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United States: Technology Mergers

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Investigating and challenging mergers in high-tech industries continues to be a high priority for US federal antitrust enforcers.

High-tech industries are often defined by unique characteristics that impact merger analysis, including the rapid pace of innovation, the importance of research and development, and the potential for massive disruption, which makes predicting the future difficult, as well as – in some industries – the significance of intellectual property and presence of network effects.

Even so, government officials repeatedly reject suggestions that their toolkits, and in particular the rubric set forth in the Merger Guidelines, are somehow outdated or that the government should shy away from enforcement activity at the frontiers of high technology.

One Commissioner at the Federal Trade Commission (FTC) recently acknowledged that 'competition in certain digital and high-tech markets may operate differently than in certain traditional markets,' but argued that the agencies do not need different rules to analyse high-tech mergers:

> *These market factors are important. But our antitrust tools are flexible. So long as we are careful to apply them with sensitivity to the competitive dynamics of digital and high-tech markets, we do not need a different set of rules to address these factors. And we absolutely should not turn a blind eye towards anticompetitive behavior in high-tech markets simply because we cannot predict the future with certainty.*[1]

Her conclusion that 'antitrust enforcers play a vital role in protecting competition and innovation in the high-tech, digital economy – and must continue to do so' is a reminder that the agencies pay close attention to mergers in tech industries.

This article focuses on recent court decisions, government enforcement actions and speeches by senior officials to explore the unique issues that attract antitrust scrutiny and drive enforcement in high-technology industries.

Impact of the Presidential Election on Merger Investigations

President Obama, when campaigning in 2008, called for 'the reinvigoration of antitrust enforcement,' including that the agencies must 'step up review of merger activity.'

Obama's first Assistant Attorney General in charge of the Antitrust Division argued specifically for enforcement in 'high-tech and internet-based markets,' saying the Antitrust Division would 'devote attention to understanding the unique competition related issues posed by these markets.'[2]

There is little doubt that merger enforcement activity has increased in recent years.[3] Still, some have criticised the Obama Administration for not going far enough. In June 2016, Senator Elizabeth Warren argued for 'stronger action to encourage competition' asserting 'consolidation and concentration are on the rise in sector after sector.' She argued, 'left unchecked, concentration will destroy innovation [and] will destroy more small companies and start-ups.'[4] At the same time, the Center for American Progress released a report arguing unchallenged mergers have led to price increases and a decline in R&D.[5]

Hillary Clinton has condemned lax antitrust enforcement and made clear that, if elected, she will 'beef up the enforcement arms' of the Department of Justice (DOJ) and the FTC, including hiring 'aggressive regulators who will conduct in-depth industry research to better understand the link between market consolidation and stagnating incomes.'[6]

Donald Trump has not yet articulated a position on antitrust enforcement, though Republicans are typically less interventionist than Democrats. Trump, as a business executive, has been a target of government enforcement, and his companies have been both antitrust plaintiffs and defendants.[7]

Whoever wins the presidential election, there will be a change of leadership at both the DOJ and FTC. The next president will be able to name the FTC chairman, fill two open commissioner vacancies, and name an Assistant Attorney General to head the Antitrust Division at the DOJ, though it may be months after the inauguration before such nominees are confirmed by the Senate.

While staff turnover can lead to a slowdown in some aspects of government enforcement, the Hart-Scott-Rodino Act imposes deadlines on the agencies to decide whether or not to challenge a merger whenever companies comply with agency-issued Second Requests.

Future competition: likelihood of entry features prominently in FTC v Steris Corp

The past few years have seen a flurry of litigated merger decisions, shining light on the way courts, as well as the agencies, analyse the likely competitive effects of a merger. One district court decision in particular may have implications for pharmaceutical and other high-tech mergers: *FTC v Steris Corp*, which was tried in federal court in Ohio.

In *FTC v Steris*, the FTC sued to block the *Steris/Synergy* merger under a theory of harm that relied on a loss of actual potential competition, as opposed to the more traditional concern of a loss of current competition. The FTC alleged that absent the merger, Synergy would have entered the x-ray sterilisation business and so the merger would allow 'Steris to insulate itself against this competitive threat,' preventing 'lower prices, improved quality, and increased choice for contract sterilization.'[8]

In its decision, the court assumed that the 'actual potential competition' doctrine is valid but was skeptical of whether Synergy would actually enter. The court ultimately concluded that the FTC had failed to meet its burden, finding that 'evidence unequivocally show[ed] that the problems that plagued the development of x-ray sterilization … justified termination of the project.'[9]

Despite this loss, the Director of the FTC Bureau of Competition has argued that 'preservation of future competition is important and … likely to remain an active part of the Commission's merger enforcement agenda.'[10]

In promising to continue to pursue future potential competition cases, agency staff noted that the Commission 'routinely relies on this 'actual potential competition' theory of harm as the basis for requiring the divestiture of pharmaceutical products in development.'[11]

DOJ and FTC focusing resources on investigating tech mergers

The US antitrust authorities continue to focus substantial resources on tech mergers, but have closed investigations without any enforcement when convinced the merger will not result in adverse effects on competition.

