

DOJ CHALLENGES COMPLETED MERGER THAT PASSED HART-SCOTT-RODINO REVIEW

Corporate & Business Law Alert
October 3, 2017

The U.S. Department of Justice recently filed a civil antitrust lawsuit against Parker-Hannifin Corporation and Clarcor Inc., alleging that the completed merger of these entities violated U.S. antitrust laws. This suit highlights that clearing the U.S. Hart-Scott-Rodino premerger notification process does not mean the transaction is exempt from further antitrust scrutiny.

Parker-Hannifin Corporation and Clarcor Inc. executed an agreement and plan of merger in December 2016 whereby Clarcor would be merged into a subsidiary of Parker-Hannifin in exchange for \$4.3 billion in cash. The parties subsequently made the required premerger notification filing under the U.S. Hart-Scott-Rodino Antitrust Improvement Act (“HSR Act”). Parker-Hannifin announced on January 18, 2017 that the 30 day HSR Act waiting period had expired, and the parties subsequently completed the merger on February 28, 2017. Clarcor is now a wholly owned subsidiary of Parker-Hannifin.

On September 26, 2017, nearly seven months after the transaction closed, the U.S. Department of Justice (the “DOJ”) filed a civil antitrust suit against Parker-Hannifin and Clarcor alleging the completed merger has eliminated head-to-head competition in the U.S. market for aviation fuel filtration systems and related filter elements, resulting in the substantial lessening of competition. The DOJ requests that Parker-Hannifin divest assets sufficient to create a separate competing business for aviation fuel filtration systems and related filter elements, thereby restoring competition in this market to pre-merger levels.

This case emphasizes that Section 7 of the Clayton Act, which prohibits mergers and acquisitions where the effect “may be substantially to lessen competition, or to tend to create a monopoly”, can be enforced either before or after the transaction is completed. This is the case both for transactions that are not reportable under the HSR Act and, notably, transactions where the 30 day waiting period under the HSR Act expires without the agencies issuing a second request. The key element is whether the transaction could substantially lessen competition or tend to create a monopoly. Sophisticated antitrust counsel can help evaluate and mitigate antitrust risks in the early stages of the transaction process, well before they become post-closing problems that are often more complicated and expensive to solve.

Attorneys

Valerie Stevens

Practices & Industries

Corporate & Business

DOJ CHALLENGES COMPLETED MERGER THAT PASSED HART-SCOTT-RODINO REVIEW

If you have any questions relating to the Clayton Act, the HSR Act, or other antitrust issues, please contact Valerie Stevens (646-218-7614; vstevens@hodgsonruss.com) or Nicholas Hoffman (716-848-1258; nhoffman@hodgsonruss.com).

