



MORGAN LEWIS ON COMPETITION

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NEW HART-SCOTT-RODINO RULES REGARDING REPORTING THRESHOLDS AND NON-CORPORATE ENTITIES FINALIZED

By Harry T. Robins and Willard K. Tom

The Hart-Scott-Rodino Antitrust and Improvements Act of 1976 ("HSR Act") and its corresponding regulations require parties to certain transactions to notify the federal antitrust agencies and to observe a waiting period before consummating the transaction. Two recent changes to this regime will affect the reporting obligations of companies. The first change adjusts the dollar thresholds for inflation. The second widens the reportability of acquisitions of partnerships, LLCs, and other non-corporate entities, although it also exempts certain transactions that formerly were reportable.

Changes to Notification Thresholds

The inflation adjustment raises the size-of-transaction jurisdictional threshold from above \$50 million to above \$53.1 million. Transactions below that size need not be reported. The rule change similarly adjusts the HSR Act's graduated-fee structure:

Valuation Of Transaction (\$millions)	Filing Fee
> \$53.1, but < \$106.2	\$45,000
≥ \$106.2 or greater, but < \$530.7	\$125,000
\$530.7 and up	\$280,000

The so-called size-of-person thresholds have also been adjusted. Now, either the Acquiring or the Acquired Person, as defined by the applicable regulations, must have \$106.2 million in annual net sales or total assets and its opposite must have \$10.7 million in annual net sales or total assets. Furthermore, the new rules provide that if the value of the transaction exceeds \$212.3 million, as determined pursuant to the HSR Act, the size-of-person test is disregarded. The FTC is required to make these inflation adjustments annually starting this year. The revised thresholds apply to all transactions that close on or after March 2, 2005, the effective date for these regulations.

New Rules Readied for Non-Corporate Entities

The FTC has also promulgated its long-awaited rules for non-corporate entities, e.g., partnerships and limited liability companies (LLCs). The FTC first published a version of these rules for comment last spring. The rules will go into effect on April 7, 2005. These
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WHEN IS ENOUGH, ENOUGH? SEARCHING FOR THE MEANING OF "SUBSTANTIAL COMPLIANCE"

By Willard K. Tom and Jason A. Lomax

Any company that has been involved in an antitrust review of a proposed transaction is familiar with a "Second Request" and the term "substantial compliance." And, while it remains unclear as to exactly what companies need to provide to the reviewing agency in order to comply with such a request, a case just filed illustrates that the Federal Trade Commission will not shy away from challenging a response it deems insufficient.

On March 4, 2005, the FTC filed a motion in the U.S. District Court for the District of Columbia to require Blockbuster, Inc. to comply with the statutory rules of the HSR Act. The FTC is investigating Blockbuster's proposed cash and stock tender offer to purchase all of the outstanding voting securities of Hollywood

Entertainment Corporation, another movie and video game rental outlet. At the end of the HSR waiting period (initially 15 days because Blockbuster's offer was first structured as a cash tender offer), the FTC issued a Request for Additional Information or Documentary Material (i.e., a Second Request), which extended the waiting period for consummation of the offer for an additional period of 30 days until after the date on which the acquiring party submits a complete response to the FTC. The 30 day waiting period was triggered because Blockbuster's offer consisted of cash and stock. Pursuant to the HSR regulations, a complete response must contain "all the information and documentary material required to be submitted pursuant to such a request" or, in the event a
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Morgan Lewis

C O U N S E L O R S A T L A W

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NEW HART-SCOTT-RODINO RULES REGARDING REPORTING THRESHOLDS AND NON-CORPORATE ENTITIES FINALIZED

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new rules, which are a marked departure from established practice, can be summarized as follows:

- Acquisition of “control” in an existing LLC or partnership will be potentially reportable events under the HSR Act. Such acquisitions are currently not subject to the HSR Act’s reporting requirements.
- Transfers of assets between two commonly controlled partnerships or LLCs will be exempt from the HSR Act.
- The formation of LLCs and partnerships will become potentially reportable events under the HSR Act. Again, such actions are now not covered by the HSR Act.
- The acquisition of voting securities of an issuer holding only exempt assets will in all cases be exempt from the HSR Act.

