

## **Foreign Company Pleads Guilty to Felony in Connection with an Antitrust Merger Case**

**March 23, 2006**

In an extraordinary move, the Antitrust Division of the Department of Justice (DOJ) brought a criminal prosecution against CMET, Inc. (CMET) for obstruction of justice relating to the settlement of a merger case. The merger, which dated back to 2001, involved the combination of DTM Corporation and 3D Systems, two of only three firms that produced industrial rapid prototyping (IRP), a technology that enables a machine to transform a drawing into a three-dimensional model. The DOJ moved to block the transaction, alleging that the proposed transaction was likely to reduce competition in violation of Section 7 of the Clayton Act, but settled the case when the parties agreed to license their technology to a third party. CMET was one of several bidders for the license.

According to its press release, DOJ charged that CMET and unidentified co-conspirators agreed to obstruct justice by, among other things:

- 1) Concealing from DOJ its motivation for acquiring the technology license, including a patent settlement that if known to DOJ would have disqualified CMET.
- 2) Altering translation of documents that CMET submitted to DOJ in connection with its bid to acquire the technology license.
- 3) Making false representations to DOJ about its intent to compete vigorously if given the technology license.

Obstruction of justice claims brought under 18 U.S.C. § 371 carry a maximum penalty of \$500,000. CMET pled guilty and agreed to a fine of \$100,000.

The DOJ generally prefers divestitures to licensing remedies in merger cases because they are skeptical that a licensee will compete effectively if entanglements with the licensor remain in place. Although deception, such as that alleged here, can affect a divestiture as well, it is possible that this case will affect the DOJ's willingness to accept licensing remedies in the future. The chief lesson here, however, is that parties to a transaction and potential divestiture acquirers must play it straight with the DOJ or face potential criminal liability.

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