



GCR LIVE 5TH ANNUAL NEW YORK

PUBLIC INTEREST CONSIDERATIONS IN MERGER REVIEW

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Considerations

- Mandatory or “Voluntary”?
 - If “voluntary” what powers does the authority have to open investigation and implications for deal certainty/post-close risk?
- Timing — Pre close or Post-close?
- Authority’s Range of Actions
 - Block deal
 - Condition deal — *e.g.*, conduct remedies
 - Just on target or beyond?
- Timing (including appeals, if any)

Considerations *(cont'd)*

- Who files?
- Who has information?
- How to handle classified information?
- Who bears the risk?
- Who negotiates fix?
- Walk away triggers/rights.

Impacted Contract Provisions/Due Diligence

Representations

- Filings
- Related regulatory
 - FOCI/DSS—defense/classified
 - Team Telecom, FERC, NRC, Jones Act
 - Export control and ITAR
 - Non U.S. FDI/labor counsel, etc.
- Government contracts
 - Classified
 - Important Inputs
 - IP
- Antibribery
- Government Investigations

Impacted Contract Provisions/Due Diligence

(cont'd)

Efforts Clause

- Cooperation
- Information
- Submissions — timing
- Discussions with Authority
- “Voluntary” submissions
- Limit/specific commitments
 - Burdensome
 - Target only?
 - Timing
- Timing to negotiate/appeal

Closing Conditions/Termination

- Which “approvals” are required?
- Impact of negative decisions (blocked or burdensome conditions)?
- Ability of either/both parties to terminate?
- Ability of either/both parties to extend termination date?
 - *E.g.*, Ingram Micro/HNA (6% fee in escrow); Multi-Fineline Elextronix/Suchon Dongshan Precision Mfg. Co. (9% fee in escrow)

Deal Implications

1. Ignorance is not bliss: Go into deal with eyes open
2. Posture of transaction can impact advice (hostile? tender offer?)
3. Key provisions of agreement could be impacted
4. Be Proactive — manage review process
 - Coordinate team of GR/legal advisors
 - Contact government customers
 - Meet with reviewing staff pre-filing
 - Build political support if high profile deal