
Fines Imposed for Failure to Make HSR Filings

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Two recent enforcement actions demonstrate that U.S. antitrust authorities can and do fine individuals and entities — especially repeat offenders — for failure to comply with U.S. antitrust premerger notification requirements. Fines may be levied even when the acquisition does not raise competitive concerns. Biglari Holdings Inc. (“Biglari”), a restaurant chain owner and investment fund operator, and Clarence L. Werner, founder of a Nebraska-based truckload carrier, agreed to pay \$1.4 million and \$486,900, respectively, to resolve allegations that they violated premerger filing rules by failing to report acquisitions of stock in public companies before closing those transactions.

The Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (“HSR Act”), requires persons contemplating mergers or acquisitions of voting securities, non-corporate interests, or assets that satisfy the size-of-transaction and size-of-person thresholds to notify the Federal Trade Commission (“FTC”) and the Antitrust Division of the U.S. Department of Justice (“DOJ”) and together with the FTC, the “antitrust authorities”) and observe a waiting period before completing those transactions. The HSR Act covers many types of transactions, and its reach is far broader than mergers and acquisitions conferring control. The exercise of options or minority acquisitions of stock on the open market, for example, may be covered if they satisfy these thresholds. For many notifications, buyers must aggregate their current holdings with those to be acquired to determine whether size-of-transaction thresholds have been met. Minority acquisitions that meet the relevant thresholds and are not exempt require notification under the HSR Act not only for crossing the minimum size-of-transaction threshold — currently \$92 million (\$50 million, adjusted annually) — but also when subsequent thresholds — currently \$184 million (\$100 million, adjusted annually) and \$919.9 million (\$500 million, adjusted annually) — are crossed. These values will increase to \$101 million, \$202 million, and \$1.0098 billion, respectively, effective February 23, 2022.

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