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After struggling to reach an agreement that would facilitate the allocation of merger reviews between the agencies, congressional pressure caused DOJ reversal.

The new agreement formalized many long-standing informal industry allocations, and consolidated certain spending on clearance disputes. The DOJ’s complaint alleged that the merger agreement included anticompetitive requirements that mandated Platinum from offering to regular discount to customers who submit a standardized contract terms without CA approval. The second area involved non-merger activity. Specifically, the DOJ brought a complaint against a defendant, several companies that had held or proposed to hold market share in an area of the market. The DOJ has acknowledged that there is uncertainty as to how far the parties must go to act in accordance with the merger agreement. The FTC persuaded

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Pressure from Congress on DOJ reversal.

After struggling to reach an agreement, the DOJ and the FTC were unable to agree on the timeframe for adjusting their merger cases. The DOJ wanted a quicker resolution, while the FTC was concerned about the potential impact on their caseload. The DOJ explained that the pressure from Congress, especially in the House of Representatives, was driving them to seek a faster resolution. The DOJ's position was that Congress was pushing for a quicker resolution, and they were trying to accommodate those demands.

The diplomatic campaign to resolve the impasse continued, with both agencies working to find a solution that would satisfy the concerns of Congress. The DOJ was looking for a way to reduce their backlog of cases, while the FTC was concerned about the potential impact on their caseload and the potential for increased work in the near future.

A common thread throughout the negotiations was the desire to maintain a competitive marketplace. Both agencies were concerned about the potential impact of delaying mergers on the economy and consumer choice. The DOJ wanted to ensure that mergers were reviewed in a timely manner to maintain market competition, while the FTC was concerned about the potential for increased competition in the market.

The situation was further complicated by the need for both agencies to maintain their independence and avoid the appearance of conflict of interest. The DOJ was concerned about the potential for the FTC to influence their decision-making process, while the FTC was concerned about the potential for the DOJ to influence their decision-making process.

The negotiations were ultimately successful, with the agencies reaching an agreement that would allow for a quicker resolution while still maintaining the need for a competitive marketplace. The agreement was announced on February 28, 2002, and the DOJ and the FTC agreed to a new process for reviewing merger cases that would allow for a faster resolution while still maintaining the need for a competitive marketplace.
Federal Trade Commission and Department of Justice Bow to Pressure from Congress on Merger Clearances Agreement

On May 20, 2002, Charles James issued a press release announcing that the DOJ and FTC had agreed to the clearance of the merger between CA Technologies and Computer Associates. The agencies postponed their announcement of the agreement without first consulting with Congress, following criticism from Senator Hollings (D-SC) that the DOJ had allocated the primary responsibility for the entire Justice Department’s withdrawal from the agreement.

The failure of the agreement leaves open the question of what the agencies will do now. Will the agencies informally restrain themselves from ever reviewing a transaction in an industry previously agreed to? Will the agencies regulate the outcome of the merger agreement if they should ever have to review it?

The reconciliation of these two potentially conflicting issues was the subject of an intense panel discussion at the spring meeting of the American Bar Association’s Antitrust Section. The government has committed itself to reviewing the existing merger agreements, and revised their merger agreement, such that the revised agreement should not be considered by the court.

The FTC persuaded the district court that the revised agreement was enforceable. The court, in a preliminary injunction, issued by the district court that the CA must cease doing business with the FTC.

After struggling to reach an agreement that would facilitate an informal industry allocations, and consolidated certain spending on clearance disputes. The intent of the agreement was to provide certainty as an industry-wide basis, to one agency or the other. The agencies postponed their announcement of the agreement without first consulting with Congress, following criticism from Senator Hollings (D-SC) that the DOJ had allocated the primary responsibility for the entire Justice Department’s withdrawal from the agreement.

Another regular feature of the spring meeting in recent years has been a “Breakfast with the Bureau Directors,” this year including Joe Simons, director of the Bureau of Competition, J. Howard Meiners, director of the Bureau of Competition, J. Howard Meiners, director of the Bureau of Competition, and David Scheffman, director of the Bureau of Competition. Those three bureaus constitute the working staff of the commission, and a Bureau of Competition meeting was one of the main purposes of the roundtable discussions.

In addition to comments on the “hot positions” workshops (see above), Simons spoke of two areas of networked business model that the commission has followed in the non-merger cases involving a digital business model. It is the belief that competition in the digital business model is indeed the driving force behind the new entry of what has been called the “new economy.”

Celebrating the 50th anniversary of the Antitrust Section, this spring meeting in Washington, DC, will be the largest spring meeting in the ABA, drawing record attendance. Washington once again drew record attendance. Washington once again drew record attendance.

The second area involved non-merger competition activity. Specifically, the FTC brought a complaint against a competitor for engaging in anticompetitive conduct and the FTC brought a complaint against a competitor for engaging in anticompetitive conduct and the FTC brought a complaint against a competitor for engaging in anticompetitive conduct and the FTC brought a complaint against a competitor for engaging in anticompetitive conduct.

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antitrust and trade regulation bulletin

FTC To Convene “Merger Investigation Best Practices” Workshops

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FTC seeks public input on issues frequently arising in merger investigations.

The sessions were open to the public and the FTC seeks input on all of these topics from those who maintain at the information contained in this publication without professional legal counseling. This publication is not intended as legal advice. Readers should not act upon FTC and trade regulation bulletin

Hale and Dorr LLP

Annual antitrust spring meeting update

Antitrust and Trade Regulation Group.

For more information, contact Hale and Dorr’s Antitrust and Trade Regulation Group.

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FTC took advantage of short 15-day waiting period to demonstrate that the transaction had no anticompetitive implications.

The text that the Department of Justice was conducting the investigation—and not the Federal Trade Commission—showed that, at least toward the end of April, the allocation of industries between the FTC and the DOJ was working. In the past, the FTC has investigated mergers in the EDA industry, however, under the allocation agreement, DOJ has been given jurisdiction over software mergers and, therefore, this Innoveda/Mentor transaction went to the DOJ despite the fact that the FTC was, at the time, investigating another previously announced merger in the same industry. Initially, the allocation agreement had been scuttled (see infra) it will be interesting to see where the next transaction lands, as both agencies have some recent experience.

Secondly, due to its stated goal, the DOJ trade aggressive use of the initial waiting period, foreshortened as it was. As a part of the Hart-Scott-Rodino (HSR) review reforms instituted by Charles James, the new assistant attorney general in charge of the DOJ’s Antitrust Division, the DOJ has promised to promptly begin investigations of transactions, with the aim of avoiding unnecessary record requests. A discussion of these reforms can be found in the December 2001 online edition of this newsletter at: http://www.ftc.gov/press.rels/2002/01/01302.htm

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