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Recent Activities

DOJ GETS INJUNCTION TO BLOCK LABELSTOCK MERGER

The DOJ won a major merger enforcement victory as the U.S. District Court for the Northern District of Illinois issued a preliminary injunction blocking Finnish paper manufacturer UPM-Kymmene Corporation's ("UPM's") proposed acquisition of Bemis Corp.'s label manufacturer, Morgan Adhesives Company ("MACtac"). *See U.S. v. UPM-Kymmene OYJ*, N.D. Ill., No. 03 C 2528, 7/25/03. Not only was it a victory for the Antitrust Division, but the decision might have long lasting effects, as it could be used to block future deals on similar grounds.

In August 2002, UPM, the parent company of Raflatac, a supplier of labelstock, announced its intention to purchase MACtac from Bemis Corporation, another supplier of labelstock, for about $420 million. Labelstock is the material from which finished labels are cut for packaged foods, beverages, price tags and a host of other consumer and industrial goods. UPM and MACtac are two of the leading producers of pressure sensitive labelstock in the United States. Such labelstock is sold primarily to companies called label "converters", for use in making self-adhesive - or pressure sensitive - labels for a broad range of consumer and commercial label applications. UPM and MACtac are the second and third largest producers of bulk labelstock, which is used to make pressure sensitive paper labels for variable information printing (where the information to be printed on the label will vary and be supplied by the end user), and of prime labels used for product identifications.

Avery Dennison Corporation ("Avery"), a direct competitor to the two merging parties, is the largest pressure-sensitive bulk labelstock manufacturer in North America, with approximately 50% of the sales of certain kinds of labelstock. The combination of UPM/MACtac would result in the firm controlling about 20% of the sales of bulk labelstock. The European Commission determined that the transaction posed no risk of creating a dominant position in any relevant European Union product or geographic market in October 2002, while the Antitrust

Division contended that the transaction would have left the top two labelstock suppliers with about 70% of the sales of certain types of labelstock in the United States.

The DOJ asserted that the transaction would have an anticompetitive effect on the production and sale of labelstock despite relatively modest market shares of the two merging parties. The DOJ alleged that the merger would hinder competition in the labelstock industry, not because of the merged firm's ability to unilaterally raise prices after the merger, but because the consummation of the merger made it more likely that collusion among the remaining suppliers of labelstock would take place in the future. The DOJ alleged that, in the past, UPM was an aggressive competitor, but the merger would have left two large producers, UPM and Avery, in a position to jointly lead and coordinate a lessening of competition in the production and sale of bulk labelstock. The DOJ further alleged that remaining smaller labelstock producers would not have the capabilities nor incentives to prevent UPM and Avery from engaging in illegal coordination. In addition, the DOJ alleged that UPM and Avery have a supplier-customer relationship, which could be abused in the future, if the merger were allowed.

The court agreed with the DOJ and enjoined the transaction. The court's decision is a significant victory for the DOJ because the court essentially concluded that the transaction would have increased the chances of collusion among UPM and Avery.

For the past several years, the antitrust agencies have focused on whether transactions would allow the merged firm to profitably raise prices to anticompetitive levels under the unilateral effects theory of harm, rather than focusing on the coordinated interaction theory. The decision is noteworthy because it highlights the role that the "coordinated effects" theory can play in future merger reviews. Even in situations where multiple competitors will remain, and the resulting market shares between the merging parties would not ordinarily warrant a regulatory challenge, the DOJ and the FTC can successfully assert the "coordinated interaction" theory as a possible theory of harm.

Here, the DOJ's successful challenge to UPM's proposed acquisition of MACtac blocked a deal in an industry that is experiencing declining prices because it is highly competitive, and that would have combined two bulk labelstock manufacturers with only about 20% of the sales of such product(s). Industries experiencing declining prices due to competition and having relatively modest market shares usually do not trigger antitrust concerns in merger reviews. However, corporate and private counsel should now be aware that either evidence of past collusion or of a concentrated industry with characteristics suggesting collusion, can result in merger challenges to deals that normally would not be blocked.

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CALIFORNIA UPDATE: ARNOLD, ARIANNA AND THE UNFAIR COMPETITION LAW

One of the strange things about California, in addition to its gubernatorial candidates, is its Unfair Competition Law ("UCL"). The UCL is found at Section 17200 of the state's Business & Professions Code. Unlike the FTC Act on which it is based, California permits private parties (in addition to enforcement agencies), to bring suit under the UCL on behalf of the public. Some courts have also permitted this even though the plaintiffs themselves have suffered no injury or harm, and would not have standing to sue under any other law. As such, Section 17200 has often been the basis for frivolous lawsuits that have little or nothing to do with unfair competition or any real wrong or injury at all. This "private attorney general" feature of the UCL allows a private party to bring a "nonclass representative" action that has the same monetary exposure to a defendant as a class action, but without the due process safeguards normally attendant to class actions. It is these "nonclass class actions" - coupled with the relaxed standing requirements - which have led to the abuse of the UCL by lawyers seeking to extort quick settlements from businesses.

Thus, when the U.S. Supreme Court granted certiorari last year in *Kasky v. Nike, Inc.*, 27 Cal.4th 939 (2002), many hoped that it would use the case to rein in the UCL on constitutional grounds, or otherwise. *Kasky* arose from Nike's attempt to defend itself from attacks in the press that it abused workers in its plants. Nike responded by issuing statements and letters that such allegations were false and it treated its workers well. Plaintiff, a consumer activist who conceded that he had suffered no injury from Nike's statements, filed a UCL action alleging that Nike's public response was unfair competition under Section 17200. As is the custom, the plaintiff brought his action on behalf of the general public.

The trial court summarily dismissed the action on First Amendment grounds, and it was unanimously affirmed by the California Court of Appeal. In a 4-3 decision, however, a divided California Supreme Court reversed, holding that Nike's speech was "commercial" and thus Nike was not entitled to First Amendment protection even though its opponents were. It was from this decision that the U.S. Supreme Court granted certiorari. *See Nike, Inc. v. Kasky*, 123 S.Ct. 817 (2003).

After oral argument and the filing of over thirty *amicus* briefs, however, the Supreme Court dismissed the petition as "improvidently granted", albeit largely on grounds that existed at the time the petition was initially granted. Three justices - Kennedy, Breyer, and O'Connor - dissented, noting that California's regulatory regime differs from traditional speech regulation in its use of "private attorneys general" to impose liability even though the plaintiffs themselves have not necessarilty suffered harm, and this threatened to impose a "serious burden" on free speech.

