
LESSONS FROM THE WHIRLPOOL/MAYTAG MERGER

Roger K. Scholten

Blizzard of Deals Herald an Era of Megamergers

. . . Moreover antitrust regulation has slackened considerably, clearing the way for previously unthinkable combinations that allow companies to slash costs, such as appliance maker Whirlpool Corp.'s recent purchase of rival Maytag Corp.

Wall Street Journal
June 27, 2006

Timeline of Key Dates

- May 19, 2005 Ripplewood/Maytag agreement announced (at \$14/share).
 - June 17, 2005 Bain, Blackstone, Haier propose to acquire (at \$16/share).
 - August 22, 2005 Merger agreement between Maytag & Whirlpool executed (at \$21 per share – 50% in cash, 50% in WHR stock).
 - October 7, 2005 DOJ issues Second Request
 - December 1, 2005 “Substantial Compliance” to Request Certified; agreement to extend review period to Feb. 27, 2006.
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Timeline Continued

- December 22, 2005 Maytag shareholders approve merger.
 - February 13, 2006 Whirlpool & Maytag agree to provide DOJ additional review time.
 - March 29, 2006 DOJ announces it will not move to block merger.
 - March 31, 2006 Transaction closes.
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Issues for Discussion

- Merger “Guidelines” – Framework for Analysis vs. Formulaic Answers?
 - What is the “relevant market” in home appliances?
 - What does “private label” really mean?
 - Does anyone care what the customers think?
 - Was anyone listening to the politicians?
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Other M&A Implications

- ❑ Pre-merger integration cooperation
 - ❑ Costs and risks associated with the process
 - ❑ The impact of disclosure requirements on the process
 - ❑ The viability of a post-signing “market check”
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HORIZONTAL MERGER GUIDELINES

0. Purpose, Underlying Policy Assumptions and Overview

. . . Because the specific standards set forth in the Guidelines must be applied to a broad range of possible factual circumstances, **mechanical application** of those standards may provide misleading answers to the economic questions raised under the antitrust laws. Moreover, information is often incomplete and the picture of competitive conditions that develops from historical evidence may provide an incomplete answer to the **forward-looking inquiry** of the Guidelines. . .

0.2 Overview - Analytical Process for a Horizontal Merger

- Would merger significantly increase concentration and result in a concentrated market?
 - In light of market concentration and other factors that characterize the market, would the merger raise concerns about potential adverse competitive effects?
 - Would competitive entry be timely, likely and sufficient either to deter or to counteract the competitive effects of concern?
 - What efficiency gains cannot be achieved by the parties through other means?
 - Are either party likely to fail and exit the market?
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The Relevant Market for Home Appliances

- **Product Market Definition and Market Shares—**
DOJ faced a number of challenges in analyzing the transaction
 - The breadth of product lines for each company
 - T5 - Washers, dryers, refrigerators, dishwashers, ranges
 - T7 - T5 plus microwaves and freezers
 - The complexity within product lines
 - Laundry – top load vs. front load
 - Refrigeration – top mount, bottom mount, built-in
 - Dishwashers – built-in vs. portable
 - Cooking – ranges vs. built-in ovens, cook tops
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Definition Challenges Continued

- The extent of cross-sourcing of products within the industry
 - The lack of uniform data combined with unprecedented changes in the industry
 - Pricing in the industry is extremely complex – price sheets, “meet comp”, promotions, SPIFSs, allowances, terms, trailing rebates, etc
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The Geographic Market Definition

The U.S. appliance industry has become increasingly global:

- Mexico's growing role
- The European entrants
- The Asian entry and success with key retailers



The Unique Role of Sears in the U.S. Home Appliance Industry

- Historically the largest retailer of home appliances with shares approaching 40% in some markets and product categories.
 - Under intense competition from the “lumber yards”, its shares have fallen significantly in recent years – but still a major force in industry.
 - Kenmore brand sales have dominated their sales despite its wide offerings of competitive brands.
 - In recent years has demonstrated a willingness to shift large portions of its volume among suppliers.
 - Has facilitated the entry of foreign entrants through its Kenmore brand and distribution and service capabilities.
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The Critical Role of the Retailers

- As evidenced by the public negotiation between Maytag and Whirlpool, both parties recognized the critical role retailers would play in the investigation.
 - DOJ's focus of its investigation supported this contention.
 - The retail environment for home appliances has changed rapidly
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Retail Environment

- Increased concentration:
 - With the exit of Montgomery Ward and Circuit City in the 1990's, the market has increasingly become concentrated in the four "big box" retailers.
 - These four currently account for 2/3 of all appliance sales – with some estimating their share will soon reach 75%.
 - The remaining share is held by larger regional players and buying groups.
 - A series of attempted price increases from manufacturers had been largely defeated by retailers.
 - With their growing influence, the big box retailers are becoming less willing to become actively involved in investigations – negative publicity, time and cost, potential disclosure of competitive information.
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DOJ Staff's Evaluation

- As expected, Division Staff focused on laundry products – with an occasional reference to dishwashers.
 - Apparent theory justifying a challenge was that post-merger, appliance retailers would acquiesce in a unilateral anticompetitive price increase if Whirlpool imposed the increase across all accounts.
 - Unclear what conclusions the Staff reached about Kenmore market share.
 - Appeared to be considerable dispute within Staff as how to view concentration – four going to three vs. eight going to seven.
 - Focused on challenging the merger-specific synergies to be generated from the transaction.
 - Within laundry category, appeared to be focused on mid-range, top load washers – but admittedly a declining product category.
 - Discussions demonstrated an inability to get past high market shares – regardless of the other factors suggested by the Guidelines.
 - Both Economic and Legal Staffs recommended filing suit.
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So Why Was the Transaction Cleared?

- Home Appliance industry is highly competitive – laundry prices have been decreasing even while innovation was increasing.
 - The number of players is growing – since 1998 Samsung, Bosch, Haier, LG and Fisher Paykel have entered U.S. market.
 - High efficiency front loads are the future
 - Unit share has grown from 10% in 2000 to over 33%
 - Prices for front load have fallen into the mainstream price range of top loaders
 - Maytag shares of top laundry were not indicative of future shares in front load
 - Foreign entrants offer retailers a variety of options and prices
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Transaction Clearance Continued

- Big Box Retailers are large, growing and have the power and incentive to fend off price increases.
 - Attempts to raise prices for laundry products must be evaluated in the context of the retailers' likely response to purchase of Whirlpool's refrigerators, ranges, dishwashers and other products.
 - The synergy opportunities in the transaction were huge – and the retailers are focused on getting a substantial share of those savings.
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So What about the Politicians?

- Despite the media attention, their impact appeared nominal.
 - The largest political risk was whether the Senate Judiciary Committee would chose to hold hearings on the transaction
 - Both Ohio and Iowa are represented on the Committee – with Ohio perceived as a “winner” in the transaction
 - Newton factory’s future unfavorable regardless of owner
 - Amana facility likely to benefit from transaction
 - Ripplewood – the wild card.
 - Haier – a “red herring”
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Other M&A Implications of the Transaction

- Pre-merger integration planning
 - Both parties decided it was in the shareholders' best interest to proceed with extensive planning prior to clearance.
 - Costs and risks associated with the Second Request
 - The impact of disclosure requirements on the process
 - Timing
 - Substance
 - The viability of a post-signing "market check"
 - Director decision making when a company is "in play"
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