DOJ recognises impact of rapidly evolving technology

Parties to tech mergers often argue that the markets in which they compete are dynamic and rapidly evolving, and consequently traditional metrics of market power, such as historical market shares, are poor predictors of anticompetitive effects.

Companies also regularly point to potential entry from tech giants. One FTC Commissioner recently explained, 'you probably will not be surprised at the number of times that we hear that the merging parties could not possibly raise prices post-merger because … [some] successful tech firm would undoubtedly enter and discipline the market. Sometimes that story is a fairy tale and sometimes it's true.'[12]

In September 2015, the DOJ announced that it had closed its investigation into Expedia's proposed US$1.3 billion acquisition of Orbitz. The DOJ explained that the online travel business was 'rapidly evolving' with new entry during the previous 18 months by two firms. Despite reports of complaints from the hotel industry, consumer groups, and members of Congress,[13] the DOJ advised that it had uncovered no evidence that the merger would be likely to result in new charges being imposed on consumers. Instead, it found that Orbitz had been only a small source of bookings and had no impact in recent years on the commissions Expedia charges. The DOJ concluded that travel service providers have options to attract customers beyond Expedia and Orbitz, including Priceline.[14]

The argument that tech markets rapidly evolve alone will not carry the day without supporting facts. One FTC Commissioner explained her view as follows:

> *Even in dynamic markets, changes in market structure may be episodic and infrequent. [However,] industry structure may prove as durable in digital and high-tech fields as in 'old economy' markets. It would be a mistake to view the mere possibility of disruptive entry as a reason to refrain from appropriate antitrust enforcement in digital and high-tech markets.*[15]

Innovation a major concern in tech mergers

The antitrust agencies focus on innovation as well as price when analysing proposed tech mergers.

One FTC Commissioner explained the agency's concern regarding innovation leading to a consent agreement resolving allegations that NXP Semiconductor's US$11.8 billion acquisition of Freescale Semiconductor would lessen competition, as follows:

> *Higher prices are obviously a fundamental concern in reviewing mergers of close competitors. The loss of competition to innovate and to develop better, faster, more efficient products, however, can be just as concerning – particularly in the technology area, where the essential competition often is not on price, but rather on product features.*[16]

The Commission alleged that the two companies had a 60 per cent share worldwide and faced only one other 'meaningful' supplier of RF power amplifiers, which are semiconductors that increase the strength of radio signals transmitted between electronic devices such as cellular base stations and mobile phones. With entry unlikely given high capital costs and significant switching costs, the agency alleged that the likely effect of the transaction would be higher prices and reduced innovation. NXP agreed to divest its RF power amplifier business.[17]

The DOJ expressed similar concerns in challenging Cox Automotive's US$4 billion acquisition of Dealer-track Technologies. According to the DOJ, Cox and Dealertrack were the two leading providers of inventory management solutions (IMSs), which use algorithms and analytics to allow automobile dealerships to manage vehicle inventories. The DOJ alleged that the two firms together would have more than an 85 per cent market share, giving Cox the power to 'unilaterally increase prices' and 'reduce its investment or other efforts to improve the quality of its products and services.' Cox agreed to divest Dealertrack's IMS business to resolve the DOJ's concerns.[18]

FTC continues active enforcement in life sciences

Historically, most FTC challenges to pharmaceutical mergers have been resolved by the merging firms agreeing to consent decrees requiring that they divest or license a few drugs to address competition concerns. The past year has been no exception, with parties consenting to a slew of divestitures in cases involving both pioneer/branded and generic drugs as well as medical devices.

Focus on combinations of both actual and potential competitors

The FTC continues to require divestitures to protect future price competition among drugs where there are a limited number of current and expected future competitors, in addition to requiring divestitures where the parties are two of a only a few current competitors.