Although the Supreme Court chose not to jump into the fray, a number of recent California court decisions show a growing hostility to the UCL, and have limited the scope and remedies in Section 17200 actions. This is particularly true for antitrust cases. In *Chavez* *v. Whirlpool Corp.*, 93 Cal. App. 4th 363 (2001), for example, the court held that a minimum resale pricing policy that did not violate the Cartwright Act (because it was consistent with *United States v. Colgate & Co.*, 250 U.S. 300 (1919)), likewise could not be considered "unfair" under the UCL. While this result may seem quite logical to one unfamiliar with prior cases interpreting what is "unfair" under the UCL, it was a major leap forward in California jurisprudence.

Several recent California Supreme Court decisions also limit the availability of nonclass representative actions, and adopt procedural mechanisms to help provide the parties with due process safeguards. In *Kraus v. Trinity Management Services, Inc.*, 23 Cal. 4th 116 (2000), the court also imposed a "competent plaintiff" requirement in representative actions, which sounds close to an injury requirement and analogous to the "adequate representative" requirement in class actions. Other cases have held that such nonclass representative actions are not appropriate where proof of liability and injury will vary among members of the public, and are totally inappropriate when brought to remedy private harm, as opposed to harm to the public generally. Another court held the fraud "prong" of the UCL does require a showing that the statement is likely to deceive the public from the standpoint of the reasonable consumer. *Lavie v. Procter & Gamble Co.*, 105 Cal.App.4th 496 (2003). Again, an unremarkable ruling, except when compared to prior Section 17200 cases.

The California Supreme Court also held earlier this year that disgorgement was not an available remedy for UCL plaintiffs, and cautioned against using the UCL as an "all-purpose substitute" for tort or contract actions. Since neither compensatory nor punitive damages are available, the only remaining monetary remedy under the UCL is restitution. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134 (2003). *Korea Supply* also narrowly defined restitution as limited to money taken directly from plaintiffs, or in which plaintiffs have a vested ownership interest.

Finally, courts are showing an increased willingness to dismiss UCL claims at the pleading stage. *See Searle v. Wyndham Int'l*, 102 Cal. App. 4th 1327 (2002); *Snohomish County v. Dynegy Power Marketing*, 244 F. Supp. 2d 1072 (S. D. Cal. 2003).

California's experience with the UCL demonstrates the wisdom of Congress in not permitting private actions under the FTC Act. Justice Breyer's dissent to the dismissal of the certiorari petition in *Nike v. Kasky*, 123 S.Ct. 2554, seems to suggest that California should do the same. Maybe Arnold, Arianna or another one of the 135 gubernatorial candidates will take Breyer's suggestion and make it part of his or her platform.

For a more extensive discussion of the UCL, particularly the recent cases limiting its scope, please order a copy of our booklet, *California Antitrust & Unfair Competition Law* (3d. Ed. 2003), which may be obtained by calling Megan Bennett at (213) 830-2006.

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3RD CIRCUIT DECISION IN INTERVEST, INC. HIGHLIGHTS DIFFICULTY OF PROVING ANTITRUST CONSPIRACY ABSENT DIRECT EVIDENCE OF COLLUSION

On August 7, the U.S. Court of Appeals for the Third Circuit affirmed the dismissal of an antitrust conspiracy claim by the provider of a commercially unsuccessful electronic bond trading platform. The decision in *InterVest, Inc. v. Bloomberg, L.P.*, 2003 WL 21894378, underscores the difficulties faced by companies that believe they are victims of an antitrust conspiracy but lack direct evidence of collusion, but also offers practical guidance on whether the available evidence is enough to get before a jury.

InterVest claimed that its platform would revolutionize bond trading by making transparent the prices paid for bonds and the markups made by broker-dealers on the sale. This promised "glasnost" in bond trading received a chilly reception from institutional broker-dealers, who feared losing a hefty chunk of their markups if investors gained greater access to such information. After financial information powerhouse Bloomberg, L.P. removed the platform from its information network following complaints by broker-dealers, InterVest sued Bloomberg and more than a half-dozen broker-dealers, alleging that they violated Section 1 of the Sherman Act by unlawfully conspiring to exclude InterVest from the bond trading market. InterVest settled with all defendants, except broker-dealer S.G. Cowen ("Cowen"), which persuaded the trial court to dismiss the case on summary judgment.

The Third Circuit affirmed the dismissal, despite evidence that: (1) all of the broker-dealers had uniformly refused to deal with InterVest; (2) Cowen's head of bond trading was against the InterVest platform because (a) it would provide unwanted price disclosure to investors, (b) it would "break the spreads" enjoyed by broker-dealers, (c) InterVest was not "playing by the rules," and (d) to support the platform would be "viewed by the street [*i.e.*, Wall Street] as unhealthy"; and (3) Bloomberg might have severed its relationship with InterVest at least in part due to pressure from broker-dealers. The court acknowledged that "a rational finder of fact might draw the series of inferences necessary to find that Cowen participated in a conspiracy with Bloomberg and other broker-dealers in order to maintain the existing closed bond trading system." Specifically, the "establishment and perpetuation of a closed system, the allusions by various broker-dealers, including defendant Cowen, to the 'rules,' the universal refusal to deal with InterVest, the complaints to Bloomberg, and Bloomberg's subsequent resistance to buy side and transparent bond trading, all support[ed] an inference of conspiracy."

An "inference of conspiracy" was not enough for InterVest to have a jury decide the case because "[c]onduct as consistent with permissible competition as with illegal conspiracy does not, standing alone, support an inference of antitrust conspiracy." *See Matsushita Electronic Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 588 (1986). In light of this court-established threshold for conspiracy claims, InterVest had two options: either introduce "direct evidence" of the alleged conspiracy, or rely on circumstantial evidence that tended to exclude the possibility that Cowen acted independently of Bloomberg and the other broker-dealers in its treatment of InterVest. The court found that InterVest did neither.

