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Comcast merger foes face uphill battle

Critics of Comcast's $45 billion bid for Time Warner Cable see nothing but bad news for consumers coming from the creation of such a behemoth company. As they try to figure out a strategy to stop the deal, these consumer advocates recognize, even if they won't say it publicly, that they face an uphill battle.

The conventional wisdom, after all, is that Justice and the Federal Communications Commission eventually will green light the transaction after the company and the government hammer out an agreement on certain conditions.

Even as consumer advocacy groups - such as the American Antitrust Institute, Public Knowledge, the Consumer Federation of America and Consumers Union – repeat the mantra that the marriage of these two companies would undercut nascent competition, threaten innovative services and result in higher prices to consumers, their message seems all but drowned out by the powerful lobbying juggernaut that Comcast has spent millions building.

Last year alone, Comcast spent more than $18 million on a who's who list of well-connected law firms and lobbying outfits – an enormous jump of more than 40 percent over what it had spent in 2010, according to figures compiled by the Center for Responsive Politics. This figure is in addition to the $8.2 million Time Warner Cable spent on lobbying expenditures last year.

Then, of course, there is David Cohen, Comcast's executive vice president, who has wined and dined so many of Washington's movers and shakers that he is something of a legend. When President Obama went to his house in Philadelphia for a Democratic Senate fundraiser last year, he said, according to news reports, "I have been here so much, the only thing I haven't done in this house is have Seder dinner."

Still, critics hope their arguments will break through, despite being so seriously outgunned. They point to the basic fact that Comcast, the nation's largest cable company and the owner of NBCUniversal (acquired in 2010), is seeking to gobble up Time Warner Cable, the second largest cable firm in the country. If approved, the new company will control about 40 percent of the broadband market and in the neighborhood of 30 percent of the pay TV market.

But Cohen and those supporting the merger insist that this is a fairly easy call for Justice and the FCC. "Objectively, this is not a challenging transaction from an antitrust perspective," Cohen said (with a presumably straight face) at a recent Senate Judiciary hearing. "Our companies serve separate and distinct geographic areas."

While acknowledging the undeniable – that this merger will create a mammoth firm – Cohen tried to make that an asset, arguing that size does matter, but in a good way. "While this transaction will make us bigger – that's a good thing," he said at the hearing, arguing that it will give the new firm the scale it will need to invest more in innovation and infrastructure and enable it to compete with the likes of Google and Apple.

But Diana Moss, vice president of the American Antitrust Institute, sees the onrushing consolidation in many industries and fears what it means for consumers. This Comcast proposal, she argues, raises special concerns because it involves telecommunications and the media.

"This is a merger that takes consolidation to new levels in yet another critical industry," Moss said in an interview with *FTC:WATCH*. "We have just come off of airlines – US Airways-American. And we are seeing a bunch of deals in food and agriculture that have created huge amounts of consolidation."

"It raises the question of when do you hit the wall on consolidation," she added. "When do we start saying no? When have we decided that having two or three major competitors just isn't enough for competition and consumers?"

"These mergers, particularly in telecommunications and media are really starting to raise bigger issues that antitrust doesn't typically deal with," she continued. "Now you are talking about diversity of the media – you are talking about preservation of independent voices; you are talking about the right to free speech, which, oh, by the way, is a constitutional issue."

Unlike the typical antitrust analysis involving price and output, Moss contends that this merger puts us "in a zone where other pressing public policy concerns are going to be collateral damage as a result of consolidation."

AAI is so concerned about the proposed merger that Moss and Bert Foer, president of AAI, co-authored a letter to the leader of the House Judiciary Committee, which has scheduled a hearing on the merger for May 8, in which they suggest various lines of inquiry.

For example, they pose the question about whether the combined company's enhanced bargaining power would really lead to better outcomes for consumers when it comes to preserving existing competition between content providers and distributors.

And they point out that limited U.S competition in broadband development has produced higher prices, lower quality and less innovation than in Europe and elsewhere and that the public is very unhappy with its cable companies. Given those facts, they propose a question about how this larger Comcast-TWC firm will have competitive incentives to offer pro-consumer bundles of services and more choice in pricing and qualities of products and services.

Still, since it is clear that congressional hearings are likely to have limited impact on the decision-makers at the Justice Department and the FCC, Foer said in an interview that he hoped to spur some coalition-building to help get the message out. To that end, he said, "we are convening a wide variety of consumer and public interest advocates in order to try to help them understand the antitrust aspects of Comcast – there is a tremendous amount of interest in this."

During a gathering in a closed session at the National Press Club on May 5, the groups will have an education and strategy session. "You need coalitions – we don't have them often enough in the antitrust world," Foer said.

Given all the consolidation that is occurring, Moss agreed that "from the consumer advocacy standpoint, coalition-building is going to become more and more important. It creates some weight and credibility and I think we will see more and more of that."

–Kirk Victor

REFERENCE:

http://www.antitrustinstitute.org/content/aai-submits-letter-house-judiciary-committee-re-upcoming-hearing-comcast-twc-merger

Terrell McSweeny officially joins the Commission

FTC Chairwoman Edith Ramirez welcomed Terrrell McSweeny as the newest member of the Commission on April 28. A low-key announcement following the swearing-in seems anti-climactic after five months of waiting for the Senate to act on her nomination, followed on April 9 by a 95-1 confirmation vote.

Ramirez administered the oath in the Commissioner's conference room, where McSweeny's family, fellow commissioners and senior members of the FTC staff gathered for the ceremony.

In a very brief telephone chat with *FTC:WATCH* a few days before joining the Commission, McSweeny was circumspect, deflecting a question about her priorities and saying simply that she was "definitely excited to get over there and I'm going to be thinking a lot more about that."

McSweeny, who most recently served as Chief Counsel for Competition Policy and Intergovernmental Relations at the Justice Department's Antitrust Division, was similarly guarded during the hearing on her nomination before the Senate Commerce, Science and Transportation Committee last

September. At that time, she did talk up the Commission's mission of protecting consumers' privacy online and of the importance of its role as an enforcement agency "proceeding judiciously on a case-by-case basis."

Notwithstanding her reticence, McSweeny, a Democrat, is seen as perhaps providing Ramirez with more flexibility, as the new commissioner's arrival ends the 2-2 party split between Democrats Ramirez and Julie Brill and Republicans Maureen Ohlhausen and Joshua Wright. In fact, her presence brings the Commission to its full five-member complement for the first time since former Chairman Jon Leibowitz's departure on March 7 of last year.

Though the Commission operates collegially and generally on a bipartisan basis, the addition of a third Democrat could make a difference on some issues where there have been divisions, especially on Section 5 of the FTC Act. Wright and Ohlhausen have taken a different approach from the Democrats by urging the Commission to issue clear standards governing and limiting the use of its authority under Section 5. In addition, Wright has already filed a half-dozen dissents since joining the Commission in January of last year.

Ramirez and Brill, by contrast, have favored a case-by-case approach to Section 5 cases. Brill also said in an interview with *FTC:WATCH* in March that if there were to be a change in the agency's approach to Section 5, which is broader than the antitrust laws and gives the FTC the flexibility to prohibit unfair methods of competition, it should occur only after all five commissioners were seated and had deliberated on it. (See *FTC:WATCH* Issue 847, published March 17, 2014.)

Given these cross-currents, McSweeny's addition to the Commission is seen by veteran observers of the agency as especially helpful to Ramirez. They also are already making some educated guesses about where the new commissioner's strengths are likely to make a difference.

For example, David Balto, who held several senior posts at the FTC before starting his own law firm, noted McSweeny's long-time experience both on Capitol Hill, where she was a senior adviser to then-Sen. Joe Biden (D-Del.) and at the Justice Department, may signal that she is poised to be a tough enforcer.

"She is very smart, pro-consumer, has terrific relations with Congress because that is where she is from," Balto said in an interview with *FTC:WATCH*. "She has worked on a number of high profile mergers at the antitrust division and impressed people with her ability to roll up her sleeves and get her hands dirty and really understand the nuts and bolts of how to be a strong enforcer."

Balto also singled out her work at the Justice Department on the Anheuser-Busch InBev and Grupo Modelo $20.1 billion merger last year in which Anheuser was required to divest Modelo's U.S. interests to preserve competition in that market. "She played a critical role in making sure the division was as tough as it needed to be," both in the litigation and the remedy, he said.

In a comment emailed to *FTC:WATCH*, Linda Goldstein, chair of the Advertising, Marketing & Media division at Manatt, Phelps & Phillips, said: "For the first time since Chairman Leibowitz stepped down, the balance of power will have shifted to the Democrats, which historically has resulted in an increased focus by the Commission on consumer protection issues. Based on…McSweeny's testimony during her nomination, we can expect her primary areas of focus to be privacy, particularly children's privacy and potentially an expanded focus to the teen segment, as well as online behavioral advertising. An increased voice at the FTC favoring enhanced privacy protection may fuel continued efforts for regulation in this area, including the potential for the passage of Do Not Track legislation."

Ramirez praised McSweeny, whose term extends to September 25, 2017, in a statement noting that "her considerable experience in the law and public policy will be an asset to the agency as it continues to pursue its missions of protecting consumers and promoting competition."

McSweeny, whose resume also includes service at the White House as Deputy Assistant to the President and Domestic Policy Advisor to the Vice President from January 2009 until February 2012 as well as a stint at O'Melveny and Myers, graduated from Harvard University and Georgetown University Law School.

