



Smithfield Foods and Premium Standard Farms charged with illegal premerger coordination

By Agri-Pulse Staff

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Washington, Jan. 22 – The Department of Justice announced a settlement Friday with Smithfield Foods Inc. and Premium Standard Farms LLC that requires the companies to pay a total of \$900,000 in civil penalties for violating premerger waiting period requirements.

The Department's Antitrust Division filed a civil antitrust lawsuit in U.S. District Court for the District of Columbia Friday, along with the proposed settlement that, if approved by the court, would resolve the lawsuit.

According to the complaint, after Smithfield and Premium Standard announced their proposed merger in September 2006, Smithfield exercised operational control over a significant segment of Premium Standard's business without observing the premerger waiting period requirement in violation of federal antitrust law. Such conduct, commonly known as "gun jumping" violates the Hart-Scott-Rodino (HSR) Act of 1976.

After entering into the merger agreement, Premium Standard stopped exercising its independent business judgment with respect to hog procurement. Instead, Premium Standard sought Smithfield's consent for all of the hog procurement contracts that arose during the waiting period, providing Smithfield with the contract terms, including price, quantity and duration. The hog procurement contracts were necessary to Premium Standard's ongoing business and were entered into in the ordinary course. Requiring a buyer's approval of the seller's ordinary course contracts can prematurely transfer operational control, violating premerger notification requirements, the Department said.

"Merging companies must remain independent in their ordinary business operations, including purchasing decisions, until the end of the premerger waiting period," said Christine Varney, Assistant Attorney General in charge of the Department's Antitrust Division. "Observing the waiting period ensures that the marketplace remains competitive which ultimately benefits consumers."

The HSR Act requires companies planning mergers or acquisitions that meet certain threshold requirements to file premerger notifications with the Department of Justice and

Federal Trade Commission. The Act gives the federal antitrust agencies an opportunity before the parties merge to investigate the proposed transactions and determine whether they would violate the antitrust laws. When the HSR Act applies, it requires that companies observe a waiting period before the acquisition occurs. A purpose of the waiting period is to preserve the companies as independent companies in case the proposed merger or acquisition is blocked so that the competition that the antitrust laws protect does not suffer.

Federal courts can assess civil penalties for premerger notification or waiting period violations under the HSR Act in lawsuits brought by the Department of Justice. During the time period relevant to this case, the maximum civil penalty for a party in violation of the HSR Act is \$11,000 for each day it is in violation. The Department's complaint does not challenge the underlying merger, which the companies announced they had closed on May 7, 2007.

Smithfield is headquartered in Smithfield, Va. Premium Standard, now a subsidiary of Smithfield, maintains its principal offices in Princeton, Mo

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