

Q&A With McDermott Will's Raymond A. Jacobsen Jr.

Tuesday, Oct 02, 2007 --- Government agencies should publicly explain their reasons not to challenge significant transactions, says Raymond A. Jacobsen Jr. of McDermott Will & Emery LLP in our series of chats with high-profile practice leaders.

Q. What attracted you to antitrust as a practice area? And what keeps you interested?

A. Working with great clients on significant business/legal issues in a diversity of procedural settings. I was fortunate to begin my career just as antitrust laws were changing substantively (with the General Dynamics, MarineBanc and GTE Sylvania decisions) and procedurally (with the Hart-Scott-Rodino Act). In the 30 years since, I've had the opportunity to work with many great clients and colleagues throughout the world to help grow our clients' businesses.

Q. What's the most challenging antitrust case you've worked on, and why?

A. We recently convinced the FTC not to challenge a merger that was very similar to one it had successfully challenged several years ago. This was an example of how it is possible, with the right facts, to convince the agencies to permit transactions even in markets where they may have had antitrust concerns.

Q. What's the most ridiculous antitrust lawsuit you've defended a client against?

A. I spent several years defending a major oil company accused of monopolizing the Florida phosphate land market. The plaintiff claimed an interest to a sizable portion of central Florida. Ultimately, we moved to dismiss the case for lack of standing and the case settled. This was an example of how many antitrust cases never reach the merits and can sometimes be disposed of on procedural grounds.

Q. Which aspects of antitrust law do you think are in need of reform, and why?

A. The FTC/DOJ "clearance" procedure is definitely in need of reform as was noted by the Antitrust Modernization Commission (AMC). Just recently, in a transaction our client was complaining about, it took a month just for the two agencies to decide which of them would review the transaction — definitely not a result consistent with antitrust enforcement.

Q. If you were in charge of the DOJ's and the FTC's antitrust divisions, what changes would you make?

A. I'd suggest they adopt the AMC's recommendation that the agencies publicly explain their reasons not to challenge significant transactions. This has been done occasionally (Cruiselines, Whirlpool), but (subject to confidentiality concerns) should be done more often to better inform corporations how the FTC/DOJ is applying the Merger Guidelines in particular transactions.

Q. Outside your own firm, can you name one antitrust lawyer who's impressed you and tell us why?

A. With respect to substantive issues — Bob Pitofsky, who taught me Advanced Antitrust at Georgetown and whom I've had the pleasure to work with in co-counseling arrangements. With respect to antitrust litigation — someone long-retired, Bill Simon, who probably argued more Supreme Court cases (five) than any antitrust lawyer. Early in my career, I had the pleasure to help him prepare several of those briefs.

Q. What advice would you give to a young lawyer who's interested in getting into antitrust law?

A. Pick an area of antitrust law that interests you — whether it be mergers, intellectual property licensing, distribution, etc. — and become an expert in that area. Also, become active in the ABA antitrust section committees, attend their sessions and help prepare committee publications.

Q. I'm a General Counsel with a Fortune 500 company facing a major antitrust lawsuit. Why should I hire your firm?

A. First, we have over 80 lawyers in 14 offices who specialize in antitrust/competition work, many of whom are recognized in Chambers or Best Lawyers in America. Second, we have a strong track record of winning challenging lawsuits and government investigations. Third, we enjoy working collaboratively with in-house counsel and attorneys in other firms to create "dream teams" in major litigation. And we understand the need to be cost-competitive and responsive with respect to fee arrangements. We work hard to find win/win fee arrangements.

Raymond A. Jacobsen Jr. is a partner at McDermott Will & Emery LLP in the firm's Washington office. As head of the firm's regulation & government affairs department and its antitrust and competition practice group, he focuses his practice on mergers, acquisitions and complex antitrust litigation, with significant experience in the defense, medical devices, biotech, consumer product, energy and health care industries.