

FTC Fines Acquirer \$896,000 for Failure to File Under HSR Act for Incremental Acquisitions of a Public Issuer by Conversion of Notes

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The Federal Trade Commission (“FTC”) yesterday fined Berkshire Hathaway Inc. \$896,000 to settle allegations that it violated the Hart-Scott-Rodino Antitrust Improvements Act (the “HSR Act”) in connection with acquisitions of shares of USG Corporation (“USG”) in December of 2013 by way of conversion of notes originally acquired in 2008. The FTC alleged that Berkshire Hathaway’s incremental acquisition of USG stock resulted in Berkshire Hathaway’s aggregate holdings of USG exceeding the \$200 million, as adjusted, size-of-transaction threshold (then \$283.6 million), and no exemption from submitting a filing under the HSR Act and observing a waiting period was available.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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