



Antitrust M&A Snapshot

United States: January – March 2017 Update

The nature of Trump-era leadership at the antitrust agencies has slowly come together since the January inauguration. Practitioners are starting to get a better sense of where antitrust enforcement is heading under the new administration. We do not expect any radical changes in enforcement, but do expect that enforcement will be dialed back at the margins, similar to prior Republican administrations. The Antitrust Division of the US Department of Justice (DOJ) will be led by Makan Delrahim, a former Antitrust Division deputy assistant attorney general and current deputy White House counsel. Meanwhile, according to press reports, the race to be chosen as the Federal Trade Commission (FTC) Chair is down to two: current Acting Chairman Maureen Ohlhausen and Utah Attorney General Sean Reyes. Based on recent public statements by Ohlhausen, it appears that antitrust enforcement will be more deliberate under the Trump administration. Second requests will be more narrowly focused to information that is essential to the merger analysis, potentially reducing significant costs to merging parties. Further, enforcement will be focused on cases with “objective concrete harms” and less consideration will be given to “speculative injuries.”

During this transition period new enforcement has been relatively limited, but the courts have handed the agencies significant wins in the challenges to transactions in the health care field. The DOJ won two injunctions blocking the Anthem/Cigna and Aetna/Humana transactions. Meanwhile, the FTC won a preliminary injunction in another hospital merger challenge.

Agency Appointment Announcement	Obama Administration 2009	Trump Administration 2017
FTC Chairman	February 27, 2009 (Jon Leibowitz)	???
DOJ Assistant Attorney General	January 22, 2009 (Christine Varney)	March 27, 2017 (Makan Delrahim)

EU: January – March 2017 Update

The January to March period has seen 97 merger control notifications, a majority of them being candidate cases for simplified procedure. There were also 89 clearance decisions, 2 of which were Phase I cases with remedies. Of note, there were also 3 withdrawals of notifications, one of which during Phase II.

Of particular significance, following in-depth Phase II reviews, the European Commission:

- Approved, subject to commitments, the merger between Dow Chemicals and DuPont;
- Approved, subject to commitments, the merger between ChemChina and Syngenta;
- Blocked the proposed merger between Deutsche Börse and London Stock Exchange Group; and
- Blocked the proposed joint acquisition of cement firm Cemex Croatia by German rivals HeidelbergCement and Schwenk.

Snapshot of Events (Legislation/Agency Remarks/Speeches/News, etc.)

United States

- **Acting FTC Chairman Maureen Ohlhausen Projects a Less Aggressive Enforcement Agenda as She Campaigns for Appointment**

Acting FTC Chairman Maureen Ohlhausen gave a number of speeches this quarter, greatly increasing her public profile as she reportedly competes with Utah Attorney General Sean Reyes to be appointed by President Trump as the permanent FTC chairman. Ohlhausen has repeatedly emphasized that “[t]he agency should focus on cases with objective concrete harms such as monetary injury and unwarranted health and safety risks. The agency should not focus on speculative injury or on subjective types of harms.” She has also stated that health care and pharmaceuticals will remain strong focus areas.

- **Makan Delrahim Tapped to Be Trump’s Assistant Attorney General Overseeing the DOJ’s Antitrust Division**

Makan Delrahim, currently a deputy in the Office of White House Counsel, was named as the head of the DOJ’s Antitrust Division, subject to Senate confirmation. Delrahim previously served as a deputy assistant attorney general in the Antitrust Division from 2003 to 2005, where he focused on IP and inter-agency coordination efforts, and has been an active lobbyist with clients such as Qualcomm, Comcast and Anthem. Delrahim is not expected to radically change the DOJ as he has experience in the Division. He is more of a “mainstream” appointment than the other rumored leading candidate. Pending Delrahim’s confirmation, Andrew Finch was named as acting head of the DOJ Antitrust Division, replacing Brent Snyder the current acting head of the Division. Once Delrahim is confirmed, Finch will become one of Delrahim’s deputies.

- **Acting FTC Chairman Indicates that Agency Second Requests Will Cover Fewer Markets**

Acting FTC Chairman Maureen Ohlhausen said that the FTC’s second requests will be more limited in scope under the Trump administration. Ohlhausen indicated that the FTC Staff has already been instructed to only seek data and information that is absolutely essential to merger analysis. Such “regulatory humility” may help to reduce the significant costs of complying with a second request.