–Kirk Victor

REFERENCE:

http://www.ftc.gov/news-events/press-releases/2014/04/terrell-mcsweeny-begins-term-federal-trade-commission

Ohlhausen stresses balanced approach on ad regulation

Former President George W. Bush famously said that he didn't "do nuance."

But when it comes to advertising regulation, FTC Commissioner Maureen Ohlhausen thinks that is a good approach. She recently told advertising lawyers that she wants the FTC to regulate ads in a way that protects consumers but not in a way that excessively limits what products are available to consumers.

"I believe that our job is to ensure that consumers get the information they need to make informed choices and, once made, that those choices are respected. I also believe, however, that it is not our job to substitute our judgment for that of consumers," she said in April 23 remarks to the Association of National Advertisers' Advertising Law & Public Policy Conference in Washington. "In our free-market system, private economic decisions determine the allocation of scarce resources. Actions, whether private or public, that limit the amount of truthful marketplace information available to consumers make those markets work less efficiently, which in turn harms consumers. Our intuition and personal experience supports the notion that consumers who can more easily compare their marketplace options, such as by using the many online and app-based tools available today, make better decisions."

Ohlhausen, a Republican former FTC staff member who was named to the Commission by President Obama, said the FTC should follow the principles of the nation's founders and restrict no more free speech than necessary to protect the public interest. While she argued that the FTC should be vigilant in regulating fraud and deception in advertising "we ought not to limit the amount of truthful information."

Along those lines, she took issue with the FTC's recent tendency to require two randomized controlled studies (RCTs) to substantiate health and disease-related claims in advertisements. She said that by requiring too much proof by advertisers ("substantiation" in legalese) consumers could be deprived of information about emerging areas of science and there would be less competition among companies about the health benefits of their products. Ohlhausen added that the burden of proof should be lower on "safe" products such as foods than on products that pose greater potential risks, such as drugs.

The FTC laid the groundwork for ad substantiation in health matters in 1972 in the *Pfizer* case, when it found that advertisers must have a "reasonable basis" for making an objective claim. In that case, the company claimed its "Unburn" lotion anesthetized nerves in sunburnt skin. However, the FTC ruled against the company and concluded that such claims had to be corroborated by "adequate and well-controlled scientific studies or tests."

Then the question became how many tests, and of what kind.

In 1983, the FTC updated and clarified its position on deception in policy statement explaining that a claim was deceptive if it was a "representation, omission or practice that is likely to mislead the consumer." The FTC later added that the "representation, omission, or practice must be a 'material' one. The basic question is whether the act or practice is likely to affect the consumer's conduct or decision with regard to a product or service."

The Commission said it will not "generally require extrinsic evidence concerning the representations understood by reasonable consumers or the materiality of a challenged claim, but in some instances extrinsic evidence will be necessary."

After her speech, in response to a question from *FTC:WATCH*, she declined comment on legislation recently introduced by Reps. Ileana Ros-Lehtinen (R-Fla.), Lois Capps (D-Cal.), and Ted Deutch (D-Fla.) to require the FTC to come up with ways to reduce the number of advertisements that distort body images of models, out of concern that the the ads cause physical and psychological pain to young people. (See *FTC:WATCH* Issue 849, published April 15, 2014)

But Ohlhausen said the FTC already does much of what the lawmakers are asking for because it "looks at the net effect of an advertisement." She added that the FTC looks at the context in which ads are looked at or watched by consumers and evaluates them accordingly.

In response to a question from the audience, Ohlhausen said the role of the FTC is "to protect consumers and take their point of view." But she added it is "not my job to take choices away from consumers."

–Claude R. Marx

REFERENCE:

http://www.ftc.gov/system/files/documents/public_statements/300221/140423anaspeech.pdf

FTC officials weigh in on direct Tesla sales

Three senior Federal Trade Commission officials, in a post on the agency's competition blog, opined that state bans on the direct sales of Tesla automobiles hurt consumers and unfairly protect automobile dealers. Though their view does not reflect the official policy of the Commission, it is a strong signal that the agency's longstanding position in favor of easy entry into markets is still considered a good way to promote competition.

"In this case and others, many state and local regulators have eliminated the direct purchasing option for consumers, by taking steps to protect existing middlemen from new competition. We believe this is bad policy," read the blog post signed by Office of Policy Planning Director Andy Gavil, Bureau of Competition Director Deborah Feinstein and Bureau of Economics Director Marty Gaynor, states.

"Regulators should differentiate between regulations that truly protect consumers and those that protect the regulated," the officials added. "We hope lawmakers will recognize efforts by auto dealers and others to bar new sources of competition for what they are – expressions of a lack of confidence in the competitive process that can only make consumers worse off."

That the staff would weigh in so sharply on a contentious issue that affects competition is not uncommon, though the fact that they sent their message via a blog post is something of a new development. It is the first time that these three senior staffers have authored a blog post together.

"A blog post may have been a slightly different way of delivering the message but I didn't see the [stance] itself as…a dramatic change," Richard Feinstein, who recently left his post as Director of the Bureau of Competition to join Boies, Schiller & Flexner, said in an interview. He recalled weighing in on similar issues in advocacy letters in response to issues such as when states were considering legislation to change the ways in which nurse practitioners might be able to offer services.

Feinstein noted that the commissioners themselves are now tweeting and he sees this blog post as consistent with that trend, as staffers are "using social media increasingly to get their views out because they figure that is what people are reading."

In explaining their position, the three FTC officials noted that U.S. car sales in 2013 totaled some 15 million out of which Tesla accounted for a bit more than 22,000 – hardly a serious threat to established dealers. But they added that if Tesla's

approach catches on it could result in a "real change to the way cars are sold that might allow Tesla to expand in the future and prove attractive to other manufacturers, whether established or new ones that have yet to emerge, and consumers."

The officials weighed in at a time when Tesla is battling several states – Arizona, Maryland, New Jersey, Texas and Virginia – over bans on sales by automobile companies directly to consumers.

After the New Jersey Motor Vehicle Commission banned the direct sale of Teslas in March, the company's CEO, Elon Musk, wrote on the firm's blog that "auto dealers have a fundamental conflict of interest between promoting gasoline cars, which constitute virtually all of their revenue, and electric cars, which constitute virtually none. Moreover, it is much harder to sell a new technology car from a new company when people are so used to the old. Inevitably, they revert to selling what's easy and it is game over for the new company."

Tesla, which manufactures high-end electric vehicles, including its Model S car that retails for $60,000 before incentives, is appealing the decision. New Jersey GOP Gov. Chris Christie has sided with his state's MVC, saying that its view is correct because "Tesla was operating outside the law."

At the same time, a leading trade association for automobile dealers has shifted into overdrive in its effort to maintain the status quo. The National Automobile Dealers Association noted in a press release that the FTC blog post reflected the views of three staffers and not the Commission or any individual commissioner.

"For consumers buying a new car today, the fierce competition between local dealers in a given market drives down prices both in and across brands – while if a factory owned all of its stores, it could set prices and buyers would lose virtually all bargaining power," Jonathan Collegio, NADA's vice president of public affairs, said in a statement. "Cars require licensing to operate, insurance and financing to take home, and contain hazardous materials, so states are fully within their rights to protect consumers by standardizing the way cars are sold."

But the three FTC officials seemed to anticipate such a stance in their post. "American consumers and businesses benefit from a dynamic and diverse economy where new technologies and business models can and have disrupted stable and stagnant industries, often by responding to unmet or under-served consumer needs," they wrote. "When that occurs in an industry long subject to extensive regulation, existing businesses – like automobile dealers – often respond by urging legislators or regulators to restrict or even bar the new firms that threaten to shake up their market."

–Claude R. Marx and Kirk Victor

REFERENCE:

http://www.ftc.gov/news-events/blogs/competition-matters/2014/04/who-decides-how-consumers-should-shop

http://www.teslamotors.com/blog/people-new-jersey

http://www.nadafrontpage.com/NADA_Responds_to_FTC_Blog_April_2014.xml

More drama in Phoebe hospital merger

Last August, it looked like the long fight over a hospital merger in Southern Georgia was finally over.

But the issue is back in play after a surprising new twist.

Readers will remember that there were two combative rival hospitals in the town of Albany, Ga. One of the hospitals, the Phoebe Putney Health System, wanted to buy its competitor, Palmyra. Using an administrative sleight of hand, Phoebe Putney arranged for the Hospital Authority of Albany-Dougherty County to purchase Palmyra and then to hand it over to Phoebe Putney. This strategy allowed Phoebe to claim it had state-action immunity in making the acquisition.

The FTC tried to halt the acquisition from its inception and moved in April 2011 to block the merger, saying it would create a monopoly. Judge W. Louis Sands of the Middle District of Georgia, however, declined to grant the agency's request for an injunction against the purchase. Phoebe then rushed to consummate the merger, taking possession of Palmyra and converting the hospital into a rehabilitation facility. It has since renamed the property "Phoebe North."

Undeterred, the FTC ultimately won a unanimous victory in the U. S. Supreme Court on February 19, 2013, with the court ruling that state-action immunity did not apply to the Phoebe-Palmyra transaction. This suggested that the deal would now face new legal scrutiny on the merits, with the result that the transaction would need to be unwound, or that the property would need to be sold to another competitor. FTC officials took a victory lap.

In June 2013, the district court issued a stipulated preliminary injunction that prevented Phoebe from taking any further steps to consolidate the two hospitals, eliminate any services or make any price changes to health plans involving the former Palmyra facility.

