

Agency Merger Enforcement in Non-Reportable Transactions

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The number of agency challenges to transactions not subject to the reporting requirements of the HSR Act, either because they were exempt or valued below the threshold, has notably increased in recent years. Significantly more non-reportable transactions were challenged over the past two fiscal years alone than over the preceding seven fiscal years—approximately sixteen challenges in 2008–2009 as compared with approximately twelve publicly announced challenges between 2001–2007.¹ Whether this trend is attributable to agency resources freeing up during the economic downturn or other factors, the increased enforcement activity is continuing, with three non-reportable transactions being subject to agency challenges during just the first four months of fiscal year 2010. Moreover, the agencies have not hesitated to challenge long-completed transactions, bringing four recent merger challenges more than two years after the relevant deal was consummated.²

Recent enforcement actions against non-reportable transactions show that the FTC is particularly interested in the pharmaceutical and healthcare industries. The Antitrust Division has stated that it plans to focus more on transactions involving agriculture markets and, in January, challenged a consummated, non-reportable merger involving dairy products. Post-merger price increases have been a leading factor in many recent challenges to non-reportable transactions, and almost every recent non-reportable merger enforcement action has alleged a post-merger market concentration of 2-to-1 or 3-to-2 (in other words, the transaction would result in a market with fewer than two significant remaining competitors).

Non-Reportable Transactions May Attract Antitrust Scrutiny

Agency challenges to transactions not subject to the HSR Act's reporting requirements began to noticeably increase in frequency in fiscal year 2008. In fiscal year 2009 there were at least seven agency challenges to non-reportable transactions,³ and in fiscal year 2008 there were at least nine

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¹ The numbers set forth here regarding challenged non-reportable transactions are based on agency reports and press releases and publicly available court and administrative pleadings. The FTC has not published the total number of non-HSR Act merger enforcement actions prior to fiscal year 2007, and the Antitrust Division has not historically disclosed how many of its non-HSR Act merger investigations led to enforcement actions. See *infra* Table 1 for a list of all enforcement actions (by case name and URL) initiated during fiscal years 2001–2010 and publicly identified as non-reportable under the HSR Act.

² Agency scrutiny can continue post-consummation because the Sherman and Clayton Acts lack a statute of limitations. See *United States v. E.I. du Pont de Nemours & Co.*, 353 U.S. 586 (1957).

³ The FTC challenged six transactions not reportable under the HSR Act in fiscal year 2009. See Fed. Trade Comm'n, Performance and Accountability Report Fiscal Year 2009, available at <http://www.ftc.gov/opp/gpra/2009parreport.pdf>. The Antitrust Division has not yet released its workload statistics for fiscal year 2009. But see *Microsemi*, *infra* Table 1.

agency challenges to non-reportable transactions.⁴ In comparison, there were at least four challenges to non-reportable transactions in fiscal year 2007.⁵ The agencies issued press releases for seven apparently non-reportable merger challenges in fiscal years 2008-2009, compared to a total of approximately twelve in fiscal years 2001-2007.⁶ Already, in fiscal year 2010, the agencies have challenged at least three apparently non-reportable transactions.⁷

Although the agencies do not often specify how they become aware of non-reportable, potentially anticompetitive transactions, the agencies closely monitor the press for transactions in industries within their respective jurisdictions. The FTC is stepping up its already heightened focus on mergers affecting healthcare and pharmaceutical industries,⁸ even in relatively small markets, with at least three out of the six FTC challenges to apparently non-reportable transactions in fiscal year 2009 involving those industries.⁹ By contrast, only 20 percent (64 out of 319) of total FTC merger enforcement actions between fiscal years 1996 and 2009 involved healthcare or pharmaceuticals.¹⁰

Senior leadership at the Antitrust Division recently signaled an increased interest in the agricultural industry.¹¹ In January, the Antitrust Division challenged a non-reportable transaction involving dairy processors that closed in 2009,¹² and the Antitrust Division is jointly hosting a series of workshops in 2010 with the U.S. Department of Agriculture to “explore competition issues affect-

⁴ The FTC initiated nine non-HSR Act merger enforcement actions in fiscal year 2008. See Fed. Trade Comm’n, Performance and Accountability Report Fiscal Year 2008, available at <http://www.ftc.gov/opp/gpra/2008parreport.pdf>. In addition, the Antitrust Division initiated fourteen non-HSR Act merger investigations, but the Antitrust Division’s Workload Statistics do not specify how many of these led to *public* challenges (there were sixteen total Antitrust Division merger challenges in fiscal year 2008). See Antitrust Division Workload Statistics, FY 1999–2008, <http://www.justice.gov/atr/public/workstats.pdf> [hereinafter DOJ Workload Statistics].