Acquisition of Control of Non-Corporate Entities

Before these amendments, the acquisition of 100% of an existing partnership or LLC was a potentially reportable event, but an acquisition of 99% or less of the interests in a partnership or LLC was not reportable. Under the new rules, an acquisition of control of an unincorporated entity will be a potentially reportable event and the acquisition of additional interests by a person who already has control of the noncorporate entity will be exempt. The rules provide that an entity controls a partnership or an LLC if it has the right to 50% of the profits or 50% of the assets of that partnership or LLC upon its dissolution.

Intra-Person Transfers Between Non-Corporate Entities

A transfer of assets between a corporate parent and its subsidiary or between two subsidiaries controlled by the same parent are exempt on the basis that such intraperson transfers have no meaningful competitive effect under the current regulatory regime. If the assets are transferred between two partnerships or LLCs controlled by the same person or from a partnership or LLC to a controlling partner or member, such acquisitions were not exempt under the former rules despite the fact that such intra-person transfers between non-corporate entities have no competitive consequence. Under the new rules, such intra-person asset transfers between non-corporate entities, including partnerships and LLCs, will be exempt.

Formation of Non-Corporate Entities

Before the implementation of the new rules, the formation of a partnership was not a reportable event despite the fact that the transaction may have substantive antitrust implications by combining separately controlled competing assets. The formation of an LLC in which one party contributes cash and the other contributes business assets was also not reportable under the previous set of regulations. The new rules, once in effect, will capture such transactions.

Rule 802.4 Extended to All Exempt Assets

Under former HSR Rule 802.4, the acquisition of the voting securities of an issuer holding certain exempt assets (but not all exempt assets) was exempt if the nonexempt assets held by such issuer are valued at \$50 million or less. For example, the acquisition of the voting securities of an issuer holding only gas reserves of less than \$500 million in value was exempt, but the acquisition of an issuer holding only cash was not exempt. The new rules extend the exemption found in Rule 802.4 to all types of exempt assets. This change will ameliorate the dissimilar treatment of asset and voting securities acquisitions under the HSR Act.

These amendments to the HSR Act regulations could have a significant impact on a party's filing obligations and illustrate the need to stay current with HSR Act practice and procedure. Moreover, the changes concerning the acquisition of control of unincorporated entities and the formation of such entities mark a significant departure from current practice. As a result, more transactions will now be subject to the Act. Given that violations of the HSR Act can result in a fine of \$11,000 per day of violation—often mounting into the millions of dollars by the time a violation is prosecuted—the need for careful consideration of the possible HSR Act ramifications of these transactions is clear.

For additional information concerning these changes and related issues, please contact Willard K. Tom (wtom@morganlewis.com), Jason A. Lomax (jlomax@morganlewis.com), Harry T. Robins (hrobins@morganlewis.com), or Robert B. Wiggins (rwiggins@morganlewis.com). ■

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party is not able to provide a complete response, a statement of the reasons for noncompliance.

A month prior to the agency’s court filing, on February 4, 2005, Blockbuster certified that it had substantially complied with the Second Request. The Blockbuster Second Request contained the request to produce specific categories of data for each company store relating to pricing, non-price terms, incentive programs, late fees, membership fees, discounts, and other benefits offered to customers. According to the FTC’s complaint, Blockbuster’s response was incomplete in several respects. Most significantly, Blockbuster provided incorrect rental fee information, and, as a result of the error, the FTC’s econometric analyses to assess the likely competitive effects of the transaction was flawed. On February 22, 2005, Blockbuster provided revised data in response to the Second Request, but the company did not re-certify its substantial compliance.