But the victory was short lived as FTC officials reluctantly concluded late last summer that there was nothing they could do to unwind the acquisition. They were told that the Georgia Department of Community Health would not allow the hospital to be sold to another competitor because the state is what is called "overbedded," and that Georgia would not issue a "certificate of need" that would allow such a purchase to proceed.

Instead the FTC announced it had reached an agreement for a very narrow proposed order that would require only that Phoebe seek FTC approval for any future acquisition plans.

Then Phoebe executives were the ones crowing. Despite their defeat at the Supreme Court, they were being allowed to retain the hospital they had acquired. They issued a triumphant press release in late August. Then they announced significant investments in computer equipment that would connect the hospital facilities.

The FTC's failure to force Phoebe to unwind the deal drew much scathing criticism in Georgia. In an editorial, Tom Putney, editor and publisher of the *Albany Journal*, wrote that local

residents felt betrayed by the government because the merger had eliminated the free market for health care in the area.

"I trusted the government to look out for our best interests," he wrote. "Once again, they didn't."

It looked like the dispute was over. But, as it has turned out, the FTC never gave the final nod to the proposed settlement.

And now an aggressive new prospective purchaser of the Palmyra facility has emerged in the form of a surgical corporation from Tennessee, called the North Albany Medical Center. In mid-March the group asked the Georgia Department of Community Health to reconsider the certification of need issue, saying that Palmyra had a right to its own certificate of need independent of Phoebe, and thus that a buyer would not need a new certificate issued in order to acquire the property.

On March 31, the FTC wrote to the Georgia Department of Community Health (DCH), saying the agency had decided to delay finalizing the settlement so that it could first know what the state board decided.

"FTC staff recently learned that North Albany is interested in acquiring the former Palmyra assets and has requested a letter of determination" from Georgia, wrote Deborah L. Feinstein, director of the FTC's Bureau of Competition. "DCH's response to North Albany's request is likely to play an important role in whether the Commission accepts the proposed settlement."

Then the FTC went to court on April 14 and asked for a 60-day extension to file additional documents, which Judge Sands promptly granted.

Now there's a war of words underway at Georgia's Department of Community Health.

Atlanta-based law firm Parker Hudson Rainer & Dobbs, representing Phoebe Putney, urged the state hospital regulators to dismiss and deny the North Albany group's request, calling the group's possible acquisition "hypothetical." The law firm also charged that the process could involve lengthy legal proceedings, and cause other mischief.

"Beyond wasting Department time and resources, that practice would be rife with opportunities for misuse by the requesting parties, such as damaging the reputation of a competitor," the law firm wrote in a letter hand-delivered to agency officials.

McGuire Woods, representing the North Albany Medical Center, fired back a response on April 16 that referred to Phoebe and its law firm repeatedly and pointedly, as the "Opponents."

"The Opponents ignore the undisputed facts leading up to the (determination of need) request by NAMC," they wrote. "Namely that the Federal Trade Commission staff made a decision to enter into the Proposed Settlement Agreement based on what NAMC believes is an erroneous interpretation of Georgia law."

The FTC "is clearly reconsidering its position," wrote Victor L. Moldovan of McGuire Woods.

Moldovan wrote that, contrary to statements by "Opponents," an administrative review is appropriate and timely.

"Finally, Opponents assertion that allowing the DET to proceed in this case would allow competitors to abuse the (determination) process by filing fabricated sets of facts regarding third parties," he wrote. "The (determination) here is clearly not a fabricated set of facts. The issue is effectively a lynchpin on regarding whether Palmyra will be available for sale to NAMC. The fact the Opponents may be forced to sell it rather than do it voluntarily does not change the analysis."

FTC officials declined comment.

–Kirstin Downey

Sixth Circuit upholds FTC hospital order

Another hospital unwinding may be on the horizon. Or will it be another Supreme Court case?

On April 22, the Sixth Circuit Court of Appeals upheld an FTC decision that found an Ohio hospital merger to be anticompetitive.

"The Commission's analysis of this merger was comprehensive, carefully reasoned and supported by substantial evidence in the record," wrote Judge Raymond Kethledge, with the concurrence of judges Helene N. White and Jane Branstetter Stranch. Kethledge was appointed by President George W. Bush, White was appointed by President Bill Clinton but later reappointed by President Bush, and Stranch was appointed by President Barack Obama.

In August 2010, ProMedica Health System Inc. acquired St. Luke's, located in Lucas County, in Northwestern Ohio. These entities were competitors but they faced a market with dwindling financial resources, as two-thirds of the county's residents have government-provided health insurance, through Medicare and Medicaid, and only 29 percent have private health insurance.

In January 2011, the FTC staff challenged the acquisition, alleging that the loss of competition would harm patients and employers and raise the cost of health care. The FTC filed an administrative complaint against ProMedica, and the FTC and the state of Ohio combined to file a separate lawsuit challenging the merger in federal district court in Toledo. The district court granted the injunction.

The FTC held a lengthy administrative proceeding and the Administrative Law Judge determined that the merger would allow ProMedica to raise prices. ProMedica appealed the decision to the Commission, which affirmed it and ordered ProMedica to divest St. Luke's. ProMedica appealed this decision as well; and now the Sixth Circuit has denied the appeal.

Judge Kethledge said the FTC's analysis found the merger had had an adverse effect on competition. He wrote that, as a general matter, a merger that increases the Herfindahl-Hirshman Index by more than 200 points, and which exceeds 2,500 is presumptively anticompetitive.

"The merger here blew through those barriers in spectacular fashion," he wrote. He noted that in one medical area, the merger would increase the HHI to 4,391, and for obstetrical services, it rose to 6,854, or as he noted, "almost triple the threshold."

Judge Kethledge was likewise unimpressed with ProMedica's arguments that the merger was essential because St. Luke's was in "dire financial straits." He called that argument the "Hail-Mary pass of presumptively doomed mergers."

But ProMedica isn't ready to call the game over yet. In an interview with the *Toledo Blade*, Jeffrey Kuhn, ProMedica's chief legal officer and general counsel, said the hospital is considering a petition to the Supreme Court.

Remedy in Bazaarvoice a slam-dunk victory for DOJ

When Bill Baer, the Justice Department's antitrust chief, recently ticked off various takeaways from the division's litigation docket in the past year, he singled out the government's victory in blocking Bazaarvoice's acquisition of PowerReviews as demonstrating that the fact that a transaction is not reportable under Hart Scott Rodino does not give it a free pass from government review.

And, he added in his comments at the ABA's antitrust spring meeting, having won that case, the government was working on shaping a remedy that really redresses the illegal behavior. For the losing party, Baer said, "it is not just a matter of divesting that which you bought 20 months ago, but there is an obligation to explore competitive dynamics that would have existed but for the unlawful conduct, the consummation of the deal."

The Department's recent announcement that it had reached an agreement with Bazaarvoice on a remedy shows that Baer achieved his objective. Bazaarvoice not only agreed to divest assets that it acquired from PowerReviews but it also will take other steps to fully restore competition in the market for those offering online product ratings and reviews platforms.

During the three-week trial of the case last fall, the Justice Department lawyers insisted that the issue presented was straightforward: Bazaarvoice's $168.2 million acquisition of PowerReviews in June 2012 was an effort by the largest provider of product customer ratings and reviews in the United States to eliminate a feisty, aggressive competitor by buying it. The Department had lots of incendiary evidence—blunt emails in which Bazaarvoice executives spoke of such things as wanting to "nuke those bastards," referring to PowerReviews.

Judge William H. Orrick III of the U.S. District Court for the Northern District of California agreed with the government in a 141-page opinion dated January 8 in which he found that Bazaarvoice had violated Section 7 of the Clayton Act by acquiring its only serious competitor.

The far-reaching remedy that still must be approved by the court reflects something else that Baer said during his comments at the ABA session in March: "You don't get the fruits of your bad behavior. You have to work with us or the court to establish the competitive dynamic that would have existed but for the unlawful activity."

Under the agreement, Bazaarvoice will sell all PowerReviews assets to a divestiture buyer, and it will take steps to compensate for the deterioration of PowerReviews' competitive position that occurred as a result of the merger. To that end, Bazaarvoice must provide syndication services to the divestiture buyer for four years, allowing the divestiture buyer to build its customer base and to develop its own syndication network.

Bazaarvoice also must waive breach of contract claims against its customers, and permit them to switch to the divestiture buyer without penalty. Bazaarvoice also is required to waive trade-secret restrictions for any of its employees who are hired by the divestiture buyer, so that the buyer will be able to leverage the research and development efforts that Bazaarvoice had undertaken after the merger.

And to make sure everything is on the up and up, the agreement provides that a trustee will be appointed to oversee the divestiture process and to monitor Bazaarvoice's compliance with its other obligations under the proposed remedy.

In a statement that he issued on the announcement of the settlement on April 24, Baer did not gloat, but it would be hard to blame the antitrust chief if he had. Baer said that the agreement not only "will remedy the harm caused by [Bazaarvoice's] unlawful acquisition of PowerReviews," but it also will require the company to provide "meaningful additional measures that will allow a divestiture buyer to quickly achieve the competitive position that PowerReviews would have occupied today, absent the unlawful transaction."

–Kirk Victor

REFERENCE:

http://www.justice.gov/atr/public/press_releases/2014/305389.htm

FTC premerger notification office takes up new quarters

Moving day is here at last.

The FTC is giving up its space at 601 New Jersey Avenue and 1800 M Street NW and is consolidating into quarters at Constitution Center, which is located at 400 7th St., SW.

The agency announced the first of the shifts last week, when it filed a notice in the Federal Register that its premerger notification office, formerly in the main FTC building on Pennsylvania Avenue, will now be housed at the Constitution Center location.