⁵ The FTC initiated two non-HSR Act merger enforcement actions in fiscal year 2007, one of which the FTC publicly identified as relating to a non-reportable transaction. See Fed. Trade Comm’n, Performance and Accountability Report Fiscal Year 2007, available at <http://www.ftc.gov/opp/gpra/2007parreport.pdf>; *American Renal Associates*, *infra* Table 1. The Antitrust Division initiated twenty non-HSR Act merger investigations, but the DOJ Workload Statistics do not specify how many of these led to challenges (there were twelve total Antitrust Division merger challenges in fiscal year 2009). See DOJ Workload Statistics, *supra* note 4. However, at least two Antitrust Division challenges could be identified as relating to non-reportable transactions through press releases. See *Daily Gazette*; *Amsted*, *infra* Table 1.

⁶ The FTC challenged seven transactions publicly identified as non-reportable during fiscal years 2001–2007, and the Antitrust Division challenged five such transactions during the same period.

⁷ See *Cameron*; *Dean Foods*; *SCI*, *infra* Table 1.

⁸ See Health Care Division, Bur. of Competition, Fed. Trade Comm’n, Overview of FTC Antitrust Actions in Health Care Services and Products (Sept. 2009), available at <http://www.ftc.gov/bc/0909hcupdate.pdf>; Health Care Division, Bur. of Competition, Fed. Trade Comm’n, Overview of FTC Antitrust Actions in Pharmaceutical Services and Products (Sept. 2009), available at <http://www.ftc.gov/bc/0909rxupdate.pdf>.

⁹ See *Carilion*; *Inverness*; *Ovation*, *infra* Table 1; see also Press Release, Fed. Trade Comm’n, Bureau of Competition Director Issues Statement on FTC’s Closure of its Investigation of Consummated Hospital Merger in Temple, Texas (Dec. 23, 2009), available at <http://www.ftc.gov/opa/2009/12/scottwhite.shtm> (closed, non-reportable hospital merger was investigated but not formally challenged by the FTC prior to closure of the investigation on Dec. 23, 2009); Press Release, Fed. Trade Comm’n, Chairman, Commissioners Issue Statement on Endocare, Inc.’s Announcement that It Has Terminated its Merger Agreement with Galil Medical Ltd. (June 9, 2009), available at <http://www2.ftc.gov/opa/2009/06/endocare.htm> (noting that Endocare, Inc.’s healthcare-related proposed acquisition of Galil Medical Ltd. was abandoned in 2009).

¹⁰ See FTC Competition Enforcement Database, Enforcement Actions in Industry/Sector: Health Care <http://www.ftc.gov/bc/caselist/industry/cases/healthcare/HealthcareAll.pdf>; see also FTC Competition Enforcement Database, Merger Enforcement Actions, <http://www.ftc.gov/bc/caselist/merger/index.shtml>.

¹¹ See Christine A. Varney, Assistant Att’y Gen., Antitrust Division, U.S. Dep’t of Justice, Crisis on the Farm: The State of Cooperation and Prospects for Sustainability in the Northeast Dairy Industry, Statement Prepared for the Senate Judiciary Committee (Sept. 19, 2009), available at <http://www.justice.gov/atr/public/testimony/250178.htm> (“Competition issues affecting agriculture have been a priority for me since I was confirmed last spring”).

