

DOJ Alleges Acquirer's Premerger Review of Target's Contracts Violates HSR Act

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On January 21, 2010, the U.S. Department of Justice, Antitrust Division ("DOJ") announced that it had settled an action against Smithfield Foods, Inc. ("Smithfield") and Premium Standard Farms, LLC ("Premium Standard") for an alleged violation of the premerger waiting period requirements of the Hart-Scott-Rodino Act ("HSR Act"). The DOJ claimed that Smithfield's exercise of its rights in a merger agreement with Premium Standard to review and consent to what the DOJ considered to be ordinary course contracts to be entered into by Premium Standard was illegal premerger coordination in violation of the HSR Act. The parties agreed, jointly and severally, to pay a \$900,000 fine.

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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