precedent under the FSIA shielded the LME from the suits claiming that it conspired with banks and warehousemen to inflate storage costs for aluminum.

The plaintiffs allege that several banks such as Goldman Sachs Group Inc. and JPMorgan Chase & Co., along with affiliated warehousing companies, the LME and other financial institutions, entered agreements between 2010 and 2013 that delayed the delivery of aluminum to end users that produced such things as drink cans.

The delay inflated rents on metal storage and earned the trading companies profit from futures trading based on resulting market conditions, the complaint alleges.

When representing Toshiba in the optical disk drive MDL, the practice group again served its client well, successfully securing agreement from U.S. District Judge Richard Seeborg that neither group had provided a workable methodology for establishing classwide injury and damages.

"That was a pretty resounding victory on the merits on class certification," Pfeiffer said. "The court went right down the line in adopting the arguments that we were pushing on behalf of joint defense group."

In denying both the direct and indirect purchaser groups' motions for class certification, Judge Seeborg found the plaintiffs hadn't shown that reports from their experts, economist Gary French and professor Kenneth Flamm, provided a basis for concluding that antitrust injury could be determined on classwide basis.

For Egge and Pfeiffer, achieving these victories, and the scores of others Latham won for clients in 2014, relied heavily on a type of harmony resonant in the firm.

"There is a cohesiveness among the partners," Pfeiffer said, "both in the firm generally and in the antitrust practice group."

--Additional reporting by Melissa Lipman, Allissa Wickham and Tom Zanki. Editing by Andrew Park.

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