- **Enforcement Remains Slow during Presidential Transition Period**

Relatively few enforcement actions have been completed by the US antitrust agencies in the first quarter of 2017. Many large cases, including Dow/DuPont, Bayer/Monsanto, AT&T/Time Warner, Sherwin Williams/Valspar, Bass Pro Shops/Cabela’s and Walgreens/Rite Aid, remain under review.

- **Acting Director of the FTC’s Bureau of Competition Tad Lipsky Criticizes Obama-Era Enforcement**

Tad Lipsky, Acting Director of the FTC’s Bureau of Competition, recently commented that certain enforcement themes during the Obama administration demonstrated a “great deal of careless talk about antitrust objectives and principles of antitrust construction.” Lipsky specifically referenced two speeches by top officials at the antitrust agencies under President Obama that suggested antitrust enforcement could be used to improve fairness in the economy and that economic analysis played too large a role in enforcement.

- **FTC Releases Study Examining Merger Remedies**

The report indicates that the vast majority of the FTC's remedies protect or restore competition, but divestitures of ongoing business units are most successful. This finding supports the agencies' view in recent years that structural remedies requiring divestiture of a viable, free-standing line of business are preferred over piecemeal divestitures of assets that had not functioned as a cohesive business

- **Senator Amy Klobucher Announces Plan to Increase Fees for "Mega-Mergers"**

Senator Amy Klobucher (D-Minn.) announced that she plans to introduce legislation that will increase fees for mergers of large companies. In a speech, Klobucher said, "In the era of megadeals that reach tens or even hundreds of billions of dollars, we need a new category of fees that reflects the complexities of mega-mergers and their serious impact on consumers." One of the goals of the proposed legislation would be to provide antitrust officials greater resources to enforce competition laws.

European Union

- **European Parliament's Resolution on the Annual Report on EU Competition Policy**

On February 14, 2017, the European Parliament adopted a resolution on the Annual Report on EU Competition policy, in which several aspects of EU merger control were addressed.

In particular, the European Parliament expressed its concern that the merger currently under discussion between Bayer and Monsanto (not yet notified to the European Commission) would create a potential European and global oligopoly—which could result in a monopoly situation in the seeds and pesticides markets—and asked the European Commission (EC) to deliver an ex-ante impact assessment of this merger and a clear view of its timing.

The European Parliament also welcomed the European Commission's consultation on certain procedural and legal aspects of EU merger control, and called on the European Commission to examine carefully whether current assessment procedures take sufficient account of circumstances on digital markets and of the internationalisation of markets. In particular, the European Parliament expressed the opinion that EU merger control arrangements should take account of the acquisition price in an M&A transaction as a filing criterion. Currently, there is no "size of transaction" aspect of EU merger control. This means that transactions involving companies with substantial impact in the EU, but limited sales in the EU, have not been reportable. Examples can include transactions involving digital media. Adding a size of transaction threshold would capture more transactions.

Finally, the European Parliament noted that the number of notified mergers increased significantly in 2015, and asked for the relevant services of the European Commission to be provided with the necessary resources (via internal reallocation of staff), enabling them to continue to deal effectively with this situation.

- **Speech by EU Competition Commissioner Vestager to the Studienvereinigung Kartellrecht on "Refining the EU Merger Control System"**

In her speech given on March 10, 2017, Commissioner Vestager reiterated, in reference to the ongoing case against Facebook/WhatsApp, that "to make good decisions, you need the right information. And a lot of the information we need comes from the companies involved in a merger," which is why she was worried by gun-jumping and by "signs that some companies aren't taking their duty to supply information as seriously as they should."

She therefore said that she would "keep a very close eye on whether companies are complying with the procedural rules" and "won't hesitate to take action if we suspect that they haven't, because we cannot allow companies to undermine a successful system by breaking the most basic rules."

Indeed, the European Commission is currently reviewing Facebook's response to accusations that it provided misleading information when acquiring WhatsApp. This response follows a statement of objections that the European Commission sent to Facebook in December 2016, where the regulator expressed its concerns that the company intentionally, or negligently, submitted incorrect or misleading information in the 2014 merger review process.

