

Competition Group Of The Year: Dechert

By **Alex Lawson**

Law360, New York (January 23, 2014, 1:50 PM ET) -- Dechert LLP's antitrust professionals were hard at work last year, handling no less than four billion-dollar transactions, with none looming larger than the \$17 billion merger of US Airways Group Inc. and American Airlines, resolving a challenge to the deal from government regulators and landing a spot among Law360's Competition Practice Groups of the Year.

While the 17-partner Dechert antitrust team prides itself on its technical savvy and legal know-how, co-chair George Gordon said that the firm chiefly focuses on how to deliver practical business solutions for its corporate client base.

"I think part of our philosophy is bringing a relentless focus on the real world and real-world operation of the marketplaces in which our clients operate," Gordon told Law360. "Economic theory is nice and economic models are interesting, but what really matters is how competition actually works."

Such was the case when the firm served as antitrust counsel to US Airways in its merger with American Airlines, eventually striking a settlement with the U.S. Department of Justice to clear the deal in exchange for a series of divestitures of departure gates and takeoff and landing spots at seven key airports.

The deal and the ensuing legal challenge from the DOJ quickly rose to national prominence, with unions, lawmakers and other stakeholders all weighing in. Dechert took note of the attention, prepping US Airways executives before testifying on Capitol Hill and quarterbacking critical presentations before the DOJ.

"We are quite attuned to what's going on in the rest of the transaction and work very closely with lawyers in non-antitrust fields, communications specialists, and lobbyists depending on the nature of the issue," Dechert partner Paul Denis said. "We pride ourselves on taking a broad view of this and integrating effectively with the clients' other advisers to get the deal done."

Working alongside Denis on the airline merger were Paul Friedman, Steven Bradbury and Gorav Jindal. Less than two weeks after that transaction was unveiled in February, Dechert found itself at the forefront of another megadeal, representing OfficeMax in its \$1.2 billion merger with Office Depot.

When the Federal Trade Commission ultimately filed a second request to probe the potentially anti-competitive effects of the deal, the deck appeared stacked against Dechert.

The firm's chief obstacle was the FTC's landmark action in 1997 that blocked a merger between Office Depot and Staples Inc. Denis explained that U.S. competition authorities have evolved significantly since then, focusing more on the practical competitive effects of a deal.

Still, Dechert had its work cut out for it to convince regulators that the OfficeMax deal was not merely a rehashing of the ultimately doomed Staples transaction. Denis, along with James Fishkin and Mike Cowie, had to explain to the FTC that the office supply industry had undergone significant changes since the late 1990s, no longer operating on the basis of localized markets that hinged on the number of office supply superstores in close geography.

"We were able to show them strategy documents that they could read in English so they could understand that," Denis said. "But what made it more effective was backing it up with this complex econometric analysis that showed, in fact, that the number of office supply superstores in a localized geographic area didn't make a difference on prices."

The firm was rewarded for its efforts, as the FTC unanimously cleared the deal in November after concluding that the office supply superstores faced sufficient and considerable competition from other retailers both online and off.

The close proximity of the US Airways and OfficeMax deals stood as a microcosm of the firm's busy year in the deals sector. At one point, the firm was simultaneously handling three second requests from the FTC, Denis explained.

Throughout the year, Dechert also went to bat in private litigation, including securing the settlement of an antitrust suit brought by American Airlines against travel services company Travelport Ltd. Dechert defended Travelport against the airline's allegations that the company had conspired with Orbitz Worldwide to monopolize a market for the distribution of AA tickets through travel agents subscribing to Travelport's services.

The firm counseled Travelport in the development of the key facts necessary to counter the airline's claims on summary judgment and also through mediation proceedings ahead of the settlement.

Another of Dechert's antitrust co-chairs, Michael Weiner, stressed that no matter the task at hand, the firm always strives to keep its obligation to the client at the forefront of its efforts, both in and out of the courtroom.

"The clients aren't looking for us to tell them what the law is, they are looking for us to help them solve the problem," Weiner said. "Part of that is not just laying out the pros and cons but also giving them the benefit of our collective wisdom and actually providing a recommendation on what the course of action is that they ought to be taking."

--Editing by John Quinn.