For example, in *Pfizer/Hospira*, the companies agreed to divest assets to address FTC competition concerns in four markets.[19]

First, the companies were alleged to have a combined share of over 90 per cent of a US market for generic acetylcysteine inhalation solution, used to treat respiratory disorders. The FTC specifically noted that the branded version of the product was no longer available.

Second, the firms were alleged to have a combined share of over 80 per cent of a US market of generic and branded clindamycin phosphate injections, used to treat lung, skin, blood, bone, joint and gynaecological infections in hospitals. Pfizer supplied a branded drug and Hospira and two other firms manufactured generic versions. While the FTC often limits markets to generic drugs where there are multiple generic competitors, here it asserted the price of the branded drug was 'competitive with the generic products' and customers 'play the branded and generic products against each other to negotiate prices.' The FTC reasoned that in markets for drugs used primarily in hospitals, branded drugs are 'typically unable to command a premium price' as hospitals will not be reimbursed for using a premium-priced product.

Third, Pfizer was alleged to be the only manufacturer of branded voriconazole injection in the United States, used to treat fungal infections in hospitals, which the FTC also asserted was 'priced competitively with the only generic version' and Hospira was alleged to be 'one of a limited number of suppliers capable of entering … in the near future.'

Finally, neither company currently sold melphalan hydrochloride injection, used to treat multiple myeloma and ovarian cancer, but the FTC alleged both were developing products and were 'two of a limited number of suppliers capable of entering the market in the near future.'

Similarly, the FTC required divestitures in the markets for seven generic drugs to resolve Mylan's hostile tender offer for Perrigo Company. In four of the markets, the FTC alleged a lessening of current competition, while in the remaining three, either Mylan or Perrigo was alleged to have been a likely future entrant.[20]

Supply disruptions increase the number of generic suppliers required by the FTC to preserve competition

The FTC has made clear that it is likely to require a remedy when a proposed transaction would reduce the number of current and/or likely future generic competitors below four, stating 'customers generally believe that having at least four suppliers in each generic pharmaceutical market produces more competitive prices than if fewer suppliers are available to them.'[21]

Consistent with this view, resolving charges that Hikma Pharmaceuticals' proposed acquisition of 49 abbreviated new drug applications (ANDAs) from Ben Venue Laboratories, a subsidiary of Boehringer Ingelheim, would lessen competition, the FTC required divestiture of the acquired ANDAs for generic injectable drugs in which it alleged the number of likely future suppliers would be reduced from four to three.[22]

The FTC went further and required a remedy when a proposed merger or acquisition would reduce the number of competitors from five to four, where specific conditions, such as the potential for a supply shortage, heightened its competition concerns.[23] In *Hikma/Ben Venue*, the FTC required a divestiture in a fifth market in which it alleged the number of likely future suppliers would be reduced from five to four. In doing so, the agency stated:

> *[T]he injectable pharmaceutical industry generally, and the generic products at issue in this investigation in particular, are highly susceptible to supply disruptions caused by the inherent difficulties of producing sterile liquid drugs. Recent manufacturing problems have made it difficult for customers to obtain sufficient quantities of, and contributed to price increases of, several of the generic injectable products impacted by this transaction.*[24]

In July 2016, the FTC required Teva to divest 79 drugs to complete its US$40.5 billion acquisition of Allergan, the largest drug divestiture order in an FTC case to date.

Preserving price and innovation competition

The FTC also regularly pursues remedies against medical device mergers, addressing innovation as well as price effects.

In August 2015, the FTC announced a consent agreement with Zimmer Holdings on divestitures to remedy alleged anticompetitive effects of Zimmer's US$13 billion acquisition of Biomet. Zimmer and Biomet were alleged to be the third and fourth largest musculoskeletal medical device companies in the United States, producing products in three already highly concentrated product markets: unicondylar knee implants, total elbow implants and bone cement.

The FTC alleged that the firms were 'particularly close competitors,' their products were 'particularly close substitutes,' and 'each other's next best alternatives based upon design similarities and comparable clinical outcomes.' As a result, the FTC alleged, customers leveraged the firms' products against each other to obtain better pricing, and the firms 'continually improve[d] features … in order to win business,' so the merger would likely result in both 'unilateral price effects' and 'reduced innovation.'[25]

Price goes up for failure to comply with HSR Act

The maximum civil penalty for non-compliance with the premerger notification requirements of the HSR Act increased from US$16,000 to US$40,000 per day – a 150 per cent increase on 1 August 2016.[26] Going forward, the maximum civil penalty for non-compliance with the HSR Act will be adjusted for inflation every January, with the first adjustment occurring in January 2017.