In another speech given on March 31, 2017, Commissioner Vestager also stated that the European Commission suspects that more companies may have submitted misleading information in cleared merger cases and that the European Commission will decide whether to launch new probes before the summer break.

- **The General Court of the EU Annulled the European Commission's Decision Rejecting the UPS/TNT Merger**

In 2012, UPS notified the EC of its proposed acquisition of TNT. On January 30, 2013, the EC prohibited the proposed acquisition because it found that that take-over would restrict competition for the express delivery of small packages to European countries. The acquisition would have reduced the number of significant players to only three, or even two, sometimes leaving DHL as the only alternative to UPS. The merger would therefore, according to the EC, have likely harmed customers by causing price increases.

UPS brought an action before the General Court seeking the annulment of the EC's decision and the General Court upheld the action and annulled the EC's decision. The General Court found that the econometric analysis used by the EC in its decision was based on an econometric model different from that which had been the subject of an exchange of views and arguments during the administrative procedure.

The EC made non-negligible changes to the analyses previously discussed with UPS. In view of those changes, the EC was required to communicate the final econometric analysis model to UPS before adopting the contested decision. By failing to do so, the European Commission infringed UPS' rights of defence.

Significant Trials

PARTIES	AGENCY	COURT	MARKETS / STRUCTURE (AS AGENCY ALLEGED)	MAJOR ISSUES	OBSERVATIONS
United States					
Anthem Inc. / Cigna Corp.	DOJ	District Court for the District of Columbia	Health Insurance to National Accounts 4-to-3 Consolidation Among Insurers Serving National Accounts	Will the merger threaten competition for the purchase of health insurance by large geographically dispersed employers? Will the merger's projected cost savings result in anticompetitive or pro-competitive effects?	Following a trial that ran from November 21, 2016, to January 3, 2017, Judge Amy Berman Jackson issued her opinion on February 8, 2017, granting an injunction blocking Anthem's acquisition of Cigna. Judge Berman Jackson concluded that the transaction would reduce competition for the sale of health insurance to "national accounts"—customers with more than 5,000 employees, usually spread over at least two states. Judge Berman Jackson found that the evidence presented at trial indicated that "large national employers have a unique set of characteristics and needs that drive their purchasing processes and decisions, and that the industry as a whole recognizes national accounts as a distinct market." With this market, the transaction was found to create a high level of concentration that is presumptively unlawful under the Horizontal Merger Guidelines. Notably, Judge Berman Jackson discredited the parties' claimed efficiencies, which included \$2 billion in reduced payments by Cigna customers as a result of switching to more favorable Anthem reimbursement rates. These efficiencies were held to be not cognizable, not merger-specific and not verifiable. Anthem appealed this ruling to the DC Circuit and the matter was argued in late March.
Health Care Network / Advocate Health and Hospitals Corporation / NorthShore University HealthSystem	FTC	Seventh Circuit, Appeal from District Court for the Northern District of Illinois	General Acute Care Inpatient Hospital Services 60% Combined Market Share	Is the geographic market limited to selected hospitals in Chicago's northern suburbs while excluding other nearby hospitals, including large academic hospitals in downtown Chicago?	Following the Seventh Circuit's reversal, the Northern District of Illinois granted a preliminary injunction of Advocate's merger with NorthShore on March 7, 2017. Judge Jorge Alonso, persuaded by the Seventh Circuit's guidance, held that the FTC appropriately defined the geographic market even though it excluded "destination hospitals" and hospitals that only overlapped with one of the merging parties. Judge Alonso's opinion was partly based on testimony from health plans which indicated that it was not possible to market a plan in the proposed geographic market without including either Advocate or NorthShore.
Deere & Company / Precision Planting LLC / Monsanto Company	DOJ	District Court for the Northern District of Illinois	High-Speed Precision Planting Systems 86% Alleged Combined Share	Are Deere and Precision Planting the only two effective competitors in a high-speed precision planting	According to the DOJ, Deere's acquisition of Precision Planting would allow it to control "nearly every method through which American farmers can acquire effective high-speed precision planting systems and provide it with the ability to set prices, output, quality and product features without the constraints of market competition." On April 5, 2017, the merging parties filed a motion for summary judgment arguing that the DOJ cannot prove a relevant product market because the DOJ did not conduct the required economic analysis, but rather "assume[d] the alleged market's existence based on inferences from cherry-picked business documents." The DOJ must respond to the

