

## Nonmerger Enforcement Actions - Administrative Complaints (FY 1996 - FY 2012)

Matter:	Enforcement Date:	Industry:
<b>1. 1010080c - FTC v McWane Inc</b>	1 /4 /2012	Manufacturing – Industrial Goods <a href="http://www.ftc.gov/os/adjpro/d9351/index.shtm">http://www.ftc.gov/os/adjpro/d9351/index.shtm</a>
<p>The Federal Trade Commission has filed complaints against the three largest U.S. suppliers of ductile iron pipe fittings, which are used in municipal water systems around the United States. The FTC charged that the three companies, McWane, Inc., Star Pipe Products, Ltd., and Sigma Corporation, illegally conspired to set and maintain prices for pipe fittings, and that McWane illegally maintained its monopoly power in the market for U.S.-made pipe fittings. Sigma has settled the FTC's charges and has agreed not to engage in similar anticompetitive tactics in the future. The complaint against McWane will be heard before an administrative law judge later this year (see Part 2 Consent 1010080). On March 20, 2012, Star Pipe Products, Ltd. agreed to settle Federal Trade Commission charges that it conspired with the two other largest manufacturers to increase the prices at which pipe fittings were sold nationwide.</p>		
<b>2. 0810137 - North Carolina Dental Board</b>	6 /17/2010	Health Care – Professional Services <a href="http://www.ftc.gov/os/adjpro/d9343/index.shtm">http://www.ftc.gov/os/adjpro/d9343/index.shtm</a>
<p>The FTC issued an administrative complaint on 7/17/2010 alleging that the state dental board in North Carolina is harming competition by blocking non-dentists from providing teeth-whitening services in the state. The FTC charged that the North Carolina Board of Dental Examiners (the "Dental Board") has impermissibly ordered non-dentists to stop providing teeth-whitening services, which has made it harder to obtain these services and more expensive for North Carolina consumers. According to the FTC's administrative complaint, teeth-whitening services are much less expensive when performed by non-dentists than when performed by dentists. A non-dentist typically charges between \$100 and \$150 per whitening session, while a dentist typically charges between \$300 and \$700, with some dental procedures costing as much as \$1,000. In an Initial Decision issued July 14, 2011, the ALJ found that non-dentists compete with dentists to provide teeth whitening services in North Carolina and that the Dental Board's concerted action to exclude non-dentist-provided teeth whitening services from the market had a tendency to harm competition. The ALJ further found that the Dental Board's action had no valid pro-competitive justification and constituted an unreasonable restraint of trade and an unfair method of competition. He accordingly issued an order requiring the Dental Board to stop engaging in the challenged conduct. On July 28, 2011 the parties appealed the ALJ's initial decision. On December 7, 2011, the Commission issued an Opinion concluding that the Dental Board violated of Section 5 of the FTC Act, and agreed with the ALJ that the Dental Board's conduct "constituted concerted action, . . . had a tendency to harm competition and did in fact harm competition," and had no legitimate pro-competitive justification. The Commission concluded that the Dental Board's conduct could be deemed illegal under the "inherently suspect" mode of analysis because the challenged conduct had a clear tendency to suppress competition and lacked any countervailing procompetitive virtue. In addition, the Commission found that there was direct evidence of anticompetitive effects. On February 10, 2012 the Dental Board filed a notice of appeal in the Fourth Circuit court.</p>		
<b>3. 0610247 - Intel Corporation</b>	12/16/2009	Information and Technology – Hardware <a href="http://www.ftc.gov/os/adjpro/d9341/index.shtm">http://www.ftc.gov/os/adjpro/d9341/index.shtm</a>
<p>In December of 2009, the Commission sued Intel Corp., the world's leading computer chip maker, charging that the company had illegally used its dominant market position for a decade to stifle competition and strengthen its monopoly. In its complaint, the FTC alleges that Intel has waged a systematic campaign to shut out rivals' competing microchips by cutting off their access to the marketplace. In the process, Intel deprived consumers of choice and innovation in the microchips that comprise the computers' central processing unit, or CPU. These chips are critical components that often are referred to as the "brains" of a computer. According to the FTC complaint, Intel's anticompetitive tactics were designed to put the brakes on superior competitive products that threatened its monopoly in the CPU microchip market. In August of 2010, Intel agreed to a settlement agreeing to provisions that will open the door to renewed competition and prevent Intel from suppressing competition in the future.</p>		
<b>4. 0610088 - Real Comp II</b>	10/10/2006	Professional Services (Non Health Care) – Real Estate <a href="http://www.ftc.gov/os/adjpro/d9320/index.shtm">http://www.ftc.gov/os/adjpro/d9320/index.shtm</a>
<p>The Commission issued an administrative complaint charging Realcomp with violating Section 5 of the FTC Act by prohibiting information on Exclusive Agency (EA) Listings and other forms of nontraditional listings from being transmitted from the multiple listing service (MLS) it maintains to public real estate web sites. The complaint further alleged that the conduct was collusive and exclusionary, because the brokers enacting the rules were essentially agreeing among themselves how to compete with one another, and were withholding the valuable benefits of the MLS from nontraditional real estate brokers. Commission staff appealed the ALJ's initial decision of December 13, 2007 dismissing the complaint. In November, 2009 the Commission issued an Opinion finding that Realcomp II had violated federal law. Following an appeal by RealComp, the United States Court of Appeals for the Sixth Circuit upheld the FTC order. On August 15, 2011 Realcomp appealed to the Supreme Court. On October 11, 2011 the Supreme Court denied Realcomp's petition for CERT.</p>		

