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August 15, 2011

Agency Challenges to Non-HSR Reportable Transactions

Dale Collins

We often hear that some deals are too small to be of interest to the Antitrust Division or the Federal Trade Commission, even if the deal is anticompetitive. More generally, there is a view that if a transaction is not reported to the antitrust agencies pursuant to the Hart-Scott-Rodino Act, the transaction is safe from challenge. Both views are mistaken.

Since January 1, 2001, the DOJ and FTC have challenged 24 non-HSR reportable transactions. Nineteen of these transactions fell below the minimum reporting threshold in effect at the time of the acquisition. The smallest of these transactions was \$4.4 million. Of the five remaining transactions, three were covered by an HSR exemption, one did not involve the acquisition of voting securities or assets, and one had no public explanation. Twenty of the transactions were already consummated at the time of the challenge, and four of the transactions were pending.

The FTC brought 15 challenges and the DOJ brought nine. The number of challenges has increased during the Obama administration, but not significantly so.

Challenges to Non-HSR Reportable Transactions

	FTC	DOJ
2001	1	1
2002	0	1
2003	1	1
2005	1	0
2006	3	0
2007	0	2
2008	1	1
2009	2	0
2010	3	2
2011	3	1
	<hr/>	<hr/>
	15	9



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Nineteen of the challenges ultimately settled, two were adjudicated on the merits in favor of the defendants, one was mooted (a bankruptcy bid failed), and two are still in litigation. Eight of the challenges settled simultaneously with the filing of the challenge. Fifteen of the challenges involved active litigation, ranging from about one month to 41 months.

The full note contains a summary of each of the 24 challenges, including the products and services in issue, a brief description of the acquisition and the gravamen of the agency's complaint, the reason (if known) why the transaction was not HSR reportable, and the ultimate disposition of the challenge. The note also contains links to the agency's web page on the case, the complaint, and the proposed and final consent orders.

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Agency Challenges to Non-HSR Reportable Transactions—Summary

Challenge	Transaction	Agency	Time in litigation	Resolution
7/21/2011	Cardinal Health/Biotech	FTC	Immediate settlement	Settlement
5/10/2011	George's Foods/Tyson Foods	DOJ	2 months	Settlement
4/20/2011	Phoebe Putney/Palmyra	FTC	4 months +	In litigation
1/6/2011	ProMedica Health/St. Luke's Hospital	FTC	8 months +	In litigation
7/28/2010	Nufarm Ltd./A.H. Marks	FTC	Immediate settlement	Settlement
12/1/2010	Laboratory Corp. /Westcliff	FTC	5 months	Defendant prevailed
3/8/2010	ESS/Premier Electron Solutions	DOJ	Immediate settlement	Settlement
1/22/2010	Dean Foods/Foremost	DOJ	3 months	Settlement
5/7/2010	Dun & Bradstreet/QED	FTC	4 months	Settlement
7/24/2009	Carilion Clinic/CAI/CSE	FTC	3 months	Settlement
2/26/2009	Lubrizol/Lockhart	FTC	Immediate settlement	Settlement
12/16/2008	Ovation Pharmaceuticals	FTC	32 months	Defendant prevailed
1/18/2008	Microsemi/Semicoa	DOJ	9 months	Settlement
5/22/2007	Daily Gazette Co./MediaNews Group	DOJ	32 months	Settlement
4/18/2007	Amsted Industries/FM Industries	DOJ	Immediate settlement	Settlement
7/7/2006	Hologic/Fischer Imaging	FTC	Immediate settlement	Settlement
8/18/2006	Duncan-EPCO/TEPPCO	FTC	Immediate settlement	Settlement
3/13/2006	American Renal Associates/Fresenius	FTC	Immediate settlement	Settlement
7/28/2005	Aloha Petroleum/Trustreet Properties	FTC	1 month	Settlement
8/7/2003	Aspen Technology/Hyprotech	FTC	11 months	Settlement
4/29/2003	SGL/Carbide/Graphite Group	DOJ	0 months	Complaint withdrawn as moot
4/24/2003	DFA/Southern Belle Dairy	DOJ	41 months	Settlement
10/10/2001	MSC/UA/CSAR	FTC	10 months	Settlement
6/6/2001	3D Systems/DTM	DOJ	2 months	Settlement



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Agency Challenges to Non-HSR Reportable Transactions—Detail

(January 1, 2001, through August 15, 2011)

