

ANTITRUST AND TRADE PRACTICES ALERT

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

New Pre-Merger Filing Rules Go Into Effect August 18, 2011

July 29, 2011

On July 7, 2011, the Federal Trade Commission announced revised Hart-Scott-Rodino (“HSR”) pre-merger notification rules and a revised notification and report form for those transactions that must be reviewed by the antitrust enforcement agencies prior to being consummated. The revised rules and form, which are based on proposed rules issued in August 2010, streamline certain aspects of the HSR reporting process but also impose new reporting burdens.

A significant new requirement relates to a buyer’s “associates.” Generally, any entity that is under common operational control with the filing entity, even if the filing entity is not the majority owner of that entity, is considered an associate. Under the new reporting requirements, information regarding the buyer’s associates that was not previously required to be reported, now must be reported. This change will be most burdensome for buyers affiliated with private equity firms, investment funds, master limited partnerships and similar entities that are commonly managed, but not necessarily commonly owned.

The new rules also add significant document submission requirements. The existing obligation to provide “4(c) documents” – documents which were prepared by or for an officer or director for the purpose of analyzing various competitive aspects of the proposed transaction – has been supplemented with a new obligation to provide “4(d) documents.” Examples of 4(d) documents include confidential information memoranda that relate to the sale of the acquired entity or assets, reports by third-party advisors regarding various competitive aspects of the sale of the acquired entity or assets, and analyses of synergies or efficiencies prepared for the purpose of analyzing the acquisition.

In addition, the new rules add additional reporting requirements for companies that manufacture goods outside the U.S. for sale into the U.S.

The new rules do, however, streamline and simplify certain aspects of the reporting process. Most significantly, the new rules eliminate the mandate to provide revenues

divided according to NAICS codes for the year 2002. This requirement was often extremely burdensome, and its elimination has been met with an enthusiastic reception. In addition, the new rules eliminate the requirement to provide the agencies with the parties' SEC filings.

The revised rules are effective August 18, 2011, and apply to any HSR filings made on or after that date.

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