



Federal Trade Commission Protecting America's Consumers

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Administrative Law Judge Rules That Polypore International's 2008 Acquisition of Rival Battery Separator Manufacturer Violated Antitrust Law

Orders Divestiture of Microporous L.P. to FTC-Approved Buyer

In an Initial Decision announced today, Chief Administrative Law Judge D. Michael Chappell found that Polypore International Inc.'s consummated acquisition – through its Daramic Acquisition Corporation subsidiary – of rival battery separator manufacturer Microporous L.P. was anticompetitive and violated federal law in four battery separator markets in North America. In an Order filed with the Initial Decision on February 22, Judge Chappell ordered Polypore to divest Microporous to an FTC-approved buyer within six months after the divestiture provisions of the Order become final.

Judge Chappell also ruled that a 2001 joint marketing agreement between Polypore and a rival battery separator manufacturer illegally divided up the markets for particular types of battery separators in North America, and ordered Polypore to amend the agreement to terminate and declare null and void the covenant not to compete. Finally, the Judge dismissed a separate allegation that Polypore engaged in exclusionary conduct in specific battery separator markets.

In September 2008, the FTC issued an administrative complaint challenging Polypore's completed February 2008 acquisition of Microporous, as well as some of Polypore's business tactics, as anticompetitive and in violation of the federal antitrust laws. Polypore competed with the former Microporous through its Daramic business unit.

According to the complaint, the combination led to decreased competition and higher prices in several North American markets for battery separators, a key component in flooded lead-acid batteries.

The complaint also charged that Polypore reached an agreement in 2001 with a potential competitor – Hollingsworth & Vose – in order to prevent that company from entering the market for polyethylene battery separators, which Polypore manufactures and sells. Finally, the complaint alleged that Polypore attempted, through various anticompetitive means, to maintain monopoly power in several battery separator markets.

In issuing his Initial Decision, Judge Chappell addressed each count of the complaint. Regarding Count I (Illegal Acquisition), the Judge found that there was a "reasonable probability" that the acquisition would substantially lessen competition in the markets for four types of battery separators. Battery separators are products of various composition that are placed between positively and negatively charged plates in batteries to prevent electrical short circuits while allowing ionic current to flow through the separators. The four markets included:

- separators used in automotive batteries for starter, lighter, and ignition (SLI) power;
- separators for deep-cycle batteries used primarily in golf carts;
- separators for motive batteries used primarily in forklifts and mine equipment; and
- separators used in uninterruptible power supply (UPS) batteries that provide backup power in the event of power outages.

Judge Chappell found that in the deep-cycle and motive markets, the "acquisition amounts to a merger to monopoly. In the SLI market, the acquisition removed Microporous as a competitor, preserving a powerful duopoly. In the UPS market, the acquisition removed Microporous as a competitive constraint, thereby cementing Daramic's monopoly in that market."

Regarding Count II (Unfair Method of Competition), the Judge found that Polypore's agreement with Hollingsworth & Vose was an illegal market allocation that restrained trade in violation of Section 5 of the FTC Act.

The Judge dismissed the monopolization charges in Count III (Monopolization) of the complaint. He wrote that Complaint Counsel had shown that Polypore "had monopoly power or a dangerous probability of achieving monopoly power" in the deep-cycle, motive and UPS battery separator markets, but that the specific conduct charged in the complaint did not constitute unlawful exclusionary conduct.

Based on his findings, Judge Chappell ordered Polypore to divest Microporous to a buyer approved by the FTC within six months after the divestiture provisions of the Order become final. The Order lays out further details, including:

- requiring Polypore to do whatever is needed to help the acquirer in "evaluating, recruiting and employing" any Microporous employees.
- prohibiting Polypore from soliciting or attempting to solicit any Microporous employee who has accepted a job with the acquiring firm.
- making sure that all necessary confidential business information is provided to the acquiring firm.

"The purpose of the divestiture of Microporous," the ALJ wrote, "is to create an independent, viable and effective competitor" in the markets Microporous was engaged in at the time it was acquired by Polypore.

Further, the Judge ordered Polypore, within 15 days after the Order becomes final, to modify its agreement with Hollingsworth & Vose to eliminate the sections that block the firms from competing in the North American market. Polypore also was ordered to "cease and desist" from "inviting, entering into or attempting to enter into" any combination, agreement or understanding – with anyone currently or potentially engaged in the development, production, marketing or sale of any battery separator – to allocate or divide markets, customers, contracts, lines of commerce, or geographic territories, or otherwise to restrict competition. Finally, the Order contains reporting and other provisions to ensure Polypore's compliance with its terms.

The Appeals Process. The Judge's Initial Decision is subject to review by the full Federal Trade Commission on its own motion, or at the request of any party. The Initial Decision will become the final decision of the Commission 30 days after it is served upon the parties, unless a party files a timely notice of appeal or the Commission places the case on its own docket for review.

Copies of the public version of the initial decision by the Administrative Law Judge are available from the FTC's Web site at <http://www.ftc.gov> and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

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File No.: 081 0131

[Statement of Bureau of Competition Director Richard Feinstein Concerning the Initial Decision](#)

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