Parties	Year	Products/Services	Acquisition	HSR	Result
Cardinal Health/Biotech FTC news release	2011 FTC	Production, sale, and distribution of single photon emission computed tomography (“SPECT”) radiopharmaceuticals (also called low energy radiopharmaceuticals)	<p>In July 2009, Cardinal Health acquired four nuclear pharmacies from privately held Biotech. Following the acquisition, Cardinal closed its pharmacies in Albuquerque, New Mexico, El Paso, Texas, and Las Vegas, Nevada.</p> <p>The FTC’s administrative complaint alleged that, as a result of the acquisition, Cardinal has a monopoly in Albuquerque, had a monopoly in El Paso until a new firm recently entered, and left only one firm competing with Cardinal in Las Vegas (with Cardinal substantially the larger).</p>	Does not appear that the minimum reporting thresholds were met: (i) the transaction was small enough that Cardinal Health did not have to make an 8-K filing, and (ii) the FTC challenged the transaction two years after it was completed.	<p>On July 21, 2011, the FTC issued an administrative complaint against Cardinal Health challenging the already consummated acquisition and simultaneously accepted a provisional consent order requiring Cardinal to reconstitute and then divest three nuclear pharmacies that it operated prior to the acquisition in Albuquerque, El Paso, and Las Vegas.</p> <p>The consent order is before the FTC pending final approval.</p>



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Parties	Year	Products/Services	Acquisition	HSR	Result
George's Foods/ Tyson Foods DOJ news release	2011 DOJ	Processing of broilers (chickens raised for meat processing)	<p>On or about March 18, 2011, Tyson and George's publicly announced George's intent to buy Tyson's Harrisonburg chicken processing complex.</p> <p>On April 18, 2011, the DOJ issued CIDs to the parties to investigate the transaction.</p> <p>On May 7, 2011, before responding to the CIDs and without any notice to the DOJ, George's and Tyson entered into an asset purchase agreement and simultaneously closed the transaction.</p> <p>The DOJ's complaint alleged that the acquisition reduced the number of chicken processors that purchased broilers in Virginia's Shenandoah Valley region from three to two.</p>	<p>Below minimum reporting threshold: Transaction value not reported.</p> <p>See DOJ news release (noting that the transaction value was below the minimum HSR reporting threshold).</p>	<p>On May 10, 2011, the DOJ filed a complaint against George's challenging the already consummated transaction and seeking that "divestiture of such assets and interests sufficient to restore competition in the Shenandoah Valley be ordered."</p> <p>On June 23, 2011, the DOJ and the parties reached a settlement requiring George's Foods to increase capacity of the acquired facility, which according to the DOJ press release, would give George's "the incentive and ability to increase local poultry production, thereby increasing the demand for grower services and averting the likely adverse competitive effects arising from the acquisition."</p>



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<p>Phoebe Putney/ Palmyra</p> <p>FTC news release</p>	<p>2011 FTC</p>	<p>Inpatient general acute-care services sold to commercial health plans</p>	<p>Proposed transaction through which Phoebe Putney Health System (PPHS), a nonprofit entity that operates Phoebe Putney Memorial Hospital under a lease from the Hospital Authority of Albany-Dougherty County, acquires operating control of Palmyra Park Hospital:</p> <p>(1) the Authority purchases Palmyra's assets from HCA backed by PPHS' guarantee of the \$195 million purchase price and an agreement to pay a \$35 million break-up fee; and</p> <p>(2) once the Authority obtained title, it would lease Palmyra to PPHS for \$1.00 per year for 40 years and give PPHS a management agreement in an arrangement similar to that under which PPHS operates Phoebe Putney Memorial Hospital.</p> <p>The FTC's administrative complaint alleged that Phoebe Putney and Palmyra are each other's closest competitors, and, if the acquisition is allowed to proceed, the combined company would control 86% of the relevant market.</p>	<p>The parties did not make an HSR filing, based on the exemption for transactions involving state entities.</p>	<p>On April 20, 2011, the FTC issued an administrative complaint against Phoebe Putney, HCA, Palmyra Park Hospital, and the Hospital Authority of Albany-Dougherty County challenging the partially completed transaction.</p> <p>On the same day, the FTC filed a Section 13(b) complaint seeking a TRO and a preliminary injunction in district court.</p> <p>On June 27, 2011, the district court denied the motion and dismissed the complaint on the grounds of state action immunity. The FTC is appealing the district court's decision.</p> <p>The administrative proceeding has been stayed pending the appeal to the Eleventh Circuit.</p> <p>For the major filings in this case, see Applied Antitrust.com.</p>