PARTIES	AGENCY	COURT	MARKETS / STRUCTURE (AS AGENCY ALLEGED)	MAJOR ISSUES	OBSERVATIONS
				systems market?	motion for summary judgment by May 2, 2017.
EnergySolutions, Inc. / Waste Control Specialists	DOJ	District Court for the District of Delaware	Commercial Low-Level Radioactive Waste Disposal Facilities Alleged 2-to-1 Merger in 36 States	Does the proposed transaction eliminate EnergySolution's only competitor for the disposal of low-level radioactive waste in the relevant geographic areas?	On November 16, 2016, the DOJ filed a complaint alleging that EnergySolution's proposed acquisition of Waste Control Specialists "would combine the only two licensed commercial low-level radioactive waste (LLRW) disposal facilities for 36 states." The DOJ alleged that Energy Solutions "[i]n the face of aggressive competition from [Waste Control Specialists], [] decided to eliminate the threat by seeking to acquire it." On November 23, 2016, the parties filed a motion to transfer the case to the Western District of Texas, but in late December, Judge Gregory M. Sleet denied the motion holding that "only Defendants' forum preference weighed in favor of transfer." The parties proceeded to collect evidence through discovery during the first quarter of 2017.

Consent Orders/Approvals

BUYER	TARGET	INDUSTRY / STRUCTURE (AS AGENCY ALLEGED)	SIGNING TO CONSENT	AGENCY	DETAILS ¹	BUYER UPFRONT
United States						
Danone S.A.	The WhiteWave Foods Company	Raw and Fluid Organic Milk Links 56% of All Fluid Organic Milk Sales and 91% of All Branded Fluid Organic Milk Sales	9 months	DOJ	The DOJ's complaint alleged that Danone's acquisition of WhiteWave would harm competition because Danone has participated in the organic milk market through a strategic partnership with WhiteWave's closest competitor. The transaction would "effectively bring[] together WhiteWave and [its closest competitor], the top purchasers of raw organic milk in the northeast and the producers of the three leading brands of fluid organic milk in the United States." To resolve these concerns, the DOJ required divestiture of Danone's Stonyfield Farms business.	No
Smiths Group plc	Morpho Detection LLC	Desktop Explosive Trace Detection Devices Alleged 3-to-2 Transaction	11 months	DOJ	The DOJ alleged that "Smiths and Morpho are two of the three leading providers of desktop explosive trace detection (ETD) devices and related services in the United States." To resolve these concerns, the DOJ required divestiture of Morpho's ETD business.	No

¹ The information in this column summarizes the government's allegations. McDermott Will & Emery LLP offers no independent view on these allegations.

BUYER	TARGET	INDUSTRY / STRUCTURE (AS AGENCY ALLEGED)	SIGNING TO CONSENT	AGENCY	DETAILS ¹	BUYER UPFRONT
China National Chemical Corporation	Syngenta AG	Crop Protection Formulations Combined Market Shares Range Between 40% and 80%	14 months	FTC	The FTC required divestiture of three types of crop protection formulations in order to settle charges that the proposed merger would harm competition in several US markets. For each of the products, a Syngenta predecessor launched the branded version of the products resulting in significant market shares for Syngenta. ChemChina's subsidiary is either the largest or second largest generic supplier of each of the three products. Other generic providers have been unable to gain sufficient share to rival ChemChina.	Yes
DaVita, Inc.	Renal Ventures Management LLC	Kidney Dialysis Centers 3-to-2 or 2-to-1 in Seven Areas in New Jersey and Texas	16 months	FTC	The FTC required the divestiture of outpatient dialysis centers in five suburban and urban areas in New Jersey, as well as two areas outside of Dallas, Texas, where the merging parties were either the only competitors present or two of three competitors.	Yes
Valeant Pharmaceuticals	Paragon Holdings I, Inc.	Contact Lens Components 70% Combined Share	19 months (Post-Closing Merger Challenge)	FTC	Following a post-closing investigation of a non-reportable transaction, the FTC's complaint alleged that the transaction lessened competition for the manufacture and sale of plastic discs used to make three different types of rigid gas permeable contact lenses. The FTC not only required the divestiture of the entire Paragon business, but also required the divestiture of the assets a Pelican Products, LLC, a contact lens packaging company that Valeant acquired after its purchase of Paragon.	Yes. Valeant spun off Paragon into a newly created entity that will be an independent competitor.