Matter:

Enforcement

Date:

Industry:

5. 0610266 - MiRealSource, Inc.

10/10/2006

Professional Services (Non Health Care) – Real Estate

<http://www.ftc.gov/os/adjpro/d9321/index.shtm>

The Commission filed a Part 3 administrative complaint challenging a set of rules adopted by MiRealSource, Inc. to keep Exclusive Agency Listings from being listed on its MLS, as well as other rules that restricted competition in real estate brokerage services. The complaint alleges that the conduct was collusive and exclusionary, because in agreeing to keep non-traditional listings off the MLS or from public Web sites, the brokers enacting the rules were, in effect, agreeing among themselves to limit the manner in which they compete with one another, and withholding valuable benefits of the MLS from real estate brokers who did not go along. On February 5, 2007 the Commission approved a consent order for public comment settling the complaint. Under the terms of the proposed consent order, MiRealSource has agreed to abandon such collusive conduct and provide its services to all member brokers representing potential home sellers, regardless of the type of listing contract that they choose. Part III Consent made final on 3/20/2007.

6. 0210119i - Piedmont Health Alliance

12/22/2003

Health Care – Professional Services

<http://www.ftc.gov/os/adjpro/d9314/index.shtm>

With an administrative complaint issued on December 22, 2003 the Commission charged Piedmont Health Alliance, Inc. with collectively setting prices it demanded for physician services with third party payers. According to the complaint, the physician-hospital organization entered into signed agreements on behalf of its member physicians to participate in all contracts negotiated and to accept the negotiated physician fees. The complaint further alleges that these practices eliminated price competition among physicians in the North Carolina counties of Alexander, Burke, Caldwell and Catawba. The complaint also names ten individual physicians who participated in the alleged price fixing services. On August 10, 2004, the organization and physicians agreed to settle charges that they fixed prices for medical services. A final consent order prohibited Piedmont Health Alliance, Inc. and the ten physicians from entering into any such agreements with physicians in the area that negotiate fees or terms of services with health insurance companies or other third party payers. Also refer to settlement entered with Tenet Healthcare Corporation (Frye Regional Medical Center, Inc.).

