

Leading LAWYERS

Twelve of the D.C. Area's Top Antitrust Attorneys

Tefft Smith

Kirkland & Ellis

When it comes to antitrust litigation, Tefft Smith is a veteran combatant—with a reputation for taking no prisoners.

The Kirkland & Ellis partner has a long track record of battling the government in court, and has been involved in litigating some of the most significant merger and price-fixing cases in recent years.

“We’re known at the [Federal Trade Commission and the Department of Justice] as people capable and willing to go to trial,” Smith, 58, says. “They know we cannot be bluffed by them.”

Smith is currently representing Infineon Technologies AG in ongoing DOJ litigation over price fixing in the computer memory chip market, and the Dow Chemical Co. in a DOJ antitrust probe involving a joint venture with DuPont. He also recently finished a two-week trial in U.S. District Court in Dallas representing the Allstate Insurance Co. in a challenge to a Texas state competition law.

“He’s exceptionally strategic, very aggressive, and highly organized,” says Charles Kalil, Dow’s general counsel. “He knows how to make sure the work you get, whether he’s written the document or not, is absolutely top-drawer. He puts together a hell of a team.”

Smith heads Kirkland’s 100-lawyer antitrust practice. Well-known colleagues include Michael Becker, Mark Kovner, J. Robert Robertson, and Karen Walker.

Smith’s first big victory came in 1981, when, as a junior partner, he assumed the lead role in what he calls “a case no one ever expected us to win.”

He was representing the Weyerhaeuser Co., which was seeking to acquire the Menasha Corp.’s West Coast operations for corrugated cardboard. The FTC challenged the deal. But Smith successfully argued in U.S. District Court for the District of Columbia and then before a FTC administrative law judge that the relevant market for corrugated cardboard was national, not regional, and therefore the merger was not anti-competitive.

More recently, he oversaw the domestic and international clearance of SC Johnson’s acquisition of Bayer AG’s insecticide business—a challenging transaction since it combined the No. 1 and No. 2 brands in most major countries.

In Smith’s best-known trials, he argued for Office Depot Inc. in its 1997 attempted merger with Staples Inc. and for baby-food maker Beech Nut Nutrition in its 2000 bid to combine with H.J. Heinz. Both were ultimately losses. But, as Smith says, “they

were extremely cutting-edge and important experiences in my career.”

In all, Smith has tried more than 20 cases to verdict, honing his litigation skills on a few non-antitrust matters along the way.

In the mid-1980s, for example, he represented Kraft Foods Inc. (also a major antitrust client) when a truck carrying 48,000 pounds of Miracle Whip overturned on a man driving a Datsun, leaving him a quadriplegic. Kraft settled with the plaintiff, then joined forces to sue the state of California for misdesign of the road, winning an \$18.5 million verdict.

Whether dealing with spilled sandwich dressing or complex economic theories, Smith says the basic trial skills are the same: “You have to master the facts and come up with a compelling story that has emotional appeal to the listener. . . . You’ve got to develop a pro-competitive story, instead of making it a technical market definition issue.”

Smith’s introduction to antitrust came in 1969, when he was a student at the University of Chicago Law School. A new professor, Richard Posner (now Judge Posner of the U.S. Court of Appeals for the 7th Circuit), was looking for a research assistant and hired Smith. They shared a byline in an article offering a statistical analysis of antitrust cases.

Smith joined Kirkland’s Chicago office in 1971 and moved to the D.C. office in 1998.

Aside from driving his Ferraris (plural) and playing squash (he’s a nationally ranked player), Smith says that “the most important thing I enjoy is training new lawyers, helping them learn to be practical, helpful advisers to companies, and teaching them the art of trial advocacy.”



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