¹² See *Dean Foods*, *infra* Table 1.

ing the agricultural sector in the 21st century and the appropriate role for antitrust and regulatory enforcement in that industry.”¹³ In addition to healthcare, pharmaceuticals, and agriculture, other industries attracting agency enforcement in non-reportable transactions since fiscal year 2007 include chemicals,¹⁴ publishing,¹⁵ professional services¹⁶ and industrial goods.¹⁷

Third-party complaints are another way the antitrust agencies become aware of or learn more about potentially anticompetitive non-reportable transactions, and, in at least three recent challenges to non-reportable transactions, the agencies identified key customers that could have complained about significant price increases.¹⁸ In *Microsemi*, the customers identified included the Department of Defense, U.S. Navy, U.S. Air Force, and NASA.¹⁹ The customers identified in *Carilion* were those in need of outpatient surgery services, and in *Ovation* they were medical professionals responsible for ensuring that premature babies were administered a particular drug therapy.²⁰ The Antitrust Division may have initiated its investigation of the closed, non-reportable acquisition of Diebold, Incorporated’s U.S. election systems business by Election Systems & Software, Inc. due to a complaint letter from an industry organization.²¹ The agencies may also find out about non-reportable transactions through pre- or post-closing press releases put out by the parties, securities or bankruptcy-related filings, foreign antitrust filings or communications with foreign authorities, or HSR Act filings for subsequent transactions.²²

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Factors that Influence the Decision to Review and Challenge Non-reportable Transactions

Post-consummation price increases appear to be the most likely reason the agencies will open an investigation of a non-reportable transaction that has already closed, and significant price increases that give rise to consumer complaints increase the likelihood of post-consummation challenges.²³ In the *Carilion* complaint, the FTC alleged that certain prices would increase by nearly 900 percent. In *Ovation*, prices increased 1,300 percent. In *Microsemi*, the alleged price increase

¹³ See Antitrust Division Public Workshops, Agriculture and Antitrust Enforcement Issues in Our 21st Century Economy, <http://www.justice.gov/atr/public/workshops/ag2010/index.htm>.

¹⁴ See *Lubrizol*, *infra* Table 1.

¹⁵ See *Daily Gazette*, *infra* Table 1.

¹⁶ See *TALX; SCI*, *infra* Table 1.

¹⁷ See *Microsemi; Polypore; Cameron; Amsted*, *infra* Table 1.

¹⁸ See *Microsemi; Carilion; Ovation*, *infra* Table 1.

¹⁹ See Memorandum of United States in Support of Emergency Motion for a Temporary Restraining Order and Preliminary Injunction at 3, *United States v. Microsemi Corp.*, Civil Action No. 1:08-CV-1311 (E.D. Va. Dec. 22, 2008), available at <http://www.justice.gov/atr/cases/f240600/240668.htm>.

²⁰ See *Carilion*, *infra* Table 1; see also Complaint ¶ 4, *FTC v. Ovation Pharms. Inc.* (D. Minn. Dec. 16, 2008), available at <http://www2.ftc.gov/os/caselist/0810156/081216ovationcmpt.pdf>. However, in the healthcare industry, the government (through Medicaid) and other public and private providers are the ones that ultimately bear the cost of a product or service, and they are motivated to bring antitrust issues to the agencies’ attention.

²¹ See Letter from Bev Harris, Black Box Voting, to Eric Holder, Attorney Gen., U.S. Dep’t of Justice (Sept 25, 2009), available at <http://www.blackboxvoting.org/BBV-AntiTrust-Letter.pdf>.

²² See *Cameron*, *infra* Table 1.

²³ However, the agencies do not generally specify whether customer complaints (as opposed to the agency’s own research) precipitated the investigation of a transaction.

was smaller, but the agencies had evidence that only one month after the transaction closed the company advised its customers to expect price increases in the “lower teens.”²⁴

Nearly all agency challenges to transactions publicly identified as non-reportable during the past few years involved 2-to-1 or 3-to-2 mergers.²⁵ This is consistent with the Horizontal Merger Data released by the FTC for all investigated mergers, which reveals that nearly all (234 of 239) 2-to-1 mergers, as well as the vast majority of 3-to-2 mergers (242 of 278), that were investigated by the FTC in fiscal years 1996–2007 were ultimately challenged.²⁶ This pattern provides some indication that non-reportable mergers resulting in more than two competitors remaining in the market (that is, a 4-to-3 or beyond) have a greater possibility of surviving agency scrutiny. Furthermore, the post-merger market shares in the challenged transactions publicly identified as non-reportable since the beginning of fiscal year 2008 were almost uniformly above 70 percent.²⁷

