

Competition, Antitrust and Foreign Investment

December 15, 2014

New Reporting Requirements for Foreign Investments in the U.S.

Non-Americans who have recently acquired or established businesses in the U.S. or intend to, should be aware of reporting requirements that have recently been reintroduced. The United States Bureau of Economic Analysis (BEA) has reinstated a program (which was discontinued in 2009) requiring a report to be filed when a foreign direct investor acquires or establishes a U.S. business, or expands an existing U.S. business, subject to certain qualifications. The BEA defines a foreign direct investment as the direct or indirect ownership or control of 10% or more of the voting interest in a U.S. business by a foreign investor.

The BEA issued six versions of the reporting form for different types of transactions. The reports focus on information concerning the facts of the transaction. For example, reporting must address the parties involved, the transaction value, and details concerning the business. Intentions concerning future activity do not need to be disclosed.

This limited reporting regime does not require commitments to be made by non-American investors and can be contrasted to the net benefit test applied to foreign acquisitions of control of certain Canadian businesses. In a separate bill introduced in September, Rep. Rosa DeLauro, D-Conn. had proposed the adoption in the U.S. of a similar net benefit test, to bolster the current CFIUS regime's focus on national security issues. Although it is widely believed that this specific bill will not be passed, its introduction evidences the globally increased focus on review of foreign investments.

The reporting requirement has been reinstated retroactively to January 1, 2014 - a reportable activity that took place from and including January 1, 2014 to November 26, 2014 must be reported by January 12, 2015. Going forward, all reports must be filed with the BEA within 45 days of completion.

For further information regarding these requirements, please contact any member of our Competition, Antitrust and Foreign Investment group.