7. 0210075 - North Texas Specialty Physicians

9 /16/2003

Health Care – Professional Services

<http://www.ftc.gov/os/adjpro/d9312/index.shtm>

An administrative law judge upheld the administrative complaint that charged that the North Texas Specialty Physicians (NTSP), a physician group practicing in Forth Worth, Texas, collectively determined acceptable fees for physician services in negotiating contracts with health insurance plans and other third party payers; thus engaging in horizontal price fixing. On January 14, 2005, NTSP filed a notice of appeal of the initial decision. On December 1, 2005, the Commission issued a unanimous decision upholding the allegations that NTSP negotiated agreements among participating physicians on price and other terms, refused to negotiate with payers except on terms agreed to among its members, and refused to submit payors offers to members if the terms did not satisfy the group's demands. The Commission concluded that the group's contracting activities with payors amounts to unlawful horizontal price fixing and that respondent's efficiency claims were not legitimate and not supported by the evidence. The respondent appealed the Commission decision to the U.S. Court of Appeals for the Fifth Circuit. On March 7, 2007, the Fifth Circuit Court of Appeals heard oral arguments in the appeal by respondents of the Commission's opinion in NTSP. The Court agreed with the Commission that the anticompetitive effects of NTSP's practices were obvious. Per remand by the Court, the Commission modified one provision of its remedial order, issuing a Final Order in September 2008. On February 28, 2009, the U.S. Supreme Court denied NTSP's petition for review.

8. 0210128 - South Carolina State Board of Dentistry

9 /12/2003

Health Care – Professional Services

<http://www.ftc.gov/os/adjpro/d9311/index.shtm>

The Commission settled a September 15 2003 administrative complaint charging the South Carolina State Board of Dentistry with unlawfully restraining competition by enacting a rule that required a dentist to examine every child before a dental hygienist could provide preventive dental care – such as cleanings – in schools. The Board, which is a state regulatory agency composed primarily of practicing dentists, claimed that its actions were immune from antitrust challenge under the state action doctrine, but that argument was rejected in a 2004 Commission opinion holding that the Board's conduct was directly contrary to state law. In 2006, the court of appeals dismissed the Board's interlocutory petition for review for lack of jurisdiction, and the Supreme Court denied certiorari in January 2007. The FTC's 2007 consent requires the Board to publicly support the current state public health program that allows hygienists to provide preventive dental care to schoolchildren, especially those from low-income families.

Matter:

Enforcement

Date:

Industry:

**9. 0210115g - Kentucky Household Goods Carriers Association, Inc.**

7 /9 /2003

Professional Services (Non Health Care) – Movers

<http://www.ftc.gov/os/adjpro/d9309/index.shtm>

An administrative law judge upheld an administrative complaint that charged a group of affiliated intrastate movers with engaging in horizontal price-fixing by filing collective rates on behalf of its member motor common carriers for the intrastate transportation of property within the Commonwealth of Kentucky. The judge also ruled that the association's conduct was not protected by the state action doctrine because the State of Kentucky did not supervise the rate-making practices of the group. On July 12, 2004, the Kentucky Household Goods Carriers Association, Inc. filed an appeal of the initial decision with the Commission. The oral argument was held January 24, 2005. On June 22, 2005, the Commission issued a unanimous opinion upholding the Initial Decision finding that the Kentucky Household Goods Carriers Association, Inc., consisting of competing firms, engaged in illegal price-fixing by jointly filing tariffs containing collective rates on behalf of its members, and that the state action doctrine does not immunize that activity from antitrust liability. On August 22, 2006, the Sixth Circuit Court of Appeals affirmed the opinion of the Commission in Kentucky Household Goods Carriers Association, Inc., finding that the Association's ratemaking activities constituted unlawful price fixing and were not exempt from the antitrust laws under the state action doctrine. The administrative complaint issued on July 8, 2003 by the Commission charged that the association composed of competing household goods movers filed collective rates for intrastate moving services in the state of Kentucky. According to the complaint, these activities were not protected under the state action doctrine and are not immune from federal antitrust scrutiny.

**10. 0210115f - Movers Conference of Mississippi**

7 /9 /2003

Professional Services (Non Health Care) – Movers

<http://www.ftc.gov/os/caselist/d9308.shtm>

With an administrative complaint issued on July 8, 2003 the Commission charged that the association composed of competing household goods movers filed collective rates for intrastate moving services in the state of Mississippi. According to the complaint, these activities were not protected under the state action doctrine and are not immune from federal antitrust scrutiny. Under terms of a final consent order the Movers Conference agreed to stop filing tariffs containing collective intrastate rates.

