

October 8, 2015

FTC Continues Aggressive Enforcement of HSR Act, Levies \$656,000 Fine Against Investor

Investor Len Blavatnik has agreed to pay \$656,000 to resolve allegations that he violated the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”) by failing to obtain clearance prior to acquiring voting securities of TangoMe, Inc., a privately held mobile messaging service company. This action, the third brought by the Federal Trade Commission and the Department of Justice this fall for HSR Act violations, demonstrates that enforcement remains a top priority, and that individuals and companies alike must ensure compliance with the HSR Act.

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Under the HSR Act, notification is generally required where an acquisition of voting securities results in an acquirer holding in excess of the “size of transaction” threshold (currently \$76.3 million). In the transaction at issue, Blavatnik’s controlled company, Access Industries, purchased approximately 29% of TangoMe’s voting securities valued at approximately \$228 million. Blavatnik made a corrective filing post-closing, acknowledging that the acquisition had been reportable, and claiming that the failure to file was inadvertent. As this was Blavatnik’s second violation of the HSR Act, the Agencies sought a fine. Blavatnik had previously violated the HSR Act in 2010 by acquiring \$634 million of voting securities of LyondellBasell Industries N.V. without making a filing. In that case, the Agencies chose not to seek a fine after he made a corrective filing, claimed the failure to file was inadvertent, and represented that he would vet the HSR Act reportability of future acquisitions with counsel.

This case is similar to recent enforcement actions in that it involved a minority acquisition. Earlier this year:

- Investment manager Third Point LLC and three of its affiliated funds, first-time offenders, entered into a proposed settlement agreement, without monetary fine, for HSR Act violations arising from improper reliance on the investment-only exemption despite holding less than 10% of the issuer’s shares; and
- Leucadia National Corporation, a repeat offender, agreed to pay \$240,000 to settle charges that it violated the HSR Act by acquiring less than 15% of an issuer’s shares in 2013 without obtaining HSR clearance, relying erroneously on the institutional investor exemption.

Through these actions, the federal antitrust authorities have exhibited that inadvertent violations are subject to enforcement actions. Further, the Blavatnik settlement is a reminder to individuals holding controlling interests in issuers or entities that they are ultimately responsible for the HSR Act compliance of such issuers or entities.

Fines for non-compliance with the HSR Act can range up to \$16,000 per day for every day of non-compliance. While the agencies typically show leniency for first offenses, repeat offenders will likely be subject to monetary penalties.

If you have any questions, please contact [Deidre Johnson](#), [Simone Waterbury](#), [Adam Eckart](#) or another member of [Ropes & Gray’s antitrust practice group](#).