The significant increase is required by the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, signed into law last November. According to the Office of Management and Budget, the increase is intended 'to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.'[27]

Just two weeks after the increase was announced, and before the new penalties went into effect, the DOJ announced that ValueAct Capital agreed to pay a record US$11 million civil penalty to settle claims that ValueAct purchased over US$2.5 billion in Halliburton and Baker Hughes stock with the intention of influencing their proposed US$35 billion merger without complying with the HSR Act's notification requirements.[28]

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Notes

1 Terrell McSweeny, *Competition Law: Keeping Pace in a Digital Age*, 16th Annual Loyola Antitrust Colloquium – Chicago, IL, p. 2 (Apr. 15, 2016), available at https://www.ftc.gov/system/ files/documents/public_statements/945343/mcsweeny_-_loyola_antitrust_colloquium_keynote_4-15-16.pdf.

2 Christine A. Varney, *Vigorous Antitrust Enforcement in this Challenging Era*, Prepared for the United States Chamber of Commerce (May 12, 2009), p. 16, available at https://www.justice.gov/atr/speech/vigorous-antitrust-enforcement-challenging-era.

3 See, eg, David J. Lynch, US takes tougher stance on deals under Obama, *The Financial Times* (Apr. 7, 2016), available at www.ft.com/cms/s/0/62f5f1c2-fcbe-11e5-b5f5-070dca6d0a0d.html#axzz4BU5T9goW; Steven Mufson and Renae Merle, As Obama's term winds down, crackdowns on mergers speed up, *The Washington Post* (May 2, 2016), available at https://www.washingtonpost.com/business/economy/2016/05/02/1f6fd29e-1076-11e6-93ae-50921721165d_story.html. But see David Goldman, Obama's not as tough on mergers as you think, CNN Money (Apr. 8, 2016), available at http://money.cnn.com/2016/04/08/news/obama-mergers-antitrust/

4 Elizabeth Warren, Reigniting Competition in the American Economy, New America's Open Markets Program Event (June 29, 2016), available at www.warren.senate.gov/files/documents/2016-6-29_Warren_Antitrust_Speech.pdf.

5 Center for American Progress, Reviving Antitrust Why Our Economy Needs a Progressive Competition Policy, (June 2016) available at https://cdn.americanprogress.org/wp-content/uploads/2016/06/28143212/RevivingAntitrust.pdf.

6 Hilary Clinton, Being pro-business doesn't mean hanging consumers out to dry, Quartz Op-Ed (Oct. 20, 2015), available at http://qz.com/529303/hillary-clinton-being-pro-business-doesnt-mean-hanging-consumers-out-to-dry/.

7 See R. Skitol, Donald Trump's Major Antitrust Encounters, *The Antitrust Source* (Apr. 2016), available at www.americanbar.org/content/dam/aba/publishing/antitrust_source/apr16_skitol_4_11f.authcheckdam.pdf.

