

## Competition Group Of The Year: Cravath

By **Matthew Perlman**

*Law360 (December 7, 2020, 8:33 PM EST)* -- Competition attorneys from Cravath, Swaine & Moore LLP scored a pivotal victory for Qualcomm this year defending against a Federal Trade Commission enforcement action, while also filing high-profile suits against Apple and Google on behalf of Epic Games and helping companies including Mylan get through major merger reviews, landing the practice among Law360's 2020 Competition Groups of the Year.

Cravath has just under 530 attorneys, largely based out of its New York office, and generally has about 20 attorneys from its litigation and corporate departments doing antitrust work at a given time. But the firm said that number can increase with workload and that it currently has about 60 attorneys working on antitrust issues.

The current workload comes amid months of uncertainty surrounding the global COVID-19 pandemic, but Christine A. Varney, chair of Cravath's antitrust practice, told Law360 that the crisis has not had a lasting impact on the pace of the firm's work despite an initial slowdown that lasted from mid-March to mid-April.

"Between April 15 and the end of April, it went from zero to 110 in about two weeks," Varney said. "It just really picked up."

Cravath partner Gary A. Bornstein helped lead the Cravath team that defended Qualcomm from the FTC's case accusing the chipmaker of monopolizing the market for modem chips used in cellular phones through the licensing practices for its standard-essential patents. The case deals with the intersection of antitrust and intellectual property rights, an issue that has been a vigorous topic of debate in antitrust circles.

After the commission prevailed in district court, Qualcomm won a resounding reversal from the Ninth Circuit in August. The full Ninth Circuit then denied a rehearing bid in October.

"There aren't that many appellate precedents out there on these issues," Bornstein said. "It will be cited a lot for years to come."

Cravath has been working on the matter since before a formal investigation was opened and also



worked on a related dispute between Qualcomm and Apple that resulted in a settlement in 2019 worth about \$4.5 billion. The firm said it had up to two dozen attorneys working on Qualcomm issues at certain points.

"It was a long time coming and it was in the context of a client that was being beleaguered on all sides," Bornstein said. "It finally resulted in a complete and total victory after a long, long period with some dark days along the way."

Among matters currently on Cravath's plate are a pair of lawsuits from Epic, maker of the popular video game Fortnite, which is accusing both Apple and Google of monopolizing the distribution of apps on their platforms. Varney, who has served both as a commissioner on the FTC and as the Assistant Attorney General for antitrust in the Justice Department, said the cases could be as significant as the government's monopolization case against Microsoft.

"In the same way, that U.S. v. Microsoft was a seminal case in the 90s that kind of brought antitrust into technology, I think this will be a seminal case, at least in the first half of the 21st century, if not longer, that kind of does the same thing for mobile platforms," Varney said. "I think the case is really going to open up what the obligations of Google and Apple are when it comes to apps and app distribution."

Bornstein is also helping lead the Epic cases and said they are really just about creating competition for app distribution because competition "forces people to do better," resulting in more innovation and lower prices.

"Classic antitrust," he said.

But taking on companies the size of Apple and Google can present unique challenges, including the amount of resources they've already devoted to the issues.

"Apple and Google have been thinking about these issues for years," Bornstein said. "They have a well put together litigation and regulatory machine already spun-up to deal with this type of thing."

Cravath's merger work last year included representing Buckeye Partners LP in connection with its \$10.3 billion acquisition by IFM Global Infrastructure Fund, a move that closed in November 2019. It also helped steer Mylan NV in its merger with Pfizer Inc.'s Upjohn off-patent brand and generic drug business, which the FTC's cleared in October with the sale of several drug products.

Varney said the latter deal encountered some difficulty as the "ground shifted" during the course of the merger.

"In the U.S., there was a growing sentiment that mergers are bad, that mergers hurt consumers and raise prices," Varney said. "That was definitely not the case when we signed the deal and I think that made it more difficult."

--Editing by Amy Rowe.