



# 2012 Practice Group of the Year

## Competition

Kirkland & Ellis LLP combined litigation moxie, helping Barr Pharmaceuticals beat class action claims over a \$400 million pay-for-delay settlement for the antibiotic Cipro, and regulatory know-how, winning antitrust approval for Constellation Energy Group Inc. in its \$7.9 billion merger with utilities giant Exelon Corp., helping earn the firm a spot among *Law360's* Competition Practice Groups of the Year.

Among its accomplishments in 2012, Kirkland & Ellis stifled a software developer's attempts to revive antitrust claims against BlackBerry maker Research In Motion Ltd. and won dismissal of an antitrust complaint against Facebook Inc. over an online advertiser's attempts to inject its own ads on the social networking site.

Kirkland & Ellis attorneys said the continued growth and success of the firm's competition team traces back to the additions in March 2011 of former Federal Trade Commission Chairman Tim Muris and his chief of staff, Christine Wilson, to the firm's Washington, D.C., office. At that time, Kirkland & Ellis also added Bilal Sayyed, formerly of O'Melveny & Myers LLP and the FTC, and Ian Conner, formerly of Hunton & Williams LLP and the U.S. Department of Justice's antitrust division.

Muris, who chaired the FTC from 2001-04, is the only former chairman who maintains a full-time competition practice, the firm said.

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"Tim Muris helps separate us from everyone else," Wilson said. "More broadly, this is a practice group that has first-rate talent in every aspect of antitrust law, including mergers,

litigation and criminal matters. This is an unusually balanced practice group in terms of its bench depth and experience."

One way Kirkland & Ellis' team set itself apart in 2012 was in its ability to successfully guide clients through several high-profile mergers and acquisitions in the energy and health care industries, two areas that receive considerable scrutiny from competition regulators. In 2012, Kirkland & Ellis filed 176 Hart-Scott-Rodino filings, premerger notifications that provide additional information on a pending transaction for the FTC and DOJ.

In the energy sector, Kirkland & Ellis represented Constellation in its \$7.9 billion merger with Exelon, creating the largest competitive energy provider in the U.S. The DOJ accepted the transaction, which drew

a second request for information, in March after Exelon offered to shed three electricity plants in Maryland.

The firm also represented NRG Energy Inc. in its \$1.7 billion deal to acquire GenOn Energy Inc. The deal, announced in July, will create the largest competitive power company in the U.S.

“These transactions are part of a larger stream of energy sector consolidation on the power plant side,” said Mark L. Kovner, a partner in the firm’s Washington office. “These reviews are both very big and very different than other FTC and DOJ assessments. The DOJ effort is just one piece of a larger regulatory puzzle.”

Additionally, the firm represented BP PLC in its agreement to sell its Texas City refinery and certain downstream assets in the southwestern U.S. to Marathon Petroleum Corp.

In the health care sector, Kirkland & Ellis represented Bristol-Myers Squibb Co. in its \$7 billion acquisition of Amylin Pharmaceuticals Inc., which closed in August 2012, and Teva Pharmaceutical Industries Ltd. in its \$6.8 billion acquisition of Cephalon Inc. The Teva deal closed in October 2011 after gaining approval from the European Commission.

Kirkland & Ellis attorneys are also handling multiple cases related to one of the hottest issues in the pharmaceutical industry: so-called

pay-for-delay settlements, in which a patent-holding pharmaceutical company pays a generic challenger to delay market entry of its product.

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Kirkland & Ellis, on behalf of client Upsher-Smith Laboratories, filed a petition for certiorari with the Supreme Court regarding antitrust challenges over the generic-drug maker’s patent settlement regarding the blood pressure medication K-Dur 20. In doing so, Upsher-Smith became the second defendant to ask the high court to review a Third Circuit holding that pay-for-delay pharmaceutical patent settlements are presumptively anti-competitive.

“This is really a cutting-edge issue and we’re right in the thick of things,” said Karen Walker, a partner in Kirkland & Ellis’ Washington office. “Particularly because of the intense focus in the U.S. on drug costs and health care costs, thinking through

these issues and seeing them played out in litigation has been fascinating and rewarding.”

In a case also dealing with pay-for-delay deals, the firm represented Barr Pharmaceuticals in a class action alleging Barr and Bayer Corp. colluded to delay a generic version of the antibiotic Cipro. In October 2011, a California appeals court rejected claims brought by a class of California consumers who alleged the agreement violated state law. The California Supreme Court in February agreed to consider the plaintiffs’ appeal on the matter.

In the next year, Kirkland & Ellis is planning to continue its growth in Asia and Europe, said James H. Mutchnik, a partner in the firm’s Chicago office. Mutchnik also said Kirkland & Ellis plans to continue investing resources in its public company’s practice and invest more in its antitrust group.

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