US

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The US merger control regime has a relatively easy filing process, but its review process can be very burdensome in a small percentage of transactions. Determining reportability is relatively straightforward for most transactions and the filing itself, while requiring some information in unusual forms, is not particularly complex and can often be prepared in a few days, or even less, if the required information is readily available.

In general, transactions among US entities or persons are reportable if the value of the transaction is greater than $70.9 million, one party to the transaction has total sales or assets of $141.8 million or more and one other party has total sales or assets of $14.2 million or more. Each of these thresholds is subject to annual adjustment.

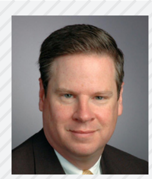
Where the entity or assets to be acquired are located outside the US, the transaction is only reportable if the entity/asset has sales in or into the US of less than $70.9 million; if all parties to the transaction are located outside the US, it may also be exempt if the parties together have sales in or into the US of $156 million or less.

There are a number of other exemptions that could apply to any given transaction, so it is advisable to consult with experienced US counsel to determine reportability. Note that acquisitions of voting securities can be reportable even when they do not confer control as can certain types of corporate joint ventures. There is no deadline for a filing; however, a reportable transaction may not be consummated until all waiting periods have expired.

The filing itself contains only limited financial, ownership and subsidiary information along with the transaction documents and certain documents created by or for officers and directors that discuss certain aspects of the transaction or, in certain circumstances, the industry. Each party must make a filing, but each transaction requires only one filing fee, which ranges from $45,000 to $280,000.

The filing starts a 30-day waiting period in most cases. If the reviewing agency determines there are substantial issues with the transaction, it will issue to each party a so-called Second Request, which is essentially a massive subpoena for documents and data. After all parties have complied with the Request, the agency has an additional 30 days to complete its review, though often additional time is provided by the parties. While only 4-5% of filed transactions receive a Second Request, complying with the request can take months and is often very expensive, and parties to competitively sensitive transactions should be prepared for the delay and the burden.

Substantively, merger review in the US has not changed significantly in the past 20 years. The review process is less structural than it once was and now relies on more case-specific economic and documentary evidence. The most recent Merger Guidelines, published in 2010, reflect this focus. Purely theoretical defenses will not be sufficient; parties need to present real evidence in support of their positions. Parties to strategic transactions should consider US antitrust risks with care.



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