



**Asia-Pacific
Economic Cooperation**

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Agenda Item: 8

Recent FTC Development

Purpose: Information
Submitted by: United States



**Competition Policy and Law Group Meeting
Moscow, Russia
12-13 February 2012**

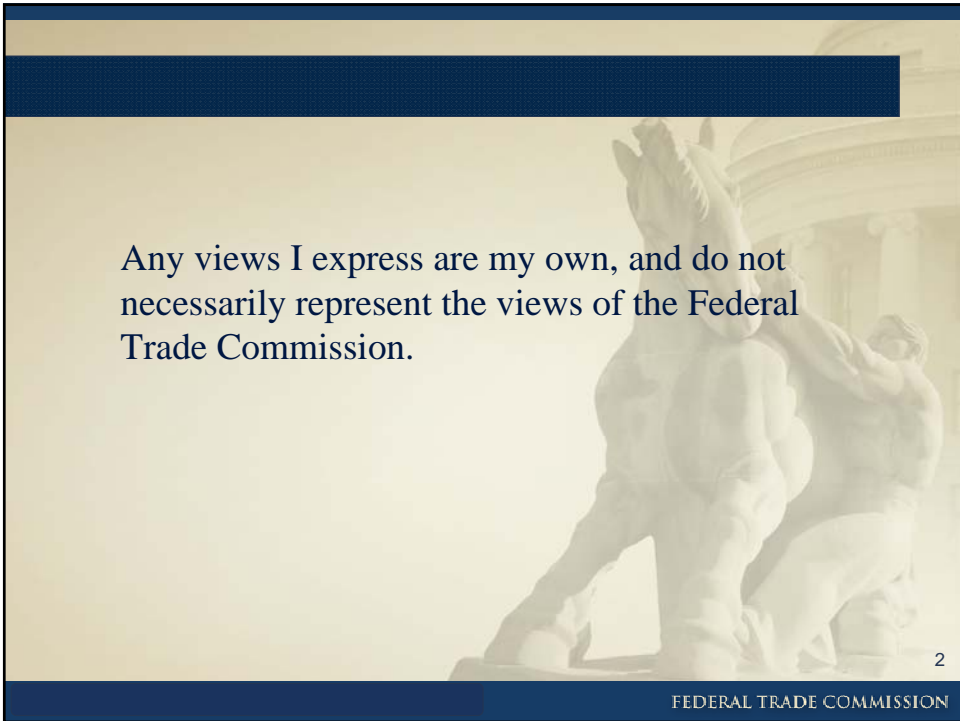


Recent FTC Developments

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APEC Competition Policy & Law Group Meetings
Moscow, February 12-13, 2012

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Any views I express are my own, and do not necessarily represent the views of the Federal Trade Commission.

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A very Active Litigation Workload

- An active litigation workload– both merger and non-merger matters – demonstrates that the Commission will file suit when necessary to prevent harm to competition.
- FTC is currently in Federal court seeking preliminary injunctions in **two** merger cases: **Graco/ITW Finishing & Rockford Health System**.
- We have **four** merger cases in various states of appeal.
- On the non-merger side, an administrative complaint was filed in January against **McWane and Star**, and the Commission just issued its opinion upholding the complaint against **North Carolina State Board of Dental Examiners**.

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FEDERAL TRADE COMMISSION

A very Active Litigation Workload

- We are also litigating **two** pay-for-delay cases.
- **Ten cases** currently in litigation.

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Protecting Competition in Healthcare

- Ending **pay-for-delay** agreements remains one of the Commission's top competition priorities.
- These agreements cause significant anticompetitive harm and cost American consumers an estimated \$3.5 billion per year.
- An October 2011 report shows that in fiscal year 2011, pharmaceutical companies continued this trend.

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Protecting Competition in Healthcare

- In FY 2011, drug companies entered into 28 potential pay-for-delay deals, that involved 25 different brand-name pharmaceutical products with combined annual U.S. sales of more than \$9 billion.

We are currently litigating two pay-for-delay cases:

- In the **Cephalon** case, discovery has been completed, and the staff is awaiting a trial date.
- In the **Androgel** matter, we appealed the dismissal of our case to the 11th Circuit.

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Protecting Competition in Healthcare

- We continue to investigate new cases, and seek **legislation** that will outlaw anticompetitive pay-for-delay agreements.
- In September, President Obama included a provision to curb pay-for-delay settlements in his recommendations to the Joint Committee on Deficit Reduction.

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3 Hospital Mergers

1. OSR Healthcare System's proposed acquisition of **Rockford (Illinois) Health System**. In November, we filed an administrative complaint charging that the acquisition would substantially reduce competition among hospitals and primary care physicians in Rockford, Illinois, and we are also in federal court seeking a preliminary injunction.

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3 Hospital Mergers

2. **ProMedica/St. Luke's Hospital** is a challenge to a consummated acquisition in the Toledo, Ohio area. The Ohio AG joined the FTC in this challenge. We won a preliminary injunction from a federal court judge, and in early January, the FTC's ALJ announced his decision finding that the merger was anticompetitive and ordering ProMedica to divest St. Luke's Hospital. The decision has been appealed to the Commission.

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3 Hospital Mergers

3. **Phoebe Putney Health System/Palmyra Park Hospital**. A proposed hospital merger in Albany, Georgia. FTC alleged that the transaction is a merger to monopoly because Phoebe and Palmyra are the only two hospitals in that area.

The FTC also alleges that the deal was structured in an attempt to improperly shield the acquisition from federal antitrust scrutiny under the “**state action**” doctrine.

