Another Merger Bites the Dust: General Electric/Electrolux Merger Collapses

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I. Introduction

Some might say consolidation is the “new black” and the trend does not seem to be going away any time soon.1 The year 2015 was record setting for the number of announced mergers in the United States, totaling around 10,000 deals and amounting to $4.7 trillion, beating out the year 2007 which held the previous record.2 Significantly contributing to these numbers are what have been termed as “mega deals”, which include any deal that exceeded $5 billion.3

If consolidation is indeed the “new black”, the collapse of the proposed merger between General Electric and Electrolux hints that the two home appliance giants may be out of style this season. While some major deals were successful, many deals of 2015 also saw their demise due to governmental review and antitrust intervention.4 The Department of Justice and the Federal Trade Commission diligently moved to challenge deals they saw as harmful to competition, successfully thwarting multiple deals from transpiring and imposing substantial divestitures and remedies as conditions of others.5 A handful of these deals were abandoned by the parties due to

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5 CROWELL MORING, supra note 4.
threats of action by the agencies. The proposed merger between General Electric and Electrolux has officially fallen into the category of abandoned mergers after it was met with heavy skepticism by antitrust enforcement agencies and challenged under Section 7 of the Clayton Act. This article focuses on the collapse of the merger between General Electric and Electrolux and the future of both companies.

II. Electrolux’s Potential Purchase of GE’s Appliance Division

a. Background of the Appliance Market

General Electric was created in 1892 and is comprised of a variety of different businesses reaching many different industries. General Electric’s history shows it is no stranger to the consolidation game among its many different sectors, but has recently attempted sell its well branded heating and cooking appliance division to Sweden’s AB Electrolux (a subsidiary of Electrolux North America, Inc.). Electrolux, unlike General Electric focuses solely on the appliance market and is the world’s second biggest home appliance maker next to Whirlpool. The cooking appliances market is primarily controlled by four major manufacturers. While Whirlpool has been the longstanding leader in all appliances, within the cooking appliance market specifically, its current market share of 26% falls just short of General Electric’s market

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6 Michael Bernstein et al., US Competition Law-Merger Enforcement, ARNOLD & PORTER 1, 7 (2016).
share of 28%. Electrolux comes in third with about 23% and Kenmore, Samsung, and LG following behind with 11%, 6% and 3% respectively.\(^\text{11}\)

\section*{b. The Stakes for Both Parties}

In September of 2014, Electrolux announced its intentions to purchase General Electric’s appliances division.\(^\text{12}\) Electrolux was excited about the prospect of increasing its product lines and embarking on the largest acquisition in the company’s history.\(^\text{13}\) The merger would benefit Electrolux by allowing them to compete more effectively with market heavy hitter, Whirlpool.\(^\text{14}\) Specifically, Electrolux’s sales were predicted to double in the United States had the merger gone through.\(^\text{15}\) The proposed merger would have benefited General Electric as well because Electrolux would have been empowered to take over a division that General Electric has no desire to continue competing in. General Electric hoped to sell its appliance division in order for it to be able to focus more on its finance and heavy industrial divisions.\(^\text{16}\) While General Electric home appliances have been a household name and profitable for General Electric, the appliance

\begin{itemize}
\item \(^\text{12}\) Bernstein, \textit{supra} note 6, at 9.
\item \(^\text{13}\) Matthew Hendrickson et al., \textit{“DOJ Scores as Electrolux and General Electric Abandon Deal; FTC Challenges (Again) Staple’s Proposed Acquisition of Office Depot”}, SKADDEN.COM (Dec. 8, 2015), \url{https://www.skadden.com/insights/doj-scores-electrolux-and-general-electric-abandon-deal-ftc-challenges-again-staples-proposed-acquisition-office-depot}.
\item \(^\text{14}\) Mann & Hansegard, \textit{supra} note \textit{Error! Bookmark not defined.}..
\item \(^\text{15}\) \textit{Electrolux’s US plans in tatters as GE deal falls through}, CNBC.COM (Dec. 1, 2015, 6:10 AM), \url{http://www.cnbc.com/2015/12/07/ge-says-has-terminated-agreement-to-sell-appliances-business-to-electrolux.html}.
\item \(^\text{16}\) Tedd Mann, \textit{GE Moves Further Away From Consumers With Sale of Appliances Unit}, WSJ.COM (Sept. 8, 2014), \url{http://www.wsj.com/articles/appliances-sale-shifts-ge-further-away-from-consumers-1410197984}.
\end{itemize}
division represented less than 5% of the company’s net earnings in 2013.\textsuperscript{17} This is the second attempt to divest the division after a failed attempt (unrelated to antitrust) before the recession.\textsuperscript{18}

III. The Challenge by the Department of Justice

\textit{a. The Antitrust Challenge}

The Department of Justice did an initial investigation lasting 10 months before ultimately concluding further action to stop the deal needed to be taken.\textsuperscript{19} In July 2015, the Department of Justice officially challenged the proposed $3.3 billion purchase of General Electric’s appliance business by Electrolux.\textsuperscript{20} The government argued that the merger between General Electric and Electrolux would substantially lessen competition and was therefore a violation of Section 7 of the Clayton Act.\textsuperscript{21} The government was primarily concerned with allowing two of the leaders in cooktops and wall ovens to combine creating a duopoly between Electrolux and Whirlpool in that specific submarket.\textsuperscript{22} The government argued that the industry was already highly concentrated and due to Electrolux’s and General Electric’s individual market power, if they were to merge the new merged company and Whirlpool would control just short of 90% major cooking appliance market, causing it to become even more concentrated.\textsuperscript{23} To bolster their argument, the government had testimony from General Electric executives acknowledging