Another pattern to note is that in recent years the FTC appears to have challenged more non-reportable transactions than the Antitrust Division. According to the FTC’s 2008 and 2009 Performance and Accountability Reports,²⁸ the FTC challenged six and nine non-reportable transactions during fiscal years 2008 and 2009, respectively.²⁹ The Antitrust Division publicly identified only one challenge as relating to a non-reportable transaction during that period.³⁰ Approximately 38 percent (15 of 39) of all of the FTC’s merger enforcement actions in fiscal years 2008 and 2009 involved non-reportable transactions.³¹ Interestingly, so far in fiscal year 2010 the Antitrust Division has challenged at least two non-reportable transactions while the FTC has challenged at least one.³²

Finally, in addition to the foregoing factors, the enforcement actions taken by the agencies since the beginning of fiscal year 2008 against non-reportable transactions indicate the agencies’ usual sensitivity to other factors, such as reduced incentives for service and innovation,³³ exclusionary conduct,³⁴ and other barriers to entry.³⁵ For example, in *Microsemi*, the Antitrust Division cited the

²⁴ See *Microsemi* Motion for TRO, *supra* note 19, ¶ 4.

²⁵ See Performance and Accountability Report for Fiscal Year 2008, *supra* note 4; Performance and Accountability Report for Fiscal Year 2009, *supra* note 3; *Lubrizol*, *Ovation*, and *Cameron* involved 2-to-1 mergers, while *Carilion*, *Inverness*, and *SCI* involved 3-to-2 mergers, *infra* Table 1. *Microsemi* and *Polypore* involved more than one relevant market and were considered both 3-to-2 and 2-to-1 mergers. See *infra* Table 1. Likewise, *Dean Foods* involved more than one relevant market and was considered a 4-to-3, 3-to-2, and 2-to-1 merger, depending on the market. See *infra* Table 1.

²⁶ 4-to-3 mergers were also likely to be challenged (140 of 188), but the percentages decline significantly thereafter (88 of 220). See Fed. Trade Comm’n, Horizontal Merger Data 1996–2007, tbl. 4.1, available at <http://www2.ftc.gov/os/2008/12/081201hsrmergerdata.pdf>.

²⁷ In *SCI*, *Cameron*, *Microsemi*, *Lubrizol*, *Ovation*, *Inverness*, and *Polypore*, the post-consummation market shares alleged by the agencies were 70 percent or more. See *infra* Table 1.

²⁸ Performance and Accountability Report for Fiscal Year 2008, *supra* note 4; Performance and Accountability Report for Fiscal Year 2009, *supra* note 3.

²⁹ Two and four of which have been identified as non-reportable through FTC press releases, respectively. See *infra* Table 1.

³⁰ See *Microsemi*, *infra* Table 1.

³¹ Performance and Accountability Report for Fiscal Year 2008, *supra* note 4; Performance and Accountability Report for Fiscal Year 2009, *supra* note 3; FTC Competition Enforcement Database, Merger Enforcement Actions, <http://www.ftc.gov/bc/caselist/merger/index.shtml>.

³² See *Cameron*; *Dean Foods*; *SCI*, *infra* Table 1.

³³ See *Lubrizol*; *Carilion*; *Microsemi*, *infra* Table 1; see also Inquiry of Diebold Deal Could Undo Sale Report Says, N.Y. Times Dealbook Blog (Dec. 21, 2009), <http://dealbook.blogs.nytimes.com/2009/12/21/probe-of-diebold-deal-could-undo-sale-report-says>.

³⁴ See *Lubrizol* and *TALX*, *infra* Table 1.

³⁵ See *Microsemi*; *Ovation*, *infra* Table 1.

lengthy periods required for government certification of the relevant products as a factor that illegally constrained competition in the market, and in *Ovation*, regulatory approval by the Food and Drug Administration was cited as a factor.

