stores. The proposed divestitures offered by Rite Aid would have eliminated the direct local overlaps but were simply insufficient for an acquirer of those assets to fully restore competition in this managed care market. Ultimately, the Commission refused the proposed divestiture and authorized the staff to seek an injunction. Rite Aid dropped the acquisition, and Revco was acquired by CVS, which currently competes aggressively with Rite Aid in the markets where competitive concerns were raised.[46]

3. Mediq/UHS

Mediq Inc. and Universal Hospital Services ("UHS") are the two largest firms in the country that rent durable, movable medical equipment—such as respiratory devices, infusion devices, and monitoring devices—to hospitals on an as-needed, short-term basis. Much of the contracting for durable medical equipment is done on a national basis, and hospital chains and group purchasing arrangements require a national network for this equipment.[47] Mediq's proposed acquisition of UHS in 1997 would have given Mediq a near monopoly in the national market and a near monopoly in numerous local geographic markets as well.[48] Competitive concerns were heightened because earlier acquisitions by Mediq had led to higher prices.

In an attempt to forestall litigation, the parties presented a purported "fix-it-first" solution involving Medical Specialties, a firm in the business of renting infusion pumps to home healthcare customers. The parties proposed to sell rental equipment to Medical Specialties and provide it with an option to lease several facilities.[49] The FTC's assessment, and that of customers, was that Medical Specialties would not have been an adequate replacement for UHS.[50] The new firm would have had a substantially smaller inventory than UHS, which itself was considerably smaller than Mediq. Customers—particularly national ones like hospital buying groups—testified that Medical Specialties would not have the amount and breadth of equipment necessary to replace UHS. Moreover, much of the business that Medical Specialties claimed it needed in order to compete successfully in the hospital rental market was under long-term exclusive contracts with UHS and Mediq.

The Commission found the proposed relief inadequate and authorized the staff to seek a preliminary injunction.[51] The defendants attempted to short-circuit the litigation by asking Judge Sporkin to approve the proposed settlement, but the judge was unwilling to second guess the FTC. On the eve

46 Press Release, FTC, Rite Aid Abandons Proposed Acquisition of Revco After FTC Sought to Block Transaction (Apr. 24, 1996); Press Release, FTC, CVS to Divest 120 Revco Drug Stores in VA, NY to Settle FTC Charges that Revco Acquisition Would Raise Prices (May 30, 1997).

47 Press Release, FTC, FTC Will Move to Block Merger of Hospital Equipment Rental Firms (July 29, 1997).

48 *Id.*

49 FTC v. Mediq, Inc., No. 97-1916 (D.D.C. Aug. 22, 1997).

50 William J. Baer, *New Myths and Old Realities: Perspectives on Recent Developments in Antitrust Enforcement*, Prepared Remarks Before the Bar Association of the City of New York (Nov. 17, 1997).

51 *Mediq, Inc.*, No. 97-1916.

of the preliminary injunction hearing, the parties dropped the proposed acquisition.[52]

B. Behavioral Relief

Of course, behavioral relief is typically a less satisfactory solution than structural relief because it often involves some sort of ongoing regulation. Nonetheless, this does not mean that it is never used. In appropriate cases, the Commission has used behavioral relief such as firewalls and nondiscrimination provisions, particularly to remedy vertical concerns. For example, in the Time Warner/Turner transaction, the Commission approved the merger based on a wide variety of behavioral rules. In other cases, a behavioral approach may be inadequate.[53]

1. Questar/Kern River

The proposed Questar/Kern River transaction in 1995 involved a situation in which a monopolist sought to acquire a fifty percent ownership interest in a firm that was on the verge of entering its market. Questar was the only transporter of natural gas to the Salt Lake City area, and Kern River Transmission Corp. had a gas pipeline that ran past Salt Lake to points further west. Kern River, which was jointly owned by Tenneco and Williams, planned to build a lateral pipeline to serve Salt Lake customers as well. The focus of the case was on transportation service to industrial customers, which could bypass the local utility and purchase gas directly from suppliers and pay separately to have it transported to their facility.[54] Kern River had begun to solicit customers and was already having an effect on the market. Due to Kern River's marketing efforts, Questar sought and obtained a tariff to lower its rates to certain industrial customers to persuade them not to switch to Kern River. Questar then sought to acquire Tenneco's fifty percent interest in Kern River, with the other fifty percent to be retained by the Williams Companies.[55] The transaction obviously raised concerns because it would eliminate the current price effect of Kern River's presence in the market and prevent future competition and the erosion of Questar's monopoly.[56]

Questar proposed what was in effect a competitive rules joint venture: it would be permitted to acquire a fifty percent interest in the Kern River pipeline while at the same time allowing Williams to have a large degree of independence on decisions as to where to enter. There were several problems

52 Press Release, FTC, Mediq Informs FTC that It Will Abandon Merger with UHS in Face of Challenge (Sept. 22, 1997).

53 For a discussion of remedies in vertical merger cases, see Richard G. Parker & David A. Balto, *The Merger Wave: Trends in Merger Enforcement and Litigation*, 55 Bus. Law. 351 (1999).

54 Press Release, FTC, FTC to Challenge Questar Acquisition of Kern River, Alleging Monopoly over Natural Gas Transmission into Salt Lake City Area (Dec. 27, 1995).

55 Questar Corp./Kern River Gas Transmission Co., No. 961-00001 (FTC Dec. 27, 1995) (preliminary injunction action authorized); FTC v. Questar Corp., No. 2:95CV 1137S (D. Utah 1995) (transaction abandoned).

56 Robert Pitofsky, *Competition Policy in Communications Industries: New Antitrust Approaches*, Prepared Remarks Before the Glasser LegalWorks Seminar on Competitive Policy in Communications Industries: New Antitrust Approaches (Mar. 10, 1997).