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ProMedica Health/ St. Luke's Hospital FTC news release	2011 FTC	(1) general acute-care inpatient hospital services sold to commercial health plans, and (2) inpatient obstetrical services	<p>In August 2010, ProMedica acquired control of St. Luke's Hospital in Lucas County, Ohio.</p> <p>The FTC's administrative complaint alleged that, as a result of the acquisition, ProMedica controls nearly 60% of the general acute-care inpatient hospital services market in Lucas County and over 80% of the market for obstetrical services, as measured by patient days.</p>	In a filing with the federal district court seeking an injunction, the FTC said the deal was not reportable. No further explanation was given.	<p>On January 6, 2011, the FTC issued an administrative complaint against ProMedica challenging the already consummated acquisition.</p> <p>On January 7, 2011, the FTC filed a petition in district court for a preliminary injunction to require ProMedica to preserve St. Luke's as a separate, independent competitor during the FTC's administrative proceeding and any subsequent appeals.</p> <p>On March 29, 2011, the district court entered judgment granting the FTC's motion for a preliminary injunction. The administrative proceeding is continuing.</p> <p>For the major filings in this case, see Applied Antitrust.com.</p>



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Nufarm Ltd./ A.H. Marks FTC news release	2010 FTC	Three phenoxy herbicides (MCPA, MCPP-p, and 2,4DB)	<p>In March 2008, Australian chemical company Nufarm acquired all of A.H. Marks.</p> <p>The FTC's administrative complaint alleged that the acquisition resulted in Nufarm obtaining monopoly positions in two phenoxy herbicide markets (MCPA and MCPP-p) and reduced a third market (2,4DB) to a duopoly.</p>	Total consideration was reported as A\$236 million, but parties may have had insufficient sales and assets in the U.S to be HSR-reportable.	<p>On July 28, 2010, the FTC issued an administrative complaint against NuFarm challenging the already consummated acquisition and simultaneously accepted a provisional consent order requiring Nufarm to:</p> <ol style="list-style-type: none"> (1) divest Marks' MCPA rights and assets to Albaugh, a new competitor; (2) divest Marks' MCPP-p rights and assets to PBI Gordon, another new competitor; and (3) modify Nufarm's current agreements with Dow Chemical and Aceto related to MCPA and 2,4DB to allow them to compete in the market for those herbicides. <p>On September 10, 2010, the FTC entered its final decision and order.</p>
Laboratory Corp. / Westcliff FTC news release	2010 FTC	Clinical laboratory testing services to physician groups operating under the delegated managed care model	<p>In May 2010, Westcliff agreed to sell all of its business assets to LabCorp for \$57.5 million. Westcliff was operating under Chapter 11 bankruptcy protection.</p> <p>The FTC's administrative complaint alleged that LabCorp and Westcliff are two of only three vendors of clinical laboratory testing services for the vast majority of physician groups in Southern California.</p>	Below minimum reporting threshold: \$57.5 million.	<p>On December 1, 2010, FTC issued an administrative complaint (4-1 vote, with Rosch dissenting) against LabCorp challenging the consummated acquisition.</p> <p>The FTC also sought a preliminary injunction to prevent LabCorp from integrating the Westcliff assets. The district court (C.D. Ca.) denied the FTC's motion on Feb. 22, 2011.</p> <p>On March 24, 2011, the FTC withdrew its appeal to the Ninth Circuit.</p> <p>On April 22, 2011, the FTC dismissed its administrative complaint.</p>



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Election Systems and Software / Premier Electron Solutions DOJ news release	2010 DOJ	Voting equipment systems	<p>In September 2009, ES&S acquired Premier Election Solutions, a subsidiary of Diebold, for \$5 million in cash plus 70 percent of receivables as of the end of August 2009.</p> <p>The DOJ's complaint alleged that, as a result of that acquisition, ES&S provides more than 70 percent of the voting equipment systems that registered voters rely on to vote in federal, state and local elections held in the United States.</p>	<p>Below minimum reporting threshold: Transaction value not reported.</p> <p>See Competitive Impact Statement 4, n.1 (noting transaction was not reportable).</p>	<p>On March 8, 2010, the DOJ and nine states filed a complaint against ES&S challenging the already consummated transaction.</p> <p>On the same day, the parties filed a proposed consent decree requiring ES&S to divest the means to produce all versions of Premier's hardware, software, and firmware used to record, tabulate, transmit, or report votes. On June 30, 2010, the court entered its final judgment.</p>
Dean Foods Co./ Foremost Farms USA Consumer Division DOJ news release	2010 DOJ	(1) school milk, and (2) fluid milk	<p>In April 2009, Dean acquired the Consumer Products Division of Foremost Farms USA, including two dairy processing plants, for \$35 million.</p> <p>The DOJ's complaint alleged that the acquisition eliminated a maverick competitor; combined the first and fourth largest sellers of school milk and fluid milk in Wisconsin, the Upper Peninsula of Michigan, and northeastern Illinois; and resulted in Dean providing more than 57 percent of fluid milk in the region and more than 50 percent of school milk in Wisconsin and the UP.</p>	<p>Below minimum reporting threshold: \$35 million.</p>	<p>On January 22, 2010, the DOJ and three states filed a complaint against Dean challenging the already consummated acquisition and seeking a permanent injunction requiring Dean to divest the acquired assets.</p> <p>On March 29, 2011, the DOJ entered into a consent agreement with the parties. The agreement requires Dean Foods to divest one of the two Foremost dairy processing plants that it acquired.</p>



