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Antitrust Division Declares Enterprise Wireless Merger Settlement a Victory

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Shortly before the scheduled start of the trial, the U.S. Department of Justice, Antitrust Division (Division) reached a settlement with Hewlett Packard Enterprise (HPE) and Juniper Networks (Juniper), allowing their $14 billion merger to proceed. The settlement, described by the agency as "novel," requires divestiture of an HPE business line to a pre-approved buyer and at least one license of certain Juniper technology to one or more licensees that must be approved by the Division.

For the third time in a month, the new administration has approved a structural remedy to address the potential anticompetitive effects of a merger.

The Transaction

HPE offers products in several technology markets, including general-purpose servers, cloud storage, and finance. The company also sells networking products, including wireless access points and campus switches, under the HPE Aruba Networking brand and its legacy on-premises network management solution, Airwave. Juniper provides a range of networking products, including wireless access points, wired switches, and network management software under the Mist brand.

Post-merger, HPE and Juniper's aggregate market share would be only approximately 22-26%, below the 2023 Merger Guidelines' 30% market share illegality presumption. However, the Division also alleged that the parties' largest competitor has an approximate 48% market share and that at least seven other competitors each have market shares of only between 1% and 10% for commercial or enterprise-grade wireless networking solutions. The transaction would result in two firms controlling more than 70% of the relevant market, with a significant gap between post-closing HPE and the next largest competitor in the market, allegedly making it easier for the two largest companies to reach and sustain a consensus on price, features, and reliability.

Despite the transaction being cleared by 14 foreign antitrust authorities, the Division sued to block the merger in January 2025 over concerns about competition for local wireless networking technology. According to the agency's complaint, there were three primary theories of harm: (1) loss of head-to-head competition between the merging parties' Aruba and Mist brands, causing prices to increase; (2) elimination of a disruptive force in the industry that has introduced tools to significantly lower the cost of wireless networks; (3) increased risk of coordination among the remaining vendors.

The European Commission's public findings regarding the transaction's impact in the EEA are in stark contrast

with the Division's allegations. HPE's CEO's recent statements might, however, explain the divergence; he has said that the transaction would facilitate the firm's ability to better compete outside the U.S., where more competitors with higher market shares participate in the market.

The Remedies

The divestiture and technology license(s) are intended to eliminate the alleged anticompetitive effects of the acquisition by strengthening one or more existing competitors or facilitating entry of a new competitor for enterprise-grade WLAN solutions.

- HPE must divest its global "Instant On" campus and branch WLAN business, including all assets, intellectual property, R&D personnel, and customer relationships within 180 days.

- The parties must also hold an auction for a perpetual, worldwide, non-exclusive license to Juniper's AI Ops for Mist source code. The license will include optional transitional support "on reasonable commercial terms" and personnel transfers.

The settlement also assures that any winning licensee will have the right to any improvements to and derivatives of the licensed technology and the right to grant rights of use to the technology to its end users and service providers as reasonably needed. If the auction results in multiple bids exceeding $8 million, Juniper will be required to license to at least one additional bidder. This novel approach by the Justice Department reflects a commitment to solving unique challenges in mergers.

While not routine, license remedies have been used previously. For example, in 2017, the Federal Trade Commission (FTC) accepted a license remedy for its challenge to a pharmaceutical company's acquisition of the U.S. rights to the drug Synacthen. The FTC alleged there that the acquisition would prevent the development of a U.S. competitor to the buyer's monopoly. In another instance, a licensing remedy was approved in a post-consummation merger challenge.

A licensing remedy alone, however, would likely have been insufficient. The divestiture of a business is an important component to the settlement here. Accordingly, parties considering transactions should not assume that a license alone will resolve agency concerns. On the other hand, it is also clear that the current administration is willing to resolve merger challenges in advance of trial in this case and in advance of complaint in two other recent transactions. This apparent shift in approach should be taken into consideration when assessing the substantive risk of potential transactions, designing agency clearance strategies, and negotiating antitrust risk-shifting provisions in purchase agreements.

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