8 Complaint, *FTC v. Steris Corp., et al.*, No. 1:15-CV-1080, paragraph 2 (N.D. Ohio Jun. 4, 2015), available at https://www.ftc.gov/system/files/documents/cases/150529sterissynergytro.pdf.
9 Opinion and Order, *FTC v. Steris Corp., et al.*, No. 1:15-CV-1080, p. 40-41 (N.D. Ohio Sept. 24, 2015), available at https://dockets.justia.com/docket/ohio/ohndce/1:2015cv01080/218093.
10 Deborah L. Feinstein, Director's Report Spring 2016, p. 4 (Apr. 2016), available at https://www.ftc.gov/system/files/documents/public_statements/944113/feinstein_-_spring_update_april_2016.pdf.
11 Id.
12 Maureen K. Ohlhausen, Antitrust Tales in the Tech Sector: Goldilocks and the Three Mergers and Into the Muir Woods, Antitrust in the Technology Sector: Policy Perspectives and Insights from the Enforcers – Palo Alto, CA, p.2 (Jan. 26, 2016), available at https://www.ftc.gov/system/files/documents/public_statements/910843/160126skaddenkeynote.pdf.
13 David McCabe, Dem Warns DOJ on Expedia-Orbitz Merger, The Hill, (Aug. 11, 2015), available at http://thehill.com/policy/technology/250837-dem-writes-doj-opposing-expedia-orbitz-merger.
14 Justice Department Will Not Challenge Expedia's Acquisition of Orbitz (16 September 2015), available at https://www.justice.gov/opa/pr/justice-department-will-not-challenge-expedias-acquisition-orbitz.
15 Terrell McSweeny, Panel Discussion: Why Regulate Online Platforms: Transparency, Fairness, Competition or Innovation?, CRA Conference – Brussels, Belgium (Dec. 9, 2015), available at https://www.ftc.gov/system/files/documents/public_statements/903953/mcsweeny_-_cra_conference_remarks_9-12-15.pdf.
16 Maureen K. Ohlhausen, supra, fn. 12 at p. 3.
17 Analysis of Agreement Containing Consent Orders to Aid Public Comment, *In re NXP Semiconductors N.V.*, FTC File Number 151-0090 (Nov. 25, 2015), available at https://www.ftc.gov/system/files/documents/cases/151125nxpanalysis.pdf.
18 Justice Department Requires Cox Automotive to Divest Inventory Management Solution in Order to Complete Acquisition of Dealertrack (Sept. 29, 2015), available at https://www.justice.gov/opa/pr/justice-department-requires-cox-automotive-divest-inventory-management-solution-order; *U.S. v. Cox Enterprises, Inc., et al.*, Complaint, 1:15-cv-01583, p.8 (D.D.C. Sept. 29, 2015), available at https://www.justice.gov/opa/file/779336/download.
19 Analysis of Agreement Containing Consent Order to Aid Public Comment, *In re Pfizer Inc. and Hospira, Inc,* File No. 151-0074 (24 August 2015).
20 Analysis of Agreement Containing Consent Orders to Aid Public Comment, *In re Mylan N.V.*, FTC File No. 151-0129 (Nov. 3, 2015), available at https://www.ftc.gov/system/files/documents/cases/151103mylanperrigoanalysis .pdf. Perrigo's shareholders rejected Mylan's takeover attempt, and the transaction was never consummated.
21 See, eg, Analysis of Agreement Containing Consent Order to Aid Public Comment, *In re Endo Int'l plc,* FTC File No. 151-0137, p. 2 (Sept. 25, 2015), available at https://www.ftc.gov/system/files/documents/cases/150925endointlanalysis.pdf; Analysis of Agreement Containing Consent Orders to Aid Public Comment, *In re Impax Labs, Inc., RoundTable Healthcare Partners II, L.P., and Tower Holdings, Inc.*, FTC File No. 151-0011, p. 2 (Mar. 5, 2015), available at https://www.ftc.gov/system/files/documents/cases/150305impaxanalysis.pdf.
22 Analysis of Agreement Containing Consent Order to Aid Public Comment, *In re Hikma Pharmaceuticals PLC and C.H. Boehringer Sohn AG & Co. KG,* FTC File No. 151-0044 (Feb. 19, 2016), available at https://www.ftc.gov/ system/files/documents/cases/160219bedfordanalysis.pdf.
23 In re Impax Labs, Inc., supra, fn. 28; Analysis of Agreement Containing Consent Orders to Aid Public Comment, In re Mylan Inc, Agilia Specialties Global Pte. Limited, Agilia Specialties Private Limited, and Strides Arcolab Limited, FTC File No. 131-0112 (Sept. 26, 2013), available at https://www.ftc.gov/sites/default/files/documents/cases/130926mylananalysis.pdf.
24 *In re Hikma Pharmaceuticals PLC*, supra, fn. 22 at p. 3.
25 Analysis of Agreement Containing Consent Order to Aid Public Comment, *In re Zimmer Holdings, Inc. and Biomet, Inc.*, FTC File No. 141-0144, p. 4 (Jun. 24,2015), available at https://www.ftc.gov/system/files/documents/ cases/150624zimmeranalysis.pdf.
26 81 Fed. Reg. 42476, June 30, 2016, Adjustment of Civil Monetary Penalty Amounts.
27 Shaun Donovan, Director, Executive Office of the President, Office of Management and Budget, Memorandum for the Heads of Executive Departments and Agencies re Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, February 24, 2016, p. 1.
28 Justice Department Obtains Record Fine and Injunctive Relief against Activist Investor for Violating Premerger Notification Requirements, July 12, 2016, available at https://www.justice.gov/opa/pr/justice-department-obtains-record-fine-and-injunctive-relief-against-activist-investor.

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Ms Grise was ranked as among the top 40 antitrust lawyers worldwide under the age of 40 by *Global Competition Review* (May 2008). She is also recognised as a leading practitioner by *Chambers USA, Euromoney's Guide to the World's Leading Competition & Antitrust Lawyers* and *Washington DC Super Lawyers*' Top 50 Women.

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