On February 24, the FTC notified Blockbuster of the deficiencies in the submission. In response, Blockbuster filed an appeal with the FTC’s General Counsel on March 2, 2005. The following day, the FTC’s General Counsel determined that Blockbuster would not be in substantial compliance until it had corrected its failures to submit accurate data, meaning that the second HSR waiting period would not expire until late March. The FTC initiated its action the next day.

On March 9, pursuant to a settlement, the trial court entered an order providing that Blockbuster would not acquire any interests in the target before 11:59 p.m. EST on March 21, 2005 and dismissing, with prejudice, the FTC’s action against Blockbuster. The termination of this action takes away what would have been an opportunity for a court to consider whether a party has “substantially complied” with a Second Request. (In 1988, the FTC did file a motion to enjoin a transaction as a result of a party’s not providing the requisite additional information; that decision, however, does not discuss the term “substantial compliance.”)

The HSR Act does not define “substantial compliance,” and the HSR regulations do not offer any interpretation of the term. As a result, what materials need to be provided pursuant to a Second Request is often a topic of debate between agency staff and antitrust counsel.

Although not settling the debate on what is meant by “substantial compliance,” this matter continues to demonstrate the importance that the agencies place on the integrity of the Second

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FTC REBUFFED BY APPELLATE COURT

By J. Clay Everett, Jr.

In an opinion sharply critical of the Federal Trade Commission, the Eleventh Circuit overturned a decision by the FTC that so-called “reverse payments” made by Schering-Plough Corporation to Upsher-Smith Laboratories, Inc. relating to drugs used to treat potassium deficiencies violate the federal antitrust laws. *Schering-Plough Corp. v. FTC*, No. 04-10688 (11th Cir. March 8, 2005). Following its prior decision in *Valley Drug Co. v. Geneva Pharm., Inc.*, 344 F.3d 1294 (11th Cir. 2003), the Eleventh Circuit held that the starting point for assessing the anticompetitive effects of a patent settlement is to determine the “exclusionary scope” of the patents at issue. If the exclusionary effects of the challenged agreement do not exceed the exclusionary scope of the relevant patents, then the agreement cannot violate the antitrust laws according to the court.

The case arose in the regulatory environment created by the Hatch-Waxman Act. Upsher filed an application with the FDA to produce and sell a generic version of Schering’s pioneer drug, K-Dur. Schering then sued Upsher for patent infringement, which, pursuant to the Hatch-Waxman Act, prevented Upsher from marketing or selling its generic product for 30 months. On the eve of trial, Schering and Upsher settled the patent litigation. Upsher agreed not to market its generic product until September 2001. Schering agreed to pay Upsher \$60 million and to dismiss its patent claims with prejudice. Upsher also agreed to license some of its other products to Schering as part of the settlement.

The FTC issued a complaint in March 2001 challenging the agreement. Complaint Counsel argued that the agreement represented a naked attempt to delay entry by a viable competitor and should be condemned either per se or pursuant to a truncated rule of reason. The case was tried to an administrative law judge, who held that Complaint Counsel failed to prove that the agreement was anticompetitive. According to the ALJ, Complaint Counsel failed to meet its burden in two respects. First, Complaint Counsel failed to prove that the Schering patents were either invalid or not infringed. Absent such proof, the ALJ held, there was no reason to believe that Upsher would have been able to enter the market without infringing Schering’s patent until 2006, when Schering’s patent expired. Consequently, the agreement which permitted Upsher to enter the market in 2001 did not delay Upsher’s entry or decrease

competition. Second, Complaint Counsel failed to prove the boundaries of a relevant antitrust market, and this failure was fatal to Complaint Counsel’s claims. According to the ALJ, Complaint Counsel was required under the the Rule of Reason to show that the agreement, on balance, adversely affected competition in a relevant market.

In addition, the ALJ accepted the argument that Schering paid Upsher \$60 million as consideration for a license of products unrelated to the products at issue in the patent litigation. Thus, the payment was not itself inherently suspect.

