DEPARTMENT OF JUSTICE

MERGER REVIEW: A QUEST FOR EFFICIENCY

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Introduction

Thank you for the opportunity to join you this evening. It's always a pleasure to come to New York City and to address the New York State Bar Association.

While I hail from Washington, DC, our nation's political capital, New York City has for a long time been our nation's financial capital. I thought it would be appropriate, therefore, to focus my remarks this evening on a topic near and dear to many down on Wall Street: The Antitrust Division's enforcement activities in the area of mergers and acquisitions. My theme for this topic is a quest for efficiency. That quest includes, of course, the efficiencies that the parties to a proposed transaction seek to obtain. Efficiency is also a goal of the Antitrust Division. We seek to identify those relatively few transactions that threaten harm to competition and to get out of the away of the remainder as quickly as possible consistent with our responsibility to enforce the antitrust laws.

We pursue this goal through a number of means, two of which I will discuss tonight. First, we seek to improve the investigative process to increase the speed and reduce the burden of the review. Second, we seek to enhance the transparency in our substantive decisions about whether to challenge mergers.

The Merger Review Process

Turning first to the merger review process, the Hart-Scott-Rodino Act of 1976 gives the Antitrust Division – and the Federal Trade Commission – an opportunity to examine most large transactions before they close. In carrying out this responsibility, we recognize that merger review can be costly and time-consuming. As I mentioned, our goal as antitrust enforcers is expeditiously to separate the few transactions that have the potential to result in a substantial lessening of competition from the many that do not, and to get out of the way of the latter as quickly as we can so that the parties can begin achieving any efficiencies as soon as possible.

Once we have identified a potentially anticompetitive deal, we strive to make the right enforcement decision as quickly as possible with the least burdens necessary. This approach not only reduces burdens on parties, it permits the Division to concentrate its resources on those transactions that do threaten substantial harm to competition.

Thanks to the HSR premerger review process, today most federal merger challenges occur *before* deals close, when effective injunctive relief is available, structural relief is more practical and effective, and harm to consumer welfare has not yet occurred. The merger review process also provides a high degree of certainty to merging parties. Although a decision not to challenge an HSR-reported transaction prior to consummation does not preclude the Division from subsequently challenging it, such challenges are extremely rare. And because private merger challenges also are rare, clearance by an agency enables the parties to have a high degree of comfort that they can consummate their merger (and implement efficiencies) with little fear of future challenges that could severely disrupt their operations.

It is also worth noting that the HSR merger review process is applied sparingly. The vast majority of transactions are cleared within the initial waiting period. Of the 7,210 transactions reported to the Division and the FTC during the fiscal years 2002-2006, second requests were issued in only 214 matters. Thus, 97 percent of the transactions that were filed with the agencies during those years were free to close – from an HSR perspective – after the initial 15 or 30-day waiting period.

Of course, if you and your client find yourselves on the receiving end of a second request, the fact that 97 percent of all mergers proceed without one is small comfort.

Burdens & Trends

The second request process can be costly, time-consuming, and filled with uncertainty. Indeed, one of the signal trends in merger review has been the explosion in the volume of documents and information produced by parties in response to second requests. While there was a time when the production of a few hundred boxes of documents was a large production, now we talk in terms of gigabytes, terabytes, and millions of pages of documents. In the Verizon/MCI and AT&T/SBC mergers, for example, the Division obtained approximately 25 million pages of documents.

Before we can expect to do anything to reduce such burdens, we need to understand the reasons underlying this explosion of information. Several come to mind:

First, technological advances have made it cheaper for companies to create and to store vast amounts of electronic documents and data and have revolutionized the way companies operate. For example, discussions that used to take place orally in meetings

are now carried out on-line via e-mail and other systems, with more participants all over the country and around the world. E-mail messages and their attachments spread throughout a company like weeds and are about as indestructible; individual hard drives and shared drives fill up with multiple and alternative versions of documents; and databases are more numerous and more complex. A second request search that once could have been completed by going through some desks and file cabinets must now include personal computer hard drives, shared drives, e-mail servers, voicemail records, vast databases, archived or stored materials, Blackberrys and other wireless devices, and so on.