**11. 0210115b - Alabama Trucking Association**

7 /9 /2003

Professional Services (Non Health Care) – Movers

<http://www.ftc.gov/os/adjpro/d9307/index.shtm>

With an administrative complaint issued on July 8, 2003 the Commission charged that the association of household goods movers engaged in the collective filing of tariffs on behalf of its members who compete in the provision of moving services in the state of Alabama. Under terms of a final consent order, Alabama Trucking Association, Inc. agreed to stop filing tariffs containing collective intrastate rates and to void collectively filed tariffs currently in effect in Alabama.

**12. 0210143 - California Pacific Medical Group**

7 /8 /2003

Health Care – Professional Services

<http://www.ftc.gov/os/adjpro/d9306/index.shtm>

With an administrative complaint issued on July 8, 2003 the Commission charged a San Francisco, California physicians' organization with engaging in an agreement under which its competing members agreed collectively on the price and other terms on which they would enter into contracts with health plans or other third party payers. The complaint also alleged that Brown and Toland directed its physicians to end their preexisting contracts with payers and required its physician members to charge specified prices in all Preferred Provider Organization contracts. A final consent order prohibits Brown and Toland from negotiating with payers on behalf of physicians, refusing to deal with payers, and setting terms for physicians to deal with payers, unless the physicians are clinically or financially integrated.

**13. 0110214 - Union Oil of California**

3 /4 /2003

Energy – Petroleum

<http://www.ftc.gov/os/adjpro/d9305/index.shtm>

An administrative law judge dismissed a complaint in its entirety against Union Oil of California that charged the company with committing fraud in connection with regulatory proceedings before the California Air Resources Board regarding the development of reformulated gasoline. The judge ruled much of Unocal's conduct was permissible activity under the Noerr-Pennington doctrine and that the resolution of the issues outlined in the complaint would require an in depth analysis of patent law which he believed were not within the jurisdiction of the Commission. In July 2004, the Commission reversed the judge's ruling and reinstated charges that Unocal illegally acquired monopoly power in the technology market for producing a "summer-time" low-emissions gasoline mandated for sale and use by the California Air Resources Board for use in the state for up to eight months of the year. While the case was pending before the administrative law judge, a consent agreement was signed.

Matter:

Enforcement

Date:

Industry:

14. 0110017 - Rambus, Inc.

6 /18/2002 Information and Technology – Hardware

<http://www.ftc.gov/os/caselist/d9302.shtm>

The Commission filed a complaint with an administrative law judge charging that between 1991 and 1996 Rambus, Inc. joined and participated in the JEDEC Solid State Technology Association (JEDEC), the leading standard-setting industry for computer memory. According to the complaint, JEDEC rules require members to disclose the existence of all patents and patent applications that relate to JEDEC's standard-setting work. While a member of JEDEC, Rambus observed standard-setting work involving technologies which Rambus believed were or could be covered by its patent applications, but failed to disclose this to JEDEC. In 1999 and 2000, after JEDEC had adopted industry-wide standards incorporating the technologies at issue and the industry had become locked in to the use of those technologies, Rambus sought to enforce its patents against companies producing JEDEC-compliant memory, and in fact has collected substantial royalties from several producers of DRAM (dynamic random access memory). (February 17, 2004) The administrative law judge dismissed all charges against Rambus, ruling that Commission staff had failed to sustain their burden of proof with respect to all three violations alleged in the complaint. The Initial Decision found that Rambus' conduct before the JEDEC standard-setting organization did not amount to deception and did not violate any extrinsic duties, such as a duty of good faith to disclose patents or patent applications. The Initial Decision also found that there was insufficient evidence that there were viable alternatives to Rambus' technology before the standard setting organization. (August 2, 2006) The FTC issued an opinion by Commissioner Pamela Jones Harbour concluding that Rambus unlawfully monopolized markets for four computer memory technologies that have been incorporated into industry standards DRAM chips. Drams are widely used in personal computers, servers, printers, and cameras. The Commission found that, through a course of deceptive conduct, Rambus was able to distort a critical standard-setting process and engage in an anticompetitive "hold up" of the computer memory industry. The Commission held that Rambus's acts of deception constituted exclusionary conduct under 21 Section 2 of the Sherman Act and contributed significantly to Rambus's acquisition of monopoly power in the four relevant markets. (February 5, 2007) Chairman Majoras issued the opinion of the Commission on remedy in the Rambus matter. In this opinion, the Commission prescribed a set of remedies barring Rambus from making misrepresentations or omissions to standard-setting organizations, requiring Rambus to license its SDRAM and DDR SDRAM technology and setting limits to the royalty rates it can collect under the licensing agreements including with those firms that may have already incorporated its DRAM technology, and requiring Rambus to employ a Commission-approved compliance officer to ensure it discloses relevant patent information to any standard-setting organizations in which it participates. (April 4, 2007) Rambus appealed the Commission's order to the U.S. Court of Appeals for the District of Columbia Circuit, which heard oral arguments in February 2008. In April of 2008, the Court issued an opinion that set aside the Commissions final orders and remanded for further proceedings consistent with the Court's opinion. On February 23, 2009, the Supreme Court denied the Commission's Petition for Writ of Certiorari. On May 14, 2009 the Commission formally dismissed the complaint in the Rambus matter.