BUYER	TARGET	INDUSTRY / STRUCTURE (AS AGENCY ALLEGED)	SIGNING TO CONSENT	AGENCY	DETAILS ¹	BUYER UPFRONT
Enbridge Inc.	Spectra Energy Corp	Pipeline Transportation of Natural Gas Combined Entity Would Have Interests in Two Closest Pipelines to Relevant Areas	6 months	FTC	In its complaint, the FTC alleged that the merger would likely reduce competition for natural gas takeaway services in three areas in the Gulf of Mexico. The merging parties owned interests in the two closest pipelines to wells in the three natural gas producing areas. Although the combined entity would only have an indirect interest in one of the two pipelines, the FTC required the merging parties to agree to certain behavioral remedies including establishing firewalls and limiting access to non-public information to resolve its concerns.	N/A – Conduct Remedy Only

Significant Merger Blocks

BUYER	TARGET	INDUSTRY	AGENCY	DETAILS ²
European Union				
Deutsche Börse	London Stock Exchange	Financial Markets	EC	<p>On March 29, 2017, the EC blocked the proposed merger between Deutsche Börse and London Stock Exchange Group.</p> <p>According to the EC, the proposed merger would have created a <i>de facto</i> monopoly in the markets for clearing fixed income instruments, where Deutsche Börse and the London Stock Exchange are the only relevant providers.</p> <p>The parties had initially proposed a remedy consisting of the divestment of a France-based clearinghouse to address the EC's concerns, but beyond that, they were only prepared to offer behavioral measures instead of additional divestitures.</p> <p>According to the EC, therefore, the parties were unable to demonstrate that the measures put forward would have been effective in practice to alleviate the EC's concerns and ensure that the divested France-based clearinghouse would be a viable competitor in fixed income clearing in the future.</p>
HeidelbergCement/Schwenk	Cemex Croatia	Cement	EC	<p>On April 5, 2017, the EC blocked the proposed joint acquisition of Cemex Croatia by HeidelbergCement and Schwenk.</p> <p>According to the EC:</p> <ul style="list-style-type: none"> • The takeover would have created a dominant supplier in the Croatian markets for grey cement and would have led to higher prices for cement customers. • The remaining domestic cement suppliers and importers would not have been able to compete effectively with the merged company after the takeover

² The information in this column summarizes the government's allegations. McDermott Will & Emery LLP offers no independent view on these allegations.

Significant Clearance Decisions

BUYER	TARGET	INDUSTRY	NOTIFICATION TO CLEARANCE	AGENCY	DETAILS ³	BUYER UPFRONT
European Union						
Smiths	Morpho Detection	Threat Detection Equipment	1.5 months	EC	<p>Both Smiths and Morpho Detection develop and manufacture threat detection equipment, in particular explosive trace detectors.</p> <p>The EC had concerns that the merged entity would have faced insufficient competitive pressure from the remaining players and that following the takeover there was a risk of price rises and less innovation for explosive trace detectors.</p> <p>The Commission found sufficient competition remained and did not challenge the transaction based on baggage explosive detection systems (for checked baggage) or cabin baggage explosive detection systems. The transaction was cleared following a Phase I review, however, the EC's decision was conditional on Smiths offering to divest Morpho Detection's global explosive trace detectors business,</p>	No
NKT	ABB's high voltage cable and cable accessories businesses	High Voltage Cable and Power Cable Accessories	5 weeks	EC	<p>The EC was concerned with the potential effects on competition of the removal of one competitor, and whether the transaction would make it more likely that the remaining players could coordinate their competitive behavior.</p> <p>There was a history of collusion in the industry. In 2014, the EC found that the main producers of high voltage power cables, including NKT and ABB, were involved in a cartel aimed at restricting competition for high voltage underground and submarine power cable projects. The EC's investigation focused on the parties' overlapping activities for high voltage power</p>	N/A

³ The information in this column summarizes the government's allegations. McDermott Will & Emery LLP offers no independent view on these allegations.