Second, products and services are becoming increasingly complicated and specialized while production and marketing methods are more and more sophisticated. As a result, learning how a product or service market operates, and how a transaction might affect competition in that market, has a steeper learning curve. Take the market for television sets. If you wanted to watch TV in 1976, when the HSR Act was passed, you went to an appliance or department store and choose from color and black and white TVs that came in a range of sizes and styles. Fast forward to 2007. Today, you can choose from among CRT "tube" TVs, projection TVs, plasma screens, LCD screens, and DLP sets. Then, of course, there are digital models, enhanced definition, high definition, HD-ready, and maybe even a few analog sets remaining. You can buy TVs small enough to fit in your pocket and large enough to project your favorite program on a 108" LCD screen. Discerning the competitive interaction among this myriad of options can require significant time and information. And the faster products and markets evolve and change, the more frequently we have to update our knowledge about those products and markets.

Finally, merger analysis itself is more sophisticated than it was when the HSR Act was passed. There was a time when the Supreme Court affirmed decisions blocking mergers based largely on market share and a perceived unwritten guiding principle that the government always won. Times have changed. The agencies and the courts have shifted their focus away from a static analysis of market shares and concentration and toward a fuller analysis of the future competitive process in the relevant market. As the Merger Guidelines explain, we still look at market shares and HHIs, but only as the

beginning of the analysis. We examine the competitive process for unilateral or coordinated effects, possible barriers to entry, and efficiencies. We frequently employ the increasingly sophisticated economic tools that have been developed by the antitrust community, such as regressions, merger simulations, diversion ratios, and critical loss analyses. While our advances in economic analysis can help us make better enforcement decisions, they often require significant quantities of data and information to conduct properly.

2001 Merger Review Process Initiative

Having identified some of the key drivers to the explosion in the volume of second request productions, I draw three principle conclusions:

> First, the volume of information available is going to continue to increase;
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> Second, our first goal in seeking to improve the efficiency of our review process should be to identify transactions that do not threaten harm to competition before issuing second requests wherever possible; and
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> Third, where we do need to conduct an in-depth investigation, we need to improve our ability to identify the information necessary to make our enforcement decisions.

My perspective is not a new one. The Division's 2001 Merger Review Process Initiative reflects these same conclusions. The Initiative included means of improving our ability to clear more transactions during the initial HSR waiting period without issuing a second request. For example, we indicated the kinds of kinds of information that parties can provide during the initial waiting period that best help us avoid having to issue a second request. (As an aside, while it surprises me, there are still large companies proposing deals that are likely to raise initial concerns that nonetheless are not ready to provide such information, such as strategic and marketing plans and lists of top customers. The relatively small effort necessary to collect such information can greatly improve the efficiency of our review process.) The Initiative also provides means to improve the efficiency of our review process after a second request issues. It provides for regular meetings between parties and the staff, for staff to disclose its concerns, and for

the possibility of identifying potentially dispositive issues that can be evaluated quickly. Better communication on the issues and information helps us to reach a decision more efficiently.

The Initiative has worked. The first goal, as I indicated, is to avoid the need to issue second requests on transactions that do not violate Section 7. During the two fiscal years (2000-2001) before the initiative was announced, approximately 40 percent of the Division's HSR preliminary investigations led to second requests. During a comparable period after the initiative was launched (fiscal years 2002 and 2003), just under 28 percent of the Division's HSR preliminary investigations went into the second request phase, and in fiscal years 2004-2006 only about 24 percent of investigations resulted in the issuance of second requests.

The second goal was to increase the efficiency of our efforts to evaluate transactions after issuing a second request. Spurred by the Initiative, the Division has been able to focus its investigations on discrete, dispositive issues in an increasing number of matters. For example, early in FY2006 the Division closed its investigations into the proposed acquisition of Instinet Group Inc. by The NASDAQ Stock Market Inc. and the proposed merger of the New York Stock Exchange and Archipelago Holdings. Thanks in part to timing and discovery agreements that we reached with the parties, the Division was able to confirm the planned entry of several firms, including regional stock exchanges supported by investments from some of the nation's largest securities firms and investment banks, that likely would be sufficient to resolve any competitive concerns raised by the transactions.

The result of these practices has been an improvement in how quickly we are able to close investigations into transactions that prove not to be anticompetitive. Since the Initiative was announced, the average number of days between the opening of a preliminary investigation and the closing of the investigation (either before or after issuance of a second request) in matters that do not lead to an enforcement action has fallen from about 93 days to 57 days. The average length of second request investigations dropped from 213 days for the two years before the Initiative to 154 days during the last two years, a drop of over 25 percent.