15. 0010231 - Polygram Holding Inc. (The Three Tenors) 7 /31/2001 Manufacturing – Consumer Goods (non Food & Bev.)

<http://www.ftc.gov/os/caselist/d9298.shtm>

The Commission upheld the ruling of an administrative law judge and prohibited PolyGram from entering into any agreement with competitors to fix the prices or 22 restrict the advertising of products they have produced independently. The administrative complaint, issued on July 30, 2001, generally known as The Three Tenors and involving respondents PolyGram Holding, Inc.; Decca Music Group Limited; UMG Recordings Inc.; and Universal Music & Video Distribution Corporation charged PolyGram with entering into an illegal price fixing agreement not to advertise or discount earlier albums and video recordings of concerts featuring the Three Tenors in an effort to promote the latest concert, thought to be less appealing to the public. The Commission ordered the respondents to cease and desist from entering into any combination, conspiracy, or agreement - with producers or sellers at wholesale of audio or video products - to "fix, raise, or stabilize prices or price levels" in connection with the sale in or into the United States of any audio or video product. In July 2005, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the Commission's decision in Polygram Holding Inc., validating the Commission's approach to analyzing horizontal conduct among competitors.

16. 9910256 - Schering-Plough / Upsher Smith

4 /2 /2001 Health Care – Prescription Drugs

<http://www.ftc.gov/os/adjpro/d9297/index.shtm>

The United States Court of Appeals for the Eleventh Circuit set aside and vacated the Commission decision that found that Schering-Plough entered into agreements with Upsher-Smith Laboratories, Inc. and American Home Products to delay the entry of generic versions of Schering's branded K-Dur 20, a prescribed potassium chloride supplement. The Commission filed a petition for writ of certiorari with the U.S. Supreme Court in August 2005, arguing that the lower court failed to recognize how some agreements limiting entry during the term of a patent can still be improper; the decision jeopardizes particularly important consumer interests; and the court of appeals misapplied the substantial evidence standard of review. The Supreme Court denied the petition. In the complaint dated March 30, 2001 the Commission alleged that Schering - Plough, the manufacturer of K-Dur 20 - a prescribed potassium chloride, used to treat patients with low blood potassium levels - entered into anticompetitive agreements with Upsher-Smith Laboratories and American Home Products Corporation to delay their generic versions of the K-Dur 20 drug from entering the market. According to the charges, Schering-Plough paid Upsher- Smith \$60 million and paid American Home Products \$15 million to keep the low-cost generic version of the drug off the market. The charges against American Home Products were settled by a consent agreement. An initial decision filed July 2, 2002 dismissed all charges against Schering - Plough and Upsher-Smith Laboratories. On December 8, 2003 the Commission reversed the administrative law judge's initial decision that had dismissed all charges. The Commission found that Schering-Plough Corporation entered into agreements with Upsher-Smith Laboratories, Inc. and American Home Products to delay the entry of generic versions of Schering's branded K-Dur 20. According to the opinion, the parties settled patent litigation with terms that included unconditional payments by Schering in return for agreements to defer introduction of the generic products. The Commission entered an order that would bar similar conduct in the future.