The move will also affect the litigating staffs of the Bureau of Competition and Consumer Protection, Records and Filings and the Inspector General.

There was considerable political intrigue over the relocation of the agency. U. S. Rep. John Mica (R-Fla.) had hoped to take the agency's Pennsylvania Avenue headquarters and give it to the National Gallery of Art, moving all of the FTC into leased space. Rep. Mica's multi-year effort has been unsuccessful so far.

But it had some impact, as FTC employees in other, leased locations are being squeezed into tighter quarters to demonstrate the agency's good faith in protecting taxpayer money.

The new address for the FTC's premerger notification office will be:

Premerger Notification Office
Federal Trade Commission, Room 5301
400 South 7th St., SW
Washington, DC. 20024

The FTC noted in its announcement that the DOJ's premerger notification office remains the same:

Director of Civil Enforcement
Office of Operations, Antitrust Division
U.S. Department of Justice
950 Pennsylvania Ave., NW, Room 3335
Washington, DC. 20530.

–Kirstin Downey

DOJ's first successful antitrust extradition ends with guilty plea

The Justice Department's first successfully-litigated extradition on an antitrust charge clearly has gotten the attention of the antitrust bar. The Department recently followed up news of the extradition by announcing that the former executive who had been brought to the U.S. from Germany has already pleaded guilty.

"It is a very big deal," Barry Nigro of Fried Frank said in an interview with *FTC:WATCH*, when asked about the importance of the extradition. "The Division continually finds new ways to step up their criminal enforcement….They have been pretty deliberate about using a carrot and stick type of approach—the carrot being amnesty and the stick being substantial penalties for those who don't cooperate, which obviously creates more incentive."

In the case, Romano Pisciotti, an Italian national and a former manager of Parker ITR Srl's Oil & Gas Business Unit, who had been extradited from Germany, was sentenced to two years in prison for participating in a conspiracy to rig bids, fix prices and allocate market shares of marine rubber hose sold in the U.S. and elsewhere, the Department stated in a press release on April 24.

Pisciotti pleaded guilty in U.S. District Court for the Southern District of Florida in Fort Lauderdale to a one-count felony charge that had been filed under seal in 2010 and unsealed last year. He had been arrested in Germany last June 17, and his initial court appearance after his extradition was on April 4. In addition to his sentence, which will be reduced by the nine months and 16 days during which he was held in Germany until his extradition, Pisciotti agreed to pay $50,000 in criminal fines.

The plea "demonstrates the Antitrust Division's ability to bring to justice those who violate antitrust laws, even when they attempt to avoid prosecution by remaining in foreign jurisdictions," Bill Baer, the chief of the Antitrust Division, said in a statement. "The Antitrust Division and its law enforcement partners will continue to protect consumers from cartels that affect the domestic and international economy."

Nigro noted that this aggressive approach represents a change for the Department. "One of the gaps in policy has been the inability to go after folks who don't subject themselves to the jurisdiction of the U.S. voluntarily," he said in the interview. "Now that the division has demonstrated that it is willing and able to extradite targets, I would think that that's going to have a material impact on how people think about their options when they find themselves in a situation in which they are a target or a possible target of an antitrust investigation in a criminal matter."

During the conspiracy, the cartel set prices for hundreds of millions of dollars in the worldwide sales of marine hose, a flexible rubber hose that is used to transfer oil between tankers and storage facilities. The indictment charges that Pisciotti carried out the conspiracy by agreeing during meetings, conversations and communications to allocate shares of the marine hose market among the conspirators. Pisciotti allegedly used a price list for marine hose to further the conspiracy. Also, he did not compete with other marine hose sellers either by not submitting prices or bids or by submitting intentionally high prices or bids.

Pisciotti and his conspirators provided information they got from customers in the U.S. and elsewhere about upcoming marine hose jobs to another co-conspirator who acted as a coordinator. This coordinator, who allegedly was paid by the manufacturers involved in the scheme, allegedly acted as a clearinghouse for bidding information to be shared among the conspirators.

Meanwhile, Pisciotti allegedly recruited at least two individuals from other marine hose firms to participate in the conspiracy, which, according to the department, began at least as early as 1999 and continued until at least May 2007. Pisciotti was charged for his role in the scheme that lasted from at least as early as 1999 until at least November 2006.

The Department noted in its release that its investigation into the marine hose business has resulted in guilty pleas by five companies – Parker ITR; Bridgestone Corp. of Japan; Manuli SPa of Italy's Florida subsidiary; Trelleborg of France; and Dunlop Marine and Oil Ltd. of the United Kingdom. Eight other individuals also have pleaded guilty and been sentenced for terms ranging from 12 months and a day to 30 months. Another individual was sentenced to six months home confinement, and one other individual – indicted fugitive Uwe Bangert, a German national formerly associated with Dunlop Marine and Oil Ltd., remains at large.

It is not yet clear how the United States will react when asked to extradite its own business executives overseas.

REFERENCE:

http://www.justice.gov/atr/public/press_releases/2014/305376.htm

DOJ, FTC question ruling penned by Judge Richard Posner

The Department of Justice, the FTC and several other groups are seeking a rehearing or *en banc* review of an appellate court ruling that they say limits the reach of the Sherman Act.

The ruling was written by Judge Richard Posner, who serves on the 7th Circuit Court of Appeals, with the concurrence of Judges Michael Stephen Kanne and Ilana Rovner, all three of who are appointees of President Ronald Reagan. Posner, a disciple of legal theorist Robert Bork, has in the past argued that the FTC should be abolished.

The Justice Department, the FTC, the American Antitrust Institute and a group of economists recently joined as *amici curiae* in briefs in the U.S. Court of Appeals for the Seventh Circuit in which they argue for a re-hearing on the issue of whether the Sherman Act extends to claims involving price-fixing of products sold abroad to non-U.S. firms that ultimately bring those products into the U.S. for sale.

In the case, *Motorola Mobility Inc. vs. AU Optronics Corp.*, Motorola sued AU Optronics, the South Korea-based maker of LCD panels, alleging Sherman Act violations for a conspiracy to fix the price of those panels world-wide from 1996 until 2006. It argued that prices of cellphones and other overseas finished products in which the LCDs were incorporated also were jacked up. Many of the screens, Motorola contended, were bought by its own overseas subsidiaries for use in products destined for the United States, so that the effects of the conspiracy on U.S. commerce were sufficiently substantial and direct.

Three top executives of AU Optronics were convicted in federal court trials in 2012 of participation in a worldwide conspiracy to inflate the prices of LCD panels. Shiu Lung Leung, the company's former senior manager in the Desktop Display Business Group, was convicted after a three-week trial in California; former AU Optronics president Hsuan Bin Chen and former AU Optronics executive vice president Hui Hsiung were found guilty after an eight-week trial. All three were sentenced to prison. Leung was sentenced to two years in prison; he is appealing his conviction.

"This international price-fixing conspiracy impacted countless American consumers by raising the price of computer monitors, notebooks and televisions containing LCD panels," said Scott Hammond, then deputy assistant attorney general at the Justice Department, at the time of Leung's conviction in December 2012.

Motorola has sought damages for overcharges on several categories of products, including LCD panels purchased by its foreign subsidiaries and delivered to them outside the U.S., where they were incorporated into cellphones later sold in the U.S. and also for LCD panels purchased by its foreign subsidiaries and delivered to them outside the U.S., where they were incorporated into cellphones and sold in foreign countries.

The three-judge panel of the Seventh Circuit, on March 27, affirmed a district court ruling finding the Sherman Act did not reach these claims because Motorola had failed to show its injuries were caused by the "domestic effect rather than by the price fixing itself." As for the damage claims for products that reached the U.S., Judge Posner wrote that while there was "doubtless some effect" on U.S. commerce in cellphones, that effect was "indirect" or "remote."

The appellate court panel also cited "practical considerations," and ruled that allowing such a claim would "enormously increase the global reach of the Sherman Act," and would create "friction with many foreign countries." Judge Posner wrote that Motorola was "oblivious" to the foreign resentment being provoked by the perception that the United States is acting as the "world's competition police officer."

In his ruling, Posner expressed disdain for both Motorola and price-fixing laws. He wrote that 42 percent of the panels used by Motorola were bought by Motorola foreign subsidiaries and were then incorporated into Motorola products for sale by Motorola.

"Motorola says that it 'purchased over $5 billion worth of LCD panels from cartel members (i.e., the defendants) for use in its mobile devices,'" Judge Posner wrote. "That is incorrect. All but 1 percent of the purchases were made by Motorola's foreign subsidiaries, which are not plaintiffs in this litigation."

Judge Posner called other aspects of Motorola's claim "frivolous," and implied that he believed that Motorola's executives were lying to the court.

"Motorola contends, and at this stage in the litigation we must assume the truth of the contention, that it determined what the subsidiaries paid for the LCD panels," he wrote. "It must have thought the price was okay, or it wouldn't have let the subsidiaries pay it. It may or may not have known that it was a cartel price. But we cannot see what difference any of this makes," he wrote.

In seeking a rehearing by the panel or a rehearing *en banc*, DOJ and FTC argue that the ruling by the panel should be vacated because "it threatens the ability of government law enforcement and private actions to prevent and redress massive harm to U.S. consumers."

The government's brief, filed on April 24, notes that the fact that this important issue would limit the application of a federal criminal statute had not even been addressed by the parties in their briefs and that the panel had not heard from either the government or other affected *amici* before issuing its far-reaching ruling.

