

LEGAL UPDATES

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# DOJ Announces \$900,000 Settlement with Smithfield Foods for "Gun Jumping"

On January 21, 2010, the Department of Justice Antitrust Division (DOJ) announced that Smithfield Foods Inc. agreed to settle gun-jumping charges brought by the DOJ. Pursuant to the settlement, Smithfield agreed to pay \$900,000 in civil penalties. The action brought by the DOJ related to actions that Smithfield and Premium Standard Farms took in September 2006, prior to the expiration of the waiting period required under the Hart-Scott-Rodino Act (HSR Act) and the consummation of the merger between Smithfield and Premium Standard in 2007.

The HSR Act requires parties to mergers and acquisitions that meet certain threshold levels to make a pre-merger notification filing with the DOJ and the Federal Trade Commission (FTC). The notification filing is followed by a waiting period during which the parties are required to operate independently while the government investigates the proposed transaction for possible anti-competitive effects. During the waiting period, the parties must continue to compete in the marketplace independently, and the acquiring party cannot exercise control or ownership over the acquired party or its business decisions. Engaging in improper pre-merger integration that is prohibited by the HSR Act is commonly referred to as "gun jumping."

The DOJ specifically alleged that during the waiting period for their proposed merger in September 2006, Smithfield exercised operational control over a significant aspect of Premium Standard's business. Before the proposed merger, Smithfield and Premium Standard both processed and sold pork in competition with each other. After executing the merger agreement, but before the HSR waiting period had expired, Premium Standard submitted three hog purchase contracts to Smithfield for its consent prior to entering into the

contracts with the independent hog producers. Together, the three multi-year contracts related to Premium Standard's purchase of between 400,000 to 475,000 hogs annually at a total cost ranging from \$57 million to \$67 million. The DOJ found that by submitting these contracts to Smithfield for its consent, Premium Standard failed to exercise independent business judgment in violation of the HSR Act.

## **What This Means to You**

The settlement between Smithfield, Premium Standard and the DOJ serves as a reminder that the DOJ and other federal antitrust agencies continue to take action against companies for gun-jumping violations. The consequences for engaging in unlawful pre-merger activity can be serious and costly.

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