

CEO Fined \$500,000 for Failure to Make HSR Filings Prior to Vesting of Restricted Stock

Comcast Corp. Chief Executive Officer Brian L. Roberts will pay \$500,000 to settle allegations that he violated premerger notification laws by failing to notify federal antitrust authorities prior to the vesting of restricted stock units received as part of his executive compensation plan, according to a complaint and proposed consent decree filed by the Department of Justice on December 16, 2011, at the request of the Federal Trade Commission.¹

The Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (“HSR Act”), requires all persons contemplating mergers or acquisitions of voting securities or assets that meet or exceed the size-of-transaction and size-of-person thresholds in the Act to notify the agencies and observe a waiting period before completing those transactions. Officers and directors who receive compensation in the form of company stock may be required to submit notification and observe the waiting period under the HSR Act before their shares vest or they exercise options, to the extent they will end up holding voting securities exceeding an HSR threshold² and are not otherwise exempt.

The HSR rules include many exemptions and exceptions and at times require the aggregation of pre-acquisition holdings and reporting of subsequent acquisitions when a secondary threshold is crossed. The HSR rules exempt acquisitions resulting in the buyer holding not more than 10% of outstanding voting securities if they are made solely for the purpose of investment (“investment only exemption”), but this exemption is unavailable for officers and directors, and therefore did not apply to Mr. Roberts’ acquisition of Comcast voting securities.

In 2008 and 2009, Mr. Roberts acquired approximately 335,000 Comcast voting securities through the vesting of restricted stock units Comcast issued to him as part of his compensation, and around the same period, Mr. Roberts acquired approximately 3,700 shares of Comcast voting securities through his 401(k) account, according to the complaint. Because over five years had passed since he made an HSR filing in 2002, Mr. Roberts was required to file and observe the waiting period prior to completing these acquisitions, which resulted in Mr. Roberts holding more than \$126.2 million of Comcast’s stock, thereby crossing the HSR threshold.³ The Department alleged that Mr. Roberts was in continuous violation of the HSR Act from the moment he exceeded the HSR threshold until the waiting period expired for his corrective HSR filing.⁴

¹ In a separate press release, the Federal Trade Commission noted that the amount of the fine was limited by a number of factors, including that the violation was inadvertent and technical and that Mr. Roberts reported the violation promptly once it was discovered.

² The minimum size-of-transaction threshold is currently \$66.0 million (\$50 million, adjusted annually); the next size-of-transaction threshold is \$131.9 million (\$100 million, adjusted annually).

³ The Department of Justice noted that Mr. Roberts had made two other corrective HSR filings in the past when he was the ultimate parent entity of Comcast and received no fines in connection with those filings.

⁴ The civil penalties for premerger filing notification violations under the HSR Act are \$16,000 per day for violations occurring on or after February 10, 2009 and \$11,000 per day for violations occurring before February 10, 2009 and on or after November 20, 1996.

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This enforcement action serves as a reminder that exercises of stock options and other acquisitions by officers and directors that will result in any single individual holding more than \$66 million (\$50 million, adjusted annually) of an issuer's presently voting stock are potentially reportable and should be reviewed by HSR counsel prior to completing such equity acquisitions. Past acquisitions of these types may also need to be reviewed to determine if any corrective filings are advisable. The action also serves as a reminder that, under the HSR Act and rules, the absence of apparent anticompetitive consequences does not excuse the failure to file.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or e-mail Elai Katz at (212) 701-3039 or ekatz@cahill.com; or Laurence T. Sorkin at (212) 701-3209 or lsorkin@cahill.com; or Lauren Rackow at (212) 701-3725 or lrackow@cahill.com.