No Direct Evidence of a Conspiracy

InterVest argued that there was "direct evidence" of a conspiracy to exclude InterVest from the bond trading market because the bond market - with its entrenched system of murky prices, transaction costs, and "rules" - was "anti-competitive on its face". In rejecting this claim, the court emphasized that there were "thousands of broker-dealers in the bond market, trading various types of securities," and that it unreasonably stretched "credibility to suggest that they all agreed on 'rules' in a manner approximating an illegal conspiracy." The court refused to depict the broker-dealers' mutual desire for less transparency as direct evidence of an antitrust conspiracy because: (1) they were acting in their self interests to maximize profits, and (2) "the lack of price transparency in the bond market benefits investors who wish to transact anonymously and thus reduce the market impact of their transactions." The court stressed that direct evidence must be explicit - the proverbial "smoking gun" - and requires no inferences to establish the proposition or conclusion being asserted. In other cases, the requisite "direct evidence" of a conspiracy has been found from, *inter alia*, a direct threat to the plaintiff from a competitor that if he went into business his competitors would do anything they could to stop him, including cutting prices or supplies; advice to distributors that a supplier would cut off access if the distributor failed to maintain a certain price level; a memo produced by a defendant conspirator detailing the discussions from a meeting of a group of alleged conspirators; and, a public resolution by a professional association recommending that its members withdraw their affiliation with an insurer. But vague, unilateral references by competitors to InterVest not playing by the "rules" was not enough.

Circumstantial Evidence Not Sufficient to Prove Conspiracy

In finding that the circumstantial evidence did not tend to exclude the possibility of unilateral conduct by Cowen, the court emphasized that there was no evidence that Cowen had: (1) communicated with other broker-dealers regarding InterVest; (2) threatened Bloomberg into no longer dealing with InterVest; or (3) agreed with Bloomberg to harm InterVest. The court also pointed to "ample evidence" that Cowen's decision not to deal with InterVest was made independently in light of, *inter alia*, its desire to continue to maximize profits earned from markups under the established system.

In cases where plaintiffs have succeeded based on circumstantial evidence, there has been a showing that, for example, defendants had meetings in which price fixing was discussed, as well as specific evidence of other pressure tactics used by defendants, or evidence of communications among defendants regarding actions they individually were undertaking against competitors, or evidence of meetings among dealers about how they were opposed to a new franchise and indicated continued efforts to pressure the manufacturer. Although there was evidence that Bloomberg received and responded to multiple complaints from various broker-dealers, this did not establish that the entrenched broker-dealers actually agreed to work together to harm InterVest, or even communicated with each other about InterVest. The lack of such communications among the broker-dealers was fatal to the case.

InterVest also failed to show collusion through "conscious parallelism" by the broker-dealers. In order to establish a conspiracy on the basis of consciously parallel behavior, a plaintiff must show: (1) that the defendants' behavior was parallel; (2) that the defendants were conscious of each other's conduct and that this awareness was an element in their decision-making process; and (3) the existence of certain other "plus factors" - which tend to vary slightly among the various courts of appeal. In the Third Circuit, the "plus" factors include (1) actions contrary to the defendants' economic interests - i.e., that defendants' conduct would not be reasonable or explicable unless they were conspiring to restrain trade, and (2) a motivation to enter into such an agreement. A significant obstacle for InterVest, which it ultimately could not overcome, was the fact that Cowen's treatment of InterVest was not contrary to Cowen's economic interests. Rather, Cowen clearly stood to gain if InterVest failed.

Finally, the court ruled that evidence of pressure upon Bloomberg not to deal with InterVest was inadequate to establish an agreement between Bloomberg and Cowen to exclude InterVest from the bond trading market. First, the court pointed out that evidence of a complaint, without any other supporting evidence tending to show illegal pressure or a conspiracy, was insufficient - even if the complained-to party ultimately terminated the plaintiff. To find a conspiracy from such events could improperly deter or penalize perfectly legitimate conduct. Moreover, InterVest had failed to point to specific examples of Cowen complaining to Bloomberg about InterVest. Furthermore, there was no evidence of Cowen threatening Bloomberg, e.g., by no longer providing it with general information on its bond trading or by refusing to use its information services.

The *InterVest* decision shows that technological innovation can be met with uniform hostility by entrenched competitors, which all take unilateral steps to destroy the ability of the newcomer to compete, but *still* not present a case for a finding of an unlawful antitrust conspiracy. Rather, the successful plaintiff will need to possess or uncover (1) direct evidence that the competitors worked in unison to damage the plaintiff, or (2) circumstantial evidence of such collusion that is not so ambiguous that it could also reflect unilateral activity by the competitors.

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FTC CHALLENGES ANOTHER CONSUMMATED MERGER

The FTC continues to send a strong message to corporate executives and antitrust counsel that antitrust risks do not end once a deal closes, and that a transaction is not free of antitrust risks simply because the transaction is not reportable under the Hart-Scott-Rodino Act ("HSR").

On August 7, the Commission announced that it had authorized the FTC staff to file an administrative complaint against Aspen Technology, Inc. ("Aspen") for illegally consummating a deal with Hyprotech, Ltd.

on May 31, 2002. Aspen acquired Hyprotech for $106 million. Because the transaction was exempt from the HSR Act, the FTC staff was not informed of the transaction prior to closing. Prior to the acquisition, Aspen, Hyprotech, and Invensys Systems' SimSci-Esscor division were the three leading providers of engineering process simulation software for process industries. The transaction, however, led to the elimination of a significant competitor in the provision of process engineering simulation software.

Both companies developed, licensed, and supported batch and continuous process engineering simulation software. According to the FTC, batch process simulation is the modeling of processes that entail a single production run with a finite beginning and end. In contrast, continuous process simulation simulates processes that experience an ongoing flow of product inputs and outputs. In addition, both companies allegedly developed integrated engineering software that gathers information generated from process engineering software and allows users to store, update, and retrieve data, depending on their needs.

In summary, the Commission alleged that the merger lessened competition in seven product markets. The merger allegedly eliminated the two largest and closest worldwide competitors for the development, licensing, and support of processing engineering software in the following defined markets: (1) continuous process engineering simulation flowsheet software for process industries; (2) continuous process engineering simulation flowsheet software for upstream oil and gas process industries; (3) continuous process engineering simulation flowsheet software for downstream refining process industries; (4) continuous process engineering simulation flowsheet software for chemical process industries; (5) continuous process engineering simulation flowsheet software for air separation process industries; (6) batch process engineering simulation flowsheet software for process industries; and (7) integrated engineering software for process industries.

The notice of proposed relief seeks an order requiring Aspen to rescind the acquisition; divest Hyprotech software, intellectual property, contract rights, and other assets; and provide any other relief necessary to reconstitute important elements of Hyprotech to make sure that a viable competitor will continue to exist.

This administrative complaint serves as a reminder that companies may still face antitrust risks even after the completion of a deal, even if the deal is not reportable under the HSR Act. The complaint also demonstrates the risks of closing a deal that presents potential antitrust issues and makes clear that such challenges will be pursued by the FTC. Accordingly, corporate and private counsel must be aware of the likely consequences and the risks of consummating deals that present significant antitrust issues.