2006 MRPI Amendments

While the 2001 Initiative has resulted in investigations that are more focused and efficient, we are not complacent. We announced last December a number of refinements that build on the successes of the 2001 Initiative. Many of the changes formally adopt second request modifications and merger investigation procedures already successfully used by Antitrust Division staff. Here are a couple of highlights:

First, the amendments include a specific "Process & Timing Agreement" merger review option. Under this option, document searches generally will be limited to certain central files and a list of 30 employees. For their part, companies will need to provide certain critical information to the Division early in the investigation; agree to an investigation schedule; and agree to a sufficient period for the Division to conduct post-complaint discovery should the investigation become one of the few that result in contested litigation. This options stems from some basic logic: Most merger investigations do not result in a contested challenge. In fiscal years 1999-2006, for example, we issued second requests in 265 HSR merger investigations and brought 60 enforcement actions, but only four of those enforcement actions led to a trial. Accordingly, parties can reduce the burdens of our review in the vast majority of transactions by agreeing to defer some discovery until after a challenge is filed.

Second, the Division released a revised Model Second Request. Division staff tailor each second request to each investigation, but all Division second requests are based initially on our standard model. We continually revise the model to clarify definitions, reduce search and production burdens, and to address problems that have arisen in past investigations. The revisions the Division issued last month are based largely on limitations that our staff has successfully negotiated and implemented in merger investigations in recent years. These changes include: a shorter time period for most document requests (generally, 2 years rather than 3-4 years); significant limitations on when second request recipients must conduct a "second sweep" for responsive documents; and an alternative to the requirement that companies search back-up tapes for responsive electronic documents.

While the Division is committed to continued improvements in its merger review process, it is important to recognize that limiting the information that we request has its

costs. For example, if we proceed to a judicial challenge, both the merging parties and, even more importantly, the courts expect the Division to present a thorough and detailed empirical analysis of a challenged merger's likely anticompetitive effects. And they expect us to do so promptly after the complaint is filed. Thus, the pressure on the Division in a contested merger challenge to gather information has increased over time. The issue, however, is the quality of that information. To paraphrase from the TiVo motto, our goal should not be more information but better information.

Transparency in Merger Decisions

A second way in which we seek to improve the efficiency of merger enforcement is to increase the transparency of the Division's enforcement decisions so that the business community can better understand and predict our actions.

Within investigations, the Division recognizes that both our staff and the parties benefit from a frank exchange of ideas and evidence. While parties remain free to decide whether and when to engage the staff, we encourage an early substantive dialogue because we are seeking to get to the right answer and want to hear their responses to any concerns as soon as possible.

For the outside world, transparency is readily achieved when the Division brings an enforcement action. Its theories and evidence of anticompetitive harm are available to the public through complaints, press releases, and competitive impact statements. The public often has as much, or greater, interest in why the Division decides not to bring an enforcement action in particular cases. Confidentiality restrictions place significant limits on what the Division may say publicly about its HSR investigations, but we try to issue closing statements that describe our rationale within those confidentiality limits. Thus, for example, we issued closing statements regarding our decisions not to challenge the AT&T/Bellsouth and Maytag/Whirlpool mergers.

The Division's 2006 transparency efforts also included the release of a joint DOJ/FTC Commentary on the Horizontal Merger Guidelines. The Commentary uses actual case examples to illustrate how the agencies have applied the Guidelines' principles in the context of particular merger investigations.

Mergers 2006 – Year In Review

I turn now to some of the specific merger enforcement activity in 2006. Overall M&A activity continued to increase at a modest pace in 2006, and this trend appears to be continuing in FY2007. We filed 10 merger enforcement actions in district court in FY 2006, and an additional 6 transactions were restructured by the parties in response to a Division investigation. This represents the highest level of merger enforcement activity since the end of the merger wave in 2001.

A number of these enforcement actions raise interesting issues that I will highlight.

Mittal/Arcelor

In 2006 the Mittal Steel Company launched a hostile $33 billion takeover of Arcelor S.A. To say that this was a hard fought takeover battle is a huge understatement, but I'll leave to the corporate lawyers the details of that battle. From an antitrust perspective, the companies were at that time the world's two largest steel producers. The Division was able to determine during the initial HSR waiting period that the transaction raised competition concerns in the $2.3 billion U.S. market for tin mill products. These are finely rolled steel sheets that are normally coated with tin or chrome and that are used in many consumer-product applications, such as sanitary food cans and general line cans used for aerosols, paints and other products.