BUYER	TARGET	INDUSTRY	NOTIFICATION TO CLEARANCE	AGENCY	DETAILS ³	BUYER UPFRONT
					<p>cables, in particular, on AC submarine power cables and DC submarine power cables. These cables are used to connect transmission grids separated by water and to bring onshore the energy generated by wind farms at sea. NKT is a potential entrant in the market for DC submarine power cables.</p> <p>However, no adverse effects on the markets were found by the EC and the transaction was cleared following a Phase I review.</p>	
Siemens	Gamesa	Energy	6 weeks	EC	<p>The EC investigated the impact of the proposed transaction on the onshore and offshore wind turbine markets, where the activities of the parties overlapped:</p> <ul style="list-style-type: none"> • The onshore wind turbine market is rather fragmented with several large competitors even after the merger. • The offshore wind turbine market is more concentrated with Siemens and Vestas being the main competitors. Gamesa is also active in the market through its subsidiary Adwen. However, as the investigation confirmed that Adwen is not a competitive constraint on Siemens, it is unlikely that the transaction will appreciably change the competitive situation. <p>The EC therefore concluded that the proposed transaction would raise no competition concerns.</p>	N/A
General Electric	LM Wind Power	Energy	5 weeks	EC	<p>The transaction concerned the acquisition by General Electric (GE), which produces onshore and offshore wind turbines, of LM Wind Power, a Danish company which designs and manufactures blades that are sold to General Electric and its competitors as a component for the wind turbines.</p> <p>The EC's investigation focused on the effect of the transaction both on the upstream market for the manufacture and supply of wind turbine blades, as well on the downstream markets for the manufacture</p>	N/A

BUYER	TARGET	INDUSTRY	NOTIFICATION TO CLEARANCE	AGENCY	DETAILS ³	BUYER UPFRONT
					<p>and supply of onshore and offshore wind turbines.</p> <p>Based on the results of its market investigation, the EC concluded that competitive concerns would be unlikely to arise after the transaction because:</p> <ul style="list-style-type: none"> • GE would not be in a position to significantly affect the upstream market. In particular since competing blade manufacturers would continue to have access to wind turbine manufacturers other than GE. • In relation to the downstream markets, GE would continue to face significant competition from other major turbine manufacturers, such as Siemens, Vestas, Nordex and Senvion, who either manufacture their blades in-house and/or are not dependent on LM Wind Power for supplies. 	
Dow Chemical	DuPont	Agro-chemicals	9 months	EC	<p>The EC had concerns that the merger as notified would have reduced competition on price and choice in a number of markets for existing pesticides.</p> <p>More specifically, the EC was concerned that the merger as notified would:</p> <ul style="list-style-type: none"> • Significantly reduce competition in a number of markets for existing pesticides; • Significantly reduce innovation competition for pesticides; • Significantly reduce competition for certain petrochemical products. <p>The transaction was cleared following an in-depth Phase II review, subject to significant commitments from the parties.</p> <p>In order to address the EC's concerns regarding the preservation of price and innovation competition in pesticide markets, the parties will divest a significant part of DuPont's existing pesticide business,</p>	Yes

BUYER	TARGET	INDUSTRY	NOTIFICATION TO CLEARANCE	AGENCY	DETAILS ³	BUYER UPFRONT
					<p>including its R&D organization, in particular:</p> <ul style="list-style-type: none"> • Globally, DuPont's herbicides for cereals, oilseed rape, sunflower, rice and pasture, and insecticides for chewing insect and sucking insect control for fruits and vegetables, etc. • They will also divest all tangible and intangible assets underpinning the divested products (including the facilities where the products are manufactured) and relevant personnel. • An exclusive license to DuPont's product for rice cultivation in the EEA to address the more limited concerns relating to fungicides. • DuPont's global R&D organization, with the exception of a few limited assets that support the part of DuPont's pesticide business, which is not being divested. <p>The sale of the underpinning R&D organization and pipeline ensures the viability and competitiveness of the divested business on a lasting basis and will enable the buyer to become a global integrated R&D competitor.</p> <p>In order to address the EC's concerns regarding the preservation of competition for certain petrochemical products, Dow will divest its two manufacturing facilities for acid co-polymers in Spain and in the US, as well as the contract with a third party through which it sources ionomers that it sells to its customers.</p>	
ChemChina	Syngenta	Agro-chemicals	14 months	EC	<p>The EC had concerns that the transaction would have reduced competition (1) in a number of existing markets for pesticides and (2) for plant growth regulators.</p> <p>The approval is conditional on the divestiture of significant parts of ChemChina's European pesticide</p>	Yes