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CONSOLIDATION IN THE ACCOUNTING INDUSTRY

The General Accounting Office ("GAO") released its report, *Public Accounting Firms: Mandated Study on Consolidation and Competition* on July 30, which found "the audit market for large public companies [to be] an oligopoly" that presents significant barriers to entry for smaller accounting firms. The 139 page report found that, with the demise of Arthur Andersen, LLP, what used to be the "big 8" is now the "big 4" (*i.e.*, Deloitte & Touche LLP, Ernst & Young LLP, KPMG LLP and PricewaterhouseCoopers LLP). These four companies audit 97 percent of all public companies that have sales in excess of $250 million.

The GAO report was mandated by the Sarbanes Oxley Act of 2002, which was passed in the wake of several accounting scandals that brought down high-flying blue chip companies, with Enron's illicit accounting and bookkeeping activities at the vanguard. The GAO's mandate was to study the consolidation of the big 8 with a focus on: (a) the factors that contributed to the consolidation; (b) the implications on competition and choices for clients, fees, quality, and independence; (c) the impact on capital formation and securities markets; and (d) the barriers to entry for smaller accounting firms.

While the study found no evidence of impaired competition, there is a potential for problems in the future due to the recent, significant changes in the accounting profession. However, the GAO found no conclusive evidence that the consolidation had (i) resulted in increased fees, (ii) affected the quality and independence of the auditors; and (iii) any "clear linkages" to capital formation. The GAO does caution that the implications of consolidation warrant continued monitoring to both prevent further consolidation and assist in competition. The report also stated that smaller accounting firms face significant barriers to entry that include a lack of staff, industry and technical expertise, capital formation, global reach, and reputation (*i.e.*, brand name).

The GAO's antitrust study, after an analysis of the Herfindahl-Hirschman Index ("HHI"), found a significant increase in the market concentration of the big 4 resulting from the dissolution of Andersen. An HHI index below 1000 is generally considered a competitive market. In contrast, an HHI index above 1800 indicates a highly concentrated market in which firms can exert significant power on the market. Prior to the PricewaterhouseCoopers merger in 1998, the HHI index was below 1800, and increased to above 2000 immediately thereafter. Now, in the wake of the Andersen collapse, it has increased to 2,566. Any additional consolidation of the big 4, though unlikely, will certainly receive close scrutiny from antitrust regulators.

The report can be found on the GAO's web page at: www.gao.gov/new.items/d03864.pdf.

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SMOKERS LOSE AGAIN

The Third Circuit has again affirmed dismissal of antitrust challenges by smokers to the tobacco settlement on the grounds that such challenges were barred by the *Noerr-Pennington* doctrine. *Mariana v. Fisher*, 2003 WL 21751930 (3d. Cir. 2003). The court had previously reached the same conclusion in *A.D. Bedell Wholesale v. Philip Morris*, 263 F. 3d 239 (3d. Cir. 2001), cert. denied, 534 U.S. 1081 (2002), as to the defendant tobacco companies. The defendants in this *Mariana* case were two Pennsylvania state officials, its Attorney General and Secretary of Revenue. The *Mariana* plaintiffs alleged that certain provisions of the 1998 Master Settlement Agreement

("MSA") between 46 states and the major tobacco companies were an output cartel that had the effect of raising cigarette prices. Plaintiffs sought an injunction enjoining the continued implementation of those terms of the MSA. Though the court conceded the terms were a *per se* unreasonable restrain of trade, it held the public officials were entitled to immunity.

Noerr immunity applies to conduct that involves petitioning the government even though it may have an anticompetitive purpose. The plaintiffs in *Mariana* argued it should not apply to public officials since they cannot "petition themselves." Relying in part on a Ninth Circuit decision, *Manistee Town Center v. City of Glendale*, 227 F. 3d. 1090 (9th Cir. 2000), the Third Circuit rejected this argument, stating that "[g]overnmental petitioning is as crucial to modern democracy as is that of private parties."

The defendants also asserted they were entitled to immunity under the state action doctrine. The court previously rejected this immunity for the private tobacco companies in *Bedell* because the post-settlement prices of the tobacco companies were not actively supervised by the states. Here, the Third Circuit stated that it was "bound" by its prior *Bedell* decision and thus the public officials here likewise had no state action immunity.

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PRÊT À PORTER HANDCUFFS? DOJ INVESTIGATES POSSIBLE PRICE-FIXING AND COLLUSION BY LEADING AGENCIES IN THE FASHION INDUSTRY

Reportedly, the DOJ's Antitrust Division is investigating allegations of criminal price-fixing and collusion among the world's top fashion-modeling agencies. The criminal inquiry follows a private civil class action suit brought by former models last year in a New York federal court. The civil suit named many of the world's leading agencies, including Ford Models, Inc., Wilhelmina Model Agency Inc., Next Model Management Inc., and Elite Model Management Corp., as defendants. The civil case was granted class action status last month. Apparently, the Antitrust Division has found that the allegations are interesting enough to begin a criminal investigation of the entire industry.

The Antitrust Division is looking into whether a half dozen of the top modeling agencies conspired to fix commissions they charge models for booking assignments, as well as the fees paid by photographers, magazines and retailers to book the models. The civil suit alleges that the agencies were breaching antitrust laws by effectively fixing commissions at 40%. If the Antitrust Division discovers that the allegation is true, the Division is likely to bring criminal charges in the future.

The modeling agencies are in a position to collude as they handle bookings for represented models and negotiate rates with the ultimate client. When photographers book a model for an ad, catalog or fashion magazine, they typically pay the agency a premium equal to 20% of the job's cost. Most models are also charged a 20% commission. For example, if a model is paid $1000 for a photo shoot, the client pays $1,200 and the model receives $800.

According to published reports, the Antitrust Division's inquiry focuses on a former trade association, the International Model Managers Association ("IMMA"). Evidently, most of the major modeling agencies belonged to the IMMA during the 1990s, and the plaintiffs in the class action suit allege that illegal collusion took place at IMMA meetings. Following up on the plaintiffs' allegations, the Antitrust Division is currently reviewing all correspondence and minutes relating to IMMA's meetings held throughout the 1990s. However, the IMMA recently dissolved, and the modeling agencies have formed a new group called Model Management Corp. Evidence from the civil suit includes minutes from an IMMA's meeting in 1991 indicating that various modeling agencies shared commission prices. Minutes from a meeting in 1992 also note that a committee would be set up to draft uniform industry contract terms. While the modeling agencies are contesting the claims of the civil suit and maintain that the meetings were both legal and proper under the auspices of a now defunct trade organization, bigger concerns are on the horizon, as the Antitrust Division is vigorously investigating the price fixing allegations, which could lead to jail time.

