



2009 Antitrust Spring Meeting: Breakfast with FTC Bureau Directors

David P. Wales

Very Active Year

- Mergers
 - Record number of filed challenges
 - Blocked
 - Inova/Prince William
 - CCS/Newpark
 - Oldcastle/Pavestone
 - CCC/Mitchell
 - Pending
 - Polypore/Microporous
 - Ovation

Very Active Year

- Whole Foods
 - Successful appeal – 13(b)
 - Remand/plenary trial
 - Settlement
- Chicago Bridge & Iron
- Sixteen consent agreements
- Several abandoned transactions
- Amendments to rules of practice

Very Active Year

- Conduct
 - Pay-For-Delay Cases
 - Cephalon (Provigil)
 - Solvay (AndroGel)
 - Real Estate Cases
 - Physician Cases
 - Standard Setting
 - Non-Compete/Market Division
 - Facilitating Practices
 - Petroleum Market Manipulation Rulemaking

Future – What To Expect

- More Activity From FTC.....

“Frankly, I don’t see how the FTC could possibly be *more* aggressive”

Future

- Commission Priorities?
 - Healthcare
 - Exclusion payment cases
 - Mergers
 - Energy
 - Market manipulation rulemaking
 - Conduct
 - Conduct
 - Standard setting
 - Resale price maintenance
 - Monopolization



Future

- Impact of Financial Crisis?
 - Continued role for antitrust enforcement
 - Mergers
 - More failing/flailing firm defense
 - Less entry/more risk with remedies
 - Too big to fail?
 - Conduct
 - Less faith in markets
 - Antitrust as a sword

Future

- Section 5 Deluge?
 - No “Zombies from the Crypt”
 - Guiding principles/limitations
 - Usual suspects
 - Invitations to collude/MAP
 - Exploring the “penumbra”
 - Standard setting?
 - Pharma cases?
 - Section 5 Workshop



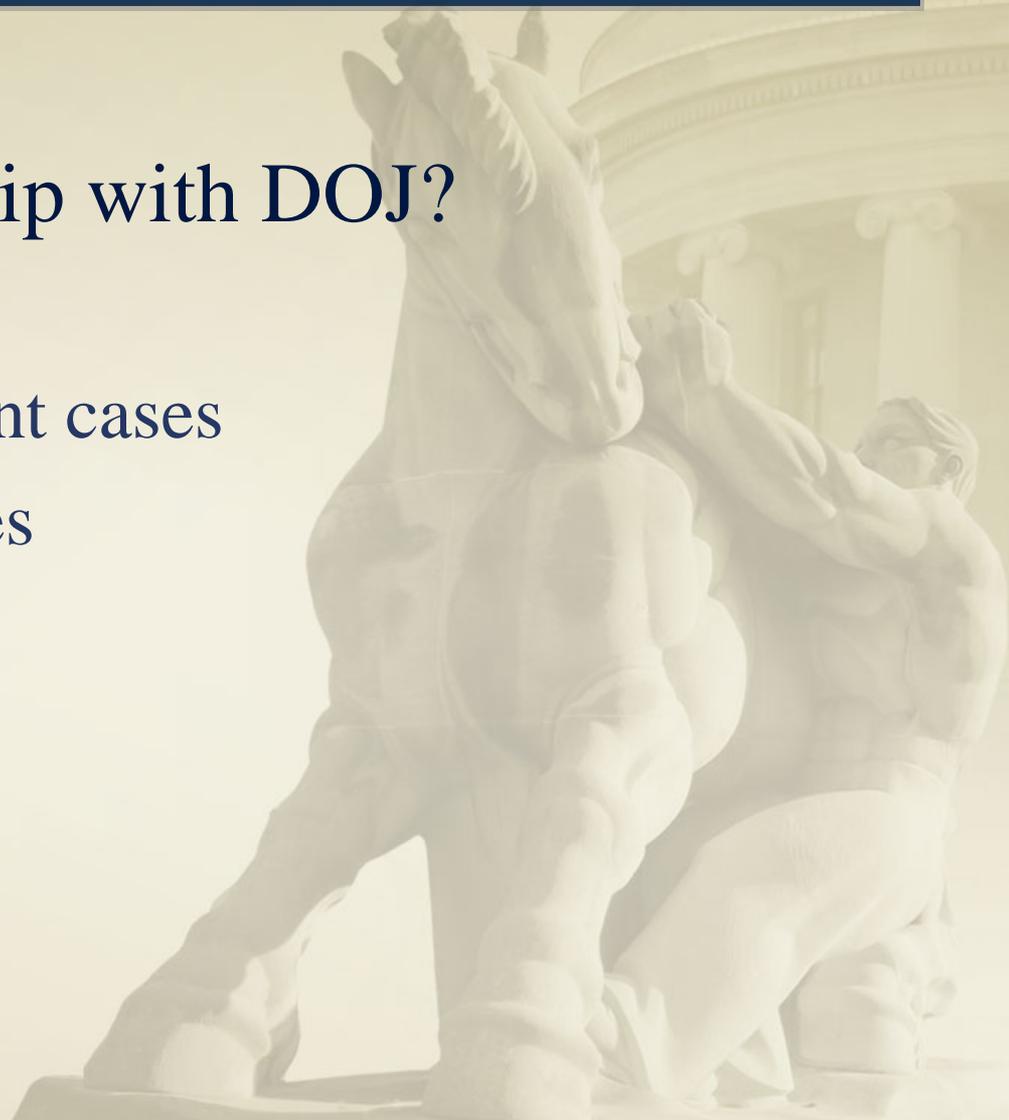
Future

- Less Merger Work?
 - HSR filings down
 - But, pipeline full
 - Continued strategic deals
 - Consummated deals



Future

- Closer Relationship with DOJ?
 - Section 2
 - Exclusion payment cases
 - Merger Guidelines
 - Clearance



Future

- Process Improvements?
 - Mergers
 - Past process reforms
 - Electronic productions
 - New ideas
 - Conduct
 - Need for speed
 - Subpoena enforcement
 - Expect more



Enforcement Actions Database



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Enforcement Actions

- Introduction
- Mergers
- Nonmerger
- By Industry
- By Name

FTC Competition Enforcement Database

This resource catalogs the Commission's (merger or nonmerger), action (consent or nonconsent), by industry/sector, and date.