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<p>Dun & Bradstreet/QED</p> <p>FTC news release</p>	2010 FTC	Kindergarten through twelfth grade educational marketing data (essentially mailing and email address lists)	<p>In January 2009, Dun & Bradstreet through its MDR division acquired QED from Scholastic Inc. for \$29 million.</p> <p>The FTC's administrative complaint alleged that, as a result of the acquisition, MDR holds over 90% of the relevant market, with only a small fringe consisting of two firms accounting for the remainder, making the transaction in practical effect a merger-to-monopoly.</p>	Below minimum reporting threshold: \$29 million.	<p>On May 7, 2010, the FTC filed an administrative complaint against D&B challenged the already consummated acquisition and seeking “[t]he divestiture with appropriate updates, of all assets necessary to restore the lost competition between MDR and QED, and in a manner that creates two or more distinct, separate, viable, and independent businesses in the relevant market(s), each with the full incentive, ability, and assets needed to offer the kinds of products and services that MDR and QED prior to the Acquisition had been offering, or had planned to offer.” The FTC also sought to require D&B to divest and not retain all data obtained from QED.</p> <p>On September 10, 2010, the FTC accepted a consent order requiring D&B to update and divest the QED K-12 marketing database (but was allowed to keep QED data D&B had imported into its own K-12 database), release former QED customers upon their request from their long-term contracts, provide the divestiture buyer with access to former QED employees as well as certain D&B employees, and provide QED customer information, transitional support and technical services to the divestiture buyer.</p> <p><i>Note:</i> The FTC accepted the consent order in final without a public comment period.</p>



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Carilion Clinic/ Center for Advanced Imaging (CAI) and Center for Surgical Excellence (CSE) FTC news release	2009 FTC	Advanced outpatient imaging services and outpatient surgical services	<p>In August 2008, Carilion Clinic acquired Odyssey IV, LLC, doing business as CAI and CSE, two outpatient clinics in the Roanoke, Virginia, area.</p> <p>The FTC's administrative complaint alleged that, as a result of the acquisition, Carilion now faces only one competitor, HCA Lewis-Gale, in the provision of advanced outpatient imaging and surgical services in the Roanoke market.</p>	Below minimum reporting threshold: \$20 million.	<p>On July 24, 2009, the FTC filed an administrative complaint against Carilion Clinic challenging the already consummated acquisition and seeking the divestiture of CAI and CSE as well as physician practices that were sources of referral support to CAI or potentially participating surgeons for CSE.</p> <p>On October 7, 2009, the FTC accepted a provisional consent order requiring the sale of CAI and CSE and, among other things, prohibiting Carilion from soliciting for employment any physician or physician practice that has referred patients to the Center for Advanced Imaging since January 1, 2008.</p> <p>On December 1, 2009, the FTC entered its final decision and order.</p>



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Lubrizol/ Lockhart FTC news release	2009 FTC	Oxidates for use as a rust preventive additive	<p>In February 2007, Lubrizol acquired Lockhart oxidate assets for \$15.6 million. The purchase agreement included a non-competition covenant that prohibited Lockhart, for a period of five years, from directly or indirectly engaging in any business competitive with the assets it sold to Lubrizol.</p> <p>The FTC's administrative complaint alleged that, prior to the acquisition, Lubrizol and Lockhart dominated the market for oxidates and together accounted over 98% of sales in the U.S. market for oxidates.</p>	Below minimum reporting threshold: \$15.6 million.	<p>On February 26, 2009, the FTC filed an administrative complaint against Lubrizol and Lockhart challenging the already consummated acquisition.</p> <p>On the same day, the FTC accepted a provisional consent order requiring Lubrizol to transfer certain oxidate assets it acquired to Additives International LLC (AI), including a non-exclusive license to manufacture rust-preventive formulas acquired from Lockhart and the right to use Lockhart trademarks for two years. In addition, Lockhart (which was also named as a respondent in the administrative complaint) must lease a portion of its Flint plant to AI, and Lubrizol must waive its non-compete agreement with Lockhart in order to facilitate AI's use of the plant.</p> <p>On April 10, 2009, the FTC entered its final decision and order.</p>