Post-Consummation Challenges

While it is usually easier to challenge transactions and impose remedies prior to closing, the agencies may challenge anticompetitive mergers after (sometimes, years after) they are consummated. Transactions reviewed under the HSR Act are rarely challenged post-closing,³⁶ but during fiscal years 2008 and 2009, the agencies initiated at least seven of the approximately sixteen merger enforcement actions taken against non-reportable transactions post-closing,³⁷ and they challenged four of those seven more than two years post-closing.³⁸

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Remedies for Non-Reportable Transactions

The agencies' tools for restoring or preserving competition are similar regardless of whether a transaction is reportable and whether it has closed. The agencies are able to use financial penalties, "fix-it-first"³⁹ or consent decrees, including obligations to divest the assets of one of the entities. Consistent with the FTC and DOJ merger remedy guidelines,⁴⁰ complete or near-complete divestiture was the typical remedy sought by the agencies in the recent enforcement actions involving non-reportable, consummated mergers.⁴¹ Conduct remedies were also sought in several situations, including restrictions on future dealings with other entities,⁴² licensing,⁴³ monitoring,⁴⁴ and the elimination of non-competes, non-solicits, and other exclusionary or long-term contracts.⁴⁵ In one recent challenge the FTC sought disgorgement of profits in addition to structural relief.⁴⁶

Because investigations are generally non-public until challenged, it is difficult to quantify how many non-reportable transactions the agencies investigate that are either resolved without a consent decree, abandoned, or not ultimately challenged.⁴⁷ The recently proposed merger between

³⁶ The agencies only challenged four closed transactions that had been reviewed pursuant to the HSR Act between fiscal years 2001 and 2007. See Robert B. Bell, *Voluntary HSR Act Filings: A Modest Proposal*, ANTITRUST, Spring 2009, at 72.

³⁷ See *Lubrizol; Inverness; Carilion; Ovation; Microsemi; Polypore; TALX*, *infra* Table 1. In addition, *Cameron and Dean Foods* involved consummated transactions, and the assets to be divested in *Cameron* had been acquired four years earlier. See *Cameron; Dean Foods*, *infra* Table 1.

³⁸ See *Inverness; Lubrizol; Ovation; TALX*, *infra* Table 1.

³⁹ The FTC does not often disclose details regarding abandoned transactions and those subject to "fix-it-first" and restructuring. See FTC Competition Enforcement Database, Merger Enforcement Actions, <http://www.ftc.gov/bc/caselist/merger/index.shtml>.

⁴⁰ See U.S. Dep't of Justice, Antitrust Division Policy Guide to Merger Remedies (Oct. 2004), available at <http://www.justice.gov/atr/public/guidelines/205108.htm>; Statement of the Federal Trade Commission's Bureau of Competition on Negotiating Merger Remedies, available at <http://www.ftc.gov/bc/bestpractices/bestpractices030401.htm>.

⁴¹ See *Ovation; Microsemi; Inverness; Polypore; Carilion; Cameron; Dean Foods*, *infra* Table 1.

⁴² See *TALX; Inverness*, *infra* Table 1.

⁴³ See *Inverness; Lubrizol*, *infra* Table 1.

⁴⁴ See *Inverness; TALX; Carilion; Dean Foods*, *infra* Table 1.

⁴⁵ See *Lubrizol; TALX*, *infra* Table 1.

⁴⁶ See *Ovation*, *infra* Table 1.

⁴⁷ While the FTC generally does not disclose information regarding specific transactions in the "Abandoned/Restructured/Fix-It-First" category, it does disclose the number of such transactions that were subject to enforcement actions in a given year. In fiscal year 2009, there were three such transactions; in fiscal year 2008, there were six. See FTC Competition Enforcement Database, Merger Enforcement Actions, <http://www.ftc.gov/bc/caselist/merger/index.shtml>.

Endocare and Galil Medical is an example of a non-reportable merger abandoned by the parties pre-closing while an FTC investigation was pending.⁴⁸ The 2009 consummated merger between two Texas hospitals is an example of the FTC investigating a non-reportable transaction without seeking relief.⁴⁹

Conclusion

While there has been some debate over the appropriate level of merger enforcement, the upsurge in non-HSR Act merger challenges is likely to continue so long as the agencies have fewer HSR Act filings to review due to the decline in merger activity.