The five FTC Commissioners voted unanimously to reverse the ALJ’s decision. The Commission concluded that the ALJ made four fundamental errors. First, the Commission held that Complaint Counsel was not required, as a matter of law, to prove that the Schering patent was either invalid or not infringed to carry its burden. Second, the Commission held that Complaint Counsel was not required to prove a relevant market as part of its affirmative case; hence Complaint Counsel’s failure to make that showing was not fatal to its claims. Third, the Commission held that respondents had failed to prove a sufficient procompetitive justification. Finally, the Commission faulted the ALJ’s factual conclusion that Schering paid Upsher \$60 million as consideration for licenses granted in other products.

The appellate court began its analysis by observing that the Commission did not challenge the validity of the patent at issue; nor did it allege that the patent infringement litigation was a “sham.” Thus, it was necessary, according to the Eleventh Circuit, applying prevailing law in that circuit, for the Commission to produce “substantial evidence” that aspects of the agreement exceeded the legitimate scope of Schering’s right to exclude under patent law. This the Commission failed to do.

There was substantial evidence in the record, the Eleventh Circuit held, to support the conclusion that payments made by Schering to Upsher provided reasonable consideration for (a) limiting the litigation risk associated with continued prosecution of Schering’s patent claims and (b) purchasing licenses to unrelated Upsher products. The Eleventh Circuit took the Commission to task for giving insufficient deference to the factual conclusions of the ALJ who decided the *Schering* case in the first instance and for refusing to credit—or even seriously consider—the parties’ procompetitive justifications for the “reverse payment” made pursuant to the challenged settlement agreement. There was “no evidence,” the Eleventh Circuit held,

to support the Commission’s conclusion that the “reverse payments” by Schering were made to purchase delayed generic entry. According to the Eleventh Circuit, “the Commission clearly made its decision before it considered any contrary conclusion.”

The Eleventh Circuit expressed particular concern that “the Commission’s opinion would leave settlements, including those endorsed and facilitated by a federal court, with little confidence.” The direct and indirect costs of litigation are too substantial to so easily condemn settlements, even if those settlements do have the potential to create anticompetitive effects. As long as a settlement of a patent infringement case “reflect[s] a reasonable implementation of the protections afforded by patent law,” it will not violate the antitrust laws.

The Eleventh Circuit decisively rejected the “quick look” standard applied by the FTC to evaluate patent settlements involving “reverse payments.” Its proposed standard recognizes the potential pro-competitive reasons for “reverse payments,” explicitly accounts for the exclusionary effects of the patents at issue and accords substantial deference to settlements of patent disputes. As such, the Schering decision should provide some comfort to companies considering settlement of patent infringement lawsuits.

Nevertheless, the Eleventh Circuit’s opinion leaves several questions unanswered. First, it is unclear what showing must be made to demonstrate that the effects of a patent settlement exceed the “exclusionary scope” of the patents at issue. Is it sufficient that a trier of fact may reasonably have concluded that the patents at issue were invalid or not infringed, or is it necessary to demonstrate that the litigation was a “sham”, i.e., objectively baseless? Will every challenge to a patent settlement require full-fledged litigation of the underlying patent dispute? Second, the Eleventh Circuit suggested in a footnote that a different standard may apply to cases involving incomplete patent settlements. Are settlements that fail to completely resolve patent litigation subject to a heightened antitrust standard?

The Eleventh Circuit’s decision in Schering perpetuates a split among the circuits regarding the standards for evaluating patent settlements involving “reverse payments.” The standard articulated in the Schering decision is directly at odds with the Sixth Circuit’s 2003 decision in the Cardizem CD case, which condemned a “reverse payment” patent settlement as per se illegal under the antitrust laws. Continued conservatism in settling patent disputes therefore remains advisable until a consensus develops among the circuits or the circuit split is resolved by the Supreme Court.

