



Merger Remedies

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FYs 2010 and 2011

16 Consent Decrees

13 Horizontal

- Portec Rail Products / L.B. Foster Co.
- MedServe, Inc. / Stericycle
- Alberto-Culver Company/ Unilever
- AT&T/Centennial Communications
- Cameron International/NATCO
- Dean Foods
- Ticketmaster/Live Nation
- Bemis/Rio Tinto
- Election Systems & Software
- Baker Hughes/BJ Services
- AMC/Kerasotes Showplace Theaters
- Amcor/Rio Tinto
- Stericycle/Healthcare Waste Solutions

3 Vertical

- Comcast/G.E./NBC Universal
- GrafTech/Seadrift Coke
- Google/ITA

FYs 2010 and 2011

Of 13 Horizontal Cases:

- 13 required divestiture.
- Some have additional relief; i.e., notification provisions, restrictions on resale, short-term supply agreements
- One, Ticketmaster/Live Nation, had substantial vertical issues and has conduct relief.

Of 3 Vertical Cases:

- All have conduct restrictions.
- Structural relief was not a viable option.

Live Nation

- *Allegation:* Unilateral theory based on Live Nation incipient competition and intent to compete on price. Live Nation also had unique advantages in challenging Ticketmaster because of its promotion business.

Live Nation

Remedy:

- Divestiture: Prior to consummation, enter into binding agreement to license Ticketmaster Host on a White Label basis for up to 5 years; acquirer has option to enter into perpetual license or choose third party ticketer or enter itself, but after 5 years cannot use Ticketmaster for term of the decree.
- Divestiture of Paciolan to Comcast within 60 days of closing.
- Prohibit retaliation against venue for contracting with another ticketer.
- Prohibit tying live entertainment to use of Ticketmaster's ticketing services.

Live Nation

Remedy:

- Does not prohibit efficient bundling.
- Firewall to prevent promotional employees from obtaining sensitive ticketing information.
- Clients switching to another ticketing service can obtain ticketing data.

Enforcement:

Rigorous provisions plus ability to obtain independent audit.

Term:

10 years.

Comcast

Allegation: Merger would allow Comcast to lessen competition from traditional MVPDs and emerging OVDs by withholding or raising the cost of content, especially content of the NBC broadcast network.

Comcast

Remedy:

- Existing FCC regulation and FCC Order protects traditional MVPDs; supplemented by DOJ anti-retaliation prohibitions.
- Comcast must license programming to OVDs on either terms economically equivalent to those given to MVPDs or terms comparable to those given to other qualified OVDs. Arbitration may be available to certain OVDs.
- Comcast must relinquish management rights in Hulu and provide content to Hulu comparable to what is provided by other JV partners.

Comcast

Remedy:

- Nondiscrimination in transmission of an OVD's network to a Comcast broadband customer. Maintaining capacity for high speed Internet service.
- Limitations on exclusive deals that limit OVD access to content.

Comcast

Enforcement:

- Quarterly reporting of allegations of noncompliance. Maintenance of certain documents, such as documents discussing denial of programming to an OVD or MVPD. Semi-annual reporting of all persons who seek video programming for distribution to consumers; also reporting of all persons who seek to have their programming carried or re-transmitted on Comcast's MVPD.
- Rigorous compliance provisions plus ability to obtain an independent audit.

Term:

7 years.

GrafTech

Allegation: GrafTech, a producer of graphite electrodes, proposed to acquire Seadrift, a major upstream needle coke producer. GrafTech already purchased needle coke from Conoco through a contract with an MFN and audit rights. The contract rights combined with control over Seadrift would give the two needle coke producers substantial real-time customer specific pricing and volume information and create a danger of coordinated effects.

GrafTech

Remedy:

- Amend the supply agreement to remove audit rights, sharing of non-public sensitive information, and MFN pricing. Prohibit use of such terms in future contracts.
- Firewall GrafTech employees who negotiate contract terms with Conoco from those who make pricing and production decisions at Seadrift. Prevent Seadrift employees negotiating with GrafTech electrode competitors from sharing competitively sensitive data with GrafTech.

GrafTech

Enforcement:

Ongoing obligation to provide to DOJ GrafTech contracts with Conoco and to provide quarterly ordinary course documents to enable the Division to monitor capacity, sales and production.

Term:

10 years.

Google/ITA

Allegation: ITA licenses QPX software, a search engine with unique capabilities used by online travel intermediaries (OTIs). Google intends to offer a travel search product that competes with OTIs. Given the importance of QPX, the acquisition of ITA would give Google the incentive to foreclose or raise the costs of rivals.

Google/ITA

Remedy:

- Google must honor existing QPX licenses, renew them on similar terms and offer to license to OTIs not under contract on fair, reasonable and non-discriminatory terms. The obligations also run to new InstaSearch technology. Google must continue ordinary course upgrades and not lessen resources to upgrade the product.
- Firewall Google from sensitive OTI information obtained through provision of QPX or InstaSearch services.
- Google generally cannot enter into agreements to limit seat availability and booking class information to OTI competitors. Granting licenses cannot be conditioned on OTI purchases of other Google services.

Google/ITA

Enforcement:

- Google must report complaints about decree violations.
- Rigorous standard compliance provisions plus ability to obtain an independent audit.
- Firewall procedures are subject to DOJ approval.

Term:

Five years.

Summary of Current Decree Enforcement

- Tailor remedies to facts of case and theory of harm.
- Four cases show a range of conduct remedies:
 - Firewalls
 - Mandatory licensing
 - Tying prohibitions
 - MFN prohibition
 - Anti-retaliation provision
 - Relinquishing management rights
 - Limiting exclusive contracts

Summary of Current Decree Enforcement

- In Ticketmaster/Live Nation, DOJ used upfront buyer.
- Revisiting compliance tools.
- Dedicating necessary resources to aggressive enforcement.