

**FTC Unwinds Non-HSR Reportable Deal****July 12, 2006**

Both the Federal Trade Commission and the Antitrust Division of the Department of Justice continue to scrutinize competitively aggressive transactions too small to be subject to the premerger notification requirements of the Hart-Scott-Rodino Act.

Most recently, the Commission announced that it would challenge Hologic, Inc.'s \$32 million purchase of the diagnosis and breast cancer screening business of Fischer Imaging Corporation. The transaction was completed on September 29, 2005. The Commission began its investigation after the transaction had closed. In its complaint against Hologic, the Commission alleged that Hologic's acquisition of Fischer's prone stereotactic breast biopsy systems (SBBSs) business harmed consumers. Prone SBBSs are integrated systems that allow doctors to conduct highly precise, minimally invasive breast biopsies using x-ray guidance. The Commission also filed a consent decree that would require Hologic to sell the Fischer prone SBBS assets to Siemens AG. The Commission vote to approve the consent decree was 5-0.

The Commission's actions are notable because Hologic's acquisition of Fischer's assets was not reportable under the Hart-Scott-Rodino Act, as the transaction was not valued at above the \$56.7 million filing threshold. According to the Commission, at the time of the transaction, Fischer was Hologic's only significant competitor in the U.S. market for prone SBBSs. As a result of the acquisition, Fischer relinquished all of its rights to develop, market, and sell prone SBBSs in the United States. According to the Commission, this left Hologic with a virtual monopoly in the U.S. prone SBBS market.

The consent decree requires the sale of the prone SBBS assets for \$6.5 million to Siemens. It would also allow Hologic to retain a royalty-free, nonexclusive, irrevocable worldwide right and license to the intellectual property of Fisher's prone SBBSs. While the Commission recognizes that Siemens is particularly well positioned to manufacture and sell prone SBBSs in the United States, it retained the right to unwind the sale and divest the assets to another Commission-approved buyer.

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