



LAW360

# 2013 Competition MVP

## Mark Kovner

The antitrust and competition practice at Kirkland & Ellis LLP had a hand in nearly 12 percent of all the transactions reported to federal antitrust agencies in the past year, and as a senior member, partner Mark Kovner was involved in several of the year's most prominent cases, earning him a spot among *Law360's* 2013 Competition MVPs.

Kovner, who has more than 24 years of experience representing clients in complex government antitrust investigations and litigation, focusing mostly on merger and acquisition clearances of late, has seen his work span deals in a variety of industries.

"It's been a very busy year, a bit of a roller-coaster on the volume of exciting and challenging matters that we've been fortunate enough to handle," he told *Law360*.

Speaking from his office in Washington, D.C., last week, he had just received word that two more deals received clearance under the Hart-Scott-Rodino Antitrust Improvements Act: Advance Auto Parts Inc.'s agreement to acquire General Parts International Inc. for \$2.04 billion, and the \$3.5 billion acquisition of five coal mines and other infrastructure in West Virginia by Murray Energy Corp., the nation's largest privately owned coal company.

"There has been work in an enormously wide range of industries, from auto rental to hospitals to car-part retailing to coal mining to life sciences to defense and consulting," Kovner said. "It's never been boring."

Kovner had to navigate a complicated tangle of issues in his representation of Clearwire in its sale to Sprint, a competitor but also its largest shareholder.

Identifying Kovner's most prominent cases in the past year is a challenge considering his work included Clearwire Corp.'s closely watched \$3.6 billion sale to Sprint Nextel Corp., Avis Budget Group Inc.'s efforts to acquire Dollar Thrifty Automotive Group, and the \$28 billion purchase of H.J. Heinz by 3G Capital Partners Ltd. and Berkshire Hathaway Inc., the largest transaction ever in the food industry.

He also represented Avis in its \$500 million acquisition of Zipcar

Inc., Vista Equity Partners in a pair of \$1 billion acquisitions for tech companies Websense Inc. and Active Network, and NRG Energy Inc.'s \$1.7 billion merger with GenOn Energy Inc., among others.

Kovner had to navigate a complicated tangle of issues in his representation of Clearwire in its sale to Sprint, a competitor but also its largest shareholder. Japanese company Softbank Corp.'s acquisition of Sprint added an additional layer to the dealings, and Dish Network Corp. entered the fray with competing bids for both Clearwire and all of Sprint, driving the final sale price to \$5 per share by the June 2013 closing, up from the \$2.97 per share Sprint originally agreed to pay eight months earlier.

“There were a tremendous number of moving parts and funky calls to be made on what required HSR clearance and what didn’t, and some national security issues,” Kovner recalled.

Kovner’s representation of Avis in its pursuit of Dollar Thrifty also followed a twisting path. Avis entered a topping bid despite Dollar Thrifty having reached a sale agreement with

really stepped to the fore,” he said, adding that China’s merger review has emerged in many potential deals as a “gating item” to see if the transaction can go the distance.

Kovner said that U.S. agencies have also been very proactive and energetic, and he has come to realize the need for him to also be proactive in engaging reviewers early in the process.

Systems Inc. in its proposed \$7.6 billion purchase of Health Management Associates Inc. and its 71 hospitals, a deal that would create the largest for-profit hospital system in the United States with a total of 200 hospitals. The agreement was announced in July and is currently being reviewed by the FTC.

Kovner said he expects the federal government to continue to have a

“What’s exciting for me is to work in a variety of industries and grapple with complicated factual and legal questions, and I don’t foresee any of that changing going forward,” Kovner said.

Hertz and then undertook a parallel HSR and foreign antitrust review, which became a major public issue. Hertz withdrew its HSR filing after losing a shareholder vote, but later reentered the picture when Avis chose to end its acquisition efforts. Hertz ended up acquiring Dollar Thrifty for more than \$1 billion above its initial bid and after agreeing to divestitures and to give up some airport slots.

“A lot of the antitrust battles were bandied about in the press,” Kovner said. “Some of the antitrust nuances were used as swords and hammers in the press in ways that I hadn’t seen before.”

The Heinz acquisition, in which Kovner represented 3G Capital Partners, stood out because it required merger clearance in a dozen countries, he said, highlighting one of the challenges in today’s landscape.

“China and India and other countries with nascent review agencies have

“In general, the more you work in collaboration with them, the more likely you are to come to a reasonable and positive resolution,” he said.

Kovner credited his high volume of work to Kirkland’s corporate practice, which he said has worked on more and more deals each year, inevitably running into antitrust questions for his department to address.

“It provides a platform for us to showcase our talents and it gives us an opportunity to do good work,” he said.

He also directed credit toward his colleagues, including former Federal Trade Commission Chairman Timothy Muris, Christine Wilson, who served as Muris’ chief of staff at the FTC, and partner Michael S. Becker, who also has a doctorate in economics.

Kovner said he anticipates a continued steady stream of work in the new year. He is currently representing Community Health

heightened interest in certain industries, including hospitals and pharmaceuticals, energy, technology, software and Internet-related businesses, as well as those related to consumer goods and food.

“What’s exciting for me is to work in a variety of industries and grapple with complicated factual and legal questions, and I don’t foresee any of that changing going forward,” he said.

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