



Antitrust-Related Recent Developments: Merger Agreement Efforts Subject of Litigation

Sep 26, 2016

Reading Time : **2 min**

By: C. Fairley Spillman

Abbott agreed to acquire Alere on January 30, 2016, for \$5.8 billion. Soon afterward (on April 28, 2016), Abbott also agreed to acquire St. Jude Medical Inc. for \$25 billion. On August 30, 2016, Alere sued Abbott, alleging that Abbott was attempting to back out of the Alere acquisition by stalling the antitrust review process until April 30, 2016, the deal's walkaway date. Alere pointed particularly to Abbott's alleged failure to: (1) comply with the Federal Trade Commission's Second Request; (2) provide notice and an opportunity to comment to Alere prior to entering into a timing agreement with the FTC; and (3) follow up on foreign antitrust clearance filings. Alere asserted that Abbott's conduct breached Abbott's covenant in the merger agreement to take all steps necessary to clear antitrust hurdles "as promptly as reasonably practicable." Alere requested expedited trial on its claims, arguing that Abbott's behavior places the April 30, 2016, deadline for the deal's completion in serious jeopardy.

In response to the motion for expedited treatment, Abbott argued that the eight months remaining before the deadline closing date are more than sufficient to clear any regulatory hurdles. Abbott further asserted that uncertainty with respect to the accuracy of Alere's financial reporting, which led to a delay in Alere's 10-K filing with the Securities and Exchange Commission, put the deal in a period of limbo. Abbott noted that, since the 10-K filing, representatives of the companies have held weekly meetings to make sure that the antitrust approval process is proceeding. Abbott also argued that Alere could not claim irreparable harm where Alere itself was not ready to close due to no shareholder vote and no proxy approval from the SEC.

After hearing oral argument on the motion to expedite on September 2, 2016, Vice Chancellor Glasscock concluded that it was appropriate to grant Alere's request for expedited trial. However, he recommended that, rather than proceed to litigate, the parties engage in mediation. Vice Chancellor Glasscock stated that the process would permit the parties to establish a clear plan with which Abbott can comply that is sufficient to give Alere some assurances that antitrust regulatory requirements are being met in a timely manner. Both parties subsequently agreed to mediate the dispute.

Categories

Mergers & Acquisitions

Antitrust

© 2025 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. Attorney advertising. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. Prior results do not guarantee a similar outcome. Akin is the practicing name of Akin Gump LLP, a New York limited liability partnership authorized and regulated by the Solicitors Regulation Authority under number 267321. A list of the partners is available for inspection at Eighth Floor, Ten Bishops Square, London E1 6EG. For more information about Akin Gump LLP, Akin Gump Strauss Hauer & Feld LLP and other associated entities under which the Akin Gump network operates worldwide, please see our Legal Notices page.