The Antitrust Division is probably interested in investigating the other allegations made in the civil suit as well. For instance, the suit alleges that the modeling agencies, acting together, have managed to keep commissions high for more than 20 years, and have prevented the entry of new, lower priced rivals. The suit also alleges that the modeling agencies acted together to evade a New York law that prohibits employment agencies from charging more than 10%, by falsely claiming to be managers of the models rather than principally engaged in arranging bookings of the models, offering little or no management services.

The Division's investigation comes amid scrutiny of business practices in all corners of the economy. Recently, the Antitrust Division has aggressively sought to root out price-fixing schemes in sectors ranging from polyester production, to sales of milk in school lunch programs. Currently, more than 70 grand juries are investigating alleged price-fixing and market allocation agreements.

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RECENT ACTIVITIES

DOJ ANTITRUST HIGHLIGHTS

- On August 21, the Antitrust Division sent a business review letter to the Woodwork Institute of California ("Institute"), a voluntary membership association for architectural millwork manufacturers, which cleared the Institute's information exchange proposal. The intent of the information exchange proposal is to conduct a survey of general financial, cost, and sales data for the purpose of increasing the operations efficiency of architectural millwork manufacturers. In the letter, the Division stated that the limited nature of the proposed cooperation curtailed any risk that the shared data would lead to collusion. For example, the proposal calls for an exchange of historic cost information on an aggregated basis, with no discussion of pricing or other sales related conduct. The Institute also proposes to identify general financial, cost, and sales data through survey questionnaires. The survey would not contain information about competitively sensitive items, and the results of the survey would be made available in aggregate form for purchase. An independent entity will manage the survey and all data submitted by the companies to the survey manager will be more than three months old at the time the results are disseminated. The survey manager will distribute financial information only if it collectively represents the architectural millwork industry. No pricing information, marketing plans or equipment information will be included in the survey. No data will be exchanged directly between or among the individual competitors. Counsel should keep in mind that the DOJ's business review procedure can be a worthwhile process where an organization may submit a proposed action to the Antitrust Division and receive a statement as to whether the Division will challenge the action under the antitrust laws. Obviously, conducting an antitrust analysis and gaining approval of a proposed action prior to commencement of questionable conduct is preferable to becoming the focus of a government inquiry.

- On August 20, the DOJ announced that Raytheon Co. and DRS Technologies Inc. will revise their proposed teaming agreement on infrared sights for military vehicle programs to resolve the Antitrust Division's anticompetitive concerns over the transaction. The modified teaming agreement is designed to preserve competition and innovation in future U.S. government military vehicle infrared sight programs. The teaming agreement, as originally proposed, however, raised significant antitrust concerns about the development and production of sights for future programs. Unmodified, the proposed teaming agreement would have resulted in Raytheon and DRS jointly producing a type of infrared sight that has already been selected for existing Marine Corps and Army programs, as well as in the development and production of sights for future programs, including the Battalion Combat Team Mobile Gun System and the Advanced Amphibious Assault Vehicle. The Antitrust Division advised Raytheon and DRS of its concerns with the agreement's application to future programs. Raytheon and DRS then agreed to modify the teaming agreement so that it would not apply to future programs. As is customary, the Antitrust Division's staff worked cooperatively with the Department of Defense staff throughout the investigation.

RECENT ACTIVITIES

DOJ Antitrust Highlights *(Continued)*

- On August 18, Yellow Corporation and Roadway Corporation received second requests for additional information from the DOJ in connection with their proposed deal. Given the size and scope of the transaction and the significant direct competitive overlaps between the two companies, the second requests were expected. Reportedly, both companies are working expeditiously to respond to the requests. Moreover, the DOJ is investigating whether the deal could harm less than truckload shipping ("LTL") competition in a national market or in various rural regions of the country. LTL shippers pick up shipments that are too small to fill an entire tractor-trailer and bring them to regional terminals, where they are combined with other orders to fill a truck. That truck then travels to a different regional terminal, where the shipments are unloaded and delivered to the recipient. The LTL business is more complex than having a truck pick up a load at one point and deliver it to another, and it costs proportionately more. The LTL business also requires an extensive network of regional hubs, therefore, it is not surprising that the DOJ would issue second requests to two of the major LTL shippers in the United States. The issue appears to be whether the deal harms LTL competition on a national or regional basis. Some speculate that on a national basis, the deal would not harm competition because there are numerous regional shipping companies that compete for the LTL business. On the other hand, there could be issues in rural areas distant from large cities because such territories are unlikely to be served by many LTL carriers. With a combined Yellow-Roadway dominating such smaller markets, the combined company could raise prices in areas where the combination results in a 3-2 or a monopoly position.

- On August 15, Avery Dennison Corp., a Pasadena, California company, announced in a SEC filing that it had received subpoenas from the DOJ's Antitrust Division. The announcement confirms that the Antitrust Division is pushing ahead with an antitrust probe of the $5 billion labelstock market. Reportedly, Avery is cooperating with the investigation. Bemis Co., a Minneapolis-based competitor, has also indicated that it received a subpoena and is providing documents to the DOJ. Speculation exists that the DOJ found enough evidence in its merger review of Raflatac Inc.'s proposed acquisition of Bemis' MACtac to open a criminal investigation of the labelstock industry. Indeed, much of the DOJ's theory to block the merger was based on the potential of future collusion in the industry if the merger were allowed to be consummated.

