

AntitrustConnect Blog

Antitrust Division Workload Statistics Show Increase in Merger Filings, Enforcement Actions

Jeffrey May (Wolters Kluwer) · Thursday, May 3rd, 2012

The Department of Justice Antitrust Division opened 90 merger investigations and filed 13 merger cases in Fiscal Year (FY) 2011 (October 1, 2010, to September 30, 2011). The uptick in enforcement activity over the past couple of years was in response to an increase in merger activity.

Increase in HSR Filings

According to recently released workload statistics, summarizing Antitrust Division activities over the preceding 10-year period (FY 2002 – 2011), there were 1,450 premerger notifications under the Hart-Scott-Rodino (HSR) Act in FY 2011.

The number of HSR filings in FY 2011 was more than double the number in FY 2009 (716). From FY 2010 (1,166) to FY 2011, there was a more than 24 percent increase in HSR filings. While the trend reflects healthy increases in large merger activity recently, the number of filings don't come close to the recent high of 2,201 in FY 2008.

Merger Cases

The Antitrust Division filed 13 merger cases in FY 2011. This was the highest number of merger cases filed since FY 2008 (15). There were only seven merger cases filed in FY 2009 and 10 merger cases filed in FY 2010.

Among the transactions challenged in FY 2011 were mega-mergers, such as AT&T's ultimately abandoned acquisition of T-Mobile USA Inc. and the combination of Comcast Corp and General Electric Co.'s subsidiary NBC Universal Inc. However, the Antitrust Division also brought two cases involving non-reportable mergers.

The first of the two challenges to transactions that did not meeting the HSR reporting thresholds was filed in May 2011. In that [case](#), the Antitrust Division moved to block George's Incorporated's acquisition of a Tyson Foods poultry processing plant in Virginia. George's later consented to a [settlement](#) requiring it to make capital improvements to the plant in order to increase in the number of chickens processed at the facility, thereby increasing the demand for grower services ((CCH) [2011-2 Trade Cases ¶77,679](#)). In November, the Antitrust Division announced a [challenge](#) to an agreement between Blue Cross Blue Shield of Montana and five of six Montana hospitals that own New West Health Services, a health insurer that competes with Blue Cross in Montana. A [consent](#)

[decree](#) resolving the matter was approved by the federal district court in Montana last month.

Merger Investigations

The number of merger investigations was up in FY 2011 over the three preceding years. While there was about a 24 percent increase in the number of HSR filings from FY 2010 to FY 2011, the number of investigations increased more than 30 percent (from 55 to 72).

Thirty one of the of the 72 HSR investigations in FY 2011 involved second requests. Second requests or requests for information and documentary material from the merging parties are made when the federal antitrust agencies are unable to make a determination on the competitive impact of a transaction based on the original HSR filings. The percentage of second requests jumped between FY 2010 and FY 2011, as well, with an increase of more than 40 percent (from 22 to 31). Eighteen of the 90 merger investigations were non-HSR matters.

The Antitrust Division's FY 2002-FY 2011 workload statistics, which also show a significant increase in criminal cases filed and grand jury investigations initiated in FY 2011, are available at: <http://www.justice.gov/atr/public/workload-statistics.html>.

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