

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **William E. Kovacic, Chairman**
 Pamela Jones Harbour
 Jon Leibowitz
 J. Thomas Rosch

| | | |
|---|---|------------------------|
| In the Matter of |) | |
| |) | |
| |) | |
| Inova Health System Foundation, a corporation, and |) | Docket No. 9326 |
| |) | |
| Prince William Health System, Inc. a corporation. |) | |
| |) | |

ORDER DISMISSING COMPLAINT

On May 8, 2008, the Federal Trade Commission issued the Administrative Complaint in this matter, pursuant to Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), having reason to believe that Respondents Inova Health System Foundation (“Inova”) and Prince William Health System, Inc. (“PWHS”) had entered into a merger agreement which, if consummated, would violate 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filed a Joint Motion to Dismiss Complaint, on the grounds that the Respondents have abandoned the transaction and have withdrawn their Hart-Scott-Rodino Notification and Report Forms.¹ By Order dated June 13, 2008, Commissioner J. Thomas Rosch, serving by designation as the Administrative Law Judge in this matter, has certified the Joint Motion to the Commission.

The Commission has determined to dismiss the Administrative Complaint without prejudice, consistent with both Commission precedent and the current posture of this case. In *Equitable*,² for example, the Commission dismissed the administrative complaint without

¹ *Joint Motion to Dismiss Complaint* (June 11, 2008) (“Joint Motion”), available at <http://www.ftc.gov/os/adjpro/d9326/080611jointmodismisscmplt.pdf>.

² *In the Matter of Equitable Resources, Inc., Dominion Resources, Inc., Consolidated Natural Gas Company, and The Peoples Natural Gas Company*, Docket No. 9322, Order Dismissing Complaint (January 31, 2008) (Public Version), at 2, available at <http://www.ftc.gov/os/adjpro/d9322/080204complaint.pdf>.

prejudice after the Respondents publicly announced that they had mutually terminated the acquisition agreement at issue in the matter, and one of the Respondents filed a notice of that termination with the U.S. Securities and Exchange Commission. Similarly, in *Swedish Match*,³ the Commission dismissed the administrative complaint without prejudice after the parties determined to abandon the transaction at issue and Swedish Match AB withdrew the applicable Hart-Scott-Rodino Notification and Report Form. The Commission noted:

The withdrawal of the Notification and Report Form -- and the parties' abandonment of the February 10, 2000 Asset Purchase Agreement -- ensure that the most important elements of the relief set out in the administrative complaint's Notice of Contemplated Relief have been accomplished without the need for further litigation in this case. Therefore, the public interest warrants dismissal of the administrative complaint. The Commission has determined to do so, however, without prejudice, because it is not reaching a decision on the merits.⁴

For similar reasons, the Commission dismissed the administrative complaint in *H.J. Heinz*⁵ after the Respondents abandoned the transaction at issue.

In this matter, as in the foregoing cases, 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. In particular, the Respondents have publicly announced that they have abandoned the proposed merger at issue. Moreover, the Respondents have withdrawn the Hart-Scott-Rodino Notification and Report Forms they 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

³ *In the Matter of Swedish Match North America Inc., and National Tobacco Company, L.P.*, Docket No. 9296 (*Swedish Match*), Order Dismissing Complaint (January 4, 2001), available at <http://www.ftc.gov/os/2001/01/swedishdismisscmp.htm>.

⁴ *Id.*, citing *R.J. Reynolds Tobacco Company*, Docket No. 9285, Order Dismissing Complaint (January 26, 1999), at 4.

⁵ *In the Matter of H.J. Heinz Company, Milnot Holding Corporation, and Madison Dearborn Capital Partners, L.P.*, Docket No. 9295 (*H.J. Heinz*), Order Dismissing Complaint (December 4, 2001), available at <http://www.ftc.gov/os/2001/12/heinzorder.pdf>

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, Commissioner Rosch not participating.

Donald S. Clark
Secretary

ISSUED: June 17, 2008