Recent UK and US merger control developments
February 16, 2017

CMA announces proposed changes to de minimis guidance

The UK’s Competition and Markets Authority (CMA) has announced proposed changes to its de minimis guidance, under which mergers affecting small markets may be cleared despite the presence of competition concerns. The CMA has proposed that:

- the threshold above which the de minimis exception cannot be used should be increased to markets with an annual value of £15 million (up from £10 million); and
- the threshold under which the CMA considers that a reference to a phase 2 review will not be justified other than in exceptional circumstances should be increased to markets with an annual value of £5 million (up from £3 million).

As always, the application of the de minimis exception in the UK will remain at the CMA’s discretion. And this measure is unlikely to free up significant capacity for the CMA’s post-Brexit scrutiny of deals currently handled in Brussels. The UK regulator may need to take a more rigorous look at the efficient allocation of its resources.

FTC announces increases to the Hart-Scott-Rodino (HSR) Act notification thresholds

The FTC has announced annual increases to the “size of transaction” and “size of parties” jurisdictional thresholds. These thresholds are used in the initial determination of whether a transaction requires advance notification in the US.

- The “size of transaction” threshold for 2017 will be increased to $80.8 million (up from $78.2 million). Transactions that result in the acquirer holding voting securities or assets valued above $80.8 million may be reportable if the “size-of-parties” threshold is also satisfied and no exemptions are available.
- The “size of parties” thresholds for 2017 will be satisfied where one party to the transaction has worldwide sales or assets of or exceeding $16.2 million (up from $15.6 million) and the other has worldwide sales or assets of or exceeding $161.5 million (up from $156.3 million). Transactions valued at more than $323.0 million (up from $312.6 million) will be subject to pre-closing notification without regard to the sales or assets of the parties.

The new thresholds take effect on 27 February 2017.

In a related announcement, the FTC has confirmed that failure to comply with the HSR Act will carry a maximum penalty of $40,654 per day.