Matter:

Enforcement

Date:

Industry:

17. 9810368 - **Andrx-Hoechst Generic Cardizem**

3 /16/2000

Health Care – Prescription Drugs

<http://www.ftc.gov/os/caselist/d9293.shtm>

A consent order settled allegations in an administrative complaint that charged that Hoechst agreed to pay Andrx Corporation millions of dollars not to market and distribute a generic version of Hoechst's branded Cardizem CD, a once-a-day diltiazem drug product used in the treatment of hypertension and angina. The consent order prohibits the companies from entering into agreements designed to restrict the entry of generic competitors in an attempt to monopolize relevant markets .

18. 9510028 - **Intel Corp**

6 /8 /1998

Information and Technology – Hardware

<http://www.ftc.gov/os/caselist/d9288.shtm>

An administrative complaint charged that Intel Corporation used its monopoly power to deny three companies continuing access to technical information necessary to develop computer systems based on Intel microprocessors. A consent order (August 3, 1999) prohibits Intel, among other things, from withholding certain advance technical information from a customer as a means of intellectual property licenses. The order protects Intel's rights to withhold its information or microprocessors for legitimate business reasons.

19. 9510029 - **Summit Technology**

3 /24/1998

Health Care – Medical Equipment/Devices

<http://www.ftc.gov/os/caselist/d9286.shtm>

On June 4, 1999 an administrative law judge dismissed charges against VISX, a key developer of laser eye surgery equipment and technology, known as photorefractive keratectomy (PRK). According to the 1998 administrative complaint., VISX and Summit Technology, the only two firms legally able to market equipment for PRK, placed their competing patents in a patent pool and shared the proceeds each and every time a Summit or VISX laser was used. The administrative law judge also dismissed charges that VISX acquired a key patent by inequitable conduct and fraud on the U.S. Patent and Trademark Office, ruling that complaint counsel failed to present evidence that an act of fraud was committed since information was not willfully withheld from the patent office. A final order settled the price fixing allegations in the 1998 complaint. On February 7, 2001, the Commission dismissed its complaint after the U.S. patent and Trademark Office issued a Reexamination Certificate of U.S. Patent No. 5,108,388.

20. 9610027 - **Mesa County Physicians, IPA**

5 /12/1997

Health Care – Professional Services

<http://www.ftc.gov/os/caselist/d9284.shtm>

A Colorado physicians' organization settled charges alleging that the Mesa County IPA conspired with its members to increase prices for physician services and thereby prevented third party payers such as preferred provider organizations, health maintenance organizations, and employer health care purchasing cooperatives from offering alternative health insurance programs to consumers in Mesa County.

21. 9410040 - **Toys "R" Us, Inc.**

5 /22/1996

Retail – Merchandise/Clothing

<http://www.ftc.gov/os/caselist/9410040/index.shtm>

An Administrative Law Judge issued an initial decision that, if made final, would prohibit Toys "R Us from entering into agreements with toy manufacturers and others that result in restrictions on sales to warehouse clubs. TRIJ threatened to stop buying products that were sold to warehouse clubs, which resulted in major toy makers halting the sale of certain products to clubs. The AW found that these practices reduced competition and led to higher toy prices. The initial decision would prohibit the toy chain from entering into any agreement with a supplier to restrict sales to any toy discounter; from facilitating agreements among suppliers that would limit sales to any retailer; and for five years, from refusing to or announcing it will refuse to purchase from a supplier because the supplier sells to a toy discounter. On October 14, 1998 the Commission issued its decision that Toys "R Us had orchestrated horizontal and vertical agreements with and among toy manufacturers to restrict the availability of popular toys to warehouse clubs. On December 7, 1998, Toys "R" Us filed a notice of appeal in the U.S. District Court for the Seventh Circuit. In August 2000, the Commission's complaint was upheld by Seventh Circuit Court of Appeals.