Recent enforcement actions show that transactions subject to customer complaints (especially due to post-consummation price increases), press reports, or identification in future HSR Act filings are likely to come to the attention of the antitrust agencies. Aggravating factors that appear materially to increase the risk of further investigation and potential challenge should come as no surprise. In addition to the obvious agency concerns generated by post-merger price increases and/or customer complaints, the agencies tend to focus on 2-to-1 and 3-to-2 transactions in markets with notable entry barriers, and on other transactions that result in less concentration, but involve industries subject to higher scrutiny. The agencies have not permitted the (lack of) reportability under the HSR Act to be a factor in identifying and investigating potentially anticompetitive transactions and, where appropriate, crafting remedies, most of which closely resemble the remedies they would seek and obtain in notified transactions. ●

⁴⁸ See Joint Statement of Chairman Leibowitz, Commissioner Harbour, and Commissioner Kovacic in the Matter of Endocare, Inc. and Galil Medical, Ltd., FTC File No. 0910026 (June 9, 2009), available at <http://www2.ftc.gov/os/closings/staff/090609galilendocarejointstmt.pdf>. See also Statement of Commissioner J. Thomas Rosch on the Abandonment of the Endocare, Inc. / Galil Medical, Ltd. Merger, FTC File No. 0910026 (June 9, 2009), available at <http://www2.ftc.gov/os/closings/staff/090609galilendocarestmtrosch.pdf>.

⁴⁹ See Texas Hospital Merger Press Release, *supra* note 9. The FTC closed its investigation of this consummated merger after finding that the target hospital's financial condition was "precarious" and there was a lack of a viable alternative purchaser that would not pose a danger to competition.

Table 1: Agency Challenges to Non-Reportable Transactions, Fiscal Years 2001–2010

Case Name	Reference
FISCAL 2010	
<i>United States v. Cameron International Corp. and NATCO Group Inc.</i> ¹	http://www.justice.gov/atr/public/press_releases/2009/252077.htm ; http://www.justice.gov/atr/cases/cameron.htm
<i>United States, State of Wisconsin, State of Illinois, and State of Michigan v. Dean Foods Company</i>	http://www.justice.gov/atr/public/press_releases/2010/254435.htm ; http://www.justice.gov/atr/cases/deanfoods.htm
<i>In the Matter of Service Corp. Int'l</i> ²	http://www.ftc.gov/opa/2009/11/sci.shtm ; http://www.ftc.gov/os/caselist/0910138/index.shtm
FISCAL 2009	
<i>In the Matter of Inverness Medical Innovations, Inc.</i> ³	http://www2.ftc.gov/opa/2008/12/inverness.shtm ; http://www2.ftc.gov/os/caselist/0610123/index.shtm
<i>FTC v. Ovation Pharmaceuticals, Inc. (n/k/a Lundbeck)</i>	http://www2.ftc.gov/opa/2008/12/ovation.shtm ; http://www2.ftc.gov/os/caselist/0810156/index.shtm
<i>In the Matter of The Lubrizol Corp. and The Lockhart Co.</i> ⁴	http://www2.ftc.gov/opa/2009/02/lubrizol.shtm ; http://www2.ftc.gov/os/caselist/0710230/index.shtm
<i>In the Matter of Carilion Clinic</i> ⁴	http://www2.ftc.gov/opa/2009/07/carilion.shtm ; http://www2.ftc.gov/os/adjpro/d9338/index.shtm
<i>United States v. Microsemi Corp.</i>	http://www.justice.gov/atr/public/press_releases/2009/249246.htm ; http://www.justice.gov/atr/cases/microsemi.htm
FISCAL 2008	
<i>In the Matter of Polypore International, Inc.</i> ⁵	http://www2.ftc.gov/opa/2008/09/polypore.shtm ; http://www2.ftc.gov/os/adjpro/d9327/index.shtm
<i>In the Matter of TALX Corporation</i> ⁶	http://www2.ftc.gov/opa/2008/04/talx.shtm ; http://www2.ftc.gov/os/caselist/0610209/index.shtm
FISCAL 2001–2007	
<i>In the Matter of MSC Software Corp.</i>	http://www.ftc.gov/opa/2001/10/msc.shtm ; http://www.ftc.gov/os/caselist/d9299.shtm
<i>FTC v. Meade Instruments Corp./Tasco Holdings, Inc.</i> ⁷	http://www.ftc.gov/opa/2002/05/meadecelestron.shtm
<i>In the Matter of Aspen Technology, Inc.</i>	http://www.ftc.gov/opa/2003/08/aspen.shtm ; http://www.ftc.gov/os/adjpro/d9310/index.shtm
<i>FTC v. Aloha Petroleum, Ltd., and Trustreet Properties, Inc.</i>	http://www.ftc.gov/opa/2005/07/aloha.shtm ; http://www.ftc.gov/os/caselist/0510131/index.shtm
<i>In the Matter of Dan L. Duncan; EPCO, Inc.; Texas Eastern Products Pipeline Company, LLC; and TEPPCO Partners, L.P.</i>	http://www.ftc.gov/opa/2006/08/teppco.shtm ; http://www.ftc.gov/os/caselist/0510108/0510108.shtm
<i>In the Matter of Hologic Inc.</i>	http://www.ftc.gov/opa/2006/07/hologic.shtm ; http://www.ftc.gov/os/caselist/0510263/0510263.shtm

