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together

The Antitrust Merger Review Process

**Presentation to State-owned Assets Supervision and
Administration Commission (SASAC), People's Republic of China,
and Officials of Certain State-owned Enterprises**

**December 14, 2010
Washington, D.C.**

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HSR: Overview

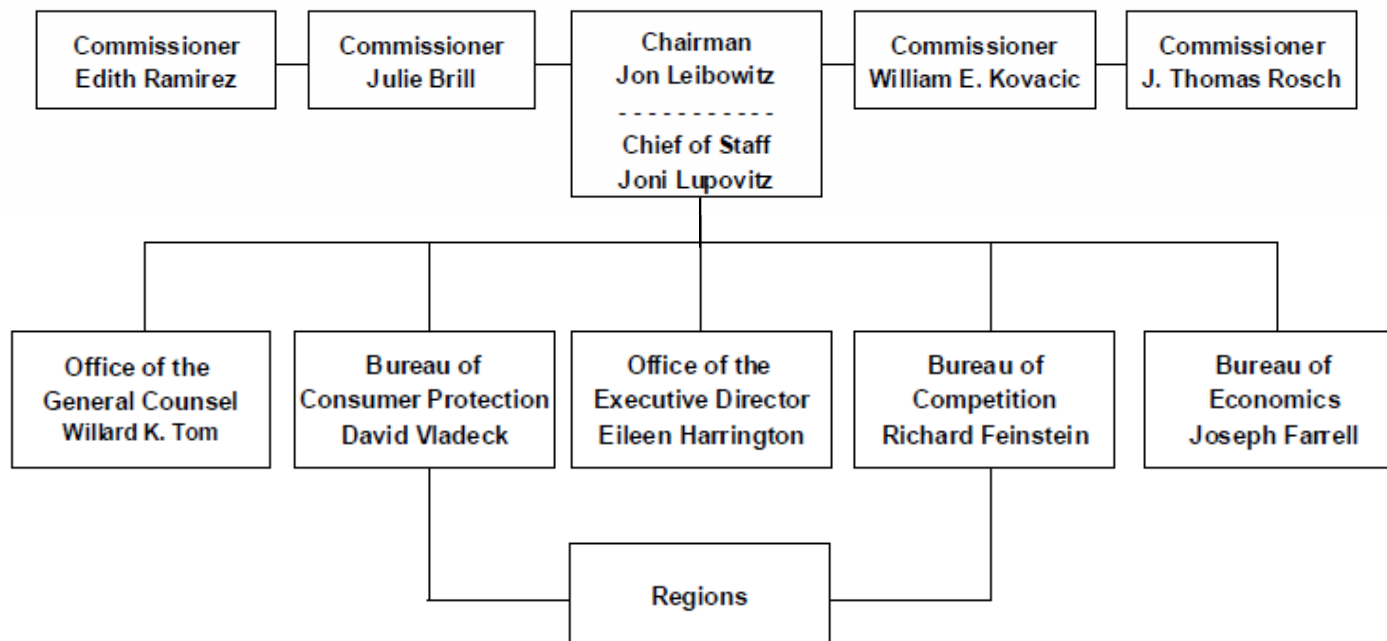
- The Hart-Scott-Rodino Antitrust Improvements Act (“HSR Act”) established the federal premerger notification program, which provides the Federal Trade Commission and the Department of Justice with information about most mergers and acquisitions (including many joint ventures) before they occur.
- The parties transactions above specified thresholds must submit “HSR forms” to the FTC and DOJ.
- The parties may not close their deal until the 30 day waiting period outlined in the HSR Act has passed, the government has granted early termination of the waiting period, or any extended review required by the antitrust agency has been completed and the competitive issues resolved.

