

Client Alert

Business Litigation Practice Group

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FTC Orders Two Bleach Wholesalers to Put an End to Non-Compete Agreement

On January 18, 2013, the Federal Trade Commission (FTC or the “Commission”) announced that it will require bleach producer Oltrin Solutions, LLC (“Oltrin”) to release its competitor, JCI Jones Chemicals, Inc. (JCI) from an agreement not to sell bleach in North Carolina and South Carolina. The non-compete agreement was part of a 2010 \$5.5 million transaction between the two companies—both producers and sellers of bulk bleach. The FTC alleges that the transaction violated antitrust laws by reducing competition between Oltrin and JCI. To settle the FTC’s concerns, Oltrin and JCI have entered into a proposed consent order with the FTC, which the FTC indicates will restore competition between the two companies. The FTC’s complaint and the proposed consent order can be found at: <http://www.ftc.gov/opa/2013/01/Oltrin.shtm>.

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Oltrin, which is jointly owned by a subsidiary of Olin Corporation, the largest North American bleach producer, buys and resells bleach produced for merchant sale in Hamlet, North Carolina. JCI, one of the world’s leading producers and distributors of water treatment chemicals, produced bleach at its plant in Charlotte, North Carolina before the 2010 transaction with Oltrin.

According to the FTC, in March 2010 Oltrin agreed to pay JCI \$5.5 million for, among other things, a list of bulk bleach customers from JCI’s Charlotte plant, along with an agreement that JCI would not sell bulk bleach in North Carolina or South Carolina for six years. According to the FTC, “the deal between the two firms eliminated substantial competition between Oltrin and JCI in the relevant geographic market; substantially increased the market concentration for bulk bleach sales in the relevant geographic market; and increased Oltrin’s ability to raise bulk bleach prices.”

The Proposed Consent Order requires Oltrin to release JCI from the non-compete agreement, transfer a minimum volume of its bulk bleach contracts back to JCI, and provide a short-term backup supply agreement that will facilitate JCI’s re-entry into the bulk bleach market in North Carolina and South Carolina.

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Under the terms of the proposed consent order, both Oltrin and JCI must notify the FTC before entering into any future transactions in the bulk bleach market. Oltrin must also notify any customers from which it has received bids since the 2010 agreement that JCI is once again in the bulk bleach business in the relevant geographic market.

This recent action serves as a reminder that the FTC investigates and challenges not just mergers and acquisitions, but other types of transactions that may affect competition, such as purchases of customer lists accompanied by non-compete agreements. Moreover, even relatively small transactions—here, the deal was valued at only \$5.5 million and took place in 2010—may attract FTC scrutiny.

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