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FTC REBUFFED BY APPELLATE COURT

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GERMAN FEDERAL SUPREME COURT REVERSES VIEW ON SCOPE OF GEOGRAPHIC MARKETS

By Jürgen Beninca

In a landmark decision issued about nine years ago, the Highest German Civil Court (*Bundesgerichtshof*) held that the geographic scope of any relevant market cannot be larger than Germany because the German Federal Cartel Office's (FCO) jurisdiction was limited to Germany. In cases in which the geographic scope of the relevant market extended beyond Germany, the FCO was allowed to take proven competitive effects from outside of Germany into account when making its analysis. Nevertheless, the FCO's subsequent analysis usually focused on the German effects only.

The *Bundesgerichtshof* has now reversed this established practice in a decision pertaining to the German company Melitta and its proposed acquisition of the Belgian Schultink-Group. Melitta is the German and European market leader in vacuum cleaner bags in which Schultink is also active (predominantly outside of Germany). The FCO prohibited the merger, arguing that Melitta would strengthen its dominant market position in Germany by acquiring higher market shares in Western Europe. The FCO found that the merger would have increased Melitta's German market share by only 0.4%, while its market share in Western Europe would have increased from 47.7% to 56.8%. Thus, the FCO prohibited the merger even though it would have had only a very modest effect on the German market. According to the FCO, this increase in market share on the European level would have strengthened Melitta's position in Germany.

The Higher Regional Court in Düsseldorf reversed the FCO's decision on the basis of the *Bundesgerichtshof's* prior practice, holding that the FCO had not sufficiently shown why Melitta's German position would have been strengthened. The *Bundesgerichtshof*, in turn, reversed the decision of the Higher Regional Court in Düsseldorf by adopting a new policy regarding the geographic scope of

the relevant market in merger cases. In doing so, the court acknowledged criticism of its prior practice from some legal commentators, and pointed out inconsistencies arising from the concept of two different geographic markets (i.e., the geographic market that could never be larger than Germany and the "economically relevant market" as it would be defined for instance by the European Commission). The *Bundesgerichtshof* described the basis for its new view as follows:

If a company gains a dominant market position by means of a merger in a relevant geographic market area which is larger than Germany, then it acquires such dominant market position in every partition of this market. No such dominant position within the scope of the FCO's jurisdiction exists, on the other hand, if a company merely holds a market share in a domestic market segment that would lead to a dominant position if it were not just a market segment but a separate relevant market.

The Bundesgerichtshof had justified its earlier practice with the argument that the purpose of the German Act against Restraints of Competition is the protection of the market conditions in Germany. The earlier approach therefore ensured that the FCO would focus its analysis on the German market. Furthermore, the Bundesgerichtshof previously asserted that the FCO had only limited power to conduct investigations in other jurisdictions. Recently, these arguments have become less persuasive and the Bundesgerichtshof faced increasing criticism because of the artificial limitation of geographic markets in its analysis.

The new decision addresses this criticism. Interestingly, although the new decision cures a significant inconsistency, the question arises whether it (together with the FCO's far-reaching jurisdiction in merger cases) may increase the likelihood of contradicting decisions from different European merger control authorities. In case the FCO uses the new decision to try to prohibit a mergers affecting relevant markets extending beyond Germany even though the actual effects of the merger in Germany might be limited, other European Member States, which have chosen to decline jurisdiction or not to prohibit the merger, may consider such FCO decisions an interference with their decisions. Such developments could negatively affect the European network of merger control authorities.

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COURT DETERMINES THAT DOJ CANNOT UNILATERALLY REVOKE AMNESTY DEAL

Does the Department of Justice (DOJ) have limitless power to revoke unilaterally an immunity agreement that it later finds objectionable? "No," answered the court in *Stolt-Nielsen S.A. v. United States*, 2005 WL 78925 (E.D. Pa. Jan. 14, 2005).

