

apply to a federal court for a preliminary injunction blocking the acquisition. The agencies are not required, however, to seek preliminary relief. Failure to seek such relief does not preclude the agency's challenge at a later time (see questions 22 and 26).

To obtain a preliminary injunction, the agency has to persuade a court that it has a 'probability of success on the merits' of its antitrust claims. The merits will be adjudicated in a subsequent trial before the court or in an FTC administrative proceeding. The preliminary injunction action may be essentially a 'mini-trial', during which the agency and the parties submit evidence to the court on the antitrust issues. In some instances, the trial on the merits and the preliminary injunction motion have been combined in an action for permanent injunction.

If the responsible agency obtains an injunction from the district court prohibiting the transaction, the parties may appeal to the court of appeals for the circuit in which the district court is located. If the court of appeals denies the appeal, the parties may petition the Supreme Court to hear the case. It is rare for the Supreme Court to accept such an appeal.

32 What is the usual time frame for appeal or judicial review?

The usual time frame for a resolution of an agency's application for an injunction to block an acquisition is approximately three to six months. An appeal to a court of appeals of an injunction blocking the transaction may be heard within a few months of the grant of that injunction. As noted above, it is rare for the Supreme Court to accept an appeal of a court of appeals decision.

Enforcement practice and future developments

33 What is the recent enforcement record of the authorities, particularly for foreign-to-foreign mergers?

The agencies have been active in their enforcement of the merger laws in recent years. Numerous transactions have resulted in divestiture agreements or court challenges. These have included domestic and foreign transactions. In addition, the agencies have become more active in making informal inquiries to the parties for further information during the initial HSR Act waiting period.

34 What are the current enforcement concerns of the authorities?

The agencies have required divestitures or other conditions, or both, through settlements, in a number of cases in recent years involving

technology, pharmaceuticals, medical devices and clinics, telecommunications services, media, food processing, supermarkets, agriculture, and scientific research and measurement devices. It appears that technology, telecommunications and media, and products and services related to the health-care industry will, in particular, continue to be enforcement priorities.

35 Are there current proposals to change the legislation?

The most recent significant amendments to the HSR Rules were in 2005 when the FTC amended the rules regarding the application of the HSR Act to non-corporate entities (partnerships, LLCs, etc). Dollar thresholds in the HSR Act and the Rules are adjusted annually to reflect changes in the GNP. In July 2011, the FTC released significant amendments to the Form, which streamline several items within the Form, but also expand certain categories of data and documents required to be submitted with a notification (see question 14). These amendments have been effective from 18 August 2011. Refer to the FTC's website, www.ftc.gov/bc/hsr/index.shtm, to confirm the currently applicable thresholds and for notice of any potential changes to rules.

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