

A Look Back at U.S. Antitrust Enforcement in 2014

AntitrustConnect Blog

January 1, 2015

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Please refer to this post as: Jeffrey May, 'A Look Back at U.S. Antitrust Enforcement in 2014', AntitrustConnect Blog, January 1 2015, <http://antitrustconnect.com/2015/01/01/a-look-back-at-u-s-antitrust-enforcement-in-2014/>

The Federal Trade Commission and Department of Justice Antitrust Division had another active year in antitrust enforcement in 2014.

As for FTC antitrust enforcement efforts, FTC Bureau of Competition Director Deborah L. Feinstein was kind enough to provide a list of the “Ten Competition Happenings for 2014” on the agency’s *Competition Matters* blog. Her list included four enforcement actions that are worth a second look:

(1) the FTC’s action against two leading propane exchange tank suppliers for allegedly coordinating to reduce the amount of propane in their tanks sold to Walmart (*In the Matter of Ferrellgas Partners, L.P.*, FTC Dkt. 9360);

(2) the Commission’s challenge to the (now abandoned) proposed combination of two high school and college class ring manufacturers (*In the Matter of Visant Corp.*, FTC Dkt. 9362);

(3) an FTC first post-Actavis reverse payment case against several major pharmaceutical companies for allegedly filing baseless patent infringement lawsuits against potential generic competitors (*FTC v. Abbvie Inc.*, FTC File No. 121 0028); and

(4) the agency’s recent challenge to the (now-abandoned) combination of roof measurement service providers Verisk Analytics, Inc. and EagleView Technology Corporation (*In the Matter of Verisk Analytics, Inc.*, FTC Dkt. 9363).

Feinstein also noted a merger that the agency decided not to challenge: the tie-up of the country's second and third largest chains of office supply superstores. The Competition Bureau Director reiterated how changed market conditions led the Commission to close its investigation of the Office Depot/Office Max merger in 2014 despite blocking Staples, Inc. from buying Office Depot some 17 years earlier (Proposed Merger of Office Depot, Inc. and OfficeMax, Inc., FTC File No. 131-0104).

Two other matters not mentioned by Feinstein, but worth noting are: the Sixth Circuit's decision upholding the FTC's determination that ProMedica Health System, Inc.'s acquisition of rival St. Luke's Hospital in Ohio was anticompetitive, and a Boise federal district court order requiring St. Luke's Health System, Ltd.—the largest health care system in Idaho—to divest Saltzer Medical Group—the state's largest independent, multi-specialty physician practice—after concluding that St. Luke's 2012 acquisition of Saltzer violated the Clayton Act and the Idaho Competition Act.

Antitrust Division Enforcement

Meanwhile, the Antitrust Division also had a busy year, especially in the mergers and acquisitions area as merger activity ticked up in 2014 from its lows during the financial crisis. The total number of Antitrust Division actions filed in 2014 (66) was down slightly from 2013 (69). However, the number of complaints challenging mergers or acquisitions was up significantly from the year earlier.

In 2014, the Antitrust Division filed 11 merger challenges. Complaints were filed on the first and last business days of the year. On January 2, 2014, the Justice Department announced a settlement of a challenge to Heraeus Electro-Nite LLC's acquisition of Midwest Instrument Company Inc. to preserve competition in the market for single-use sensors and instruments used to measure the temperature and chemical composition of molten steel in the steel-making process.

The Antitrust Division wrapped up 2014 with a New Year's Eve suit challenging the combination of paper companies Verso Paper Corp. and NewPage Holdings Inc. The parties agreed to a settlement requiring mill divestitures.

Among the year's other deals reviewed by the Justice Department were Tyson Foods Inc.'s \$8.5 billion acquisition of The Hillshire Brands Company and a flour milling joint venture between ConAgra Foods Inc., Cargill Inc., CHS Inc., and Horizon Milling LLC. Each of the 11 filings in 2014 was resolved by consent decree.

In 2013, the Justice Department filed only six merger challenges. That year saw some contested merger cases, most notably the government's ultimately successful court challenge to Bazaarvoice Inc.'s June 2012 acquisition of PowerReviews Inc. The government's 2013 suits to block Anheuser-Busch InBev's acquisition of Grupo Modelo and the \$11 billion combination of US Airways and American Airlines also were filed without proposed settlements and only later resolved by consent decree. Both years saw a few actions challenging violations of the filing notification requirements of the Hart-Scott-Rodino (HSR) Act of 1976.

Criminal Actions

As for criminal matters, the Justice Department continued its investigations into cartel activity in the auto parts sector and bid rigging by real estate investors at foreclosure auctions. New for 2014 were charges against shipping companies and their employees for conspiring to fix prices, allocate customers, and rig bids of international ocean shipping services for roll-on, roll-off cargo.

The first company named in the shipping probe was Compañía Sud Americana de Vapores S.A. of Chile, which agreed to plead guilty to the charge in February. Since then, Japanese transportation companies Kawasaki Kisen Kaisha Ltd. (K-Line) and Nippon Yusen Kabushiki Kaisha (NYK) have also agreed to plead guilty for their participation in the conspiracy. The total agreed-upon fines in this investigation exceeds \$135 million, according to the Justice Department. Two K-Line employees were also charged in the conspiracy in December. Expect to see more charges and pleas in these continuing probes in 2015.