HSR: Agencies

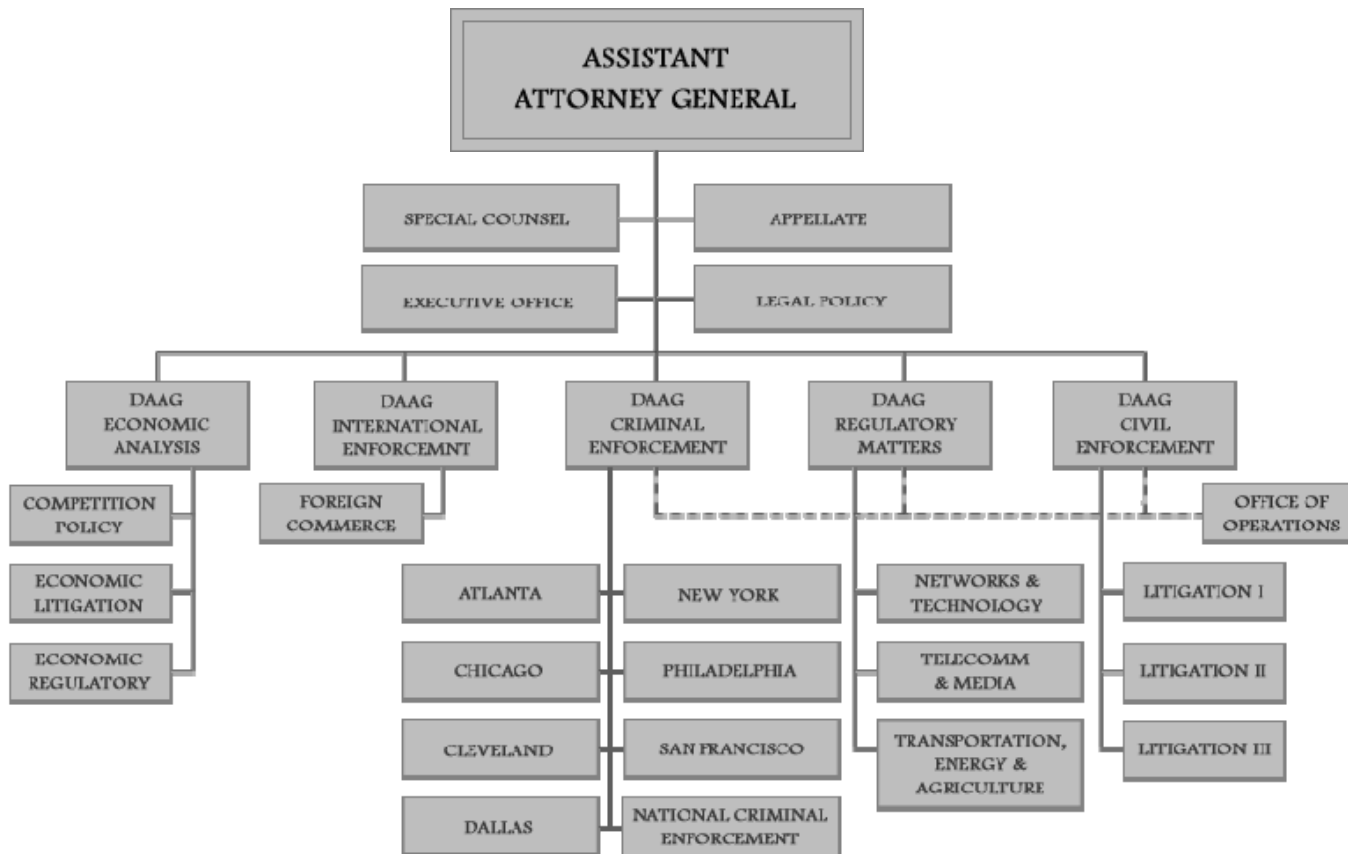
- Most mergers are reviewed by the Federal Trade Commission (“FTC”) or the Antitrust Division of the Department of Justice (“DOJ”).
 - The FTC and DOJ have issued joint “Horizontal Merger Guidelines” describing the analytical techniques, practices, and the enforcement policies the agencies consider in reviewing mergers among competitors and potential competitors (the Horizontal Merger Guidelines were updated in August 2010)
- Certain transactions may be subject to review by other federal agencies such as the Federal Energy Regulatory Commission or the Federal Communications Commission.
- Proposed transactions also can be reviewed by State Attorneys General and/or state regulatory commissions under state antitrust and regulatory laws.

HSR: Federal Trade Commission

FEDERAL TRADE COMMISSION



HSR: Antitrust Division



HSR: Industries

- The FTC and DOJ determine which agency will review a given merger based on the industry or product involved in the merger. Although there is some overlap, proposed transactions generally would be divided as follows:

Federal Trade Commission

- Airframes
- Automobiles
- Building Materials
- Chemicals
- Computer Hardware
- Energy (natural gas)
- Healthcare Providers
- Industrial Gases
- Grocery/Retail Stores
- Pharmaceuticals and Biotechnology
- Professional Services
- Satellites/Launch Vehicles
- Textiles

Antitrust Division

- Agriculture and Associated Biotechnology
- Avionics, Aeronautics, and Defense
- Beer
- Computer Software
- Cosmetics and Hair Care
- Energy (electrical and nuclear)
- Financial Services, Insurance, Stock and Option, Bond, and Commodity Markets
- Flat Glass
- Health Insurance
- Industrial Equipment
- Media and Entertainment
- Metals, Mining, and Minerals
- Photography and Film
- Pulp, Paper, Lumber, and Timber
- Telecommunications Services and Equipment
- Travel and Transportation
- Waste Management

Core Elements of Merger Review Analysis

- Market Definition (product and geographic market)
- Market Concentration (pre- and post-proposed transaction)
- Effects of the Proposed Transaction
 - Unilateral Effects (ability of merged firm to raise prices)
 - Coordinated Effects (whether coordination among competitors that could raise prices/reduce output is more likely)
- Ease of Entry into the Market (including from foreign suppliers)
- Non-Price Factors (potential effects on quality, service, variety, innovation, etc.)
- New Guidelines place a greater emphasis on flexibility in analysis and focus on evidence beyond data regarding market concentration

Information Used in Antitrust Agency Merger Reviews

- HSR Forms (containing information and internal documents of the parties assessing the deal and its impact on the market)
 - Materials and data provided in HSR forms are confidential
- Information gathered by the antitrust agencies
 - Typically from customers, competitors, and public sources
- Additional information/document requests to the parties
- Meetings and discussions between the antitrust agency officials and the parties during the review process

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