

Comcast CEO Fined \$500,000 for Failure to File HSR on Acquisition of Comcast Stock

The Department of Justice Antitrust Division has settled its claims that Brian L. Roberts, the chief executive officer of Comcast Corp., violated the notification filing requirements of the Hart-Scott-Rodino (“HSR”) Act by acquiring Comcast voting stock without first filing notification with the federal antitrust regulators. Roberts has agreed to pay a civil penalty of \$500,000.

The HSR Act sets notification and waiting period requirements that must be observed by individuals and companies based on the size of their holdings before they consummate acquisitions resulting in holding voting stock or assets above a certain value (currently, \$66 million). Violations of the HSR Act can result in civil penalties in lawsuits brought in federal courts by the Department of Justice. For a party that violated the HSR Act before Feb. 10, 2009, the maximum civil penalty is \$11,000 a day for each day the party is in violation of the Act; for violations of the HSR Act on or after Feb. 10, 2009, the maximum civil penalty is \$16,000 a day.

In 2002, Roberts filed an HSR notification regarding his acquisition of Comcast voting stock from a merger between Comcast and AT&T Corp. Under the HSR rules, Roberts could acquire additional Comcast stock for up to five years without having to file another HSR notification, unless he acquired enough stock to cross a higher notification threshold. After the five year exemption period expired, Roberts acquired additional Comcast stock on multiple occasions as part of his compensation package, without making any HSR filings. In August 2009, Roberts made a corrective filing with the Premerger Notification Office disclosing his recent failures to make HSR filings. Roberts faced potential penalties of approximately \$8 million.

This was not Roberts’ first failure to make required HSR filings, a factor which likely led to the substantial penalty. Roberts had twice before made corrective filings, conceding that he had made acquisitions that were reportable under the HSR Act but claiming he inadvertently failed to file notification under the HSR Act. For both previous transactions, federal antitrust enforcers opted not to seek civil penalties.

What’s Next?

This substantial civil penalty illustrates that premerger notification rules can ensnare executives with a significant stake in their companies who acquire voting stock as part of their compensation. The rules cover acquisitions of voting stock by executives as a result of grants of restricted stock, the exercise or vesting of options, warrants or similar securities, and purchases in the open market or pursuant to dividend reinvestment plans or employee stock purchase plans. Moreover, the Department of Justice is unlikely to be sympathetic to repeat violators of the HSR Act. Executives should assess whether their acquisitions of voting stock as compensation are subject to HSR notification requirements. In addition, executives and their companies should ensure that compliance programs are in place to assure that acquirers will be proactive in assessing whether an HSR filing is required for any given transaction.

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