- On August 11, Dentsply International Inc. ("Dentsply") announced that a favorable decision had been issued by the U.S. District Court for the District of Delaware (*U.S. v. Dentsply Int'l, Inc.*, D. Del., Civ. No. 99-005-SLR, 8/8/03) in the DOJ's suit against Dentsply. After a lengthy trial, the court finally issued an opinion that Dentsply's artificial tooth distribution policies and practices, which were designed to harm competing manufacturers, do not violate the antitrust laws. The DOJ filed the exclusive dealing and monopolization case against Dentsply in January 1999 alleging that its tooth distribution practices violated the antitrust laws under Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act. The DOJ sought an order for Dentsply

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DOJ Antitrust Highlights *(Continued)*

to discontinue its practices. At issue was Dentsply's policy, which precluded its dealers from dealing with Dentsply if they handled the artificial teeth of competing manufacturers. There were approximately 23 dealers who were subject to the policy. The policy, however, was not in writing and the dealers were not even obligated to continue with the arrangement. Nevertheless, none of the major dealers defected to alternative manufacturers because they did not want to give up the ability of distributing Dentsply's artificial teeth. The court rejected the exclusive dealing and monopolization claims as it held that no significant foreclosure existed and that market share alone is not sufficient to infer monopoly power. The DOJ failed to prove that Dentsply had the power to control prices or exclude competition because Dentsply's exclusive dealing policy, while intended to exclude competitors, did not exclude competitors from dental laboratories. The court basically held that Dentsply's rivals' failure to gain market share was due to their own business decisions, rather than Dentsply's exclusionary practices. While the DOJ presented a number of interesting economic theories as to why Dentsply's practices harmed competition even without a written agreement, this case demonstrates that bringing a monopolization and exclusive dealing case on anticompetitive intent alone is not enough to establish that exclusionary conduct is anticompetitive.

- On July 31, the DOJ took the unusual step of offering a brief explanation of the analysis that led to its decision to officially close its investigation of Orbitz, the travel Web site owned jointly by five major domestic airlines. The Antitrust Division explained that its inquiry focused on the "most favored nation" agreement among the owner airlines and Orbitz's so-called "charter associates". The agreement requires these airlines to market through Orbitz any publicly available fares offered through third party Web sites or their own proprietary Web sites. After a lengthy investigation of the joint venture, including the review of numerous documents produced by Orbitz and other third parties, interviews, and examination of analyses provided by a number of third parties, the DOJ concluded that the evidence did not show any reduction in competition or harm to airline consumers. The DOJ explained that its lawyers and economists began collecting and analyzing extensive information about Orbitz and its impact on air travel markets in the spring of 2000, or approximately a year before the launch of Orbitz in June 2001. Therefore, the staff has been conducting an investigation of the joint venture for about 3 years. The DOJ basically explained that, while a joint venture ultimately may be procompetitive, any agreement among major horizontal competitors in a concentrated industry to collaborate and jointly market their products or services - particularly if they agree to restrict their individual marketing prerogatives - triggers warning lights and can raise serious anticompetitive concerns, which must be investigated. Here, the Antitrust Division scrutinized various ways that Orbitz could reduce competition and ultimately concluded that the joint venture is not anticompetitive.

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RECENT ACTIVITIES

FTC ANTITRUST HIGHLIGHTS

- On August 27, the FTC and DOJ released the 25th Annual HSR Report to Congress for fiscal year ("FY") 2002. FY 2002 marked the first full year of operation under recent extensive reforms to the HSR Act, which included raising the size-of-transaction threshold from $15 million to $50 million. This increase in the reporting threshold inherently resulted in a decrease in the number of reportable transactions in FY 2002. The overall decline in merger activity in FY 2002 also contributed to the decrease in reportable transactions. In FY 2002, 1,187 transactions were reported under the Act, which represented about a 50 percent decrease from the number of transactions reported in FY 2001, and about a 76 percent decrease from the 4,926 transactions report in FY 2000 (the last full year under the previous reporting thresholds). Combined, the DOJ and the FTC issued 49 Second Requests in FY 2002, which resulted in 34 challenges (24 by the FTC and ten by the DOJ). Of the 24 challenges by the FTC, ten resulted in current orders, two administrative complaints were issued, seven transactions were abandoned, and the Commission authorized the staff to seek injunctive relief in five transactions, which resulted in one matter being filed in federal court. Of the ten merger challenges by DOJ, two resulted in current orders, two were abandoned and five other transactions were restructured. The DOJ also litigated unsuccessfully one case in district court.

- On August 6, the FTC announced the appointments of Ann Malester as Deputy Director of the Bureau of Competition and Steve K. Bernstein as Assistant Director for Mergers I, one of the three merger shops in the Bureau. Both appointees are career FTC staff attorneys with significant experience in investigating and litigating merger and acquisition cases. Ms. Malester has been with the FTC for 26 years; Mr. Bernstein has spent 12 years with the agency.

- On August 4, Pamela Jones Harbour assumed her new position as FTC Commissioner, after being sworn in by Chairman Muris. President Bush named Commissioner Harbour, an Independent, to a term that expires in September 2009. She was confirmed unanimously by the Senate on July 23, 2003.

- On August 4, the FTC and DOJ released a detailed agenda for the final sessions of their joint hearings on health care and competition law and policy to be held September 24-26, 2003, and September 30-October 1, 2003. These hearings will be held at the FTC Conference Center, which is located at 601 New Jersey Ave., N.W. in Washington DC. As always, morning sessions will be held from 9:15 a.m.-12:30 p.m., and afternoon sessions will be held from 2:00 p.m.-5:00 p.m. The specific sessions at this set of hearings are as follows:

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FTC Antitrust Highlights (*Continued*)

Date	***Morning Session Topic***	***Afternoon Session Topic***
September 24	Physician Product and Market Sharing Definition	Physician Information
September 25	Physician IPAs - Patterns and Model	Physician IPAs - Messenger Benefits of Integration
September 26	Physician Unionization	Group Purchasing Organizations
September 30	International Perspectives on Health Care and Competition Law and Policy	Medicare and Medicaid
October 1	Remedies: Civil/Criminal	None

- On August 1, the FTC announced that it had settled separate allegations of illegal anticompetitive conduct by associations in Minnesota and Iowa. The proposed orders settle charges that the Minnesota Transport Services Association ("MTSA") and the Iowa Movers and Warehousemens' Association ("IMWA") harmed competition by filing collectively established rate tariffs in those states under circumstances where the state action doctrine does not apply. Both household goods movers associations have agreed to cease and desist from filing collective rates and to rescind existing tariffs based on joint established rates filed in Minnesota and Iowa. MTSA is comprised of about 89 household goods movers doing business in Minnesota; IMWA has approximately 70 household goods movers as members that conduct business in Iowa. Both MTSA and IMWA were alleged to have engaged in initiating, preparing, developing, disseminating, and taking actions to establish and maintain collective rates in violation of the FTC Act. The result of these activities, according to the FTC, has been to fix rates for the transportation of household goods in Minnesota and Iowa.