"Unless vacated, the panel's narrow view of the statutory term `direct' is likely to constrain the government's ability to effectively prosecute cartels that substantially and intentionally harm U.S. commerce and consumers, as well as prevent those injured in the United States from redressing that harm," the government's brief states.

The government's brief argues that the panel's decision undercuts the Seventh Circuit's *en banc* decision in 2012,

Minn-Chem, Inc. v. Agrium, Inc., that "rejected the idea that an effect on U.S. commerce is `direct' only `if it follows as an immediate consequence' of the defendant's activity."

"As this Court noted in *Minn-Chem,* it is important for our courts to protect U.S. consumers from foreign price-fixing conspiracies because the price fixers' host countries `often have no incentive' to enforce their antitrust laws because they `would logically be pleased to reap economic rents from other countries' whose consumers ultimately bear the burden of the inflated prices."

The record shows a "direct effect" on U.S. commerce in cellphones "causing harm to many U.S. consumers that Congress intended to be redressable under the Sherman Act," the brief states.

The American Antitrust Institute has also weighed in with its own *amicus* brief, filed on April 24: "This was a serious error of law with potentially grave consequences for U.S. businesses and consumers," AAI officials wrote. "Deterrence of international cartels that adversely affect American victims is already woefully inadequate," the brief said, adding that Posner's ruling could make it more difficult for victims to recover damages under the Sherman Act.

A group of economists, including John Asker of New York University, Jonathan Eaton of Brown University, Roger Noll of Stanford University, Ariel Pakes of Harvard University and Robert Porter of Northwestern University, also filed a brief in the case, writing that the 7th Circuit decision "raises important policy concerns that warrant a full review with the benefit of input from all affected parties."

–Kirk Victor and Kirstin Downey

REFERENCE:

http://www.justice.gov/atr/cases/f303700/303738.pdf

INTERNATIONAL

ICN conference ponders state-owned enterprises

The thirteenth annual conference of the International Competition Network (ICN) has wrapped up its work in Marrakesh, Morocco, after meeting for three days in late April. This marked the first time that the conference was held on African soil since the Cape Town meeting in 2006. Fittingly enough, one of the major initiatives this year was the presentation of a policy paper by the host organization, the Moroccan Competition Council, on the topic of "State-Owned Enterprises and Competition Law."

More than 500 delegates from 90 jurisdictions participated, including representatives not only of the national enforcement agencies, but also people representing a variety of legal, academic, and business interests. The U.S. delegation was led by Bill Baer of the Antitrust Division, and Edith Ramirez of the Federal Trade Commission.

The setting lent itself to comfortable deliberations. The meeting was held at Palmeraie Golf Palace, a five-star hotel with fountains, pools, and entrance archways all in their proper places.

The delegates assembled for panels on such topics as techniques for greater agency effectiveness, promoting a competition culture within a country, effective cartel enforcement (Baer's panel), and efficiencies in loyalty rebates and discounts, and international cooperation in merger cases (Ramirez' panel).

One topic on the agenda was a study of how state-owned enterprises (SOEs) might fit into a marketplace otherwise organized on competitive principles. Morocco made this its principal contribution to the meeting. This reflected a belief that the topic has been under-studied, and is actually of great importance to the smaller countries and emerging economies that have not yet decided how to handle large legacy enterprises in such fields as utilities, transportation, telecommunications, or education.

To assemble current data, Morocco sent out a questionnaire that was completed and returned by the competition authorities in 36 jurisdictions. From this they concluded that state-owned enterprises might take either of two forms. First, they might be "ordinary competition actors when carrying out activities of production, distribution and service." But, on the other hand, they might also be "exceptional or specific competition actors, enjoying exemptions because of the vital nature or sensitive activities they manage, which constitute a particular and important interest for citizens . . . ."

To the extent that these exemptions create problems, the "preponderan[t]" issue, according to the report, has been "abuse of dominant position," beyond what the special role or functions of these entities might require. They might cross-subsidize or offer bundled prices to gain advantage in some other, non-monopoly market. Or they might cut off legitimate potential entrants from needed monopoly inputs.

To bring these activities into the competitive world, insofar as is practical, the Moroccan study identified a number of corrective measures. Exemptions from competition laws should be recognized only to the extent needed to support the special purposes of the SOE. And moral suasion, backed by litigation, might help to change the underlying culture.

REFERENCE:

http://www.icnmarrakech2014.ma/images/SOE_under_competition_law_Morocco.pdf

NEIL AVERITT COMMENTARY

How the commissioners play on their days off

We know the professional identities of the FTC Commissioners, and what they think and do during the work week. But who are they the rest of the time? What interests and pastimes hold their attention during their days off – and may be part of what makes them the people they are?

I have spoken with Maureen Ohlhausen and Julie Brill in order to begin a survey of the enforcers. Not surprisingly, they emerge as two distinct personalities in leisure as well as at work. But there are also some common themes. Hint: bring your running shoes to a weekend invitation from either one.

Maureen Ohlhausen's leisure interests center on the hill country a few hours west of Washington.

One focal point is a cabin in Romney, West Virginia, west of Antietam and Winchester, which is owned by her mother-in-law. This becomes a base for outdoor activities, both for Maureen and her husband, and for whichever of their now-mostly-adult children show up on any given weekend. The two oldest of her four children were both married within the last year, but at least one of the four is usually there. The outdoor focus is a calculated change from the desk-bound nature of the workweek.

The family takes a canoe trip about every two months. A favorite spot is something called The Trough. This is a stretch of water on a branch of the Potomac, which winds between mountains for five or six miles, with a railroad track in the valley but no road, and consequently no houses either, but a good number of bald eagles.

The canoe trips are mostly benign, but not always. When her youngest child, Neil, was about eight, he was in a canoe that sank while going through some rapids, and Ohlhausen left her own canoe to haul him to shore. Seeing his head "bobbing just above the white water was pretty scary," she reports.

Another activity is skeet shooting. This involves firing with a shotgun at little clay target discs ("pigeons") that are shot off, often in pairs, flying from left to right and from right to left, which is surely good practice for Washington. Her most memorable moment on the skeet range came last fall, when she showed up with her three sons. The other men already there looked dubious. But then, after she had done fairly well, one of them came up to shake her hand and say he was glad she had joined them.

Sometimes the family venue moves elsewhere. For fifteen years now they have rented a place on the Outer Banks in the summer, holding an open house for whatever members can make it. This once led to seven teenagers squeezing in, and to a heavy demand on the board games. Elsewhere people have tried their hand at riding, surfing lessons in Maui, and ice skating – something that Ohlhausen had grown up doing as a child on Long Island.

Another focal point is the University of Virginia at Charlottesville. Ohlhausen and her husband met there as students, and all four of their children went there as well. Especially meaningful for fans of hospital mergers, all four children were taught economics by Ken Elzinga.

But children, while, of course, a source of great joy, can also create complications. By this we mean Girl Scout cookies. Maureen had been a Girl Scout herself as a child, and later spent three years as a leader for her daughter's troop. This led to her being named Cookie Mom, which meant that a thousand dollars' worth of cookies were delivered and stockpiled in her house, and that she was personally responsible for their cost. So far so good. But then she had to run an errand, and came back to discover that her youngest son, Neil, he of the canoe, had come downstairs in his little blue footie pajamas and decided that Santa had visited. He had broken open the boxes and chocolate was spread everywhere. We draw a curtain of silence over the rest of the scene.

Maureen follows live music. A new favorite is a band called Love Canon, whose specialty is bluegrass versions – that is, strings and vocals – of 1980s popular hits such as "Boys of Summer" and "Take on Me." She also enjoys the movies. Her favorite from recent years is "Moonrise Kingdom," about twelve-ish youngsters at summer camp. She likes that phase of children's lives, and also enjoyed the way the film showed the importance of having a caring adult in the background.

Commissioner Julie Brill also has a house, away from Washington, that plays a significant role in her life. In her case it is a house on twenty acres of land in the town of Randolph, near the center of Vermont. She and her husband have owned it for the last dozen years, from the time that Brill was serving as Vermont AAG, and she gets back there most weekends to reconnect with her husband and two college-age sons.

That makes for a long commute on Fridays, but during the week Brill keeps an apartment only a five minute walk from the agency, and so, she says, the commute time "on a weekly average" works out the same as most people's.

The Vermont house also provides a natural venue for outdoor activities – such as running, hiking, and biking. Because this is, after all, New England, wintertime activities such as cross-country skiing and snowshoeing are high on this list. On the other hand, the downhill winter sports, like alpine skiing and snowboarding, do not feature prominently in Brill's schedule. She has nothing against them, but finds it easier and more satisfying to "just go out the back door."

The property next door works in favor of the back-door approach. That neighbor is an inn that runs a cross-country retreat, which provides open space and trails.

Brill is a hard-core fan of team sports. Her high school did not field a girls' soccer team, but she did play soccer at Princeton, beginning as a freshman, which was the first year that women's soccer was offered. A favorite memory from this period is a tournament held during the Head of the Charles regatta in Cambridge. "It was a lot of fun to see so many women's teams at the same time."

Brill continues to run in the DC area, and is captain of the team that the FTC fields for the three-mile ACLI Capital Challenge.

But a growing interest has been basketball – both college and professional. In fact, Brill follows these sports so closely that Google Dashboard, which follows people's online habits, has her pegged as a 65-year-old man. So far she had made no move to correct this error. Perhaps it's a useful reminder of potential problems in the privacy area.