The plaintiff in that matter had sought to avail itself of the DOJ's amnesty program in 2003 by providing information to the government about a tanker's cartel involving it and other tanker carriers. Based on this information, the government launched a criminal investigation that resulted in its obtaining guilty pleas, a total of \$62 million in fines against two other companies, and prison sentences for several executives of the other firms. In exchange for the provision of that information, the company received a promise from the DOJ that it would not indict the company or any of its employees for illegal activities that occurred prior to January 15, 2003, to the date of the amnesty letter agreement.

In March 2004, the DOJ sought to revoke this agreement, alleging that the company had failed to cooperate fully and that the company had failed to live up to the terms of the amnesty letter because it had continued to engage in unlawful activity through the latter half of 2002. Moreover, the DOJ asserted that although the company had represented that it had ceased its illegal conduct in March 2002, proscribed conduct had lasted throughout 2002. The DOJ threatened to indict the company and one of its managing directors on account of this alleged breach. Stolt then brought an action to enjoin the indictment.

In assessing whether the DOJ could revoke its agreement with Stolt, the court first examined whether the DOJ can unilaterally void an amnesty agreement without a judicial determination that the other party breached the agreement. In deciding this question, the court carefully weighed the importance of prosecutorial discretion against the plaintiff's due process rights. The court concluded that such a balancing, under the decision to revoke such an agreement must be made by a court, and not the DOJ acting on its own. The court then stated that such a determination must be made before the party alleged to have been in breach under the terms of the amnesty agreement is indicted by the government, and not after. The court observed that

COURT DETERMINES THAT DOJ CANNOT UNILATERALLY REVOKE AMNESTY DEAL

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“[r]evolving the issue of whether Stolt was in material breach of the agreement and whether DOJ is bound by the agreement now at the preindictment stage insures that Stolt is afforded the requisite due process without imposing an undue burden on the government.”

Having thus defined its role and the timing of its review, the court addressed the issue of whether revocation was appropriate in the matter before it. The court first observed

that it would “carefully scrutinize” and strictly construe the terms of the agreement because a party to an amnesty agreement of the type at issue in this matter “surrenders valuable constitutional rights by entering into an immunity agreement.”

The court made a number of key findings during its analysis. First, the court found that there was no reference to the March 2002 date in the agreement and that the timing for

the cessation of illegal activity by Stolt was not clearly set forth in the agreement. The court next found that Stolt had cooperated with the DOJ by turning over “voluminous incriminating documents to DOJ and [by] produc[ing] employees who revealed how the parcel tanker industry operated and how the customer lists were exchanged among the conspirators for the purpose of allocating customers and shipping lanes.” As a result of this cooperation, the court found that the DOJ had been able to pursue criminal actions against Stolt’s co-conspirators—Odfjell Seachem AS and Jo Tankers, B.V.—as well as Odfjell and Jo executives. The court also noted the existence of an “integration clause” in the agreement that expressly excluded any terms other than those set forth in the final writing.

Based on these findings, the court concluded that the DOJ “got what it bargained for in the agreement” and that it would grant the plaintiff’s motion for an injunction.

For more information concerning this decision and the DOJ’s amnesty program, please contact Donald C. Klawiter (dklawiter@morganlewis.com), Peter E. Halle (phalle@morganlewis.com), Tara L. Reinhart (treinhart@morganlewis.com), or Nathan Muyskens (nmuyskens@morganlewis.com). ■

ANTITRUST PRACTICE PARTNERS NAMED TO *THE BEST LAWYERS IN AMERICA*®

Washington, D.C. partners Willard K. Tom and John H. Shenefield, and San Francisco partner George A. Cumming have been selected to appear in the 2005-2006 edition of *The Best Lawyers in America*®. *Best Lawyers* is regarded as the definitive guide to legal excellence in the United States. Selection to the publication is based on an exhaustive peer-review survey in which 16,000 leading attorneys throughout the country cast “votes” on the legal abilities of other lawyers in their specialties.

