

Competition Group Of The Year: Sullivan & Cromwell

By **Matthew Perlman**

Law360 (January 25, 2019, 12:29 PM EST) -- The competition team at Sullivan & Cromwell LLP helped guide Bayer and Praxair through the global clearance process last year for transformative deals that required complicated fixes, while also earning wins on high-stakes conduct cases for other clients, landing the team a spot among Law360's Competition Groups of the Year.

Sullivan & Cromwell attorneys served as lead counsel to Bayer AG in winning greenlights from regulators in more than two-dozen jurisdictions for its \$66 billion purchase of Monsanto Co., a deal that ultimately required the divestiture of nearly \$9 billion in assets. Meanwhile, a team from the firm helped guide Praxair Inc. in its more than \$70 billion merger of equals with Linde AG through a review process that saw upwards of \$8 billion in assets shed.

Renata Hesse, who joined Sullivan & Cromwell's litigation group in 2017 after a stint as acting chief of the U.S. Department of Justice's Antitrust Division, told Law360 that the firm was able to employ small teams on both transactions, despite the heavy lifting they required.

"It is, I think, unprecedented for a single firm, with the sort of lean team that we use here, to have accomplished two of the largest transactions of the year and gotten them through the regulatory process at the same time," Hesse said. "I think what it tells you about the firm is that the quality of the resources is what really matters."

The firm's competition group includes 22 partners and 24 other attorneys working mostly out of four U.S. offices and two in Europe. Core groups of five to six Sullivan & Cromwell attorneys worked full-time on the Bayer and Praxair transactions, with support from various parts of the firm as needed. Steven Holley, a partner in the litigation group who worked both deals, said that using a lean team saves money and time because it makes it easier to keep everyone up to speed.

To win approval for its Monsanto purchase, Bayer cut a deal to sell a large swath of assets to chemical company BASF Corp., which included various provisions to help ease concerns about the divested businesses remaining viable. These included a so-called wrong pocket clause that would allow BASF to come back and acquire additional assets up to a year after closing.



Holley said the team faced “vehement opposition” from the staff level at the DOJ during the review process and that the team had to work with the front-office to find a solution.

“We did something which I don't think people normally do, which is in the face of a whole bunch of complaints about how it couldn't be fixed, we went ahead and fixed it,” Holley said.

Another challenge was getting the divestitures to line-up across the 30 or so jurisdictions that had to approve the deal and making sure there were no conflicts with the remedies that were proposed to different authorities. In the end, Holley said, the divestitures in the Bayer deal mostly overlapped, but only because they fought “tooth and nail to make sure that they did.”

The Praxair deal also required careful coordination across jurisdictions, ultimately receiving clearance from 20 different authorities and seeing assets sold to four different buyers.

“It's just keeping a lot of balls up on the air, and making sure that you don't have overt conflicts from one jurisdiction to another,” he said. “But this seems to be, if you're going to do these giant deals with people who are really operating on a global scale, this is the way it's going to be now.”

Hesse said global reviews have become increasingly complicated, in part because some of the smaller competition authorities have stopped simply following the lead of the U.S. and Europe, as they had in the past. Instead, she said, they're working together more.

“The depth of cooperation means that the substantive reviews have taken longer to get done, which puts pressure on timing, and that also puts pressure on clearance of a particular remedy,” she said.

On conduct matters, Sullivan & Cromwell scored a big win in August for its client Royal Bank of Canada in a case accusing some of the world's largest banks of rigging the \$9 trillion government agency bond market. A New York federal court dismissed a suit from private investors over the allegations after finding they had failed to allege they were injured by the conduct.

This was despite the fact that Bank of America and Deutsche Bank were cooperating with the investors following settlements.

In September the firm also scored a win for private equity client Lion Capital LLP in the multidistrict litigation over allegations of price fixing in the packaged seafood industry. The judge found that Lion Capital and one of its holding companies could not be held liable for the actions of its portfolio company Bumble Bee Foods.

Hesse said the range of matters the firm works on shows that it has a full-service operation and makes it a fun and interesting place to work.

“It's just a tremendous combination of substantive skill set, with a strategic sense of how to get things done and how to do it in a way that works for the client and without, generally, ruffling the feathers of the authorities that you're appearing in front of,” she said.

--Editing by Alyssa Miller.