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<p>Ovation Pharmaceuticals</p> <p>FTC news release</p> <p><i>Note: In the course of the proceedings, Ovation changed its name to Lundbeck, Inc.</i></p>	2008 FTC	Drugs to treat patent ductus arteriosus (PDA), a congenital heart defect	<p>In January 2006, Ovation acquired the NeoProfen, a drug awaiting regulatory approval, from Abbott Laboratories.</p> <p>The FTC's complaint alleged the acquisition provided Ovation with control over the only two pharmaceutical treatments for PDA sold in the United States.</p>	Below minimum reporting threshold: Transaction value not reported.	<p>On December 16, 2008, the FTC filed a complaint in federal district court pursuant to Section 13(b) of the FTC Act against Ovation challenging the already consummated acquisition and seeking permanent injunctive relief to divest NeoProfen. No administrative complaint was filed.</p> <p>On August 31, 2010, the district court dismissed the FTC's action for failure on market definition.</p> <p>On August 19, 2011, the Eight Circuit affirmed the dismissal.</p>
<p>Microsemi/Semicoa</p> <p>DOJ news release</p>	2008 DOJ	<p>(1) JANTXV and JANS small signal transistors, and</p> <p>(2) JANTXV and JANS 5811 diodes, all of which are used in military and space applications</p>	<p>On July 14, 2008, Microsemi acquired substantially all of Semicoa's assets. According to the Microsemi press release, total consideration for the acquisition was approximately \$25 million.</p> <p>The DOJ's complaint alleged that the acquisition combined the only suppliers of JANTXV and JANS small signal transistors in the world, and eliminated Semicoa as a re-entrant manufacturer of JANTXV and JANS 5811 diodes, where Microsemi was the only incumbent manufacturer.</p>	<p>Below minimum reporting threshold: Approximately \$25 million.</p> <p>See Competitive Impact Statement 2-1 (noting transaction was not reportable).</p>	<p>On December 18, 2008, the DOJ filed a complaint against Microsemi challenging the already consummated acquisition and seeking divestiture of the Semicoa assets.</p> <p>On August 20, 2009, the DOJ and Microsemi reached a settlement requiring the company to divest all of the assets that it acquired from Semicoa.</p> <p>On January 29, 2010, the district court entered its final judgment adopting the settlement.</p>



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<p>Daily Gazette Co./ MediaNews Group</p> <p>DOJ news release</p>	<p>2007 DOJ</p>	<p>(1) sale of local daily newspapers to readers in Charleston WV, and</p> <p>(2) sale of access to those readers to advertisers in those newspapers</p>	<p>Prior to the acquisition, Daily Gazette and MediaNews were parties to a Joint Operating Agreement (JOA) pursuant to which they consolidated certain non-editorial aspects of their respective daily newspapers, the Charleston Gazette and the Charleston Daily Mail.</p> <p>On May 7, 2004, Daily Gazette Company acquired MediaNews' ownership interest in the Joint Operating Agreement (JOA) and ownership of the Daily Mail.</p> <p>The DOJ's complaint alleged that, as a result of the acquisition, Daily Gazette owned the only two daily newspapers in Charleston.</p>	<p>Below minimum reporting threshold: Transaction value not reported.</p> <p>See DOJ news release (noting transaction did not satisfy reportability thresholds).</p>	<p>On May 22, 2007, the DOJ filed a complaint against both the Daily Gazette and MediaNews challenging the already consummated transaction and seeking to rescind it.</p> <p>On January 20, 2010, the DOJ and the parties reached a settlement requiring the companies to:</p> <ol style="list-style-type: none"> (1) restructure their joint operating arrangement and returning to MediaNews independent control over the operations of the Daily Mail; (2) provide economic incentives to grow the newspaper, including substantial discounts of the Daily Mail in order to rebuild its subscriber base; and (3) continue publishing the Charleston Daily Mail as long as it has not failed financially. <p>The settlement also prohibited the Daily Gazette from discriminating against the Daily Mail in circulation, advertising sales, and other key joint activities.</p> <p>On July 19, 2010, the district court entered its final judgment adopting the settlement.</p>