- On August 1, FTC Chairman Muris appeared before the Senate Judiciary Committee and described the proposed legislative changes to the Hatch-Waxman Act, compared the proposed changes to the FTC's analysis of the Act, and explained the Commission's concerns about the proposed changes. In particular, the Chairman told the Senate Judiciary Committee that the Commission supports most of the provisions of the Senate and House versions of the Greater Access to Affordable Pharmaceuticals Act, which amends Hatch-Waxman. Both the Senate and House bills limit brand-name companies to only one 30-month stay of approval per drug product, prior to generic entry. This important change was recommended by the FTC in

RECENT ACTIVITIES

FTC Antitrust Highlights *(Continued)*

its July 2002 report entitled "Generic Drug Entry Prior to Patent Expiration: An FTC Study." The text of Chairman Muris' testimony can be found at http://www.ftc.gov/os/2003/08/030801pharmtest.htm.

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FTC CONSUMER PROTECTION HIGHLIGHTS

- The FTC announced on August 26 that the corporate defendants in FTC v. Healthcare Claims Network, Inc., and the remaining individual defendant, Charles Lloyd, settled FTC charges that they, along with Anne and Stanford Miller, promoted and sold false medical billing work-at-home opportunities in violation of the FTC Act. Anne and Stanford Miller settled the FTC's claims against them in February 2003. The FTC charged that the defendants collectively charged $485 to individual customers in exchange for providing them with everything necessary to perform medical billing services from home - but then provided inadequate training and billing software that many customers could not use. The settlement bans the defendants from making any deceptive claims in connection with the sale of any goods or services, and from making other misrepresentations with respect to the sale of medical billing business opportunities. The settlement also requires the liquidation of all of the corporate defendants and payment of consumer redress.

- Customers who eagerly purchased a mounted rubber singing fish, "Big Mouth Billy Bass," but did not receive the highly-popular novelty item or received it late, will be encouraged to hear that the FTC has taken decisive action that will hopefully resolve such customers' heartaches. On August 19, the FTC settled charges with Deer Creek Products, Inc., Golden Age Products, Inc. a/k/a Lakeside Products, and Michael DiStephano, for violations of the Mail Order Rule in conjunction with the sale of Big Mouth Billy Bass, the Bio Ear Electronic Sound Amplifying Device, and other assorted products. According to the FTC's complaint accompanying the settlement, the collective defendants failed to ship such products within 30 days of receiving orders for them, in violation of the Mail Order Rule. Furthermore, the FTC alleged that the collective defendants failed to provide adequate delay notices, deem orders cancelled or subsequently make prompt consumer refunds. The settlement prohibits defendants from future violations of the Mail Order Rule and imposes a $150,000 civil penalty, which is currently suspended due to the defendants' inability to pay.

- The FTC announced decisive actions with respect to the marketers of false international drivers' permits ("IDPs") on two occasions in August. On August 19, the agency settled claims against a group of defendants collectively doing business as the Institute for International Licensing, and the financial processor who was

RECENT ACTIVITIES

FTC Consumer Protection Highlights (*Continued*)

alleged to have participated in the scam. On August 5, the agency settled claims against another group of defendants who also falsely marketed IDPs. According to the FTC, only the American Automobile Association and the American Automobile Touring Alliance can issue valid IDPs, which cannot be used in the place of suspended or revoked government-issued drivers' licenses. The settlements against both groups of defendants prohibit the marketing of any bogus identification documents and misrepresenting the uses of IDPs and other identification documents.

- On August 18, the direct marketers of the Copa Hair System and Richard Simmons' "Blast Off the Pounds" products settled FTC charges that they made unsubstantiated claims relating to their hair system products, and also violated the agency's Mail Order Rule by failing to ship ordered "Blast Off the Pounds" products within the required time period. According to the terms of the settlement, GoodTimes Entertainment Limited and GT Merchandising & Licensing Corporation are required to possess adequate substantiation for claims made with respect to specified marketed products, and are also prohibited from charging customers who do not specifically purchase the products in question.

- On August 11, the FTC announced that the agency had settled claims against one of the country's largest credit-repair operations. According to the complaint filed in conjunction with the settlement, ICR Services, Inc., three of ICR's officers and directors, National Credit Education and Review ("NCER"), and NCER's president falsely represented the capabilities of a computer disk alleged to have the ability to identify inaccuracies in the entry process used by credit reporting agencies. The settlement requires the defendants to pay more than $1.15 million in consumer redress and prohibits further violations of the FTC Act and the Credit Repair Organizations Act. The next day, the FTC announced that it had authorized staff to appear as amicus curiae in Carter v. ICR Services, Inc., No. 00-CV-2666 (N.D. Ala.), a class action against many of the same defendants that were involved in this matter. The FTC's amicus brief filed with the court urged the denial of the class counsel's motion for injunction, which was granted.

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INTERNATIONAL ANTITRUST HIGHLIGHTS

- The United States investment fund, Lone Star, announced on August 26 that it had agreed to acquire a majority stake in Korea Exchange Bank ("KEB") for $1.2 billion. This makes Lone Star only the second foreign investor to take control of a South Korean bank. Under the terms of the deal, the Texas-based fund will pay

RECENT ACTIVITIES

International Antitrust Highlights (*Continued*)

about $1.39 billion won in cash to purchase existing and new shares in KEB, some of which are held by Commerzbank of Germany, giving the fund a 51 percent stake in the company. Lone Star's investment in South Korea's fifth-largest commercial bank sent a positive signal to foreign investors, whom analysts view as critical to advancing the restructuring of the country's financial sector.

- On August 20, Italy's antitrust authority ordered five of Italy's largest internet service providers, engaged in anticompetitive practices in their advertising campaigns, to halt such conduct. Giuseppe Tesauro, the head of the Autorita Garante della Concorrenza e del Mercato, maintained that Edisontel SpA, NetSystem Srl, Telecom Italia SpA, Tin.it, and Tiscali SpA engaged in deception in their advertising campaigns. The agency arrived at this conclusion after a complaint was filed by a rival company called Wind SpA, which said that promotional messages from the five companies placed emphasis on connection speed, omitting that these were theoretical speeds and not actual speeds realized during navigation of the Internet. A fine was not assessed against the companies because it could not be proved whether the deception coming from the inaccuracy was intentional or not. According to documents from the authority, the companies could have been fined up to 5 percent of their revenue for the period in question. A spokesman for Wind did not comment on the decision, but did say that the company was pleased the authority ruled in its favor.

