

Competition Group Of The Year: Wilson Sonsini

By **Ryan Davis**

Law360, New York (January 15, 2013, 4:16 PM ET) -- Wilson Sonsini Goodrich & Rosati PC guided both Netflix Inc. and Live Nation Entertainment Inc. to victory in separate certified antitrust class actions and secured regulatory approval on three continents for Seagate Technology PLC's acquisition of Samsung Electronics Co. Ltd.'s hard drive business, earning the firm a spot among Law360's Competition Practice Groups of the Year.

In both the Netflix case, where the plaintiffs alleged the company conspired with Wal-Mart Stores Inc. to corner the online DVD rental market, and the Live Nation case, which claimed the company and Clear Channel Communications Inc. monopolized the market for rock music tickets, federal judges granted summary judgment to the defendants after earlier granting the plaintiffs class certification.

"It's unusual to get to summary judgment in two certified class action and prevail on both in less than a year," said Jonathan Jacobson of Wilson Sonsini's New York office.

The Netflix suit claimed that the company struck an anti-competitive deal with Wal-Mart in 2005, in which Netflix agreed not to sell new DVDs and Wal-Mart agreed not to compete in the business of renting DVDs online.

By the time the judge ruled on Netflix's motion for summary judgment, Wal-Mart had already reached a settlement with the subscriber plaintiffs valued at between \$30 million and \$40 million.

"The management at Netflix had the guts to stick it out through summary judgment and if necessary, through trial," Jacobson said.

In November 2011, U.S. District Judge Phyllis J. Hamilton of the Northern District of California, granted summary judgment to Netflix, ruling that there was no evidence the deal restrained trade. The subscribers failed to show that any member of the class paid a higher rate for Netflix's service because of the arrangement, she ruled. The case is now on appeal to the Ninth Circuit.

The case was challenging in part because the subscribers were represented by "almost the entire plaintiffs' bar," Jacobson said.

"It was not a trivially litigated case, and the outcome was a complete win for Netflix," he said.

The Live Nation case was originally brought as a nationwide class action claiming that the company and Clear Channel used their market power to drive up ticket prices for live music, but class certification was denied in 2006.

The plaintiffs then filed 22 regional cases, five of which were certified as class actions. Two of them, involving Los Angeles and Denver plaintiffs, were selected as test cases.

In March 2012, U.S. District Judge Stephen V. Wilson of the Central District of California granted summary judgment to Live Nation and Clear Channel, concluding that "rock concerts" was not a market that could be monopolized.

The judge found no liability and no injury and ruled that the testimony of the plaintiffs' expert purporting to show that Live Nation and Clear Channel harmed consumers was "hopelessly flawed." The plaintiffs later agreed to dismiss the other regional cases.

"It was a complete win. All 22 cases were disposed of, and there is no appeal," Jacobson said.

Seagate's \$1.4 billion acquisition of Samsung's hard disk unit was announced shortly after a similar deal by Western Digital Technologies Inc. to buy Hitachi Ltd.'s storage unit, and the two deals would together reduce the number of hard drive makers from five to three.

However, Wilson Sonsini notified the European Commission and China's Ministry of Commerce of the Seagate deal first, so it was analyzed by those agencies as if Hitachi and Western Digital were separate companies, boosting Seagate's chances of getting approval.

"Ours got in first in both Europe and China, so we had the benefit of being reviewed as if the other deal didn't exist," said Scott Sher of Wilson Sonsini's Washington, D.C., office.

As a result, the Seagate deal was cleared with no conditions in the U.S. and European Union and with minor conditions in China in December 2011, while regulators imposed substantial remedies on the Western Digital deal, Sher said.

Also in the past year, Wilson Sonsini represented Micron Technology Inc. in its \$2.5 billion acquisition of Elpida Memory Inc., announced in July, and mining company Glencore International PLC in its \$90 billion tie-up with rival Xstrata PLC, announced in February.

The firm also represented Google Inc. in the Federal Trade Commission's investigation into its search business, which ended with a settlement this month, after Law360's practice group of the year winners were announced.

The firm's practice group has 50 attorneys who work on antitrust matters full time in the New York; Palo Alto, Calif.; Washington; and Brussels offices. Wilson Sonsini also has 10 to 15 members of its litigation team whose work is focused primarily on competition matters.

The competition group is one of the larger groups at the 700-person firm, and has grown substantially since it started with a very small group of attorneys six years ago, Jacobson said.

"We expect to keep growing, though not at the pace we've grown at in the past," he said.

Susan Creighton, co-chair of the firm's antitrust practice, said that because the group is purpose-built and grew from a handful of people, "we're able to add people that are complementary to our practice."

"We can really hire best of breed, rather than repurpose people as demand comes and goes," she said.

One of the keys to the group's success is the ability of the attorneys to work closely together as a team and avoid any conflicts over who gets credit for the work, Jacobson said.

"I've been around for a number of years, and I've never observed over the course of my career a group as collegial as this one," he said. "That's a term every firm likes to use, but you rarely see to the extent you see it with this group."

--Editing by John Quinn.

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