Last summer, a District Court granted Phoebe Putney's motion to dismiss the FTC's complaint on state action grounds. In December, the Court of Appeals for the 11th Circuit denied the FTC's appeal. The Commission is considering its next steps.

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Merger Enforcement

- **Graco Inc./ITW Finishing** A December 2011 case involving rival producers of equipment used to apply paints and other liquid finishes to a various manufactured goods. Together they control a dominant share of North American markets. The Commission issued an administrative complaint and staff is also seeking in a preliminary injunction in federal district court.
- **Polypore International/Microporous Products**, a 2008 Commission decision finding that a consummated merger of two makers of battery separator components resulted in higher prices in violation of Section 7 of the Clayton Act. The case is on appeal at the 11th Circuit Court of Appeals.

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Recent Merger Consent Agreements

Laboratory Corporation of America (LabCorp) /Orchid Cellmark Requiring LabCorp to divest a portion of Orchid's paternity testing business before proceeding with its acquisition.

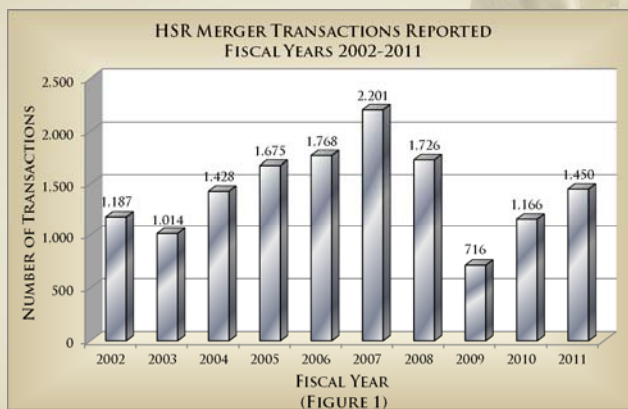
IMS Health/SDI Requiring IMS Health to sell two of SDI's businesses to resolve the FTC's concerns about this merger of providers of market research products that help drug makers determine how much to spend in promoting their branded drugs.

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HSR merger filings continue to grow

- A 25% increase in reported transactions over fiscal year 2010.



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Stopping Anticompetitive and Monopoly Conduct

- Litigation Highlights:
 1. North Carolina State Board of Dental Examiners
 2. McWane Inc. and Star Pipe Product, Ltd.
 3. Pool Corporation
 4. Google

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Litigation Highlights

1. North Carolina State Board of Dental Examiners

- In December, the Commission upheld the ALJ's Initial Decision finding that that North Carolina State Board of Dental Examiners violated the law by trying to block non-dentists in the state from providing teeth-whitening goods or services.
- The FTC's Revised Rules of Practice require the Commission to issue a ruling within 100 days after a case is heard. The Commission issued this decision 35 days after oral argument.

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Litigation Highlights

2. McWane Inc. and Star Pipe Products, Ltd.

- FTC filed an administrative complaint in January 2012 against McWane and Star Pipe, for an alleged illegal conspiracy to **set and maintain prices** for ductile iron pipe fittings, used in municipal water fittings.
- McWane also allegedly illegally maintained its monopoly power through exclusive dealing.
- A third company involved in the alleged illegal conduct, **Sigma Corporation**, **accepted a consent order**, and agreed not to engage in similar anticompetitive conduct in the future.

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Litigation Highlights

3. Pool Corporation

- Enforcement action announced in November 2011 against Pool Corp, the U.S's largest pool products distributor, for **exclusive dealing** conduct.
- Pool Corp allegedly used anticompetitive tactics, threats and coercion in thwarting entry by new competitors and allowing it to maintain its distribution monopoly.

4. Google

- Google has stated that it is under an FTC investigation, relating to its business practices, including search and advertising.

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Energy

- FTC continues to monitor energy markets and devote significant resources to maintaining and protecting competition in industry activities.
- The FTC has an ongoing Gasoline and Diesel Price Monitoring Project (http://www.ftc.gov/ftc/oilgas/gas_price.htm)
- A September 2011 FTC Bureau of Economics report examined trends in the petroleum industry and effects on gasoline prices. The report concluded that worldwide crude oil prices continue to be the main driver of American gasoline prices.

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Energy

- In April 2011 the FTC and the Commodity Futures Trading Commission (CFTC) signed an **MoU** to facilitate sharing of non-public information in agency investigations, including investigations into oil and gas markets.

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Intellectual Property

- The FTC hopes to provide leadership on how to approach some difficult issues involving IP rights and competition.
- In March 2011, it released “**The Evolving IP Marketplace: Aligning Patent Notice and Remedies with Competition**”, a report recommending ways to improve policies governing patent notice and remedies.
- In June 2011, it held a public **workshop on collaborative standard setting**, as part of a project aiming to better understand the practical, economic and legal implications of the policies of SSOs and their members.

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Summary

- **Healthcare**
 - Ending pay for delay is a top priority (Cephalon, Androgel)
 - Mergers (Rockford (Illinois) Health System, ProMedica/St. Luke's Hospital, Phoebe Putney System)
- **Merger Enforcement**
 - Graco Inc.'s proposed acquisition of ITW Furnishing LLC
 - Polypore International
 - LabCorp/Orchid Cellmark
 - IMS Health/SDI
- **Anticompetitive and Monopoly Conduct**
 - North Carolina State Board of Dental Examiners
 - McWane Inc. and Star Pipe Products
 - Pool Corporation
- **Energy**
 - Reports on gasoline prices, petroleum industry practices and pricing
 - MOU with Commodity Futures Trading Commission (CFTC)
- **Intellectual Property**
 - New Patent report and workshop on collaborative standard setting

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