- The planned creation of a Norwegian banking entity, via the merger of the country's two biggest banks, Den Norske Bank ASA and Gjensidige NOR ASA, suffered a blow on August 19 when Norway's antitrust authority warned it may scuttle the $2.4 billion deal. The two banks immediately struck back, defending the deal and accusing the agency of not considering the broader implications of the merger throughout Scandanavia. The Norwegian Competition Authority maintained that the merger would limit competition, giving both banks more than 50% of the market in many sectors in which they operate, including loans to private customers and small and medium-sized businesses, as well as life and pension insurance. The authority claimed that up to 70% of Norway's population would patronize the renamed DnB NOR, with 262 branches, a real estate and insurance empire, and the country's postal service as a partner.

- The Federal Court of Canada announced on August 19 that it had assessed additional fines totaling $2.4 million in a conspiracy case involving cartel conduct in the animal feed additives sector. In two separate cases, the court assessed fines totaling $2 million against Netherlands-based Akzo Nobel Chemicals BV, and totaling $414,000 against U.S.-based Bioproducts Inc., for those companies' involvement in an international conspiracy to fix prices in Canada and to allocate markets domestically and abroad in choline chloride. In addition, Akzo was fined for its participation in a conspiracy involving monochloracetic acid and monochloroacetate.

RECENT ACTIVITIES

International Antitrust Highlights (*Continued*)

- EU Competition Commissioner Mario Monti stated on August 6 that new evidence collected in the 4-year probe of Microsoft confirmed that the company was unfairly leveraging its dominant position that its Windows operating system has in personal computers into the market for servers, which tie desktop computers together. He also charged that Microsoft's inclusion of Windows Media Player in the Windows operating system was detrimental to competing audio-visual software from Apple Computer Inc. and RealNetworks Inc. Monti gave Microsoft a last opportunity to comment before threatening to impose tough measures on the way the company sells Windows. Monti has the power to fine Microsoft up to 10% of its global annual turnover for antitrust abuses. Microsoft has argued that its settlement with U.S. authorities, combined with additional steps it has taken voluntarily, answer the challenge in Europe regarding media and server software. Rumor has it, however, that Monti is preparing some of the toughest measures he has ever taken to stop Microsoft's alleged anticompetitive activities.

- On July 18, Heineken obtained regulatory approval from the European Commission ("EC" or "Commission") to acquire Austrian brewer Österreichische Brau-Beteiligung-AG ("BBAG"). The EC examined the deal's impact on both the supply of beer to the on-trade sector (*i.e.*, pubs, clubs and restaurants) and to shops and other retail outlets (off-trade), despite the two being distinct markets. The transaction involved the production and distribution of beer in Austria, France, Greece, Italy, Ireland, and the Netherlands. The Commission found that the combination of BBAG and Heineken did not give rise to any anticompetitive concern because the impact on the beer markets was negligible in those five countries. BBAG is an Austrian company active primarily in the brewing, marketing and distribution of beer and some nonalcoholic drinks.

- The Office of Fair Trading ("OFT") in the United Kingdom published guidance on new fast-tracking procedures for complaints made by designated consumer bodies on July 17. The Enterprise Act introduced a specific category of "super-complaint" that allowed designated consumer bodies to complain to the OFT and specific regulators about market features significantly harming consumers' interests. The publication outlines the procedures for making a super-complaint and how such complaints will be dealt with. It also provides details of the evidence that might be provided in support of a super-complaint -- including information on the structure of the market, the way competition works, and how consumers' interests are harmed.

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RECENT ACTIVITIES

FCC ANTITRUST HIGHLIGHTS

- The FCC's new media ownership rules, scheduled for implementation this month, were put on hold by a surprise decision on September 3 from a three-judge panel of the U.S. Court of Appeal for the Third Circuit, in a case brought by the Media Access Project, leading several activist groups. In addition, some of these same groups have petitioned the FCC directly. On the other side of the debate, media giants NBC, News Corp., and Viacom have challenged the new media ownership rules as too restrictive. The new, more restrictive radio and newspaper ownership rules have also been challenged on First Amendment grounds by advocacy groups and entities seeking to merge. The decision gives Congress more time to overturn the rules as well.

- SBC's Section 271 applications to InterLATA service in Illinois, Indiana, Ohio, and Wisconsin received a blow from the DOJ's August 27 analysis that was sent to the FCC. The DOJ's report said that continuing concerns over SBC's billing process and accuracy, along with line-splitting and pricing raise issues, warrant serious consideration by the FCC. SBC currently has Section 271 applications to these four states and Michigan, with all five sharing the same billing system with the same issues. Last month, SBC's Michigan 271 application was similarly criticized by the DOJ.

- The Univision/HBC proposed merger was endorsed by the *Washington Post* on August 22nd. Citing the explosion of Spanish and English-language media, such as Univision, Telemundo, CNN en Espanol, Discovery en Espanol, Fox Sports en Espanol, HBO Latino, and MTV Latino, along with the Spanish radio stations, and major newspapers expanding Spanish-language editions to serve the growing Spanish speaking population, the *Post* pointed out that the FCC should use the same regulatory standard applied to any media conglomerates. The argument is bolstering Chairman Powell's contention that the market, rather than the government imposed standards, will determine diversity. As the buying power and growth of the nation's largest minority increases, the media market that serves them has developed and is now growing, independent of government regulation or limitations.

- In response to concerns about a lack of diversity in programming after the full implementation of the new media ownership rules, on August 20, the FCC announced an initiative to study local programming in communities, in an apparent attempt to address the issues raised. A task force will examine the measure of localism and the impact of the new media ownership rules on local programming. The task force will have 12 months to examine the effects and advise the FCC on how to best promote local programming in radio and television. In addition, the task force will make recommendations to Congress on ways to promote local programming.

RECENT ACTIVITIES

FCC Antitrust Highlights (*Continued*)

- On August 18, FCC Chairman Powell continued his defense of the new ownership rules and issued a challenge of his own. Reuters reported Chairman Powell requested that Congress pass "real laws" to give the FCC better guidance on the ownership rules. Rather than vote against the implementation of the new rules, Chairman Powell wants Congress to pass legislation that assists the FCC to set media ownership limits.

- The Univision/HBC proposed merger entered the home stretch in August when the FCC lifted the freeze on license transfer applications. After receiving DOJ approval earlier this year, the merger was delayed this summer by the FCC's adoption of new media ownership rules; the merger appears likely to receive FCC approval in September. Chairman Michael Powell, along with fellow Republican Commissioners Kathleen Abernathy and Kevin Martin are expected to approve the merger over the objections of Democratic commissioners Michael Copps and Jonathan Adelstein, subject to compliance with the more restrictive radio ownership rules adopted by the FCC in June.

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