\begin{enumerate}
\item Mann, \textit{supra} note 16; Taylor, \textit{supra} note 11.
\item Antoine Gara, \textit{General Electric Receives $175 Million Fee For Terminating Appliance Unity Sale To Electrolux}, \textit{FORBES.COM} (Dec. 7, 2015, 8:12 AM), \url{http://www.forbes.com/sites/antoinegara/2015/12/07/general-electric-receives-175-million-fee-for-terminating-appliance-unit-sale-to-electrolux/#3a8e4d34361d}.
\item Bernstein, \textit{supra} note 6, at 9.
\item Id.
\item \textit{Electrolux and General Electric Abandon}, \textit{supra} note 7.
\item See Melissa Lipman, \textit{DOJ Electrolux Merger Suit Solid Despite Limited ‘Hot Doc’ Use}, \textit{LAW 360} (July 2, 2015, 7:47 PM), \url{http://www.law360.com/articles/675472/doj-electrolux-merger-suit-solid-despite-limited-hot-doc-use} (commenting that the Herfindahl-Hirschman Index (HHI) was also used in factoring market power after the proposed merger and created concerns for the government); see also Complaint at 12, US v. AB Electrolux et al., No. 15-1039 (D.D.C 2015); \textit{see also} Gara, \textit{supra} note 18.
\end{enumerate}
Electrolux’s potential dominant position as a market leader as a consequence of the merger. In addition, the government asserted the barriers to entry in this particular industry are high because people do not usually “mix and match” brands of appliances throughout their homes and therefore, makers of other home appliances have little incentive to enter, especially paired with the time and cost of gaining brand recognition.

The government also contended that such a combination would result in harm because it would decrease consumer options for cooking appliances and ultimately lead to increased prices because without competition, there would be no market force to keep prices down. In addition, the government argued that aside from the general population, building contractors would have been particularly adversely affected because they tend to buy these appliances in bulk at discount prices. The government also noted that Whirlpool approved of the merger, giving rise to evidence that coordinated effects to create higher prices was probable.

b. The Enhanced Efficiency Arguments by Electrolux

Electrolux adamantly denied that the proposed merger would substantially lessen competition. Electrolux argued that the merger would increase competition and provide more consumer choice among high quality products because there is significant possible competition from other industry players such as LE or Samsung. From an efficiency standpoint Electrolux

25 Schossler, infra note 27.
26 Mann & Hansegard, supra note Error! Bookmark not defined..
asserted that by combining production and other resources they would also be able to gain economies of scale and cost savings.\(^3\) This ultimately would allow for more room for research and development and benefit consumers in the long run.\(^3\) Electrolux also claimed that the barriers to entry would be high in this specific market regardless of the merger due to the time and expense of winning over brand appreciation.\(^3\)

With respect to the government’s predicted market power concern, Electrolux argued that the government’s worries of market power were overinflated.\(^3\) Interestingly enough, while not a formal defense, Electrolux counsel brought attention to the fact that the DOJ had not challenged Whirlpool’s acquisition of Maytag in 2006.\(^3\) Electrolux appeared to be arguing that this case is similar in the facts and in that case, quality went up and prices went down in that case and there was no reason that the same result could not happen with the merger with General Electric.\(^3\)

c. The Failed Settlement Discussions

Throughout the process Electrolux offered settlement proposals so sell assets, however these offers were rejected.\(^3\) The Department of Justice attempted to compromise throughout the talks by allowing the merger on condition that Electrolux divested its entire US business, however


\(^{3}\) Id.


\(^{3}\) Lipman, supra note 23.

\(^{3}\) Id.

\(^{3}\) Id.

\(^{3}\) Mann & Hansegard, supra note Error! Bookmark not defined.; Gara, supra note 18.
Electrolux did not agree to the condition and litigation continued. In order to protect consumers from this seemingly anticompetitive move, the merger was contentiously litigated for five months before General Electric backed out of the deal just before a final expert witness was called. The Department of was surprised by the decision to abandon because it is a rare occasion to do so that late in the proceedings.\(^{38}\) As a result of their abandonment, General Electric plans to collect a $175 million termination fee, although Electrolux is still reviewing the terms of the breakup fee.\(^{39}\)

**IV. The Future in White Goods**

In the wake of the abandonment of the Electrolux deal late last year, General Electric wasted no time courting other buyers to enable it to focus more on its high-tech and heavy industry divisions.\(^{40}\) From the time of the break-up General Electric has been confident that another buyer would substitute for Electrolux.\(^{41}\) Their predictions came true as they announced their intention to sell the division to Chinese appliance manufacturer, Haier for $5.4 billion in January 2016.\(^{42}\) After the Department of Justice review, the merger was cleared in March, 2016.\(^{43}\) While Electrolux’s CEO testified at trial that the deal was “absolutely critical”, Electrolux plans to look for other acquisitions.\(^{44}\) However, his word may not be the most reliable source as he stepped forward.


\(^{39}\) Mann & Hansegard, *supra* note Error! Bookmark not defined.

\(^{40}\) Id.

\(^{41}\) Id.


\(^{44}\) Gara, *supra* note 18.
down as CEO in January 2016.\textsuperscript{45} Immediately after the collapse of the deal, Electrolux shares decreased by 12\% and profits have not yet rebounded.\textsuperscript{46}

V. Conclusion

While 2015 seemed to be a booming year for both consolidation and the Department of Justice, there is debate as to whether 2016 will be a repeat.\textsuperscript{47} As of right now, General Electric and Haier both have a tally in the win column, but there are many more proposed deals that still await their fate.

\textsuperscript{46} Gara, supra note 18.