Sports interests have provided a framework for one of Brill's favorite recent speeches, "The Six Things that I Learned from Basketball," which she delivered to her old high school in South Orange / Maplewood, New Jersey.

Brill also confesses herself a big fan of movies. Favorites films from recent years have included Gravity ("unbelievable"); American Hustle ("wonderfully acted"); and Her ("the most philosophical movie that I've seen in a long time").

But Brill draws the line at chickens. Her husband once proposed that they keep some on the property – remember, there are twenty acres – mainly to produce eggs for their own use. But this, she says, is a bridge too far.

–Neil Averitt was an attorney at the FTC for 37 years. Neil's feature stories on the private lives of government enforcers will appear episodically and will include visits with officials at the Justice Department and Federal Trade Commission. Neil welcomes your thoughts and comments. He can be reached at neil@ftcwatch.com.

FTC BRIEFS

Jostens drops plan to acquire rival

Jostens, Inc. ended its planned to buy rival American Achievement Group Holding Corp. (AAC) after the FTC voted 4-0 to go to court to block the transaction.

Jostens' April 17 decision followed an investigation of the proposed $486 million deal that began last year. The FTC expressed concern about the deal and alleged that the "combined Jostens/AAC would control an unduly high percentage of the high school and college rings markets, making it a dominant firm with only one smaller meaningful competitor in both markets. ''

Jostens is based in Edina, Minn. and AAC is based in Austin, Texas.

FTC Bureau of Competition Director Deborah Feinstein praised the decision.

"The parties' abandonment of the transaction preserves competition for consumers in the markets for class rings, which are an important memento for millions of high school and college graduates across the country. A combination of two of the three leading manufacturers would have led to higher prices and lower quality for the students and their parents who purchase these rings," she said in a statement.

Marc Reisch, the CEO of Jostens' parent company Visant, Inc. said in a statement that they still believe the transaction wouldn't hurt competition but "entering into a protracted litigation with the FTC and the inherent cost and distraction is not in the best interest of our stakeholders."

REFERENCE:

http://www.ftc.gov/news-events/press-releases/2014/04/statement-ftc-bureau-competition-director-deborah-feinstein

http://www.visant.net/DynamicContent/Docs/201404171455.pdf

FTC, DOJ ban robocall marketer

The Federal Trade Commission and Justice Department reached an agreement with a California man whom it had alleged knowingly sold his services to companies that placed illegal prerecorded sales calls.

On April 17, the FTC announced that it and the Justice Department had reached a settlement with Joseph Turpel that bans him from robocalling and telemarketing.

The settlement also imposes a civil penalty of $395,000 but it is waived because Turpel signed a form swearing he doesn't have the funds to pay. But the settlement mandates that if Turpel was shown to be misrepresenting his financial situation he would have to pay immediately.

The settlement was filed in federal court in California on April 15. In 2011, on behalf of the FTC, the Justice Department filed a complaint alleging that Turpel's firm, Sonkei Communications, Inc. of Newbury Park, California, "sold robocall services to telemarketers offering credit card services, home security systems, and grant procurement programs." The complaint also alleged that Turpel knew his clients were making calls to numbers on the National Do Not Call Registry.

The complaint also alleged that Turpel "gave clients the means to hide their identity by transmitting inaccurate caller names, such as "Service Message," or "Service Announcement" on caller ID displays."

At the time, the company issued a statement saying it was innocent and was the victim of unauthorized use of its trade name by third parties.

REFERENCE:

http://www.ftc.gov/news-events/press-releases/2014/04/marketer-robocalling-services-banned-telemarketing

http://www.ftc.gov/system/files/documents/cases/140417turpelstip.pdf

http://cdn3.getoutofdebt.org/wp-content/uploads/2011/11/Sonkei-Communications-TSR.pdf

FTC seeks comment on asset sales in three mergers

The Federal Trade Commission is inviting public comments on asset sales, tied to mergers, in three separate cases.

The FTC wants input on Fidelity National Financial Inc.'s request to sell its interest in the Portland Title Agency Interest to Old Republic Title Company of Oregon and six title plant assets to AmeriTitle, Inc. Fidelity maintains that the sales would address concerns raised by the FTC last year

that Fidelity's proposed $2.9 billion acquisition of Lender Processing Servicers would substantially lessen competition in several Oregon counties.

Comments are due May 29 and can be mailed to: FTC Office of the Secretary, 600 Pennsylvania Ave., N.W., Washington, DC 20580. Or they can be filed electronically at: https://ftcpublic.commentworks.com/ftc/oldrepublicdivestapp/ or https://ftcpublic.commentworks.com/ftc/amerititledivestapp/

The FTC also wants comments on Ardagh Group SA's proposed sale of six manufacturing plants to Glass Container Acquisition LLC. Ardagh maintains that the sale would satisfy concerned raised by the Commission that its $1.9 billion acquisition of Saint-Gobain Containers, Inc. would reduce competition in the field of glass containers for beer and spirits. The plants are located in: Jacksonville, Fla.; Warner Robins, Ga.; Lawrenceburg, Ind.; Shakopee, Minn.; Elmira, N.Y.; and Henryetta, Okla.

Comments are due May 28 and can be mailed to: FTC Office of the Secretary, 600 Pennsylvania Ave., N.W., Washington, DC 20580. Or they can be filed electronically at: https://ftcpublic.commentworks.com/ftc/ardaghbuyerdivestapp/

The Commission is also seeking comments on Franchise Services of North America's request to sell 22 former Advantage Rent A Car locations to Hertz Global Holdings, Inc. and Avis Budget Group.

Franchise Services acquired the locations (none of which are currently operating) from Hertz in 2012 after Hertz was required to sell Advantage to address concerns raised by the FTC that Hertz's $2.3 billion acquisition of Dollar Thrifty Automotive Group would be anticompetitive.

Franchise Services filed for bankruptcy protection last year and sought to sell Advantage. Catalyst Group LLC was the winning bidder for Franchise Services' assets and decided to operate at 40 of the Advantage locations and to exclude the remaining 28 locations from its purchase. Franchise Services wants to sell 22 locations to Hertz and Avis and then find other purchasers for the other six locations.

Comments are due May 19 and can be mailed to: FTC Office of the Secretary, 600 Pennsylvania Ave., N.W., Washington, DC 20580. They can be filed electronically at: https://ftcpublic.commentworks.com/ftc/hertzdivestapp/

REFERENCE:

http://www.ftc.gov/news-events/press-releases/2014/04/ftc-requests-public-comments-two-applications-fidelity-national

http://www.ftc.gov/news-events/press-releases/2014/04/ftc-requests-public-comments-ardagh-group-sas-application

http://www.ftc.gov/news-events/press-releases/2014/04/ftc-seeks-public-comment-franchise-services-north-americas

FTC opposes proposed limits on driver apps in Chicago

A proposal pending before the Chicago City Council that would impose higher licensing fees for software-based car services than for taxis would "unnecessarily impede competition from these services, limiting the consumer benefits that such services might otherwise generate, according to a comment letter from three top FTC officials.

The council wants to charge these services a $25,000 licensing fee and a $25 fee for each driver. Taxi licenses are $500 annually and a $15 fee per driver.

Services such as Uber and Lyft "that facilitate using personal automobiles to provide transportation services to the public may provide consumers with expanded transportation options, at potentially lower prices, thereby better satisfying consumer demand, and potentially increasing competition," wrote Office of Policy Planning Director Andy Gavil, Bureau of Competition Director Deborah Feinstein and Bureau of Economics Director Marty Gaynor.

The FTC officials criticized the proposed ordinance for not recognizing demand-based pricing which they contend is a good response to consumer demands and can be an efficient way to allocate resources.

The letter also criticized the proposal for its ban on advertising, data retention requirements and costly insurance mandates.

In addition, the FTC officials also took issue with the ban on picking up or dropping off passengers from O'Hare International Airport, Midway International Airport, or McCormick Place convention center.

As with the ordinance's restrictions on pricing and insurance, absent some specific evidence that the presence of transportation network vehicles in proximity to these areas will harm consumers, this change should not be adopted. To the extent that there may be concerns about potential queue problems or congestion issues in certain areas, staff recommend considering a less restrictive means to deal with these problems.

REFERENCE:

http://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-honorable-brendan-reilly-concerning-chicago-proposed-ordinance-o2014-1367/140421chicagoridesharing.pdf

JUSTICE BRIEFS

Judge okays airline merger

The U.S. Airways/American Airlines merger is fully airborne.

Judge Colleen Kollar-Kotelly, charged under the Tunney Act with reviewing the merger, ruled that the proposed final judgment reached by the airlines and the Justice Department "is in the public interest," and gave it her blessing to go forward.

U.S. Airways and American Airlines agreed to merge in February 2013, in a deal worth an estimated $17 billion.

In August 2013, the Department of Justice and the states of Arizona, Florida, Tennessee, Texas, Pennsylvania, Virginia and the District of Columbia filed a civil lawsuit to block the merger, saying the likely effect of the merger would be to lessen competition in many parts of the country. Subsequently Texas withdrew from the lawsuit, and in November, the parties reached a settlement on the merger, which required the airlines to divest 104 air carrier slots at Reagan National Airport, 34 slots at New York La Guardia International Airport, and rights related to airport gates in Chicago, Los Angeles, Boston, Miami and Dallas.

More than a dozen groups protested the settlement, saying that consumers and air travelers were being short-changed, and questioning the reasoning behind the settlement.

Judge Kollar-Kotelly acknowledged their concerns, noting that "the merger would eliminate two independent competitor airlines, ending head-to-head competition between U.S. Airways and American on numerous nonstop and connecting routes."

