New Premerger Filing Form

7/15/2011 Richard L. Bouma

The Department of Justice and Federal Trade Commission have revised their premerger filing form. Though there are exceptions, in most situations parties to an acquisition must file a premerger form if the total consideration (including ancillary covenants) paid for the acquired company exceeds a trigger amount. The trigger amount for 2011 is $66 million. That amount is adjusted each year for inflation.

In some ways, the new premerger form is easier to complete than the old form. For example, the parties no longer need to reconstruct historic product-line revenues from a long-ago "base" year (like 2002), which was burdensome; instead, parties need only report their most recent product-line revenues. That change alone makes this new form a welcome improvement.

However, in other ways the new form may be more challenging, at least for some filers. For example, under the old form, filers only had to report their own product-line revenues, and those of affiliates under common ownership. In the new form, that reporting obligation is extended to a new category of entities called "associates." An associate is a business that is not under common ownership with the filing entity, but is under common management or common control (through a management agreement, for example). This added reporting for business associates may be an extra burden for some filers.

If you would like further information or a copy of the new form or new premerger filing rules, please contact Richard L. Bouma or any other business lawyer at Warner Norcross & Judd LLP.