

Rising Star: Wilson Sonsini's Scott Sher

By **Joseph Marks**

Law360, New York (March 16, 2011) -- Wilson Sonsini Goodrich & Rosati PC partner Scott Sher was a force behind some of the biggest technology acquisitions of 2010, helping to win European Commission approval for Oracle Corp.'s \$7.4 billion acquisition of Sun Microsystems Inc. and Federal Trade Commission backing for Intel Corp.'s \$7.7 billion acquisition of McAfee Inc., earning him a spot on Law360's list of five competition lawyers under 40 to watch.

Sher, 38, helped win approval for the Oracle-Sun deal before the U.S. Department of Justice's Antitrust Division in late 2009 and shepherded the Intel-McAfee deal through the European Commission in January.

Sher also played a major role in Wilson Sonsini's representation of Google Inc. in 2010, including working extensively on Google's planned acquisition of ITA Software Inc., one of the leading software providers for flight and hotel booking websites, including Orbitz LLC, which may face DOJ scrutiny.

Sher came to Wilson Sonsini's San Francisco office in 2000 after graduating from the University of California Hastings College of the Law in 1997 and clerking for Judge Joseph T. Sneed III of the U.S. Court of Appeals for the Ninth Circuit and Judge Charles A. Legge of the U.S. District Court for the Northern District of California.

"My first month of work was really the beginning of the dot-com bust," Sher said. "I remember driving to work in October and the traffic was terrible and by April it was very easy. For antitrust [attorneys] that was actually fantastic because there was a lot of market consolidation, a lot of companies were being acquired instead of going public. So during my first years of work, I really got a tremendous amount of very interesting experience."

By 2004, Sher had racked up enough antitrust experience in the growing tech sector that the firm asked him to move to Washington to help put together a central office for its burgeoning antitrust practice.

In addition to recruiting a roster of big names for the firm's now-60-member Washington office, he also helped build a 30-member global antitrust practice, which allows the firm to coordinate its representation of clients across regulatory jurisdictions.

"I think there's a broad recognition that antitrust can't be jurisdiction-specific," Sher said. "You can't have a strategy that just takes into account one jurisdiction, then allow a completely unrelated team to do the primary antitrust matters in another jurisdiction. You have to coordinate to make sure one team isn't too far out ahead of another on the substance. Agencies talk to each other frequently and if they're coordinating, you have to as well."

One of the exciting things about working in technology antitrust, Sher said, is that technology is moving so quickly that it regularly outpaces traditional conceptions of what's anti-competitive and what's not.

"I think the important thing with regard to antitrust and technology markets is really to make sure that the other side — a judge or a regulator — understands how the industry and technology works," Sher said.

"That's oftentimes the answer to why a transaction does or doesn't raise competition problems," he said. "That really can't be determined based on precedent....Some of these markets have only been around for one year or three years and you have no idea what that market is going to look like three years down the line or even six to 12 months."

As one example, he cited the Intel-McAfee deal. In that case, he said, European Commission regulators were especially concerned that the merger would allow Intel to gain an unfair advantage in the computer security market by building McAfee security software into its processors.

While that concern would be valid in most traditional acquisitions, Sher said, his firm spent a great deal of time explaining that it made little sense in the Intel-McAfee case because security software and the computer viruses that attack it change so quickly that a security system frozen into a three-year-old central processing unit would be of little value.

"So that wasn't necessarily an antitrust question," Sher said, "it was a technology question and the posited potential theories of harm made no sense in the industry."

--Editing by Jonathan Jacobson.

All Content © 2003-2011, Portfolio Media, Inc.