Will advises clients in a variety of industries on a number of antitrust topics including those pertaining to mergers and acquisitions, as well as those relating to the nexus between antitrust law and intellectual property rights. John’s practice concentrates on antitrust litigation and counseling. John is especially involved in the firm’s cartel practice and is a member of the Antitrust Modernization Commission. George Cumming concentrates his practice on complex litigation across a wide range of substantive areas including antitrust, intellectual property, and financial services litigation.

SUPREME COURT WATCH

Three cases with antitrust implications are on the Supreme Court’s calendar. In the first, *Volvo Trucks North America v. Reeder-Simco GMC*, the Court will be asked to determine whether the lower courts correctly applied the Robinson-Patman Act to Volvo’s pricing policies to its dealers. The Robinson-Patman Act prohibits certain forms of price discrimination. In the case at bar, the Court will be asked to determine whether the plaintiff in such an action must be an actual purchaser of the product in question. The case also involves questions concerning the nature of the type of competitive injury that must be suffered to invoke the federal antitrust laws.

In *Unitherm Food Systems, Inc. v. Swift-Eckrich, Inc.*, the Court will be asked to determine whether an appellate court may examine the sufficiency of evidence in a civil jury case where the party requesting review made a motion for judgment as a matter of law before submitting the case to the jury, but neither renewed that motion nor moved for a new trial. The underlying action concerns Unitherm’s suit against Swift-Eckrich for patent infringement for a method of browning precooked meat.

In *Public Utility District No. 1 of Snohomish County v. Dynegy Power Marketing, Inc.*, the court has requested briefing by the Solicitor General on the scope of the “filed rate doctrine” and on whether the Federal Energy Regulatory Commission has final rate-making authority in the market for wholesale power. The plaintiff is appealing a ruling of the Ninth Circuit Court of Appeals, which held that defendants, generators and traders of wholesale electricity, were shielded from attack for having allegedly manipulated the market and supply of electricity in order to raise prices on account of the FERC’s regulation of power markets.

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Request process and the fact that the agencies will take action under §7A(g)(2) of the Clayton Act in seeking information deemed necessary for their review.

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Stephen Paul Mahinka and **Harry A. Robins** co-authored “Licensing in the Pharmaceutical Industry: Strategies and Questions Regarding Antitrust Premerger Notification,” *FDLI Update* (Nov./Dec. 2004).

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ANTITRUST PRACTICE MEMBERS TO APPEAR AT THE ANNUAL SPRING MEETING OF THE ABA'S ANTITRUST SECTION

The Annual Spring Meeting of the Antitrust Section of the American Bar Association will take place at the J. W. Marriott Hotel, in Washington, D.C., from March 30 through April 1, 2005. A number of Morgan Lewis Antitrust Practice Group attorneys will play featured roles:

- On Wednesday, March 30, Tara L. Reinhart (treinhart@morganlewis.com) will discuss "Hot Topics in Criminal Antitrust" as part of the program presented by the Criminal Practice and Procedure Committee.
- Also on Wednesday, Edward D. Cavanagh (ecavanagh@morganlewis.com) will chair and moderate a program concerning "Frequently Encountered Ethics Problems in Antitrust Practice."
- Jonathan M. Rich (jrich@morganlewis.com) will co-chair the Financial Services Committee Program entitled "Arguing the Issues: Regulated Financial Markets and Implied Repeal of the Antitrust Laws" on Thursday, March 31.
- Willard K. Tom (wtom@morganlewis.com) is a presenter on the Intellectual Property Committee Program panel and will address "What You Need to Know About Developments in Intellectual Property-Antitrust" on Thursday, March 31.
- Also on Thursday, John H. Shenefield (jshenefield@morganlewis.com) will discuss "International Antitrust: Developments after *Empagran* and *Intel*" as part of the program offered by the International Antitrust and Foreign Competition Law, Sherman Act Section One and Sherman Act Section Two Committees.

Antitrust Practice Group partner Donald C. Klawiter is the Chair-Elect of the ABA Antitrust Section.

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