Simultaneous with its hostile tender offer, Mittal entered into an agreement to sell Arcelor's Canadian subsidiary, Dofasco, to ThyssenKrupp in the event that its takeover effort was successful. The Division was able fairly quickly to determine that this sale of Dofasco to ThyssenKrupp – or the sale of alternative Mittal tin mill product assets in the U.S. to an acceptable buyer – would preserve competition in the tin mill products market.

In May 2006, before the expiration of the initial HSR waiting period, Mittal entered into a letter agreement with the Division in which it agreed to divest Dofasco (or, if necessary, certain alternative assets) in the event that its takeover of Arcelor succeeded and the Division concluded after further investigation that such a divestiture was necessary to protect competition. The letter agreement was accompanied by a proposed consent decree that the Division could file if a divestiture were necessary. We provided

for the divestiture of assets alternative to Dofasco because the target had tied up Dofasco in a special Dutch entity called a stichting.

In August 2006, the Division announced that it had concluded that the acquisition of Arcelor by Mittal would adversely affect competition in the $2 billion tin mill products market in the eastern United States by eliminating constraints on the ability of producers to coordinate their behavior and thereby increase the price of tin mill products to can manufacturers and other customers. The Division filed suit to block the transaction, and at the same time filed the consent decree that it had negotiated with Mittal earlier in the year. As foreseen by the consent decree, the sale of Dofasco currently remains under the control of the Dutch stichting, so it is not clear that Mittal will be in a position to sell it. If not, the Division will select one of the other two sets of assets to remedy the concerns addressed in our complaint.

Of the many interesting facets of this saga, I will pause briefly to mention our use of a "pocket decree." While they have been used by the Division for many years, they have been and remain relatively rare. They most typically arise in fix-it-first or analogous situations where the acquiring company has an exogenous legal obligation to divest certain assets that would eliminate any competitive concern. For example, in the acquisition of radio or television stations, FCC regulations might require the acquiring firm to sell a station to stay below a regulatory limit. If the divestiture takes place, no further investigation would be required. If for some reason it does not take place, the pocket decree protects the ability of the Division to address the competitive concern. Further, there are instances where our review process itself can affect the outcome of the marketplace competition for control of companies. For example, in some tender offer situations, the issuance of a second request can trigger foreign regulatory requirements that destroy the offeror's ability to succeed. Where such concerns arise that are not of the parties' own making, we consider whether we can minimize the impact of our review process on the competition in the marketplace consistent with our enforcement responsibilities.

Maytag/Whirlpool

When the Division investigates a merger, we typically look first at the numbers – the merging parties' likely market shares and the degree of concentration in the market.

If those numbers are high in a particular case, we may make an initial presumption that there is a problem with the transaction. But that presumption is, of course, rebuttable as explained in the Horizontal Merger Guidelines. We proceed to examine the evidence that is developed during the investigation – customer statements and documents, deposition testimony, internal documents and data from the companies as well as from third parties. Based upon the evidence, we decide whether our initial presumption is warranted.

Last March, for example, the Division decided not to challenge the merger of home appliance manufacturers Maytag Corporation and Whirlpool Corporation. Our investigation focused on residential clothes washers and dryers, although we considered the impact of the merger across the entire range of products offered by the two companies. We found that, despite the two companies' relatively high share of laundry product sales in the U.S., any attempt to raise prices likely would be unsuccessful. Whirlpool and Maytag represented two well-known brands in the industry, but rival appliance brands such as General Electric, Frigidaire, and Kenmore are also well established. And newer brands such as LG and Samsung have quickly established themselves in recent years in the U.S.

More generally, it became clear that washers and dryers that are made in Mexico and Asia are being shipped, or could be shipped, to the United States. Further, the large retailers that collectively account for almost two-thirds of all home appliance sales in the United States – stores like Sears, Lowe's, The Home Depot, and Best Buy – have the ability to foster major shifts in share toward or away from any particular supplier. This was confirmed by recent events in the marketplace. Best Buy, for example, had significant success with LG laundry products following their introduction in May 2003. In early 2005, Best Buy discontinued selling Maytag laundry products altogether and replaced some of the discontinued models with LG products. Home Depot has also been selling LG laundry products, since June 2005, and LG now accounts for a significant percentage of laundry sales at both retailers.

