Investment holding company Berkshire Hathaway Inc. has agreed to pay $896,000 in civil penalties to resolve Federal Trade Commission allegations that it violated premerger reporting laws in connection with the 2013 acquisition of voting securities in USG Corporation.

The Hart-Scott-Rodino (HSR) Act requires parties to notify the FTC and the Department of Justice (DOJ) of large transactions that affect commerce in the United States and otherwise meet the statutory filing requirements. After submitting this notification, parties must observe a waiting period before closing their transaction, while one of the two agencies determines whether the transaction may substantially lessen competition, in violation of U.S. law. One of the statute’s filing mandates requires parties to notify the antitrust agencies if their total holdings in another party exceed a “size-of-transaction” threshold, regardless of the value of an individual transaction.

“The Commission requires compliance with the premerger notification rules, and will not hesitate to seek civil penalties against companies or individuals that fall short of their filing responsibilities,” said Deborah Feinstein, Director of the FTC’s Bureau of Competition.

“Although we may not seek penalties for every inadvertent error, we will enforce the rules when the same party makes additional mistakes after promises of improved oversight. Companies and individual investors alike should ensure that they have an effective program in place to...
monitor compliance with HSR filing requirements."

According to the FTC's complaint, Berkshire Hathaway changed convertible notes it owned in USG into 21.4 million voting securities on December 9, 2013. As a result of the conversion, the value of its USG holdings exceeded $283.6 million, the premerger reporting threshold under the HSR Act at the time. The company subsequently made a corrective filing, and acknowledged that the transaction should have been reported under the HSR Act.

Just six months prior, Berkshire Hathaway made a corrective filing in connection with a June 2013 acquisition of $41 million of voting securities in Symetra Financial Corporation, a transaction that resulted in Berkshire Hathaway holding Symetra voting securities valued at more than $283.6 million. The FTC took no action against Berkshire Hathaway following its first HSR Act violation, and relied on the firm's assurances that it would implement appropriate HSR monitoring procedures going forward.

The proposed final judgment settling the complaint requires Berkshire Hathaway to pay a civil penalty of $896,000, based on the time it was in violation of the HSR Act, from December 9, 2013 when it acquired the shares via the conversion through February 3, 2104, the end of the waiting period for the corrective filing. This is the maximum civil penalty that can be imposed as a result of this violation. At this time, the FTC has opted not to bring a separate action against the company for the prior HSR filing violation.

The Commission vote to refer the complaint to DOJ for filing on the FTC's behalf was 5-0. It was filed in the U.S. District Court for the District of Columbia on August 20, 2014, by FTC staff acting as deputized agents of the DOJ. The proposed final judgment is subject to court approval.

NOTE: The Commission authorizes the filing of a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. Consent decrees have the force of law when signed by the District Court judge.

The FTC's Bureau of Competition works with the Bureau of Economics to investigate alleged anticompetitive business practices and, when appropriate, recommends that the Commission take law enforcement action. To inform the Bureau about particular business practices, call 202-326-3300, send an e-mail to antitrust[at]ftc[dot]gov, or write to the Office of Policy and Coordination, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580. To learn more about the Bureau of Competition, read Competition Counts. Like the FTC on Facebook, follow us on Twitter, and subscribe to press releases for the latest FTC news and resources.

CONTACT INFORMATION
Berkshire Hathaway Inc. to Pay $896,000 to Resolve FTC Allegations

http://www.ftc.gov/news-events/press-releases/2014/08/berkshire-hat...