

## **Antitrust Challenges to Small Transactions**

Last week, the Federal Trade Commission filed a lawsuit seeking to unwind Dunn & Bradstreet Corporation's \$29 million acquisition from Scholastic Corporation of a competing database for marketing to kindergarten through twelfth-grade teachers, administrators, schools, and school districts. The transaction, which was consummated in early 2009, was not required to be notified under the Hart-Scott-Rodino Act, which currently applies to transactions valued in excess of \$63.4 million.

This is the fourth challenge to a consummated transaction below the Hart-Scott-Rodino filing threshold in the last six months. In November, the Department of Justice filed suit seeking to enjoin Cameron International Corporation's acquisition of NATCO Group, Inc. on the grounds that the acquisition would impermissibly reduce competition in refinery desalters. The complaint alleged, among other things, that Cameron's acquisition in 2005 of a competitor's refinery desalting business for \$8.25 million violated the antitrust laws.

In January, the Department of Justice sued Dean Foods Company over its April 2009 acquisition of two dairy processing plants for \$35 million, alleging that the transaction substantially lessened competition in the school milk and fluid milk markets in Wisconsin, the upper Peninsula of Michigan, and northeastern Illinois. And in March, the Justice Department sued Election Systems and Software, Inc., the largest provider of voting equipment systems in the United States, for its 2009 acquisition of its largest rival for \$5 million.

The lesson from these suits is clear: both federal antitrust agencies are looking carefully at transactions of all sizes, and almost no transaction is too small to escape scrutiny. Buyers in transactions below the Hart-Scott-Rodino threshold should analyze the antitrust implications of the deal and consider whether to voluntarily notify the agencies to enable them to conduct an investigation before closing in order to avoid post-closing lawsuits like those described above. Such suits put the buyer in an extremely unfavorable position, since the choices are usually limited to settling with the government by divesting the acquired assets at a "fire sale" price, or engaging in expensive litigation against the government over a small transaction.

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