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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Middle-Market Spotlight: Gencorp-Rocketdyne

By **Liz Hoffman**

Law360, New York (August 13, 2013, 11:11 AM ET) -- So far, 2013 dealmaking headlines have been dominated by a handful of large-cap deals. For good reason: Data shows that the middle market sputtered this spring, and highly charged deals for Sprint Nextel Corp., Dell Inc. and others. raised issues sure to trickle down.

But there are midmarket gems all around us. So this week, Law360 will be featuring a few of them. Stay tuned for stories on the future of 3-D printing and private equity's love affair with dentistry.

Gencorp Inc.'s carveout of United Technologies Corp.'s rocket business had all the makings of a post-Soviet spy thriller — albeit a pretty wonky one: a ticking clock, a Russian joint venture, and a monopoly on missile defense intercept technology that the Federal Trade Commission let slide.

Gencorp struck a deal in July 2012 to acquire Pratt & Whitney Rocketdyne from UTC for about $550 million. The acquisition would have doubled Gencorp in size, and given it a leg up in key defense contracts.

But there were two problems.

The first was an antitrust review. Gencorp and Rocketdyne are the two major players — the only two, really — in what's known as liquid divert and attitude control systems, or LDACS. The technology helps balance and guide the missiles the U.S. military would theoretically shoot into outer space to intercept a theoretical attack from, say, North Korea.

Unsurprisingly, the FTC opened an investigation and requested more information.

But 11 months later, the agency closed its review and signed off on the merger. Not because it found the deal would not create a monopoly; in fact, it said it would. Instead, the Department of Defense had pulled rank, saying the merger would create a more stable supplier of LDACS technology and urging antitrust approval.

Saved by the DoD: not a common M&A outcome, especially in the defense sector, where military officials can scuttle deals that set off natural security alarm bells.

“It's really a unique situation,” said Will Chuchawat of Sheppard Mullin Richter & Hampton LLP, who headed the deal for Gencorp. “Here you have the FTC saying, clear as can be, that this is absolutely going to create a monopoly, and the deal goes through anyway.”

The second problem was a joint venture between Rocketdyne and NPO Energomash, a Russian defense contractor, to produce R-180 rockets. Energomash makes the engines, while Rocketdyne adds key technology and assembles them in Florida, then sells them to a partnership between Lockheed Martin Corp. and Boeing Co. to be sold on to the U.S. government.

Gencorp needed the approval of two Russian governmental agencies to acquire Rocketdyne's 50-percent stake in the joint venture, RD Amross LLC.

But it was slow going in Moscow. After receiving FTC clearance in June, the parties had less than a month to get the Russian approvals before hitting a one-year outside date set out in the orginal agreement.

Rather than extend the deadline, the parties reopened the deal and, essentially, carved out the carveout. They excluded the RD Amross interests, cut $55 million off the purchase price, and negotiated new agreements for what would happen once the Russian approvals came in. In the meantime, a separate contract maintained Rocketdyne's services and obligations to the joint venture.

“When you have a big train like this, you don't want to stop it once it's on the tracks,” Chuchawat said. “Once we had the FTC green light, the idea was 'let's keep it moving.'”

The parties declined to comment on the Russian regulatory process. But the deal amendment sets a new drop-dead date for the RDA interest sale of July 2014, suggesting they expect it to be a while.

In the meantime, the deal has closed and Gencorp, nearly twice its former size, has perhaps the only government-blessed monopoly in the U.S.

Gencorp was represented by Will Chuchawat of Sheppard Mullin, assisted by Olshan Frome Wolosky LLP on financing and U.S. Securities & Exchange Commission matters, and by Sutherland Asbill & Brennan LLP and Hogan Lovells LLP on antitrust matters.

UTC was represented by Karessa Cain of Wachtell Lipton Rosen & Katz.