The merger would also leave the market with only three large, international airlines – Delta, United and the new merged airline – with the breadth of service to reach numerous cities around the world.

The other competitors, she noted, are specialized airlines, including Southwest Airlines, JetBlue Airways, Virgin America, Frontier Airlines and Spirit Airlines, which travel more limited routes.

On the other hand, she wrote, the settlement would allow the divestiture of a number of slots in some cities where there had been little opportunity for the specialized airlines to grow. She wrote that introducing new competition at Reagan and La Guardia would help to reduce airline prices.

The judge said that the Department of Justice had made a convincing case that the divestitures would "provide meaningful and effective competition," in many markets.

Judge Kollar-Kotelly wrote that she believed that her review of the case satisfied the Tunney Act requirements. "…Despite the objections of commenters and *amici*, perfect matching between remedies and alleged violations is not required for Tunney Act approval," she wrote.

In a statement, Justice Department Assistant Attorney Bill Baer said he was pleased with the outcome.

"We're pleased that the court agreed that the department's remedy will enhance competition in the airline industry," he said. "…History has shown that when low cost carriers have entered the market, consumers benefit. With the settlement, the department is requiring an unprecedented number of divestitures in this industry that will provide enhanced competition across the nation."

REFERENCE:

http://www.justice.gov/atr/cases/usairways/index.html

http://www.justice.gov/atr/public/press_releases/2014/305491.htm

Bridgestone execs are indicted

The Justice Department's sweeping investigation into price fixing and bid rigging in the auto parts industry recently netted indictments of a current executive and two former executives of Bridgestone Corp. for allegedly engaging in an international conspiracy to fix prices of anti-vibration rubber parts. Another former Bridgestone executive has already pleaded guilty for his role in the conspiracy.

The Department's far-reaching probe into price fixing in auto parts already has resulted in charges against 32 individuals. Also, some twenty-six companies have pleaded guilty or agreed to plead guilty for their roles in the auto parts conspiracy and have agreed to pay fines totaling more than $2.29 billion.

The most recent indictments, filed on April 15 in U.S. District Court for the Northern District of Ohio, charge Japanese nationals Yoshiyuki Tanaka, Yasuo Ryuto and Isao Yoshida, with conspiring to suppress competition in automotive parts by allocating sales, rigging bids and maintaining prices of anti-vibration rubber parts sold to Toyota Motor Corp., Nissan Motor Corp., Suzuki Motor Corp., Subaru and certain of their subsidiaries, affiliates and suppliers, in the U.S. and elsewhere.

And on April 16, the Justice Department announced that former Bridgestone Corp. executive Yusuke Shimasaki agreed to plead guilty and to serve 18 months in a U.S. prison for his role in the international conspiracy involving anti-vibration rubber parts sold in the United States and elsewhere. According to the one-count felony charge also filed in federal court in the Northern District of Ohio, Shimasaki, along with co-conspirators, allegedly conspired to fix, raise and maintain the prices of automotive anti-vibration rubber parts sold to the same automobile firms as the three individuals who were charged on April 15. Shimasaki allegedly participated in the conspiracy from at least as early as January 2001 until at least December 2008.

During that time period, Shimasaki had various jobs, including sales manager, executive vice president and general sales manager. According to the plea agreement, in addition to serving time in prison, Shimasaki has also agreed to pay a $20,000 criminal fine and to cooperate in the department's investigation. The plea agreement is subject to court approval.

Brent Snyder, Deputy Assistant Attorney General for the Antitrust Division's criminal enforcement program, said in a statement that the charge "once again demonstrates the Antitrust Division's vigorous commitment to hold individuals accountable for engaging in anticompetitive conduct."

The three individuals indicted on April 15 include Tanaka, who was employed in various posts involving anti-vibration rubber parts sales, including at Bridgestone's U.S. subsidiary from about 1991 until at least February 2011. He is currently manager of the international planning section. Ryuto, who no longer works at Bridgestone, had been at the company from about 1991 until at least June 2008, and held various jobs, including general manager and director of anti-vibration rubber parts sales. Yoshida also no longer is at Bridgestone,

but had worked there from about 1997 until at least September 2008 when he, too, held different jobs involving anti-vibration rubber sales.

Of those three indictments, Snyder said in a statement that the action "demonstrates the Antitrust Division's vigorous commitment to hold individuals accountable for engaging in anticompetitive conduct," and he added that antitrust violations "are not just corporate offenses but also crimes by individuals."

The government charges that the three defendants and their co-conspirators held meetings and had communications in Japan during which they furthered their alleged conspiracy involving the sales of anti-vibration rubber products to automakers in the U.S. and elsewhere. These products are comprised mostly of rubber and metal and are installed in suspension systems and engine mounts and other parts of autos. Their purpose is to reduce road and engine vibration.

Bridgestone pleaded guilty on February 13 and agreed to pay a $425 million criminal fine for its role in the conspiracy. The three individuals in the indictment are charged with violations of the Sherman Act that carry a maximum penalty of 10 years of jail time and $1 million criminal fine for individuals.

REFERENCE:

http://www.justice.gov/atr/public/press_releases/2014/305235.htm

http://www.justice.gov/atr/public/press_releases/2014/305205.htm

Showa Corp. guilty plea in auto parts case

Showa Corp. will plead guilty and pay a $19.9 million fine for its role in a conspiracy to rig bids and fix prices for pinion-assist type electric-powered steering assemblies that are installed in cars, the Justice Department announced on April 23.

The Department's investigation into bid rigging and price fixing in the auto parts industry has now resulted in either guilty pleas or agreements to plead guilty from some 27 companies and 24 executives. The criminal fines amassed from these cases total $2.3 billion.

Showa's decision to plead guilty came after the Department filed a one-count felony charge on April 23 in U.S. District Court for the Southern District of Ohio in Cincinnati in which it alleged that the Japanese-based manufacturer had conspired to rig bids and fix prices for certain pinion-assist electric powered steering assemblies sold to Honda Motor Co. Ltd. and some of its subsidiaries.

"Today's guilty plea marks the 27th time a company has been held accountable for fixing prices on parts used to manufacture cars in the United States," Bill Baer, who heads the Justice Department's Antitrust Division, said in a statement, in which he added that law enforcement authorities are "committed to prosecuting illegal cartels that harm U.S. consumers and businesses."

REFERENCE:

http://www.justice.gov/atr/public/press_releases/2014/305347.htm

PEOPLE

Robert Langer on Janet Steiger

Editor's Note: Attorney Robert M. Langer delivered remarks honoring former FTC chairwoman Janet Dempsey Steiger at the FTC's annual Miles Kirkpatrick Award Ceremony on April 17. Steiger was appointed to the FTC by President George H. W. Bush, and served as chairwoman of the agency from 1989 to 1995.

I am truly honored to speak to you today about Janet Dempsey Steiger. I am also thrilled that after ten years, I have finally been able to meet, in person, both Janet's son, Bill, and sister, Ann.

I served as Chair of the National Association of Attorneys General Multistate Antitrust Task Force from 1990 to 1992. My responsibilities included helping to coordinate the activities of the Task Force with both the Antitrust Division and the Federal Trade Commission, including the meetings of the Executive Working Group, comprised of a few select state attorneys general, the Chairman of the FTC and the Assistant Attorney General in charge of the Antitrust Division.

Because I had served as an assistant attorney general in the Connecticut Attorney General's Office for close to twenty years before assuming my Task Force responsibilities, I had been fully aware that the relationship between state and federal enforcers tended to ebb and flow quite considerably. What became immediately apparent to my colleagues, and me however, was the positive impact Chairman Steiger had on the state/federal working relationship. There was a dramatic improvement in communication, cooperation and coordination of our respective activities that manifested itself in innumerable ways, including joint actions. However, perhaps the single most important change was attitudinal. The states were finally accorded the respect that they believed they had earned and deserved. Through Janet's efforts working with Bureau Chiefs Kevin Arquit and Barry Cutler, the state/federal relationship dramatically improved – and unquestionably, it stands as one of Janet's most enduring legacies – one that continues to this day. I would be remiss if I did not also acknowledge the efforts of the former Antitrust Division chief, Jim Rill. He too deserves great credit for improving the state/federal working relationship.

During Janet's tenure, I was privileged on several occasions to speak on panels with her. In fact, in my office is a wonderful photo of Janet, Jim Rill, Tom Kauper and me on a panel at the then extant New England Antitrust Conference held at Harvard. Dan Goldberg served as moderator of our panel. Janet and I became friends as well as colleagues during our respective tenures, and I, along with so many others, came to admire Janet as both an extraordinary individual and inspirational leader.

When Janet passed away in 2004, I had already left government service. I had continued my active role in the ABA Section of Antitrust Law and was asked by the then Chair of the Section, Kevin Grady, to develop a worthwhile use for the Section's reserves funds. After considerable study,

we proposed to the Council of the Section, a project that would provide stipends to worthy law students to intern during the summer in offices of state and territorial consumer protection agencies. The project was conceived of as a consumer protection outreach initiative that sought to provide meaningful assistance to the states while, at the same time, informing law schools, the ABA and the states that the home for consumer protection within the ABA was, and is, the Section of Antitrust Law.

Kevin Grady then had an epiphany and suggested that we name the Project in honor and in memory of Janet. I thought that was an inspired idea. I then reached out to Janet's family and sought their permission for the Section to name our new enterprise the Janet D. Steiger Fellowship Project, and Bill and Ann kindly consented - for which we were, and are, deeply grateful.

