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FTC Commissioner Brill Provides Thoughts on Abandoned IDT/PLX Combination

Jeffrey May (Wolters Kluwer) · Thursday, January 31st, 2013

The Federal Trade Commission's investigation of the now-abandoned merger between Integrated Device Technologies and PLX Technology was the topic of [remarks](#) delivered by FTC Commissioner Julie Brill at Skadden's and Compass/Lexecon's annual "Antitrust in the Technology Sector" program in Palo Alto, California, on January 28. "The issues raised by IDT/PLX spanned the Merger Guidelines," Brill said.

In December 2012, the FTC issued an [administrative complaint](#) seeking to prevent Integrated Device Technology's proposed \$330 million acquisition of PLX Technology, Inc. The FTC's complaint alleged that the combined company would possess a near-monopoly on the production of PCIe switches, a type of integrated circuit.

The FTC alleged that IDT, a San Jose, California-based manufacturer of a variety of semiconductor products, held the second position in the PCIe switch market, after PLX, a Sunnyvale, California-based producer of a range of integrated circuits. PCIe switches connect components in computers and other modern electronics. The transaction would allegedly have granted the combined entity a market share of over 85 percent in the PCIe switch market.

The parties announced their intention to merge in April 2012. The FTC issued Second Requests to the parties in July 2012. In response to the issuance of the FTC complaint on December 18, the companies abandoned the proposed transaction on December 20.

In her remarks, Brill discussed three aspects of the case that she found interesting: (1) customer evidence; (2) documentary and economic evidence; and (3) natural experiments regarding entry.

"From my standpoint, the complaint allegations regarding the relevant market and competition were well founded in real-world customer evidence," Brill said. She noted that the agency took into consideration the contentions of PLX that PCIe switches were not a relevant market but were part of a wider "systems interconnect solutions" market, in which PCIe competed with various data transfer protocols. However, the agency staff had uncovered in customer interviews that the majority of customers believed that PCIe switches were a relevant market. "[C]ustomers were concerned about the competitive effects of the merger, not only on price, but also on innovation and customer service," Brill said.

"[D]ocumentary evidence told a story that was quite consistent with the customer evidence," Brill

added. The companies' senior management had identified each other as their primary competitor and one document described the merger as a "near monopoly."

Brill also talked about what the past evidence regarding entry and repositioning said about the likely post-merger world. "IDT and PLX had successfully developed a portfolio of reliable switch products that were backward compatible," Brill explained. "It would simply not have been economical for customers to start over again with a new vendor, even at the pre-design phase before the PCI switch was baked-into a system."

Brill concluded with "some generic lessons" that could be drawn from the IDT/PLX case:

1. The FTC can and does enforce the antitrust laws in fast-moving high-tech markets, even when faced with complex arguments about how a market might be at an inflection point—in this case Intel's move to place more PCIe functionality on its CPU—and a potential market shift to other data transfer protocols;
2. Low-tech enforcement tools, such as documents and customer evidence regarding the relevant market, existing competition, and entry and repositioning, are useful in high-tech markets, as with any other market; and
3. In high-tech markets, the impact a merger may have on non-price competition, including innovation and customer service, matters a lot.

Brill's remarks should remind parties to potential mergers of the importance of customer evidence in FTC investigations.

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