Interlocutory Orders, Etc.

THORATEC CORPORATION
AND
HEARTWARE INTERNATIONAL, INC.

Docket No. 9339, Order, August 11, 2009

Order dismissing the Complaint.

ORDER DISMISSING COMPLAINT

On July 28, 2009, the Federal Trade Commission issued the Administrative Complaint in this matter, having reason to believe that Respondents Thoratec Corporation ("Thoratec") and HeartWare International, Inc. ("HeartWare") had entered into a merger agreement in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and which, if consummated, would violate Section 5 of the FTC Act, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. Complaint Counsel and the Respondents have now filed a Joint Motion to Dismiss Complaint, which states that the Respondents have decided not to proceed with the proposed merger and that Thoratec has withdrawn its Hart-Scott-Rodino Notification and Report Form filed for the proposed transaction.[1]

The Commission has determined to dismiss the Administrative Complaint without prejudice as the most important elements of the relief set out in the Notice of Contemplated Relief in the Administrative Complaint have been accomplished without the need for further administrative litigation.[2] In particular, the Respondents have announced that

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[1] *See* Joint Motion to Dismiss Complaint (Aug. 5, 2009), *available at* http://www.ftc.gov/os/adjpro/d9339/090805jointmodismisscmplt.pdf.

[2] *Cf.* Order Dismissing Complaint, In the Matter of CSL Limited and Cerberus-Plasma Holdings, LLC (June 22, 2009), *available at* http://www.ftc.gov/os/adjpro/d9337/090622commorderdismisscomplaint.pdf; Order Dismissing Complaint, In the Matter of Inova Health System Foundation and Prince William Health System, Inc., Docket No. 9326 (June 17, 2008), *available at* http://www.ftc.gov/os/adjpro/d9326/080617orderdismisscmpt.pdf; Order Dismissing Complaint, In the Matter of Red Sky Holdings LP and Newpark Resources, Inc., Docket No. 9333 (Dec. 10, 2008), *available at* http://www.ftc.gov/os/adjpro/d9333/081210redskycmpt.pdf;

they have decided not to proceed with the proposed acquisition, and Thoratec has withdrawn its Hart-Scott-Rodino Notification and Report Form filed for the proposed transaction. As a consequence, the Respondents would not be able to effect the proposed transaction without filing new Hart-Scott-Rodino Notification and Report Forms.

For the foregoing reasons, the Commission has determined that the public interest warrants dismissal of the Administrative Complaint in this matter. The Commission has determined to do so without prejudice, however, because it is not reaching a decision on the merits. Accordingly,

IT IS ORDERED THAT the Administrative Complaint in this matter be, and it hereby is, dismissed without prejudice.

By the Commission.

Order Dismissing Complaint, In the Matter of Equitable Resources, Inc., Dominion Resources, Inc., Consolidated Natural Gas Company, and The Peoples Natural Gas Company, Docket No. 9322 (Jan. 31, 2008), *available at* http://www.ftc.gov/os/adjpro/d9322/080204complaint.pdf.

Interlocutory Orders, Etc.

ASPEN TECHNOLOGY, INC.

Docket No. 9310, Order, August 20, 2009

Order modifying the Order issued on December 20, 2004 by adding provisions intended to remediate its inability to achieve fully its stated purpose as a result of actions by AspenTech.

ORDER TO SHOW CAUSE AND ORDER MODIFYING ORDER

On December 20, 2004, the Federal Trade Commission ("Commission") issued a Decision and Order ("Order") in Docket No. 9310 resolving claims contained in the Commission's Complaint issued on August 7, 2003. The Complaint alleged that the acquisition of Hyprotech Limited ("Hyprotech") by Respondent Aspen Technology, Inc. ("AspenTech"), lessened competition in several relevant markets, including the licensing of process engineering simulation software, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C.§ 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. Respondent denied these allegations but agreed to settle the matter through entry of the Order, which became final on December 27, 2004, before the administrative trial had begun.

The Order requires AspenTech, among other things, to divest Hyprotech's process engineering simulation software, known as HYSYS, and certain related products specified in the Order that were marketed together with HYSYS (collectively, "Hyprotech assets"). The Order requires AspenTech to divest the Hyprotech assets it owns and to sublicense rights to the Hyprotech assets it licenses from third parties if the relevant license agreements permit it to do so. The Order also requires that AspenTech divest or license the Hyprotech assets to an acquirer approved by the Commission and in a manner approved by the Commission and incorporates into the Order the terms of any Commission-approved divestiture agreement between AspenTech and a Commission-approved acquirer. On December 20, 2004, the Commission approved divestiture of the Hyprotech assets to Honeywell International Inc. ("Honeywell') pursuant to a purchase and sale agreement previously submitted to the Commission. The Order requires AspenTech to have divested the Hyprotech assets to Honeywell on or before March 28, 2005. The