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Amsted Industries/ FM Industries DOJ news release	2007 DOJ	New and reconditioned end-of-car cushioning units (EOCCs), which are used by railroads in the United States.	<p>On December 1, 2005, Amsted and Progress Rail completed an asset swap by which Progress Rail conveyed FMI, its wholly-owned subsidiary, FMI, to Amsted. On April 25, 2006, Amsted dismantled FMI by firing its employees and disposing of virtually all FMI plant equipment through an auction, and conducted all of its EOCC business out of one facility.</p> <p>The DOJ's complaint alleged that the acquisition reduced the number of new EOCC suppliers from two to one, and the number of reconditioned EOCC suppliers from three to two.</p>	Below minimum reporting threshold: Transaction value not reported.	<p>On April 18, 2007, the DOJ filed a complaint against Amsted challenging the already consummated acquisition.</p> <p>On the same day, the parties filed a proposed consent decree with the court. The consent decree requires Amsted to divest without compensation to Wabtec Corporation, a new entrant, all intellectual property and other intangible assets that it acquired from Progress Rail. In addition, the consent decree requires Amsted to grant a perpetual, royalty-free license to certain Amsted-generated intellectual property to account for gaps in the FMI IP and to notify the United States of future acquisitions related to EOCCs.</p> <p>On July 16, 2007, the district court entered its final judgment adopting the settlement. On July 15, 2008, the court granted the DOJ's unopposed motion to enter a modified final judgment.</p>



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Hologic/ Fischer Imaging FTC news release	2006 FTC	Prone stereotactic breast biopsy systems (Prone SBBS), which are used to conduct highly precise, minimally invasive breast biopsies using X-ray guidance	<p>On September 29, 2005, Hologic paid \$32 million to acquire all of Fischer's intellectual property and other assets related to its mammography and breast biopsy businesses, including patents, trademarks, and customer and vendor lists for Fischer's prone SBBS product.</p> <p>The FTC's administrative complaint alleged that the acquisition eliminated Hologic's only significant competitor in the U.S. market for prone SBBSs.</p>	Below minimum reporting threshold: \$32 million.	<p>On July 7, 2006, the FTC issued and administrative complaint against Hologic challenging the already consummated acquisition.</p> <p>On the same day, the FTC accepted a provisional consent order requiring Hologic to divest to Siemens all of Fischer's prone SBBS-related assets. The consent permitted Hologic to retain a license to Fischer's prone SBBS patents to ensure that Hologic can continue to compete in the U.S. prone SBBS market after the divestiture.</p> <p>On August 9, 2006, the FTC entered its final decision and order.</p>
Dan L. Duncan and EPCO, Inc./ Texas Eastern Products Pipeline and TEPPCO Partners FTC news release	2006 FTC	Salt dome storage for natural gas liquids in Mont Belvieu, Texas	<p>On February 24, 2005, EPCO, which was controlled by Duncan, acquired from Duke Energy Field Services:</p> <p>(1) TEPPCO's general partner, Texas Eastern Products Pipeline Company, for \$1.1 billion, and</p> <p>(2) 2.5 million limited partnership units of TEPPCO Partners for \$100 million.</p> <p>The FTC's administrative complaint alleged that EPCO and TEPPCO controlled the two leading providers of NGL salt dome storage out of only four providers in the Mont Belvieu market.</p>	Not reportable. See Analysis of Proposed Agreement Containing Consent Order to Aid Public Comment.	<p>On August 18, 2006, the FTC filed an administrative complaint against Duncan, EPCO, TEPPCO, and Teppco Partners, L.P. against the already consummated transaction.</p> <p>On the same day, the FTC accepted a provisional consent order, which required TEPPCO to divest its interests in its Mont Belvieu Storage Partners natural gas liquids storage facility and related pipeline, land, and other assets.</p> <p>On November 3, 2006, the FTC entered its final decision and order.</p>