Ultimately, we concluded that the combination of strong rival suppliers with the ability to expand sales significantly and the large cost savings and other efficiencies that the parties were able to substantiate (and that should benefit consumers) indicated that the

transaction was not likely to harm consumer welfare. Thus, any initial presumption had been rebutted, and we closed our investigation.

Exelon/PSEG

In the energy industry, last year the Division investigated the proposed merger of Exelon Corporation and Public Service Enterprise Group Inc.[1] The $16 billion merger would have combined the assets of two of the largest electricity generators in the mid-Atlantic region and would have created one of the largest electricity companies in the United States. Our investigation focused on the merging parties' overlaps in the wholesale electricity market operated by PJM Interconnection LLC, which covers an area stretching from New Jersey in the east to Illinois in the west and North Carolina in the south. We focused more specifically on areas in New Jersey, Philadelphia, central Pennsylvania, and eastern Maryland. The value of electricity sold in these areas was in the range of $30 billion. Within one of the areas of concern, the combined company would control about 40% of the total generating capacity. The post-merger HHI in that area would have been approximately 2,100, representing an increase of approximately 800.

As I have said, market shares are only the beginning of the analysis, and this is especially so in electricity mergers. Not all electricity generation plants are the same. Huge variations in the marginal cost of running different kinds of generators create large disparities in the amount of time that a generating unit produces electricity in a year. The marginal costs of running a hydroelectric dam generator or nuclear power plant are substantially less than the marginal costs of running coal-fired steam turbine generators or gas-fired combustion turbine generators.

Electricity suppliers in PJM markets bid their available capacity into PJM-administered auction markets by submitting a daily "supply curve" for each generating unit, which defines the quantity each unit will produce at any given market price that day. Each day's hourly market-clearing price is determined by the intersection of market supply and demand for that hour, and each megawatt bid into the market at or below that

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[1] In addition to the papers that the Antitrust Division filed with the district court in this matter (which may be found on the Division's website at http://www.usdoj.gov/atr/cases/exelon.htm), a discussion of the Division's Exelon/PSEG merger investigation may be found in Elizabeth Armington, et al., *The Year in Review: Economics at the Antitrust Division, 2005-2006*, 29 REV. INDUS. ORG. 305 (Dec. 2006).

market-clearing price receives that price. Price is set by the highest-bid capacity required to meet demand, so low-cost capacity earns a high operating margin and high-cost capacity earns a low margin.

A simplified model of price determination in the auction can be represented by a "fuel curve" – a market supply curve that assumes that all units are bid at their marginal cost. The fuel curve traces a path from very low-cost hydroelectric and nuclear units to higher-cost coal-fired steam turbine units, up to highest-cost "peaking" gas- and oil-fired combustion turbine units. The intersection of this curve with demand in a particular hour would yield the market-clearing price for that hour, if all plants bid their supply at cost.

The shape of the fuel curve in a market and the position of a firm's generating units on the curve gives us information about the competitive process that is not reflected in simple HHI calculations based on generating capacity. For example, the combination of plants owned by a particular supplier affects its incentive and ability to exercise market power by withholding output from selected plants to drive up the market-clearing price. The Exelon/PSEG merger would have combined a firm that had significant low-cost nuclear and hydroelectric generating capacity (Exelon) with a firm that had significant higher-cost coal-fired steam turbine capacity (PSEG). The Division concluded that the combined firm would have significantly more incentive and ability to withhold output from selected high-cost plants than either firm had independently before the merger.

Under the terms of the consent decree, the merged firm would have been required to divest six electricity plants in Pennsylvania and New Jersey that provide more than 5,600 megawatts of generating capacity and that included key generating units in the mid-range of the fuel curve – units that often were on or near the margin and thus would have enhanced the ability of the merged firm to exercise market power. The ability of the merged firm profitably to raise prices by withholding output without the divested units would have been limited. I say "would have" because Exelon later abandoned its effort to acquire PSEG.

Telecom/Tunney Act

The telecommunications industry has kept the Division busy during the last few years. The Division has recently investigated the mergers of Verizon and MCI, SBC and AT&T, the new AT&T and BellSouth, Sprint and Nextel, and Cingular and AT&T

Wireless, among others. The Division took action to challenge portions of these transactions to protect competition, and decided not to challenge others after concluding that they were not likely to result in a substantial lessening of competition.