You can view short descriptions of such as press releases and case files.

Bookmark this page and visit again later.

Scope of the data

- Currently, the information in this database pertains to the FTC's enforcement actions from 2004 to February 29, 2009.
- U.S. antitrust laws are enforced by the Antitrust Division of the Department of Justice. The FTC's enforcement authority pertains to the FTC's anticompetitive practices.



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Merger Enforcement Actions

The figures in this table link to PDF reports.

Fiscal Year	Part 2 Consents	Federal Injunctions	Part III Administrative Complaints	Abandoned/ Fix-it-first/ Restructured	Total Merger Enforcement Actions	Civil Penalty Actions Section 7 A	Order Violations
2009	7	4	*	1	12	1	-
2008	13	1	1	6	21	1	-
2007	14	3	*	5	22	1	-
2006	9	-	-	7	16	-	-
2005	9	1	-	4	14	1	-
2004	10	1	1	3	15	1	1
Total	62	10	2	26	100	5	1

Important notes about the data

- The fiscal year 2009 data is updated through February 29, 2009.
- Information on the individual transactions listed under the category of "Abandoned/ Fix-it-first/ Restructured" transactions is nonpublic.
- An asterisk (*) in the "Part III Administrative Complaints" column means that in addition to authorizing staff to file an injunction in Federal Court, the Commission also filed a Part III complaint.

<http://www.ftc.gov/bc/caselist/index.shtml>

Enforcement Actions Database

Merger Enforcement Actions - Part 2 Consents (FY 2004)

[View Short List of Cases +](#)

Matter	Enforcement Date	Industry
1. 0410039 - Enterprise Products Partners L.P./GulfTerra Energy Partners, L.P.	9 /30/2004	Energy – Natural Gas
<p>http://www.ftc.gov/os/caselist/0410039/0410039.shtm</p> <p>Enterprise Products Partners L.P. settled charges that its \$13 billion merger with GulfTerra Energy Partners L.P. would eliminate competition in two markets: the pipeline transportation of natural gas from the West Central Deepwater region of the Gulf of Mexico; and propane storage and terminaling services in Hattisburg, Mississippi. The consent order requires the divestiture of an interest in a pipeline transportation system and an interest in a propane facility that serves the Dixie Pipeline.</p>		
2. 0410164 - Magellan Midstream Partners, L.P./Shell Pipeline Company LP and Egiulon Enterprises LLC from Royal Dutch Petroleum Company	9 /28/2004	Energy – Petroleum
<p>http://www.ftc.gov/os/caselist/0410164/0410164.shtm</p> <p>Under terms of a consent order, Magellan completed its acquisition of pipelines and terminals in the Midwestern United States and a refined petroleum products terminal in Oklahoma City that supplies light petroleum products such as gasoline and diesel fuel from the Shell Oil Company. The consent order required Magellan to divest the Shell Oklahoma City terminal to a Commission-approved buyer within six months after the transaction is consummated.</p>		
3. 0410162 - Buckeye Partners/Shell Terminals and Pipelines	9 /27/2004	Energy – Petroleum
<p>http://www.ftc.gov/os/caselist/0410162/0410162.shtm</p> <p>Buckeye agreed to notify the Commission before acquiring any interest in the Niles petroleum terminal for a period of ten years under provisions of a consent order. The consent order settled charges that Buckeye's proposed acquisition of five refined petroleum products pipelines and 24 petroleum products terminals in the United States from Shell Oil Company would reduce competition in the market for the terminaling of gasoline, diesel fuel, and other light petroleum products in the area of Niles, Michigan.</p>		
4. 0410106 - General Electric Company/InVision Technologies	9 /9 /2004	Defense – Other
<p>http://www.ftc.gov/os/caselist/0410106/0410106.shtm</p> <p>General Electric was permitted to acquire InVision Technologies, Inc. with conditions that it divest InVision's YXLON x-ray nondestructive testing and inspection equipment to a Commission approved acquirer. According to the complaint issued with the consent order, the two firms are direct competitors in a highly concentrated market. The consent order protects competition in the United States market for specialized x-ray testing and inspection including standard x-ray cabinets; x-ray systems equipped with automated defect recognition software; and high-energy x-ray generators.</p>		
5. 0410025 - Cima Labs/Cephalon	8 /9 /2004	Health Care – Prescription Drugs
<p>http://www.ftc.gov/os/caselist/0410025/0410025.shtm</p> <p>The consent order settled charges that Cephalon's proposed acquisition of Cima Labs, Inc. would allow Cephalon to continue its monopoly in the United States market for drugs that eliminate or reduce the spikes of severe pain that chronic cancer patients experience. The consent order required Cephalon to grant Barr Laboratories, Inc. a fully paid, irrevocable license to make and sell a generic version of Cephalon's breakthrough cancer pain drug, Actiq, in the United States.</p>		
6. 0410031 - Sanofi-Synthelabo/Aventis	7 /28/2004	Information and Technology – Other

Merger Enforcement Actions - Part 2 Consents (FY 2004)

[View Summary of Cases +](#)

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5. 0410025 - Cima Labs/Cephalon	8 /9 /2004