Table 1: Agency Challenges to Non-Reportable Transactions, Fiscal Years 2001–2010 *continued*

Case Name	Reference
FISCAL 2001–2007	
<i>In the Matter of American Renal Associates, Inc., and Fresenius Medical Care Holdings, Inc.</i> ⁴	http://www2.ftc.gov/opa/2007/09/dialysisclinic.shtm ; http://www2.ftc.gov/os/caselist/0510234/index.shtm
<i>United States v. 3D Systems Corporation and DTM Corp.</i> ⁴	http://www.justice.gov/atr/public/press_releases/2001/8364.htm ; http://www.justice.gov/atr/cases/indx303a.htm
<i>United States and Commonwealth of Kentucky v. Dairy Farmers of America, Inc., and Southern Belle Dairy Co., LLC</i>	http://www.justice.gov/atr/public/press_releases/2003/200966.htm ; http://www.justice.gov/atr/cases/dairy0.htm
<i>United States v. SGL Carbon Aktiengesellschaft and SGL Carbon LLC</i> ⁴	http://www.justice.gov/atr/public/press_releases/2003/200954.htm ; http://www.justice.gov/atr/cases/indx135a.htm
<i>United States v. Daily Gazette Company and MediaNews Group, Inc.</i>	http://www.justice.gov/atr/public/press_releases/2007/223466.htm ; http://www.justice.gov/atr/cases/daily.htm
<i>United States v. Amsted Industries, Inc.</i>	http://www.justice.gov/atr/public/press_releases/2007/222737.htm ; http://www.justice.gov/atr/cases/amsted.htm

¹ The assets to be divested prior to the consummation of the proposed transaction were acquired in a previous transaction reportedly valued below the minimum HSR Act reporting threshold.

² It is unclear whether premerger notification was required for this transaction. The acquisition terms have not been publicly disclosed, but the target company was a privately owned business with approximately \$30 million in annual revenues.

³ It is unclear whether premerger notification was required for this transaction. A company press release valued the acquisition at approximately \$175 million (subject to adjustment) but the acquisition was not challenged until more than two years after the closing, and no violations of the HSR Act were alleged.

⁴ The challenging agency did not specifically indicate that this transaction was non-reportable, but the reported transaction value was below the minimum HSR Act reporting threshold.

⁵ It is unclear whether premerger notification was required for this transaction. The acquisition was reportedly valued at approximately \$76 million but the acquisition was not challenged until more than six months after the closing, and no violations of the HSR Act were alleged.

⁶ The challenging agency did not specifically indicate that all of these transactions were non-reportable, but some of the reported transaction values were below the minimum HSR Act reporting threshold.

⁷ The FTC sought a preliminary injunction to block a potential acquisition of some or all of the assets of the target company, which “may or may not be reportable” under the HSR Act.