

CLIENT ALERT

2015 Antitrust M&A Year in Review

Jan.26.2016


Crowell & Moring LLP is pleased to release its "2015 Antitrust M&A Year in Review." Following a record-breaking year for volume of transactions, this publication provides insight and analysis into developments and trends in global antitrust enforcement of mergers and acquisitions. We examine the antitrust agencies' increasing focus on protecting innovation and emerging forms of competition, requiring broader remedies and more competitive divestiture buyers, and highly scrutinizing transactions in markets where prior consolidation was not challenged. We also look at the agencies' increasing willingness to challenge transactions through litigation, and their relatively successful recent track record.

The report spotlights areas that were particularly noteworthy in 2015, including telecom, health care, energy, and IP and innovation. We also take a look at the first year of Commissioner Vestager's merger enforcement in Europe, the growing influence of third parties in merger review proceedings, and procedural trends at the Federal Trade Commission and Department of Justice Antitrust Division that impact the cost and timeline of merger review in the U.S.

Given the likelihood that recent antitrust merger enforcement developments foreshadow what to expect in the coming year, the 2015 Antitrust M&A Year in Review provides insight into trends that will be highly relevant going forward. We hope that you will find this report useful and welcome your feedback.

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2015 ANTITRUST M&A YEAR IN REVIEW

2015 was a record-breaking year for global merger activity, with the highest recorded volume of announced transactions at over \$5 trillion, approximately half of which involved U.S. targets.* The year was punctuated by three mega-deals valued at over \$100 billion: Pfizer/Allergan, Dow/DuPont, and Anheuser-Busch InBev/SABMiller.

Many of the major deals of 2015 are strategic plays, combining competitors to gain efficiencies, improve innovation and more effectively compete in changing regional and global markets. That means many of them present challenging competition issues for regulators in the U.S., Europe, and elsewhere.

By any measure, the agencies rose to the challenge and were extremely active in the merger enforcement arena. The Department of Justice (DOJ) Antitrust Division challenged five transactions, four of which were abandoned by the parties and one of which is pending. The Federal Trade Commission (FTC) challenged six transactions, four of which are pending. In addition, between the two U.S. agencies, numerous transactions were cleared only after the agencies imposed substantial divestitures and other remedies. And in Europe, Commissioner Vestager made her mark in her first year on a number of high-profile merger investigations.

Several important themes emerge from the agencies' record on merger enforcement in 2015.

First, the agencies are increasingly willing to block transactions that they consider harmful to nascent competitors and future innovation in dynamic markets. In April, DOJ, along with the FTC, blocked Comcast's \$45 billion attempt to acquire Time Warner Cable, based on concerns that the merger would make Comcast an "unavoidable gatekeeper" for emerging broadband internet services such as "over the top" streaming video services like Netflix. Similarly, DOJ worked closely with agencies in China, Korea and Europe to block the combination of Applied Materials and Tokyo Electron,

NOTABLE CROWELL & MORING DEALS IN 2015

AT&T's \$67 Billion Acquisition of DIRECTV
C&M was lead antitrust counsel for AT&T in this transaction which created a more competitive video/broadband provider. DOJ cleared with no conditions.

Humana's Proposed \$37 Billion Merger with Aetna
C&M is representing Humana in connection with the antitrust review of its proposed merger with Aetna, which will combine two highly complementary health insurance providers in the U.S. DOJ review pending.

United Technologies' \$9 Billion Sale of Sikorsky Aircraft to Lockheed Martin
C&M was lead antitrust counsel for UTC in connection with its divestiture of a leading helicopter manufacturer to a premier defense contractor. DOJ cleared in initial waiting period.

Liberty Global's Acquisition of De Vijver Media
C&M's Brussels team assisted cable operator Liberty Global in this transaction, one of the first EU cases involving vertical integration between broadcasters and content distribution platforms. European Commission (EC) cleared after a Phase II investigation and commitments guaranteeing access to De Vijver Media's channels.

*Source: Dealogic

Crowell & Moring, LLP | January 2016
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For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Wm. Randolph Smith

Partner – Washington, D.C.
Phone: +1 202.624.2700
Email: wrsmith@crowell.com

Jeane A. Thomas, CIPP/E

Partner – Washington, D.C.
Phone: +1 202.624.2877
Email: jthomas@crowell.com