Under the leadership of Rich Wallis, the Chair of the ABA Section of Antitrust Law who succeeded Kevin Grady, the Steiger Fellowship Project became operational ten years ago with eight states hosting one Steiger Fellow each. During these ten years, the staff member who has worked most closely with me to facilitate placement of the Steiger Fellows, and without whom the Project could not have succeeded, has been the Assistant Director of the Section of Antitrust Law, Deborah Morgan. My legal assistant, Sandy Sequenzia, has also provided invaluable assistance.

Because the leadership of the Section of Antitrust Law has steadily increased the funding for the Project, this year we were able to select a total of thirty-seven jurisdictions, including both the Northern Mariana Islands and Puerto Rico, to receive a Steiger Fellow. By the end of this summer, over 220 law students will be able to call themselves Steiger Fellows. Each student now receives a $5,000 stipend for an eight-week internship, and, if not living at home during the summer, an optional travel/housing allowance.

The states and territories inform us over and over again how valuable the Steiger Fellows have been in helping them to fulfill their consumer protection mission, and students in turn, inform us that they have been provided with a wonderful opportunity to sample public service during their law school careers. We particularly wanted to reach out to law students with an interest in public service, but who, for financial reasons, are just not able to volunteer their services over the summer.

While our principal goal is not necessarily for each student upon graduation to enter public service, many in fact have done so, including, for example, former Steiger Fellows who serve as our principal contacts in administering the Fellowship Project in both Montana and Washington State.

Before I close, I just want to note that I and the current Vice Chairs of the Project, Lesley Fair, Kevin O'Connor, Milton Marquis and Harvey Saferstein, as well as former Vice Chair, John Villafranco, do our very best to participate briefly at the beginning of every Steiger Fellowship interview. Jurisdictions often interview as many as five or six students. It is a challenge for us to coordinate our schedules within a thirty day window in order to meet the demand, but we do so in large part to be sure that each law student, whether or not he or she is chosen as a Steiger Fellow, hears directly from one of us why we named the Project in memory of Janet.

It has been my honor to Chair the Janet D. Steiger Fellowship Project since its inception, and I am so grateful that I am able to say that Janet Steiger was my friend. Thank you.

–Robert Langer is an attorney in Wiggin and Dana's Hartford, Conn., office. He is chairman of the Janet D. Steiger Fellowship project of the American Bar Association's Section of Antitrust Law. His email address is RLanger@wiggin.com.

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Contact:

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CALENDAR

May 1 – FTC Commissioner **Maureen Ohlhausen** will speak at the Common Ground Conference sponsored by the Federal Trade Commission and the Office of the U.S. Attorney for the Southern District of Illinois. The conference will take place at Washington University School of Law in St. Louis.

May 6 – The American Antitrust Institute is holding its 14th annual Energy Roundtable. The meeting will take place at the National Rural Electric Cooperative Association headquarters at 4301 Wilson Boulevard, Arlington, Virginia. For more information, go to: http://www.antitrustinstitute.org/events/14th-annual-energy-roundtable

May 6 – FTC Commissioner **Maureen Ohlhausen** will speak at the Practicing Law Institute's Antitrust Institute 2014: Developments and Hot Topics in New York City. or more information, go to: https://www.pli.edu/Content/Seminar/Antitrust_Institute_2014_Developments_Hot/_/N-4kZ1z12f1v?ID=176658.

May 7 – The FTC is holding a forum on "Consumer Generated and Controlled Health Data" as part of its Spring Privacy Series. The session will be held from 10 a.m. to 12 noon at the FTC Conference Center, 600 New Jersey Avenue, NW, Washington, DC. For more information, go to: http://www.ftc.gov/news-events/events-calendar/2014/05/spring-privacy-series-consumer-generated-controlled-health-data

May 14 – FTC Commissioner **Maureen Ohlhausen** will participate in a conversation at a luncheon session at a conference on the Future of Privacy and Data Security, sponsored by the Law and Economics Center at George Mason University in Arlington, Virginia. She will be interviewed at noon by Chris Wolf, a partner at Hogan Lovells LLP. For more information, go to: http://www.cvent.com/events/lec-public-policy-conference-on-the-future-of-privacy-data-security-regulation/event-summary-3b3eb1a1e75f423c85da4c1681180be5.aspx.

May 15-16 – Georgetown University Law Center is sponsoring a conference on "International Double Jeopardy: Issues Facing Multinational Corporations in Parallel Cross-Border Investigations." For more information, go to: http://www.law.georgetown.edu/continuing-legal-education/programs/cle/multinational-corporations/index.cfm

May 16 – FTC Commissioner **Julie Brill** will speak at the Boston Bar Association's "Meet the Privacy Officers" conference. She is scheduled to speak from 10:50 a.m. to 11:30 a.m. The event will be held at 16 Beacon Street, Boston. For more information, go to: https://www.bostonbar.org/membership/events/event-details?ID=15356

May 17 – FTC Commissioner **Julie Brill** will speak at the Federal Communications Bar Association's Annual Seminar at 10 a.m. The event is at 10 a.m. at The Homestead in Hot Springs, Virginia. Contact: Natalie Roisman, nroismnan@wbklaw.com

May 19 – FTC Commissioner **Julie Brill** will discuss self-regulatory organizations during a speech at the National Association of Attorneys General's Consumer Protection Conference. Her speech is at 2:00 p.m. at the Westin Georgetown, 2350 M Street, Washington, DC. Contact: Michelle Shuster, mshuster@mpslawyers.com.

May 20 – FTC Commissioner **Julie Brill** will speak at the National Advertising Initiative's Annual Summit at 11 a.m. at Arent Fox, 1717 K Street, NW, Washington, DC. Contact: Marc Groman, mgroman@networkadvertising.org

May 22 – FTC Commissioner **Julie Brill** will discuss data security issues from 11 a.m. to 12 p.m. at Georgetown Cybersecurity Law Institute at Georgetown University Law Center, 600 New Jersey Avenue, Washington, DC. Contacts: Lynn Adams, laa49@georgetownlaw.edu; Mary Ellen Callahan, MECallahan@jenner.com

May 22-24 – The American Bar Association's Antitrust Section is holding its Antitrust in Asia Conference. The meeting will be held at the China World Hotel in Beijing. For more information, go to: http://www.americanbar.org/calendar/2014/05/antitrust-in-asia--beijing.html

May 28 – FTC Commissioner **Julie Brill** will participate in the University of Cambridge and Indiana University Symposium on Government Access to Private Sector Data. The event will take place in London. Contact: Fred Cate, Fred@fredhcate.org

June 2 – FTC Commissioner **Julie Brill** will deliver the keynote address at the European Data Supervisor's Workshop on Privacy and Competitiveness in the Age of Big Data in Brussels, Belgium. Contact: Peter Hustinix, edps@edps.europa.eu.

June 3 – FTC Commissioner **Julie Brill** will participate in the University of Cambridge and Indiana University Symposium on Data Risk Management. The event will take place in London. Contact: Fred Cate, Fred@fredhcate.org

June 18 – The American Antitrust Institute is holding an invitational symposium on "A Multidisciplinary Examination of Efficiency." The session will be held at the National Press Club, 529 14th Street, Washington, DC. For more information, go to: http://www.antitrustinstitute.org/2014symposium

June 19 – The American Antitrust Institute is holding its annual conference on "The Inefficiencies of Efficiency." The session will be held at the National Press Club, 529 14th Street, Washington, DC. For more information, go to: http://www.antitrustinstitute.org/2014annualconference

June 25 – FTC Commissioner **Julie Brill** will address the University College of London and Jevons Institute London Colloquium on Two-Sided Markets. Contact: Antonio Bavasso, Antonio.Bavasso@AllenOvery.com

June 26 – FTC Commissioner **Julie Brill** will address the Global Competition Review's Conference on Technology, Media and Telecoms. The speech is scheduled for 11:00 a.m. in London. Contact: Antonio Bavasso, Antonio.Bavasso@AllenOvery.com

June 27 – FTC Commissioner **Julie Brill** will speak at the Aspen Ideas Festival at the Aspen Institute in Aspen, Colorado. Contact: Rachel Elman, Rachel.Elman@aspeninstitute.org

September 15 – The Federal Trade Commission is holding a workshop on "Big Data: A Tool for Inclusion or Exclusion?" The workshop will focus on the impact of big data on consumers, especially low-income and underserved populations. Interested parties have until August 15 to submit comments, papers and topic suggestions. The session will be held that the FTC Conference Center Constitution Center, 400 7th Street, NW, Washington, DC. For more information, go to: http://www.ftc.gov/system/files/attachments/press-releases/ftc-examine-effects-big-data-low-income-underserved-consumers-september-workshop/140411bigdatawksp.pdf?Source=govdelivery

October 16-17 – The Federal Trade Commission is holding its seventh annual Microeconomics Conference at the Constitution Center in Washington, D.C. For more information, go to: http://www.ftc.gov/news-events/events-calendar/2014/10/seventh-annual-federal-trade-commission-microeconomics

November 6-7– The Federal Trade Commission is holding a celebratory dinner and all-day symposium on the agency's 100th anniversary. The agency will post details on the event at http://www.ftc.gov/about-ftc/our-history

December 2 – The American Antitrust Institute is holding its 8th Annual Private Enforcement Conference and Awards Dinner. The session will be held at the National Press Club, 529 14th Street, Washington, DC. For more information, go to: http://www.antitrustinstitute.org/events/8th-annual-private-enforcement-conference-and-awards-dinner.