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American Renal Associates/ Fresenius FTC news release	2006 FTC	Outpatient dialysis services	<p>On August 3, 2005, the parties entered into an asset purchase agreement pursuant to which ARA would purchase five Rhode Island dialysis clinics from Fresenius. The agreement also required Fresenius to close an additional three clinics—two in Rhode Island and one in Fall River, Massachusetts.</p> <p>The FTC's administrative complaint alleged that the agreement to close three Fresenius clinics was a naked agreement to eliminate competition in the affected areas. The complaint also alleged that ARA and Fresenius were the only two providers of outpatient dialysis services in the Warwick/Cranston, R.I. area, and that ARA's acquisition of the two Fresenius clinics in Warwick would have given ARA a monopoly in the area.</p>	Below minimum reporting threshold: \$4.4 million.	<p>On March 13, 2006, in response to the FTC investigation, the parties terminated the asset purchase agreement.</p> <p>On September 7, 2006, the FTC filed an administrative complaint against ARA and Fresenius and simultaneously accepted a provisional consent order, which</p> <ol style="list-style-type: none"> (1) prohibits ARA and Fresenius from agreeing with any dialysis clinic operator to close any clinic or otherwise allocate any dialysis market, territory, or customer, and (2) requires ARA to notify the FTC of its intention to acquire any dialysis clinic assets in the Warwick/Cranston area of Rhode Island. <p>On October 23, 2006, the FTC entered its final decision and order.</p>



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Aloha Petroleum/Trustreet Properties FTC news release	2005 FTC	(1) marketing of gasoline by bulk suppliers, including intracorporate transfers to integrated retailers, and (2) the retail sale of gasoline.	<p>Pursuant to an asset purchase agreement dated February 22, 2005, Aloha, which owns a 50 percent interest in the Barbers Point petroleum importing terminal on Oahu, would acquire the remaining 50 percent interest from Trustreet. Aloha also would acquire, through long-term leases, 18 retail stations that Trustreet now operates under the “Mahalo” brand name.</p> <p>An interest in the terminal gives the owner a proportional right to use the terminal’s capacity to import gasoline or to store gasoline obtained from refiners on Oahu.</p> <p>The FTC’s Section 13(b) complaint alleges that the acquisition, if allowed to proceed, would reduce from five to four the number of gasoline marketers with ownership of (or guaranteed access to) a refinery or an import-capable terminal, and would reduce from three to two the number of bulk suppliers who have been willing to sell to unintegrated retailers.</p>	Below minimum reporting threshold: \$18 million.	<p>On July 28, 2005, the FTC filed a Section 13(b) complaint in federal district court against Aloha and Trustreet to enjoin the closing of the acquisition pending an administrative adjudication of the merits.</p> <p>On September 6, 2005, the FTC dismissed its Section 13(b) complaint after Aloha announced it would enter into a 20-year throughput agreement giving Mid Pac Petroleum LLC substantial rights to use the Barbers Point terminal. The FTC found that the Mid Pac throughput agreement would essentially substitute Mid Pac for Trustreet as a bulk supply gasoline marketer in Hawaii. See FTC news release.</p> <p>The FTC appears not to have issued an administrative complaint and the matter was resolved without a consent order.</p>



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<p>Aspen Technology/Hyprotech</p> <p>FTC news release</p>	<p>2003 FTC</p>	<p>Continuous and batch process engineering simulation software for seven distinct end uses</p>	<p>AspenTech acquired Hyprotech on May 31, 2002 for \$106.1 million.</p> <p>The FTC administrative complaint alleged that the acquisition combined the two closest competitors in the product markets, resulting in a strong number one competitor and leaving only SimSci as a weak number two competitor. Post-transaction, AspenTech's share of the relevant markets for various engineering process simulation software was between 67 and 82 percent.</p>	<p>Not reportable.</p> <p>Hyprotech was a wholly-owned operating division of ABA Technology plc.</p> <p>AspenTech's acquisition of Hyprotech was probably not reportable for failure of Hyprotech to have sales in or into the United States in excess of the reportable threshold.</p> <p>In any event, the administrative complaint notes that the transaction was not reportable.</p>	<p>On August 7, 2003, the FTC issued an administrative complaint against AspenTech challenging the already consummated acquisition.</p> <p>On July 15, 2004, the FTC accepted a provisional consent order requiring AspenTech to divest the overlapping assets it acquired from Hyprotech.</p> <p>In addition, the order:</p> <p>(1) requires AspenTech to divest its operator training software and services business; and</p> <p>(2) allows customers with licenses to Hyprotech software to procure software maintenance and support agreements with the Commission-approved buyer without a penalty.</p> <p>The order also allows AspenTech to license the continuous and batch process engineering software back from the buyer to preserve product integrations that have occurred since the acquisition.</p> <p>On December 21, 2004, the FTC entered its final decision and order, making several technical modifications based on some of the comments received.</p>



