

Consummated Mergers Caught in FTC Net

September 6, 2006

It is well known that the Hart-Scott-Rodino Antitrust Improvements Act requires pre-merger notification filings ("HSR filings") to be made at the Federal Trade Commission ("FTC") and the Department of Justice Antitrust Division ("Antitrust Division") for proposed transactions that meet the statutory thresholds for size of transaction and size of person. It also is well known that FTC and Antitrust Division review of HSR filings may result in challenges to potentially anticompetitive transactions prior to their closing. What is less well known, is that both agencies can and do challenge consummated mergers as potentially anticompetitive whether or not they pass through the HSR process. Two recent FTC challenges to consummated mergers are instructive.