

**Table 1: Post-Consummation Challenges, 2001–2008 (Complete)\***

BY ROBERT B. BELL

Parties/Deal	Closed	Challenged	Reason for Challenge	Relief
MSC Software Corp.'s acquisitions of Universal Analytics, Inc. and Structural Analysis & Research Corp.	1999/6/24; 1999/11/4	2001/10/10	Achieved monopoly power in software for engineering analysis, "finite element analysis," and Nastran software.	Create and divest "up to two" viable on-going businesses engaged in the licensing or sale of Nastran software; ancillary relief.
Chicago Bridge & Iron Company acquisition of Pitt-Des Moines, Inc. (reported under HSR)	2001/7/21	2001/10/25	Anticompetitive effects in markets for LNG, LPG, and LIN/LOX/LAR tanks, and LNG plants and import terminals.	Reestablish and divest acquired business; ancillary relief.
Airgas, Inc. acquisition of Puritan Bennett Medical Gas Business from Mallinckrodt (reported under HSR)	2000/1/21	2001/10/26	Achieved monopoly power in the production and sale of nitrous oxide.	Divest acquired nitrous oxide plants, customer contracts, bulk nitrous oxide.
The Hearst Trust, The Hearst Corporation acquisition of Medi-Span, Inc. (reported under HSR)	1998/1/15	2001/11/20	Achieved monopoly power in integratable drug datafiles.	Create and divest competing business consisting of all acquired assets and other assets necessary to compete.
Dairy Farmers of America acquisition of Southern Belle Dairy Co. LLC	2002/2/25	2003/4/24	Substantially lessened competition for sale of milk sold to schools in 100 school districts in eastern Kentucky and Tennessee.	Divest all interests in acquired company to suitable buyer; ancillary relief (including best efforts to force joint venture partner to divest interests).
Aspen Technology, Inc. acquisition of Hyprotech	2002/5/31	2003/8/6	Combined two most significant and closest competitors in continuous process engineering simulation software, batch process engineering software for process industries.	Divest integrated engineering software business to Bentley Systems; divest batch and continuous process software to a Commission-approved buyer; ancillary relief.
Evanston Northwestern Healthcare Corp. acquisition of Highland Park Hospital (reported under HSR)	2000/1	2004/2/10	Acquisition of hospital and affiliated physician association allowed Evanston to raise prices at all three area hospitals for hospital services and physician services.	Conduct remedy required Evanston to allow private payors to negotiate separately with Highland Park Hospital; ancillary relief ensured independent negotiation and arbitration of disputes.
Hologic, Inc. acquisition of Fischer Imaging Corp.	2005/6/22	2006/7/7	Eliminated only significant rival in market for Prone Stereotactic Breast Biopsy Systems.	Divest all acquired assets to a pre-approved acquirer; ancillary relief.
Dan L. Duncan acquisition from Duke Energy Field Services of TEPPCO, LLC and limited partnership units of TEPPCO Partners, L.P.	2005/2/24	2006/8/18	Combined the two largest providers of salt dome storage for Natural Gas Liquids in Mont Belvieu, Texas (connected to the Dixie Pipeline supplying the Southeastern United States).	Divest interest in TEPPCO-owned NGL Storage Facility and related pipeline and land assets; ancillary relief.

\* This table accompanies the article by Robert B. Bell, Voluntary HSR Filings: A Modest Proposal, *ANTITRUST*, Spring 2009, at 69.

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Amsted Industries acquisition of FM Industries	2005/12/1	2007/4/18	Achieved monopoly in market for new end-of-car cushioning units, 80% share of market for reconditioned end-of-car cushioning units.	Divest, without compensation, all acquired intangible assets and grant a perpetual royalty-free license to all Amsted IP.
Daily Gazette Company (Charleston Gazette) acquisition of Charleston Daily Mail from MediaNews Group, Inc.	2004/5/7	2007/5/22	Gave Charleston Gazette control over and ability to shut down Charleston Daily Mail, leading to monopoly in Charleston, WV local daily newspaper market.	Not yet resolved. <sup>1</sup> Relief sought: rescind transaction, restore Charleston Daily Mail to its pre-deal competitive condition, further relief as necessary to redress injury and restore competition.
TALX Corp. acquisition of six competitors	2002/3/27 through 2005/11/1	2008/4/28	Acquisitions eliminated competition in the markets for outsourced unemployment compensation management services and employment verification services	Consent decree eliminated non-compete clauses for employees, allowed customers to terminate long-term contracts (up to a total of \$10 mil.), prohibited agreements requiring ADP to subcontract to TALX services agreements with new customers.
Polypore International, Inc./ Microporous Holding Corp.	2008/2/29	2008/9/10	Anticompetitive effects and/or attempted monopolization in the market for (1) all polyethylene battery separators, or (2) four types of flooded lead-acid battery separators.	Not yet resolved. <sup>2</sup> Relief sought: relief necessary to restore competitive conditions, including but not limited to rescission, assignment of intellectual property, and ancillary relief.
Ovation Pharmaceuticals, Inc. acquisition from Abbott of NeoPren drug assets	2006/1	2008/12/16	Acquisition of only competing treatment for premature infants' heart condition violated § 7; accompanying price increase violated § 2.	Not yet resolved. <sup>3</sup> Relief sought: rescission of transaction, disgorgement, injunction prohibiting Ovation from owning interest in the competing drugs.
Microsemi Corporation acquisition of assets from Semicoa Inc.	2008/7/14	2008/12/18	Acquisition violated § 2 by creating monopoly in small signal transistors suitable for certain aerospace and military applications; violated § 7 by reducing from 3 to 2 competitors for specialized semiconductors for such applications.	Not yet resolved. <sup>4</sup> Relief sought: divest all tangible and intangible assets acquired; any ancillary relief necessary to restore competitive conditions.
Inverness Medical Innovations, Inc. acquisition of assets from ACON	2006	2008/12/23	Acquisition of assets related to digital consumer pregnancy tests violated § 2 where covenants limited ACON's ability to compete, including its ability to participate in competing joint venture.	Divest to specified new competitor an exclusive license to relevant IP; conduct remedy prevents Inverness from interfering in joint venture or in ACON's transfer of IP to joint venture partner.

<sup>1</sup> Opposition to Motion to Dismiss filed 2007/10/5, available at <http://www.usdoj.gov/atr/cases/daily.htm>.

<sup>2</sup> ALJ designated 2008/9/11. See <http://www.ftc.gov/os/adjpro/d9327/index.shtm>.

<sup>3</sup> Complaint filed in the District of Minnesota 2008/12/16. See <http://www.ftc.gov/os/caselist/0810156/index.shtm>.

<sup>4</sup> Complaint filed in the Eastern District of Virginia 2008/12/18. See <http://www.usdoj.gov/atr/cases/microsemi.htm>.