Needless to say, the telecommunications industry has changed a lot since the Division brought suit to break up the old AT&T monopoly. To take just one example – wireless telephony – when Motorola introduced the first hand-held mobile phone, the DynaTAC 8000X in 1983, when Bill Baxter was AAG for Antitrust, it weighed nearly 2 pounds, cost $4000 (those are 1983 dollars), gave you 30 minutes of talk time, and was not-so-affectionately known as the "brick phone." Today, Motorola's RAZR model weighs a little over 3 ounces, costs less than $400 without a service plan (less with one), provides over 7 hours of talk time, and is decidedly un-brick-like. We have seen similar advances in mobile services, which have moved from analog to digital and now to 3G (third generation) services that can support web-surfing, text messaging, e-mail, and even streaming video and audio. These features have now attracted over 200 million subscribers for wireless services provided by multiple companies in each area.

The Division's 2005 Verizon/MCI and SBC/AT&T investigations resulted in consent decrees early in FY2006. The Division investigated all areas in which the two sets of merging firms competed, including residential local and long distance service, Internet backbone services and a variety of telecommunications services provided to business customers. With the exception of the local private line service that was the subject of the consent decrees, the Division concluded that the transactions would not harm competition and would likely benefit consumers, due to existing competition, emerging technologies, the changing regulatory environment, and exceptionally large merger-specific efficiencies.

The decrees require the parties to divest portions of certain local fiber-optic network facilities in order to protect competition in the market for facilities-based local private line service to certain business customers in a number of metropolitan areas. Like all Antitrust Division consent decrees, the Verizon/MCI and SBC/AT&T decrees are subject to the Tunney Act, which requires a determination by a federal district court that entry of the decrees is in the public interest. The decrees are currently before the U.S. District Court for the District of Columbia. That court must determine whether the

decrees adequately prevent the competitive harm the United States alleged in its complaint without imposing undue harm in the process. The views of the United States on this matter have been extensively briefed to the court, and I commend that record to anyone who would like additional information.

DFA/Southern Belle

Merger enforcement isn't all about heavy industry and complex products. As many of you no doubt know by now, in April 2003 the Division and the Commonwealth of Kentucky filed a lawsuit in U.S. District Court in Kentucky, challenging DFA's acquisition of its interest in the Southern Belle dairy. The complaint charged that the acquisition reduced competition for school milk contracts in 100 school districts in Kentucky and Tennessee because it gave DFA significant partial ownership interests in two dairies – the Southern Belle dairy and the nearby Flav-O-Rich dairy – that competed against each other for such contracts. As a result, the acquisition reduced the number of independent bidders for school milk contracts from two to one in 45 school districts in eastern Kentucky, and from three bidders to two in 55 school districts in eastern Kentucky and Tennessee.

The day before filing their motions for summary judgment, the defendants modified their ownership agreements to reduce DFA's legal rights to exercise control over Southern Belle. Without addressing the ownership arrangement that had been in effect for two years, the district court granted summary judgment to the defendants, holding that the government failed to establish a mechanism by which the acquisition was likely to affect competition adversely in the school milk markets under the defendants' modified agreement. We appealed that decision to the Sixth Circuit, arguing among other things that the acquisition as it existed for two years violated Section 7 of the Clayton Act and that the defendants' modifications did not remedy that violation.

In October 2005 the Sixth Circuit reversed the district court's summary judgment to DFA and remanded for trial. Agreeing with the Division, the court of appeals concluded that the district court should have addressed the original ownership arrangement and that the government presented sufficient evidence to survive summary judgment on that arrangement. The court held that DFA's fifty percent ownership of the two competing dairies and the closely aligned interests of the dairies' managements could

lead to anticompetitive behavior, violating Section 7 even in the absence of DFA rights to control the two competitors' decisionmaking.

Last October, the Department, Kentucky, and DFA announced an agreement that required DFA to divest its interest in the Southern Belle dairy, which has been completed.

Conclusion

This commitment to transparency results in real dividends for the Division and for the business community and, most importantly, for consumers. When businesses and their advisers have a better understanding of how the antitrust laws are enforced, they are better able to plan their transactions with an eye towards addressing and alleviating competition concerns. Anticompetitive transactions that cannot be fixed should be less likely to be proposed in the first instance. Parties also should be better able to predict when transactions that present competitive problems can be remedied in a manner that preserves efficiencies from the deal. In such instances, they may propose a fix-it-first or enter into a consent decree to remedy the competitive problem without having to undergo the time and expense of contested litigation. The result is enhanced efficiency that benefits the Division, business, and, most importantly, consumer welfare.

Thank you for the opportunity to speak to you this evening.