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SGL Carbon AG, SGL Carbon LLC (“SGL”)/ Carbide/Graphite Group DOJ news release	2003 DOJ	Large graphite electrodes (separately for 18, 20, 22, and 24 inch diameter), which are used in electric arc furnace steel production	<p>As part of Carbide/Graphite Group bankruptcy proceeding, SGL wished to acquire certain assets.</p> <p>The DOJ’s complaint alleged that SGL Carbon and Carbide/Graphite are two of the only four producers capable of manufacturing quality 18 inch diameter and larger graphite electrodes for sale in the United States.</p>	Below minimum reporting threshold: \$7 million.	<p>On April 29, 2003, the DOJ filed a complaint in federal district court against SGL seeking a permanent injunction to block the unconsummated acquisition.</p> <p>On April 15, 2003, the DOJ voluntarily dismissed its complaint when the bankruptcy court awarded the assets to C/G Electrodes Acquisition LLC and rejected SGL’s bid.</p>
Dairy Farmers of America/ Southern Belle Dairy DOJ news release	2002 DOJ	Manufacture, distribution, and sale of milk products to schools	<p>In February 2002, DFA acquired a 50% common equity interest and 100% credit interest in Southern Belle, its only competitor in the relevant markets.</p> <p>The DOJ’s complaint alleged that the acquisition eliminated the only other independent bidder for school milk in 47 school districts, and reduced the number of independent bidders from three to two in 54 school districts, in Kentucky and Tennessee.</p>	Below minimum reporting threshold: \$38 million.	<p>On April 24, 2003, the DOJ and one state filed a complaint against DFA and Southern Belle challenging the already consummated acquisition and seeking an injunction requiring DFA to divest its Southern Belle interests and to allow any school district or school purchasing cooperative to terminate or rescind any contract to supply school milk entered into with defendants on or after February 20, 2002.</p> <p>On October 2, 2006, the parties filed a proposed consent decree requiring DFA to divest its interest in Southern Belle.</p> <p>On March 23, 2007, the district court entered its final judgment adopting the settlement.</p>



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MSC Software / Universal Analytics, Inc. and Computerized Structural Analysis & Research FTC news release	2001 FTC	(1) licensing or sale of advanced versions of Nastran software, and (2) licensing or sale of FEA solvers for advanced linear structural analysis	On June 24, 1999, MSC acquired UAI for approximately \$8.4 million. On November 4, 1999, MSC acquired CSAR for approximately \$10 million. The FTC's administrative complaint alleged that, prior to the acquisitions, MSC, UAI, and CSAR were the only firms competing in the licensing or sale of advanced versions of Nastran. MSC was the dominant competitor with an estimated market share of 90 percent. The remaining share was roughly split between UAI and CSAR. The complaint also alleged that there were few suppliers competing in the licensing or sale of FEA solvers for advanced linear structural analysis other than MSC, UAI, and CSAR.	Below minimum reporting threshold: \$8.4 million and \$10 million.	On October 10, 2001, the FTC issued an administrative complaint against MSC challenging the already consummated acquisition and seeking relief that would require MSC to divest all software, intellectual property, and other assets necessary for the operation of up to two viable ongoing businesses each engaged in the licensing or sale of an advanced version of Nastran in competition with MSC Nastran. On August 14, 2002, the FTC accepted a provisional consent order requiring MSC to divest at least one clone copy of its current advanced Nastran software, including the source code, through a royalty-free, perpetual, non-exclusive license to one or two acquirers. On November 1, 2002, the FTC entered its final decision and order .



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3D Systems / DTM DOJ news release	2001 DOJ	Industrial rapid prototyping (RP) systems, which are used to transform a computer design into three-dimensional prototypes.	<p>On April 2, 2001, 3D and DTM entered into an agreement and plan of merger, pursuant to which 3D intended to acquire DTM in a cash tender offer.</p> <p>The DOJ's complaint alleged that the acquisition would combine the two largest manufacturers of RP systems in the United States, reduce the number of competitors in the U.S. industrial RP systems market from three to two, and result in the combined company having a U.S. market share of 80 percent.</p>	Below minimum reporting threshold: \$45 million.	<p>On June 6, 2001, the DOJ filed a complaint against 3D and DTM seeking to block the consummation of the pending acquisition.</p> <p>On August 16, 2001, the parties filed a proposed consent decree, which would require 3D and DTM to grant a license to develop, manufacture and sell, and to supply any support or maintenance services for, products under the defendants' RP patent portfolios within a limited field of use matching either 3D's or DTM's technology. The licensee must be a firm that currently manufactures industrial RP systems.</p> <p>On May 1, 2001, the district court entered its final judgment adopting the settlement.</p>

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