BUYER	TARGET	INDUSTRY	NOTIFICATION TO CLEARANCE	AGENCY	DETAILS ³	BUYER UPFRONT
					<p>and plant growth regulator business. In this respect, the parties have offered to divest:</p> <ul style="list-style-type: none"> • A significant part of Adama's existing pesticide business, notably fungicides for cereals, fruits and oilseed rape, herbicides for cereals, corn, sunflower and vegetables, insecticides for cereals, corn, fruits, oilseed rape and vegetables and its seed treatment products for cereals and sugar beet; • Some of Syngenta's pesticides, notably fungicides for vegetables and herbicides for cereals, vegetables and sunflower; • Twenty-nine of Adama's generic pesticides under development and a commitment to give access to third parties to studies and field trial results for these products; • A significant part of Adama's plant growth regulator business for cereals; and • All relevant intangible assets underpinning the divested pesticide and plant growth regulator products. They will also make available relevant personnel. 	

Significant Selected Ongoing Public Investigations⁴

BUYER	TARGET	INDUSTRY	ANNOUNCED	AGENCY	STATUS
United States					
AT&T Inc.	Time Warner Inc.	Telecommunications	October 22, 2016	DOJ	AT&T reported in December that it received a second request from the DOJ. In January, AT&T CEO Randall Stephenson met with then President-elect Donald Trump. AT&T released a statement saying that the merger was not a topic of discussion between Stephenson and Trump. There has been significant political pressure for an in-depth antitrust review of the transaction after President Trump stated during the campaign that he thought the deal should not be approved. On April 14, 2017, the FCC approved the sale of Time Warner's only TV station marking a step towards regulatory clearance for this transaction.
Dow	DuPont	Agriculture Seeds and Pesticides	December 11, 2015	DOJ	The European Commission cleared the transaction on March 27, 2017, with significant divestitures from DuPont's global pesticides business. The DOJ's investigation continues.
Bayer	Monsanto	Agriculture Seeds and Pesticides	September 14, 2016	DOJ	The parties are reportedly looking to divest roughly \$2.5 billion in assets to clear the merger review. This news comes after the CEOs of Bayer and Monsanto met with President Trump during his transition to argue that the merger would create American jobs.
Bass Pro Shops	Cabela's	Outdoor Retailers	October 3, 2016	FTC	The FTC's investigation continues. The FTC issued a second request for more information in late November 2016. The bankruptcy of Gander Mountain and subsequent closing of 32 stores potentially raises additional concerns for the FTC as Gander Mountain was likely viewed as a significant competitor to the merging parties. On April 18, 2017, the parties agreed to an amended merger agreement decreasing the total value of the transaction to \$5 billion and signing a separate sale of Cabela's bank subsidiary.
Walgreens	Ride-Aid	Retail Pharmacy	October 27, 2015	FTC	The FTC's investigation continues. In mid-December 2016, the parties proposed to divest 865 stores and certain assets to rival Fred's. The FTC has not approved the divestiture. The parties are reportedly considering certifying compliance with the FTC's second request forcing the FTC to decide whether to challenge the transaction.
Sherwin Williams	Valspar	Paints and Coatings	March 20, 2016	FTC	The parties originally expected the deal to close in the first quarter of 2017, but have since delayed that expectation as they await the conclusion of the FTC's investigation. Sherwin Williams recently announced plans to sell Valspar's North American industrial wood coatings business to Axalta for \$420 million as part of its efforts to alleviate antitrust concerns.

⁴ This is a subset of the ongoing merger investigations, but is intended to provide a snapshot of some of the major matters in which the agencies are engaged.

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